

**AGENDA REQUEST
BUSINESS OF THE CITY COUNCIL
CITY OF PEARLAND, TEXAS**

AGENDA OF: May 18, 2015	ITEM NO.: Resolution No. R2015- 89
DATE SUBMITTED: May 12, 2015	DEPT. OF ORIGIN: PEDC
PREPARED BY: Matt Buchanan	PRESENTOR: Matt Buchanan
REVIEWED BY:	REVIEW DATE:
SUBJECT: A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into a Tax Abatement Agreement with Shale-Inland Holdings, LLC, Southwest Stainless, LP, and American Commercial Contractors, LLC and approving the Pearland Economic Development Corporation to enter into a Loan Agreement with Shale-Inland Holdings, LLC.	
EXHIBITS: R2015 89, Tax Abatement Agreement, PEDC Loan Agreement	
FUNDING:	
<input type="checkbox"/> Grant <input type="checkbox"/> Developer/Other <input type="checkbox"/> Cash <input type="checkbox"/> Bonds To Be Sold <input type="checkbox"/> Bonds- Sold <input type="checkbox"/> L/P – Sold <input type="checkbox"/> L/P – To Be Sold	
EXPENDITURE REQUIRED: N/A	AMOUNT BUDGETED:
AMOUNT AVAILABLE:	PROJECT NO.:
ACCOUNT NO.:	
ADDITIONAL APPROPRIATION REQUIRED:	
ACCOUNT NO.:	
PROJECT NO.:	
To be completed by Department:	
Finance	X Legal
Ordinance	X Resolution

EXECUTIVE SUMMARY

Since December 2013, PEDC and the City have been working with Shale-Inland Holdings, LLP, on the possible construction of an office and distribution facility. The proposed facility would include office, manufacturing, and warehouse area in a 210,000 sq. ft. tilt-up concrete building. The facility will be located generally northwest of the intersection of Bailey Road and SH 35 immediately south of the Weatherford's facility. Investment in land, building, and equipment is estimated at \$21 million and will create approximately 80 jobs.

Shale-Inland Holdings (SIH) was formed in March 2012 and is a specialty industrial supplier of pipe, valves, fittings and related products / technical services to the chemical, petrochemical and industrial sectors with distribution from 10 distinct brands and approximately 40 branches throughout North America.

Tax Abatement

Tax abatement is proposed on real and fixed property and inventory over a 10-year period at the following rates:

<u>Real and Fixed Property</u>	
2017- 2019	100%
2020 - 2023	75%
2024 - 2027	50%
 <u>Inventory</u>	
2017 – 2027	40%

PEDC Loan

The PEDC Board of Directors has approved providing the company with a loan of \$490,000. The initial disbursement of \$420,000 would occur within 60 days of the company receiving its certificate of occupancy and commencing operations at the facility. Future disbursements would be provided if the company creates additional jobs beyond the initial 80 employees. Disbursements would occur after Shale-Inland submits annual compliance certification and meeting terms of the agreement. Shale-Inland will have three years to create the additional jobs and receive the additional disbursements.

RECOMMENDED ACTION

Consideration and approval of a Resolution authorizing the City Manager or his designee to enter into a tax abatement agreement between the City and Shale-Inland Holdings, LLC, Southwest Stainless, LP, and American Commercial Contractors, LLC and approving the Pearland Economic Development Corporation to enter into a Loan Agreement with Shale-Inland Holdings, LLC.

RESOLUTION NO. R2015-89

A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into a Tax Abatement Agreement with Shale-Inland Holdings, LLC, Southwest Stainless, LP and American Commercial Contractors or its assigns, and authorizing a Loan Agreement between the Pearland Economic Development Corporation and Shale-Inland Holdings, LLC.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:

Section 1. That certain Tax Abatement Agreement, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes, is hereby authorized and approved.

Section 2. That certain Loan Agreement a copy of which is attached hereto as Exhibit "B" and made a part, hereof for all purposed, is authorized and approved.

Section 3. That the City Manager or his designee is hereby authorized to execute and the City Secretary to attest a Tax Abatement Agreement.

PASSED, APPROVED and ADOPTED this the _____ day of _____,
A.D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

WHEREAS, the Improvements, as defined below, constitute a major investment within the Reinvestment Zone that will substantially increase the appraised value of property within the zone and will contribute to the retention or expansion of primary and secondary employment within the City; and

WHEREAS, there will be no substantial adverse effect on the provision of City services or on its tax base and the planned use of the Premises will not constitute a hazard to public safety, health, or welfare; and,

WHEREAS, but for the benefits provided through this Tax Abatement Agreement the Improvements as defined below would not be made in the City; and

WHEREAS, the Companies declare that they will be the sole beneficiary of the benefits provided through this Tax Abatement Agreement and that the Companies will not share any portion of the proceeds of the benefits received through this Tax Abatement Agreement with any other party as compensation or award for consulting or other services received by the Companies contingent upon the successful execution of this agreement;

NOW, THEREFORE, for and in consideration of the mutual agreements and obligations set forth below, the sufficiency of which is hereby acknowledged by the parties hereto, the Companies and the City mutually agree as follows:

1. DEFINITIONS:

- a. Effective Date:** The words “Effective Date” mean January 1, 2017.
- b. Freeport Goods:** The words “Freeport Goods” mean inventory that qualifies as freeport goods under Section 11.251 of the Texas Tax Code, as amended.
- c. Improvement:** The word “Improvement” means a building, structure, fixture, or fence erected on or affixed to land.
- d. Inventory:** The word “Inventory” means personal property that comprises Southwest’s inventory of finished goods, supplies, raw materials, and work in progress.
- e. Personal Property:** The words “Personal Property” mean property that is not land or an improvement, including inventory, furniture, equipment, and machinery.

f. **Premises:** The property subject to this Agreement, as described by the metes and bounds and map attached hereto as **Exhibit "A."**

g. **Tangible Personal Property:** The words "Tangible Personal Property" have the same meaning as that term is given in Section 1.04 of the Texas Tax Code, as amended.

2. **CONFLICT OF INTEREST:** The City represents and warrants that the Premises does not include any property that is owned by a member of its council or boards, agencies, commissions, other governmental bodies or employees approving, or having responsibility for the approval of, this Agreement.

3. **ABATEMENT:** Subject to the terms and conditions of this Agreement, and subject to the rights and holders of any outstanding bonds of the City, a portion of ad valorem taxes assessed upon the Premises, Improvements, and certain personal property as defined herein and otherwise owed to the City shall be abated. The City hereby acknowledges that it is not aware of any terms or conditions of any outstanding bonds which would invalidate this Agreement or would conflict with the provisions of this Agreement. This Agreement shall be effective with the Effective Date.

a. **Improvements:** In each year that this Agreement is in effect, there shall be an abatement of taxes assessed upon the increased value of the Premises due to the Improvements defined herein, exclusive of future or other capital investment made at the Premises not contemplated herein, over the market value as of January 1st in the year in which this Agreement is executed. The abatement as herein provided shall be for the following years and in the following amounts: (i) One hundred percent (100%) of the taxes assessed upon the increased value of the Improvements set forth below exclusive of future or other capital investment made at the Premises, annually for a period of three (3) years beginning January 1, 2017 and ending December 31, 2019; (ii) Seventy five percent (75%) of the taxes assessed upon the increased value of the Improvements set forth below exclusive of future or other capital investment made at the Premises, annually for a period of three (3) years beginning January 1, 2020 and ending December 31, 2022; and (iii) Fifty percent (50%) of the taxes assessed upon the increased value of the Improvements set forth below exclusive of future or other capital investment made at the Premises, annually for a period of four (4) years beginning January 1, 2023 and ending December 31, 2026.

b. **Inventory:** Additionally, there shall be an abatement of forty percent (40%) of the taxes on Inventory that are not freeport goods, annually for a period of ten (10) years beginning January 1, 2017 and ending December 31, 2026.

4. FUNDING CONDITIONS: The Companies must meet all of the following conditions (“Funding Conditions”), or the Companies shall be subject to liquidated damages and/or repayment of abated taxes in accordance with this Agreement:

a. Capital Improvements: The Companies shall construct various improvements on the Premises, which shall be substantially complete on or before December 31, 2016 (the “Improvement Completion Date”), and which when complete shall have a minimum investment value of Fourteen million dollars (\$14,000,000) for the land and improvements. The Companies shall have such additional time to complete the Improvements as may be required in the event of “force majeure” (as set forth herein) if the Companies are diligently and faithfully pursuing completion of the Improvements. The date of completion of the Improvements shall be defined as the date a Final Certificate of Occupancy is issued by the City.

b. Job Creation: Shale shall create a total of not less than 80 “Employment Positions”, as defined herein, by December 31, 2016;

Shale shall demonstrate compliance with this Section by maintaining a minimum of ninety five percent (95%) or more of the required Employment Positions at the Premises for the entire duration of this Agreement. Employment Positions, for purposes of this Agreement, shall only be counted if the number of Employment Positions is greater than the total number of Employment Positions located at Shale’s operations in the City at the time this Agreement is executed (the “Threshold”).

c. Employment Positions. For the purposes of this Agreement, “Employment Positions” shall be defined as Shale’s jobs meeting all of the following criteria:

- 1) New positions based at the Premises that require at least 2000 hours worked annually per employee; and
- 2) The Employment Positions must have an average annual gross compensation of at least \$40,000.00 per year (excluding benefits); and
- 3) Medical benefits must be provided for each Employment Position.

d. Non-Freeport Inventory. Southwest shall maintain at the Premises, during the term of this Agreement, inventory (other than

Freeport Goods) with a value that never falls below the yearly minimum values shown in Table 4.1 below:

Table 4.1 Inventory Value	
Year	Inventory Value After Freeport Exemption
2016	\$57,500,000
2017	\$60,000,000
2018	\$63,200,000
2019	\$64,900,000
2020	\$67,500,000
2021	\$67,500,000
2022	\$67,500,000
2023	\$70,200,000
2024	\$70,200,000
2025	\$70,200,000

e. Lease agreement: Southwest and ACC shall execute an agreement providing for (1) the construction of an approximately 205,000 square foot manufacturing/distribution facility on the Premises, and (2) a lease of said facility by Southwest as the tenant for the term of this Agreement.

5. APPLICATION FOR TAX ABATEMENT: Shale and Southwest agree and covenant that the information provided in the Application for Tax Abatement attached hereto as **Exhibit "B"** is true and correct and that any materially false or misleading information provided to applicable taxing jurisdictions shall be an event of default and grounds for termination of this Agreement.

6. GOOD FAITH, COMPLIANCE AND CONSIDERATION: The Companies agree and covenants that it will diligently and faithfully, in a good and workmanlike manner, pursue completion of the Improvements as a good and valuable consideration of this Agreement. The Companies further covenant and agree that all construction of the Improvements will be in accordance with all applicable federal, state and local laws and regulations or valid waiver thereof. In further consideration, the Companies shall thereafter, from the date a Final Certificate of Occupancy is issued until the expiration of this Agreement, continuously operate and maintain the Premises and limit the use of said Premises to that use which is consistent with the terms of this Agreement and the

general purpose of encouraging development or redevelopment of the Reinvestment Zone during the period that this Agreement is in effect.

7. ANNUAL COMPLIANCE VERIFICATIONS: No later than 60 days after January 1, 2018, and continuing every year thereafter through 2027, Shale and Southwest shall deliver to the City an Annual Compliance Verification, in the form of **Exhibit “C”**, attached hereto, signed by duly authorized representatives of the Companies certifying the following information:

- a. the number of Employment Positions created and maintained by Shale on the Premises, the general description the Employment Positions existing as of December 31st of the preceding year and the wage information for all Employment Positions; and
- b. the appraised value, as determined by the Central Appraisal District, of the Improvements and Inventory as defined herein, supporting evidence that the Improvements were constructed or installed on or before the Improvements Completion Date and a general description of the Improvements and Inventory existing as of December 31st of the preceding year

There shall be a total of ten (10) Annual Compliance Verifications submitted to the City with respect to calendar years 2017 through 2026. Each Annual Compliance Verification shall include specific back-up information supporting the Employment Position data. Furthermore, all Annual Improvement Compliance Verifications shall consist of a certified copy of the appraised value of the Improvements and Inventory as shown by the Central Appraisal District supported by all correspondence, renditions, appeals or contests and settlement of appraised value and shall provide appropriate back-up data for the Improvements exclusive of other investments made at the Premises.

8. APPLICATION FOR PROPERTY TAX ABATEMENT EXEMPTION FORM 50-116: Southwest shall annually submit the Application for Property Tax Abatement Exemption Form 50-116, in the form of **Exhibit “D”** to Brazoria County annually to qualify for its abatement and shall submit a copy to the City as part of its Annual Compliance Verification.

9. CERTIFICATION OF GOOD STANDING/DELINQUENT TAXES: By execution of this Agreement, the Companies certify that the Companies are in good standing under the laws of the State in which it was formed or organized, and have provided the City evidence of such. In addition, the Companies certify that the Companies owe no delinquent taxes to any taxing unit of the State of Texas, the City or any other local tax levying political subdivision with jurisdiction to levy taxes in or on the operations and property of the Companies at the Premises.

10. CERTIFICATION RELATING TO UNDOCUMENTED WORKERS: By execution of this Agreement, the Companies, including any business, branch, division, and department of the Companies, certify that it does not and will not knowingly employ an undocumented worker (as defined by Texas Government Code Section 2264.001(4)). If after any abatement of taxes under the Agreement, the Companies, or a business, branch, division, or department of the Companies, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Companies shall repay the amount of any funds abated plus interest at the rate of 8% per year. The repayment shall be due and owing not later than the 120th day after the date of the conviction without the requirement of notice from the City.

11. ACCESS TO PREMISES: The Companies further agree that the City, its agents and employees, shall have the right to enter upon the Premises at any reasonable time upon at least 24 hours prior written notice, to inspect the Improvements in order to determine whether the construction of the Improvements is in accordance with this Agreement and all applicable federal, state, and local laws, ordinances, and regulations or valid waiver thereof. After completion of the Improvements, the City shall have the continuing right to enter upon and inspect the Premises at any reasonable time, after 24 hours written notice has been given, to determine whether the Premises are thereafter maintained and operated in accordance with this Agreement and all applicable federal, state, and local law, ordinances, and regulations. The City shall conduct at least one inspection annually to ensure compliance with the guidelines contained in Resolution No. R2015-19. Notwithstanding any other provision of this Agreement, if the City determines that a violation of a federal, state, or local law, ordinance or regulation exists on the Premises, the City may, in addition to any other authorized enforcement action, provide to the Companies written notice of such violation. For the purposes of this Agreement, the Companies shall have ten (10) days from the date of the notice to cure or remedy such violation. If the Companies refuse to cure or remedy the violation within the ten (10) day period, the Companies are subject to the forfeiture, at the discretion of the City, of any right to any tax abatement for a portion of the period or the entire period covered by this Agreement.

12. LIQUIDATED DAMAGES:

a. Funding Condition Targets. As set forth above, during the term of this Agreement through 2026, Shale and Southwest shall deliver to the City an Annual Compliance Verification demonstrating compliance with the Funding Conditions of this Agreement for the preceding year. If Shale and Southwest fail to timely provide an Annual Compliance Verification or provide an Annual Compliance Verification that demonstrates Shale or Southwest failed to meet a Funding Condition target(s) for that year, then the City may, at its sole discretion and in addition to all other remedies for

the recapture of lost tax revenue provided herein, require the Companies to pay liquidated damages up to the amount of the abatement received for the year in which the Companies did not meet the Funding Conditions.

b. General Provisions Related to Liquidated Damages: Liquidated damages provided for herein shall be construed in accordance with Section 312.205, Tax Code, V.A.T.S., as amended, and shall include all taxes which otherwise would have been paid to the City without the benefit of abatement (but without the addition of penalty; interest will be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Tax Code) and shall become a debt to the City and shall be due, owing and paid to the City as liquidated damages subject to the expiration of any cure period or the termination date, whichever is applicable. The City shall retain all remedies for the recapture and collection of the lost tax revenue as provided generally in the Tax Code for the collection of delinquent property taxes and in accordance with Resolution No. R2015-19.

13. DEFAULTS AND REMEDIES:

a. Each of the following acts or omissions of the Companies or occurrences shall constitute an act of default under this agreement:

- 1)** The Companies fail to meet the Capital Improvements Funding Conditions by the Improvement Completion Date.
- 2)** The Companies fail to provide or submit Annual Compliance Verification Report(s) as required by this Agreement.
- 3)** The Companies fail to meet any of the Funding Conditions set forth in Section 4 of this Agreement.
- 4)** The Companies allow their ad valorem taxes owed to any taxing jurisdiction with respect to the Premises (or Tangible Personal Property associated therewith) or the Inventory to become delinquent, and fail to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes.

b. In the event of a default of the terms of this Agreement, the City shall provide the Companies written notice of such default, which notice shall be delivered by personal delivery or certified mail to:

Kevin S. Boyle, Sr.
Shale-Inland Holdings, LLC
515 Post Oak Blvd., Suite 800
Houston, Texas 77027

Kevin S. Boyle, Sr.
Southwest Stainless, L.P.
515 Post Oak Blvd., Suite 800
Houston, Texas 77027

Susan Rozman
American Commercial Contractors, LLC
4660 Sweetwater Blvd Suite 110
Sugar Land, Texas 77479

c. If the Companies fail to satisfactorily cure a default under this Agreement within thirty (30) days of the date of receiving written notice, this Agreement may be terminated by the City at its discretion without further notice or liability to the Companies. In the event the Companies fail to cure a default within thirty (30) days of receiving notice, the Companies shall immediately refund to the City any amounts abated under this Agreement plus interest at the rate of 8% per year, compounded annually from January 1 of the year prior to the Default Year to the date of payment of the refunded taxes.

d. Shale shall provide the City a written notice a minimum of thirty (30) days before any of the Employment Positions or Improvements are moved from the Premises that would result in a reduction below the then required Employment Positions. In the event Shale shall move any of the Employment Positions or Improvements required by this Agreement from the Premises during the term of the Agreement, the City in its sole discretion, may, terminate this Agreement and require the Companies to immediately refund, to the City, all or a portion of the taxes previously abated under this Agreement, plus interest at the rate of 8% per year, compounded annually from January 1 of the year following the execution of this Agreement to the date of repayment.

e. All taxes abated herein shall be deemed due and owing to the City at any point that the Companies cannot pay their bills as they come due. If after the Companies are no longer able to pay their bills as they come

due, they file for protection from their creditors under any chapter of the bankruptcy code the City may, at its discretion, pursue the abated taxes as a creditor in the bankruptcy for unpaid property taxes subject to any and all tax liens applicable thereto.

14. CITY AUDIT RIGHTS:

a. Duty to Maintain Records. The Companies shall maintain adequate records to support its compliance with the terms of this Agreement. The Companies shall also maintain such records as are reasonably deemed necessary by the City and auditors of the City, or such other persons or entities designated by the City, to ensure proper accounting for all costs and performances related to this Agreement.

b. Records Retention. The Companies shall maintain and retain for a period of four (4) years after the submission of the final Annual Compliance Verification report, or until full and final resolution of all audit or litigation matters which arise after the expiration of the four (4) year period after the submission of the final Annual Compliance Verification report, whichever time period is longer, such records as are necessary to fully disclose the extent of services provided under this Agreement, including but not limited to any daily activity reports and time distribution and attendance records, and other records which may show the basis for the calculation of full time positions.

c. Audit Trails. Appropriate audit trails shall be maintained by the Companies to provide accountability for updates and changes to automated personnel and financial systems. Audit trails maintained by the Companies shall, at a minimum, identify the changes made, the individual making the change and the date the change was made. An adequate history of transactions shall be maintained by the Companies to permit an audit of the system by tracing the activities of individuals through the system. The Companies' automated systems provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, or modification of information related to the performances of this Agreement. The Companies agrees that its failure to maintain adequate audit trails and corresponding documentation shall create a presumption that the performances were not performed.

d. Access. The Companies shall, upon reasonable advance notice, grant the City, or such other persons or entities designated by the City for

the purposes of inspecting, auditing, or copying such books and records, access, during normal business hours on a not to interfere basis, to all paper and electronic records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement. All records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement shall be subject to examination or audit by the City, or such other persons or entities designated by the City in accordance with all applicable state and federal laws, regulations or directives. The Companies will direct any subcontractor with whom it has established a contractual relationship to discharge the Companies' obligations to likewise permit access to, inspection of, and reproduction of all books and records of the Companies' subcontractor(s) which pertain to this Agreement.

e. Location and Reimbursement. Any audit authorized herein shall be conducted at the Companies' Premises in the City during normal business hours and conducted at the City's expense and in a manner not to unreasonably interfere with Shale's, Southwest's and ACC's business, provided all reasonable costs incurred by the City in conducting any such audit shall be reimbursed by the Companies in the event such audit reveals an aggregate discrepancy in any of the Companies' reporting of compliance as required by this Agreement. If any audit or examination reveals that the Companies' reports for the audited period are not accurate for such period, the Companies shall reimburse the City in accordance with Section 11 of this Agreement.

f. Corrective Action Plan. If an audit reveals any discrepancies or inadequacies which must be remedied in order to maintain compliance with this Agreement, applicable laws, regulations, the Companies' responsibilities or performance standards, the Companies agree to, within thirty (30) calendar days after the Companies' receipt of the audit findings, propose and submit to the City a corrective action plan to correct such discrepancies or inadequacies subject to the approval of the City. The Companies further agree, at the sole cost of the Companies, to complete the corrective action approved by the City within thirty (30) calendar days after the City approves the Companies' corrective action plan.

g. Reports. The Companies shall provide to the City periodic status reports in accordance with the City's audit procedures regarding the Companies' resolution of any audit-related compliance activity for which the Companies are responsible.

15. REPORTS AND BRIEFINGS: In a manner consistent with the need to protect privacy and the intellectual property of the Companies and third parties, the Companies will provide periodic briefings as reasonably requested by the City on the general activities, economic impact and progress of the new project development and business operations in Texas.

16. USE AND RETENTION OF CITY CRAFTSMEN, TRADES AND SUPPLIERS: Although not an event of default or a condition to this Agreement, the City requests that the Companies satisfy their need for additional employees from residents of the City of Pearland, Texas, and purchase all materials, supplies and services necessary to affect the occupancy of the property from City of Pearland merchants and businesses.

17. COMMUNITY INVOLVEMENT: Although not an event of default or condition of any advance hereunder, the Companies agree to actively participate in community and charitable organizations and/or activities, the purpose of which are to improve the quality of life in the City of Pearland, Texas, and to actively encourage its employees to be involved in such organization and/or activities.

18. FINANCIAL INFORMATION: The Companies shall furnish the City, if requested, on an annual basis by February 28, of each year throughout the term of this Agreement, information regarding the general business status, market and general summary financial updates regarding the Companies.

19. INDEMNITY AND HOLD HARMLESS: The Companies release, acquit, indemnify, and hold harmless the City, its officers, agents, employees, successors, and assigns, from any and all kinds of claims, demands, losses, damages, injuries, rights, causes of action, or judgments of whatsoever character or nature, including attorneys' fees, which may arise as a result of this agreement. The provisions of this section reflect the expressed intentions of the Companies and the City and shall survive the termination, expiration, or cancellation of this agreement.

20. EXPRESS NEGLIGENCE. The indemnity set forth in this agreement is intended to be enforceable against the Companies and their successors and assigns in accordance with the express terms and scope hereof notwithstanding Texas' express negligence rule or any similar directive that would prohibit or otherwise limit indemnities because of the negligence (whether sole, concurrent, active or passive) or other fault or strict liability of the city.

21. GENERAL PROVISIONS

a. Authority. Each party represents that it has obtained all necessary authority to enter into this Agreement.

b. Relationship of Parties and Disclaimer of Liability. The parties will perform their respective obligations under this Agreement as independent contractors and not as agents, employees, partners, joint ventures, or representatives of the other party. Neither party can make representations or commitments that bind the other party. The Companies are not a “governmental body” by virtue of this Agreement or the City’s granting of an abatement.

c. Limitation of Liability. In no event will either party be liable to the other party for any indirect, special, punitive, exemplary, incidental or consequential damages. This limitation will apply regardless of whether or not the other party has been advised of the possibility of such damages.

d. Term. The term of this Agreement commences on the Effective Date of this Agreement and continues until December 31, 2026 unless terminated earlier pursuant to the terms of this Agreement.

e. Termination for Cause. Either party may terminate this Agreement for cause upon thirty (30) days prior written notice to the other party. “Cause” is any failure to perform a material obligation under this Agreement within the specified time; including the Companies’ failure to comply with any Funding Conditions contained herein. The sole remedy for any termination for Cause (and for the “cause” giving rise to the termination) shall be that each party is relieved of its obligation to perform hereunder, however, following termination by the City, the Companies will continue to be obligated to the City for liquidated damages and/or repayment of abated taxes in accordance with applicable provisions of this Agreement.

f. Dispute Resolution and Applicable Law.

1) Informal Meetings. The parties’ representatives will meet as needed to implement the terms of this Agreement and will make a good faith attempt to informally resolve any disputes.

2) Applicable Law and Venue. This Agreement is made and entered into in the state of Texas and this Agreement and all disputes arising out of or relating thereto shall be governed by the

laws of the state of Texas, without regard to any otherwise applicable conflict of law rules or requirements. The Companies agree that any action, suit, litigation or other proceeding (collectively "litigation") arising out of or in any way relating to this Agreement, or the matters referred to therein, shall be commenced exclusively in the State of Texas in any court with proper jurisdiction to hear this matter closest to the City Hall of the City of Pearland, and hereby irrevocably and unconditionally consent to the exclusive jurisdiction of those courts for the purpose of prosecuting and/or defending such litigation. The Companies hereby waive and agree not to assert by way of motion, as a defense, or otherwise, in any suit, action or proceeding, any claim that (a) the Companies are not personally subject to the jurisdiction of the above-named courts, (b) the suit, action or proceeding is brought in an inconvenient forum or (c) the venue of the suit, action or proceeding is improper.

22. MISCELLANEOUS PROVISIONS

- a. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in establishing proof of this Agreement to produce or account for more than one such counterpart.
- b. Merger.** This document constitutes the final entire agreement between the parties and supersedes any and all prior oral or written communication, representation or agreement relating to the subject matter of this Agreement.
- c. Severability.** Any term in this Agreement prohibited by, or unlawful or unenforceable under, any applicable law or jurisdiction is void without invalidating the remaining terms of this said Agreement. However, where the provisions of any such applicable law may be waived, they are hereby waived by either party, as the case may be, to the fullest extent permitted by the law, and the affected terms are enforceable in accordance with the parties' original intent.
- d. Survival of Promises.** Notwithstanding any expiration, termination or cancellation of this Agreement, the rights and obligations pertaining to payment or repayment of abated taxes and/or liquidated damages, confidentiality, disclaimers and limitation of liability, indemnification, and any other provision implying survivability will remain in effect after this Agreement ends.

e. Binding Effect. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the parties and their successors and all other state agencies and any other agencies, departments, divisions, governmental entities, public corporations and other entities which shall be successors to each of the parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the parties hereto.

f. Successors and Assigns/Notice. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement may be transferred or assigned by the Companies only upon written permission by the City in accordance with Resolution R2015-19, which permission shall not be unreasonably withheld. No assignment shall be approved if the assignor or assignee is indebted to the City for ad valorem taxes or other obligations. The Companies, or any legal successor thereto or prior assignee thereof, may assign their rights and obligations under this Agreement, including by merger or operation of law, to any legal successor or any person or entity that acquires all or substantially all of their business and operations. In addition, with the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, the Companies, or any legal successor company thereto or prior assignee thereof, may assign their rights and obligations under this Agreement to any parent or wholly owned subsidiary that they currently have in place or later establish, if it is constituted as a separate legally recognized business entity. Any such assignment will be made without additional consideration being payable to the City. This Agreement shall survive any sale, change of control or similar transaction involving the Companies, any successor thereto or prior assignee thereof and no such transaction shall require the consent of the City. The Companies shall provide the City written notice of any assignment, sale, change of control or similar transaction pursuant to this section as soon as possible and in no event not later than thirty (30) calendar days following such event.

g. Force Majeure. Neither party shall be required to perform any obligation under this Agreement or be liable or responsible for any loss or damage resulting from its failure to perform so long as performance is made impossible by force majeure or acts of God, including but not limited to strikes, lockouts or labor shortages, embargo, riot, war, revolution, terrorism, rebellion, insurrection, flood, natural disaster, interruption of utilities from external causes. If the force majeure only delays performance, then the Parties shall not be relieved of the duty to perform

their obligations under this Agreement but shall have additional time equal to said delay to perform.

h. Notice. All notices, requests, demands and other communications will be in writing and will be deemed given and received (i) on the date of delivery when delivered by hand or via electronic mail, (ii) on the following business day when sent by confirmed simultaneous telecopy and (iii) on the following business day when sent via overnight courier (e.g., Federal Express).

23. AGRICULTURAL VALUATION: It is understood and agreed by the City and the Companies that if the Premises has been designated and taxed as agricultural land pursuant to Chapter 23, Subchapter C, Tax Code, V.A.T.S., that this Agreement shall not be effective and no abatement granted until the Companies has removed the agricultural use designation and all taxes due pursuant to Section 23.55, Tax Code, V.A.T.S., as amended, (roll back taxes) have been paid.

24. CITY AUTHORIZATION: This Agreement was authorized by Resolution of the City Council at its council meeting on the 18th day of May, 2015, authorizing the City Manager to execute the Agreement on behalf of the City.

Witness our hands this _____ day of _____, _____.

ATTEST:

CITY

By: _____
Young Lorfing, TRMC
City Secretary

By: _____
Clay Pearson
City Manager

APPROVED AS TO FORM:

By: _____
Darrin M. Coker
City Attorney

SHALE-INLAND HOLDINGS, LLC

By: _____
Kevin S. Boyle, Sr.
Chief Financial Officer

SOUTHWEST STAINLESS, L.P.

By: _____
Kevin S. Boyle, Sr.
Chief Financial Officer

AMERICAN COMMERCIAL CONTRACTORS, LLC

By: _____
Susan Rozman
President

THE STATE OF _____ ,

COUNTY OF _____ ,

BEFORE ME, the undersigned Notary Public, on this day personally appeared Kevin S. Boyle, Sr., Chief Financial Officer of Southwest Stainless, L.P. known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, A.D., 2015.

NOTARY PUBLIC, STATE OF TEXAS
Printed Name: _____
Commission Expires: _____

THE STATE OF _____ ,

COUNTY OF _____ ,

BEFORE ME, the undersigned Notary Public, on this day personally appeared Susan Rozman, President of American Commercial Contractors, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, A.D., 2015.

NOTARY PUBLIC, STATE OF TEXAS
Printed Name: _____
Commission Expires: _____

Exhibit "B"

APPLICATION FOR TAX ABATEMENT IN THE CITY

EXHIBIT "C"

FORM OF ANNUAL EMPLOYMENT COMPLIANCE VERIFICATION

EXHIBIT "D"

Application for Property Tax Abatement Exemption Form 50-116

THE STATE OF TEXAS §
§
COUNTIES OF BRAZORIA §
FORT BEND, AND HARRIS §
§

LOAN AGREEMENT

Borrower: ***SHALE-INLAND HOLDINGS, LLC.***
a Delaware limited liability company
515 Post Oak Boulevard
Suite 800
Houston, Texas 77027

Lender: ***PEARLAND ECONOMIC DEVELOPMENT CORPORATION***
a Texas non-profit corporation
1200 Pearland Parkway, Suite 200
Pearland, Texas 77581

This **LOAN AGREEMENT** between ***SHALE-INLAND HOLDINGS, LLC***, a Delaware limited liability company (hereinafter referred to as “Borrower”), and the ***PEARLAND ECONOMIC DEVELOPMENT CORPORATION***, a Texas non-profit corporation, is made and executed on the following recitals, terms and conditions.

WHEREAS, the Pearland Economic Development Corporation (hereinafter referred to as the “Lender”) is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; . . . (F) recycling facilities; . . . (I) distribution centers; (J) small warehouse facilities capable of serving as decentralized storage and distribution centers; (K) primary job training facilities for use by institutions of higher education; or (L) regional or national corporate headquarters facilities”; and

WHEREAS, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless Lender enters into an Agreement with Borrower providing at a minimum a schedule of additional payroll or jobs to be created or retained by Lender’s

investment; a schedule of capital investments to be made as consideration for any direct incentives provided by Lender to Borrower; and a provision specifying the terms and conditions upon which repayment must be made should Borrower fail to meet the agreed to performance requirements specified in this Agreement; and

WHEREAS, Borrower has applied to Lender for financial assistance necessary to operate a distribution facility generally located at the Northwest Corner of S. Main Street and Bailey Road, within the City of Pearland, Texas, including the loan and financial assistance described in this Agreement, and those which may be described on any exhibit or schedule attached to this Agreement, a copy of said application is attached hereto as *Exhibit D*; and

WHEREAS, Borrower has agreed to locate a minimum of 80 Full-Time Employment Positions working at the Borrower's distribution facility located on the Property; and

WHEREAS, Borrower has agreed to make a minimum capital investment of **Fourteen Million Dollars (\$14,000,000)** within the City of Pearland, Texas, and this amount includes the construction of a building for the Borrower's distribution facility located on the Property, which will be leased by the Borrower; the cost of the real estate; and the cost of the business personal property to be located on the Property; and

WHEREAS, Lender approved the provision of certain financial assistance to the Borrower at its meeting held on March 26, 2015, which would provide the Borrower the financial assistance necessary for the Borrower to locate the distribution facility on the Property; and

WHEREAS, this loan and financial assistance from the Lender to the Borrower, are referred to in this Agreement individually as the "Loan" and collectively as the "Loans;" and

WHEREAS, Borrower understands and agrees that: (a) in granting, renewing, or extending this Loan, Lender is relying upon Borrower's representations, warranties, and agreements, as set forth and provided for in this Agreement; (b) the granting, renewing, or extending of this Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (c) this Loan shall be and shall remain subject to the terms and conditions as set forth in this Agreement; and

WHEREAS, the Board of Directors of Lender have determined the Loan provided to Borrower is consistent and meets the definition of "project" as that term is defined in Sections 501.101 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, Borrower agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Pearland, Texas, to approve all programs, and expenditures of the Lender, and accordingly this Agreement is not effective, and Lender is under no obligation to provide the Loan and financial assistance authorized by this

Agreement until City Council has approved this project and expenditure at a City Council meeting called and held for that purpose.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lender and Borrower agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, and shall continue thereafter until all obligations of Borrower to Lender have been performed in full and the parties terminate this Agreement in writing, or on **December 31, 2025**, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Loan Agreement, together with all exhibits and schedules attached to this Loan Agreement from time to time, if any.
- (c) **Borrower.** The word “Borrower” means Shale-Inland Holdings, LLC, a Delaware Corporation, whose address for the purposes of this Agreement is 515 Post Oak Boulevard, Suite 800, Houston, Texas 77027.
- (d) **City.** The word “City” means the City of Pearland, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 3519 Liberty Drive, Pearland, Texas 77581.
- (e) **Effective Date.** The words “Effective Date” mean the date of the later to execute this Agreement by and between the Borrower and Lender.
- (f) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (g) **Full-Time Employment Positions.** The words “Full-Time Employment Position” or

“Full-Time Employment Positions” mean and include a job requiring a minimum of Two Thousand (2,000) hours of work by one (1) person averaged over a twelve (12) month period for the borrower, with such hours also to include any vacation and sick leave, with health insurance benefits, and working a minimum of thirty (30) hours a week at the Property. The average annual salary of all “Full-Time Employment Positions” must be greater than \$40,000.00, excluding employee benefits.

- (h) **Indebtedness.** The word “Indebtedness” means and includes without limitation all Loans, together with all other obligations, debts and liabilities of Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower, or any one or more of them; whether now or hereafter existing, voluntary or involuntary, due or not due, absolute or contingent, liquidated or unliquidated; whether Borrower may be liable corporately or jointly with others; whether Borrower may be obligated as a guarantor, surety, or otherwise; whether recovery upon such Indebtedness may be or hereafter may become otherwise unenforceable.
- (i) **Lender.** The word “Lender” means the Pearland Economic Development Corporation, a Type B economic development corporation, and a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 1200 Pearland Parkway, Suite 200, Pearland, Texas 77581. Telephone number is (281) 997-3000. Facsimile number is (281) 997-3016.
- (j) **Loan.** The word “Loan” or “Loans” means and includes any and all loans and financial accommodations from Lender to Borrower, whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described in this Agreement and described on any exhibit or schedule attached to this Agreement.
- (k) **Note.** The word “Note” means the non-interest bearing Promissory Note of even date herewith, executed by and between the parties hereto in the principal amount of **Four Hundred Twenty Thousand and No/100 Dollars (\$420,000.00)**, or so much as shall be advanced, due upon demand and payable on or before **December 31, 2024**, attached hereto as **Exhibit C** of this Agreement.
- (l) **Property.** The word “Property” means the approximately 1,742,400 square feet or 40 acre tract or tracts of land situated in the City of Pearland, Brazoria County, Texas, more particularly described and or depicted in **Exhibit A** of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (m) **Related Documents.** The words “Related Documents” mean and include without limitation all promissory notes, loan agreements, and all other instruments and documents, whether now or hereafter existing, executed in connection with Borrower’s Indebtedness to Lender.

- (n) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS OF BORROWER.

Borrower covenants and agrees with Lender that, while this Agreement is in effect, Borrower shall comply with the following terms and conditions:

- (a) **Certificate of Occupancy.** Borrower covenants and agrees to obtain or cause to be obtained a Final Certificate of Occupancy from the City for a minimum of 205,000 square feet facility located on the Property by **October 1, 2016**.
- (b) **Operate a Distribution Facility.** Borrower covenants and agrees by **January 1, 2017**, and during the Term of this Agreement, to maintain and operate a minimum of 205,000 square feet distribution facility located on the Property.
- (c) **Annual Compliance Verification.** Borrower covenants and agrees that within 60 days following January 1, 2018 and for each subsequent year covered by this Agreement, Borrower shall deliver to Lender an annual compliance verification signed by a duly authorized representative of Borrower that shall certify the existence of a lease, for the building(s) on the Property, between the Property owner and Borrower that shall be in effect throughout the Term of this Agreement, a minimum number of Full-Time Employment Positions, and shall disclose and certify the wage, and hours worked for all Full-Time Employment Positions (the “Annual Compliance Verification”). The Borrower covenants and agrees during the Term of this Agreement, there will be a total of seven (7) Annual Compliance Verifications due and submitted to the Lender within 60 days of January 1 of each year, covering jobs created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall be in the form substantially similar to the form attached hereto as *Exhibit B* of this Agreement, and shall provide back-up data for the Full-Time Employment Position numbers provided. This backup data will include the Annual Employment Compliance Verification Detail and also may include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports. This back-up data will only be permitted to be reviewed by PEDC at the Company’s offices and PEDC shall not retain a copy of any specific wage or social security information.
- (d) **Job Creation and Retention.** Borrower covenants and agrees by **January 1, 2017**, and during the Term of this Agreement the Borrower or related entity of the Borrower, will employ a minimum of eighty (80) Full-Time Employment Positions working at the Property. Borrower covenants and agrees to maintain the Full-Time Employment Positions specified in Table 4-1 of this Agreement during the Term of this Agreement. During the Term of this Agreement, Borrower covenants and agrees to provide to Lender annually an Annual Compliance Verifications indicating a minimum 80 Full-Time Employment Positions working at the Property.

- (1) **Minimum Number of Full-Time Employment Positions.** During the Term of this Agreement, Borrower covenants and agrees to provide to Lender annually an Annual Compliance Verifications indicating a minimum 80 Full-Time Employment Positions working at the Property.

Table 4-1:

<u>Due Date:</u>	<u>Minimum Number of Full-Time Employment Positions:</u>	<u>Financial Assistance Provided:</u>
Issuance of Final Certificate of Occupancy and Operation of Facility	80	\$420,000.00

- (2) **Additional Full-Time Employment Positions.** If during the Term of this Agreement, Borrower creates and maintains Full-Time Employment Positions which exceeds the 80 Full-Time Employment Positions, as specified in Table 4-1 of this Agreement, Borrower shall be entitled to **Three Thousand Five Hundred and No/100 Dollars (\$3,500.00)** for each Full-Time Employment Position exceeding the minimum number of 80 Full-Time Employment Positions, as specified in Table 4-2 of this Agreement. The maximum reimbursement by Lender to Borrower shall not exceed **Seventy Thousand and No/100 Dollars (\$70,000.00)**. Upon receipt of the additional financial assistance provided for in this Section 4(d)(2) and Section 5(b) of this Agreement, Borrower covenants and agrees to maintain the number of Additional Full-Time Employment Positions during the Term of this Agreement.

Table 4-2:

<u>Due Date:</u>	<u>Additional Full-Time Employment Positions:</u>	<u>Financial Assistance Provided:</u>
<i>2nd and 3rd Annual Compliance Verification</i>	<i>81 or Additional Full-Time Employment Positions created since 2nd Annual Compliance Verification by the 3rd Annual Compliance Verification up to 100</i>	<i>\$3,500.00 each job not to exceed \$70,000.00</i>

For clarity purposes, should the Borrower create and maintain 90 Full-Time Employment Positions by the 2nd Anniversary of the Annual Compliance

Verification, Borrower shall be entitled to \$35,000.00 (\$3,500.00 * 10 additional jobs created). Should the Borrower create and maintain 100 Full-Time Employment Positions by the 3rd Anniversary of the Annual Compliance Verification, Borrower shall be entitled to \$35,000 .00 (\$3,500.00 * 10 additional jobs created which exceed the 2nd Anniversary Date jobs level).

- (e) **Real, Business Personal Property and Inventory Located on the Property.** Borrower covenants and agrees the Property shall have an increased taxable value, before any exemptions or abatements are applied, of the improvements and business personal property (over the base Tax Year 2014 of \$460,000.00) of at least **Fifty Six Million and No/100 Dollars (\$56,000,000.00) of Real, Business Personal Property and Inventory**, as evaluated by the Brazoria County Central Appraisal District on **January 1, 2017**, and shall maintain the increased taxable value at the same minimum level for the Term of this Agreement.
- (f) **Additional Assurances.** Borrower agrees to make, execute and deliver to Lender such other promissory notes, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence the Loans.
- (g) **Performance.** Borrower agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Borrower and Lender.

SECTION 5. AFFIRMATIVE COVENANTS OF LENDER.

Lender covenants and agrees with Borrower that, while this Agreement is in effect, Lender shall comply with the following terms and conditions:

- (a) **Financial Assistance.** Lender covenants and agrees to provide to Borrower a disbursement of Loan proceeds in the amount of: **Four Hundred Twenty Thousand and No/100 Dollars (\$420,000.00)** within sixty (60) days following: (1) submission of a final certificate of occupancy consistent with Section 4(a) of this Agreement and (2) operate a distribution facility consistent with Section 4(b) of this agreement.
- (b) **Additional Financial Assistance.** Lender covenants and agrees to provide to Borrower disbursements of Loan proceeds in the following amounts, consistent with Table 4-2 of this Agreement: **Three Thousand Five Hundred and No/100 Dollars (\$3,500.00)** for each Full-Time Employment Position exceeding 80 Full-Time Employment Positions, as specified in Table 4-2 of this Agreement. The maximum additional financial assistance to be provided by Lender to Borrower under this Section 5(b) of the Agreement is **Seventy Thousand and No/100 Dollars (\$70,000.00)**. Lender covenants and agrees to disburse Loan proceeds within sixty (60) days following the later of: (1) submission of a completed Annual Compliance Verification as provided in Section 4(d) of this

Agreement; and (2) the two-year and three-year anniversaries of the submission of the initial Annual Compliance Verification.

- (c) **Performance.** Lender agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Borrower and Lender.

SECTION 6. CESSATION OF DISBURSEMENT OF FINANCIAL ASSISTANCE.

If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to disburse Loan proceeds specified in Section 5(a) and 5(b) of this Agreement if: (i) Borrower becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **Certificate of Occupancy.** Failure of Borrower to obtain or cause to be obtained a Final Certificate of Occupancy from the City for a minimum of 205,000 square feet distribution facility located on the Property consistent with Section 4(a) of this Agreement is an Event of Default.
- (b) **Operate a Distribution Facility.** Failure of Borrower to operate a minimum of 205,000 square foot distribution facility on the Property consistent with Section 4(b) of this Agreement is an Event of Default.
- (c) **Annual Compliance Verification.** Failure of Borrower to submit the Annual Compliance Verifications consistent with Section 4(c) of this Agreement is an Event of Default.
- (d) **Job Creation and Retention.** Failure of Borrower to employ and maintain a minimum of ninety-five percent (95%) of the Full-Time Employment Positions plus any Additional Full-Time Employment Positions working at the Property for which funds have been advanced consistent with Section 4(d) of this Agreement is an Event of Default.
- (e) **Real Property, Business Personal Property and Inventory Located on the Property.** Failure of Borrower to maintain at least **Fifty Six Million and No/100 Dollars (\$56,000,000.00)**, of increased taxable improvements real property, business personal property and inventory value over base Tax Year 2014 for the term of this Agreement consistent with Section 4(e) of this Agreement is an Event of Default.

- (f) **Financial Assistance.** Failure of Lender to disburse Loan proceeds to Borrower for Financial Assistance consistent with Section 5(a) of this Agreement is an Event of Default.
- (g) **Additional Financial Assistance.** Failure of Lender to disburse Loan proceeds to Borrower for Additional Financial Assistance consistent with Section 5(b) of this Agreement is an Event of Default
- (h) **False Statements.** Any written warranty, representation or statement made or furnished to the Lender by Borrower under this Agreement or any document(s) related hereto furnished to the Lender by Borrower is/are false or misleading in any material respect, either now or at the time made or furnished, and Borrower fails to cure same within thirty (30) days after written notice from the Lender describing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if Borrower fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if Borrower obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and Borrower fails to provide written notice to the Lender of the false or misleading nature of such warranty, representation or statement within ten (10) days after Borrower learns of its false or misleading nature.
- (i) **Insolvency.** The dissolution or termination of Borrower's existence as a going business or concern, Borrower's insolvency, appointment of receiver for any part of Borrower's property, any assignment of all or substantially all of the assets of Borrower for the benefit of creditors of Borrower, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.
- (j) **Other Defaults.** Failure of Borrower or Lender to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any Related Documents, or failure of Borrower or Lender to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between the Lender and Borrower, and Borrower or Lender fails to cure such failure within thirty (30) days after written notice from the Lender or Borrower, as the case may be, describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if Borrower or Lender fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period and the non-defaulting party is not otherwise in default, the non-defaulting

party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event Borrower defaults and is unable or unwilling to cure said default within the prescribed time period, the financial assistance provided pursuant to Section 5(a) and Section 5 (b) of this Agreement, shall become immediately due and payable by Borrower to Lender based upon the following schedule:

- (1) Effective Date through the fourth (4th) year anniversary of the Annual Compliance Verification Date repay 100% of financial assistance provided pursuant to Section 5(a) and 5(b) of this Agreement;
- (2) through the sixth (6th) year anniversary of the Annual Compliance Verification Date repay 85% of financial assistance provided pursuant to Section 5(a) and 5(b) of this Agreement;
- (3) on or after the seventh (7th) year anniversary of the Annual Compliance Verification Date repay 75% of financial assistance provided pursuant to Section 5(a) and 5(b) of this Agreement;

SECTION 9. LOAN FORGIVENESS.

Notwithstanding the provisions hereof and the obligations contained in the Note executed incident hereto as *Exhibit C* of this Agreement, any advance hereunder shall be forgiven and not be payable to Lender upon completion of Section 4 of this Agreement. **However, any Loan advance, not previously forgiven under the foregoing, shall not be forgiven in an Event of Default under Section 7 and Section 8 of this Agreement, and shall become immediately due and payable in accordance with this Agreement and the Note.**

SECTION 10. INDEMNIFICATION.

Borrower shall indemnify, save, and hold harmless Lender, its directors, officers, agents, attorneys, and employees (collectively, the “Indemnitees”) from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnatee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of Lender’s loan advances by Borrower or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which Lender is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of Lender or Borrower to enter into this Agreement; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys’ fees and disbursements) that any Indemnatee suffers or incurs as a result of any of the foregoing; provided, however, that Borrower shall have no obligation under this Section to Lender

with respect to any of the foregoing arising out of the gross negligence or willful misconduct of Lender or the breach by Lender of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnatee, such Indemnatee shall promptly notify Borrower, but the failure to so promptly notify Borrower shall not affect Borrower's obligations under this Section unless such failure materially prejudices Borrower's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Borrower in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnatee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Borrower to participate in such contest. Any Indemnatee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Borrower may be liable for payment of indemnity hereunder shall give Borrower written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Borrower's concurrence thereto.

SECTION 11. BORROWER'S REPRESENTATIONS.

By execution hereof, the signators warrant and represent that they have the requisite authority to execute this Agreement and the Related Documents and that the representations made herein, and in the Related Documents, are true and accurate in all respects.

SECTION 12. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Brazoria County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Brazoria County, Texas.
- (c) **Audit.** Borrower shall furnish Lender a copy of Borrower's annual audited financial statements and Borrower's records, documents, agreements and other instruments for the following purposes: (i) to ensure Borrower's compliance with the affirmative covenants set forth in Section 4 of this Agreement; and (ii) to determine the existence of an Event of Default set forth in Section 7 of this Agreement. The Borrower shall maintain such records as are deemed necessary by the Lender and auditors of Lender, or such other persons or entities designated by Lender, to ensure proper accounting for all costs,

performances, sales tax information, and number of jobs created or retained related to this Agreement. The Borrower shall grant access to all paper and electronic records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement to Lender, or such other persons or entities designated by Lender for the purposes of inspecting, auditing, or copying such books and records. All records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement shall be subject to examination or audit by Lender, or such other persons or entities designated by Lender in accordance with all applicable state and federal laws, regulations or directives. The Borrower will direct any subcontractor with whom it has established a contractual relationship to discharge the Borrower's obligations to likewise permit access to, inspection of, and reproduction of all books and records of the Borrower's subcontractor(s) which pertain to this Agreement.

- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Borrower warrants and represents that the individual or individuals executing this Agreement on behalf of Borrower has full authority to execute this Agreement and bind Borrower to the same. Lender warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Certain Prohibited Economic Incentives.** Borrower covenants and agrees that this Agreement does not violate Section 501.161 of the Act, as amended.
- (g) **Community Involvement.** Although not an event of default or condition of any advance hereunder, the Borrower agrees to actively participate in community and charitable organizations and/or activities, the purpose of which are to improve the quality of life in the City of Pearland, Texas, and to actively encourage its employees to be involved in such organization and/or activities.
- (h) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (i) **Employee Hiring, Materials and Supplies Purchase.** Although not an event of default or a condition to this Agreement, Lender requests that the Borrower satisfies its need for all additional employees from City of Pearland, Texas, residents and purchase all materials, supplies and services necessary to affect the occupancy of the Property from City of Pearland merchants and businesses.
- (j) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil

commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

- (k) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown on Page 1 of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.
- (l) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (m) **Successors and Assigns.** This Agreement is with the Borrower, and shall not survive any sale, merger, change of control or similar transaction involving the Borrower, without the written consent of the Lender. The Borrower shall provide the Lender written notice of any assignment, sale, merger, change of control or similar transaction pursuant to this Agreement as soon as possible, and in no event not later than thirty (30) days following such event.
- (n) **Survival.** All warranties, representations, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement shall be considered to have been relied upon by Lender and will survive the making of the Loan and delivery to Lender of the Related Documents, regardless of any investigation made by Lender or on Lender's behalf.
- (o) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (p) **Undocumented Workers.** Borrower certifies that the Borrower does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Borrower is convicted of a violation under 8 U.S.C. § 1324a(f), Borrower shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of eight percent (8%), not later than the 120th day after the date the Lender notifies Borrower of

the violation.

[The Remainder of this Page Intentionally Left Blank]

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND BORROWER AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AS OF EFFECTIVE AS OF _____ .

BORROWER:

SHALE-INLAND HOLDINGS, LLC
a Delaware Corporation,

By: _____
Name: Kevin S. Boyle, Sr.
Title: Chief Financial Officer
Date Signed: _____

LENDER:

PEARLAND ECONOMIC DEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Matt Buchanan
President
Date Signed: _____

ATTEST:

Lucy Stevener, Vice-President

Exhibit A

[Description or Depiction of the Property]

Exhibit B

[Annual Compliance Verification Form]

Exhibit C

[Note]

PROMISSORY NOTE

\$420,000.00

_____, 20__
 (“Effective Date”)

SHALE-INLAND HOLDINGS, LLC, (including successors and assigns, hereinafter referred to as the “Maker”), For Value Received, promises and agrees to pay unto the order of **PEARLAND ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “Payee”), at its corporate offices located at 1200 Pearland Parkway, Suite 200, Pearland, Texas 77581, in lawful money of the United States of America, the principal sum of **Four Hundred Twenty Thousand and No/100 Dollars (\$420,000.00)**, or so much as shall be advanced, said sums to accrue interest at the rate of eight percent (8.0%) per annum.

TERMS OF PAYMENT: The principal of this Note is due on demand, but in any event, on or before **December 31, 2025**. Notwithstanding the foregoing, loan proceeds hereunder shall be advanced in accordance with the terms and provisions of that certain Loan Agreement executed as of even date herewith between Maker and Payee (hereinafter referred to as the “Loan Agreement”), and such loan proceeds shall be forgiven and or repaid according to said Loan Agreement after such advance if Maker is not then in default under the Loan Agreement. As such, Payee shall make no demand on principal under this Note except for upon occurrence of an Event of Default as that term is defined in the Loan Agreement.

ALL PAST due principal shall bear interest until paid at the rate of twelve percent (12.0%) per annum.

THIS LOAN is a line of credit but is not revolving. As already stated, loan proceeds made hereunder are also governed by the Loan Agreement of even date herewith.

IF DEFAULT is made in the payment of any interest or principal hereof, as and when the same is or becomes due, or if an Event of Default occurs under any instrument securing the payment hereof or executed in connection herewith, including the Loan Agreement, the owner and holder of this Note may declare all sums owing hereon due and payable within thirty (30) days of the date of notice. If default is made in the payment of this Note at maturity (regardless of how its maturity may be brought about), and the same is placed in the hands of an attorney for collection, or suit is filed hereon, or proceedings are had in bankruptcy, probate, receivership or other judicial proceedings for the establishment or collection of any amount called for hereunder, or any amount payable or to be payable hereunder is collected through any such proceedings, Maker agrees and is also to pay to the owner and holder of this Note a reasonable amount as attorneys’ or collection fees.

Except as provided herein and in the Loan Agreement, upon an Event of Default (as that term is defined in the Loan Agreement) only, Maker, co-makers, signers, permitted assigns, sureties, endorsers and guarantors, and each of them, expressly waive demand and presentment for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, notice of intent to accelerate the maturity hereof, notice of the acceleration of the maturity hereof, bringing of suit and diligence in taking any action to collect amounts called for hereunder and in the handling of securities at any time existing in connection herewith; and are and shall be jointly, severally, directly and primarily liable for the payment of all sums owing and to be owing hereon, regardless of and without any notice, diligence, act or omission as or with respect to the collection of any amount called for hereunder or in connection with any right, lien, interest or property at any and all times had or existing as security for any amount called for hereunder.

IT IS the intention of Maker and Payee to conform strictly to applicable usury laws. Accordingly, if the transactions contemplated hereby would be usurious under applicable law (including the laws of the State of Texas and the laws of the United States of America), 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 canceled automatically and, if theretofore paid, shall be credited on the Note by the holder hereof (or, to the extent that this Note shall have been or would thereby be paid in full, refunded to the Maker); and (ii) in the event that maturity of this Note is accelerated by reason of an election by the holder hereof resulting from any Event of Default, 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 paid, shall be credited on this Note (or, to the extent that this Note shall have been or would thereby be paid in full, refunded to the Maker).

THIS NOTE has been executed and delivered in and shall be construed in accordance with and governed by the laws of the State of Texas and of the United States of America, except that V.T.C.A. Finance Code, Chapter 346, as amended (which regulates certain revolving credit loan accounts and revolving tri-party accounts) shall not apply hereto. Payee's address for notice is 1200 Pearland Parkway, Suite 200, Pearland, Texas 77581.

[signature on next page]

In witness whereof, Maker has executed this Note to be effective as of the Effective Date.

MAKER:

SHALE-INLAND HOLDINGS, LLC
a Delaware Corporation

By: _____

Name: Kevin S. Boyle, Sr.

Title: Chief Financial Officer

Date Signed: _____

Exhibit D

[Application]