



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 29, 2013

Ordinance 17679

Proposed No. 2013-0331.2

Sponsors McDermott

1 AN ORDINANCE approving a new industrial ground lease
2 to continue a forty-seven-year occupancy for Saint-Gobain
3 Containers, Inc., located at 5801 East Marginal Way South,
4 and include an additional property located at 5427 Ohio
5 Avenue South, Seattle, in council district eight.

6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 **SECTION 1. Findings:**

8 A. The properties subject to this proposed ground lease are Harbor Bond
9 Properties acquired by King County between 1912 and 1919 using proceeds of the 1910
10 Harbor Bond Issue and are managed by the facilities management division as financial
11 investment properties pursuant to K.C.C. 4.56.075.

12 B. King County entered into a ground lease in 1966 with the predecessor-in-
13 interest of Saint-Gobain Containers, Inc., for property located adjacent to the Duwamish
14 river, Seattle.

15 C. The King County executive has negotiated a new lease with Saint-Gobain
16 Containers, Inc.

17 D. The King County executive is authorized to lease real property for use by the
18 county as provided in K.C.C. 4.56.186 and consistent with the provisions of K.C.C.

19 4.04.040 requiring approval by ordinance of any lease with a cumulative term of two
20 years. The subject lease provides an initial term of five years.

21 SECTION 2. The King County executive is hereby authorized to execute the
22 lease in substantially similar form as provided in Attachment A to this ordinance and all
23 actions up to now taken by county officials, agents and employees consistent with the
24 terms and conditions of the lease agreement are hereby ratified, confirmed and approved.

25 SECTION 3. If any one or more of the covenants or agreements provided in this
26 ordinance to be performed on the part of the county is declared by any court of competent
27 jurisdiction to be contrary to law, then such a covenant or covenants, agreement or
28 agreements are null and void and shall be deemed separable from the remaining
29 covenants and agreements of this ordinance and in no way affect the validity of the other
30 provisions of this ordinance or of the lease.

31 SECTION 4. The subject lease is hereby approved in substantially similar form
32 to that of Attachment A to this ordinance.
33

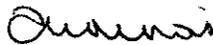
Ordinance 17679 was introduced on and passed by the Metropolitan King County Council on 10/28/2013, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Patterson, Ms. Lambert, Mr. Dunn, Mr. McDermott and Mr.
Dembowski
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

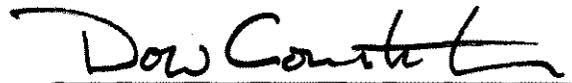

Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 8 day of NOVEMBER, 2013.



Dow Constantine, County Executive

Attachments: A. Lease Agreement Between King County and Saint-Gobain Containers, Inc., dated 10-14-13

RECEIVED
2013 NOV - 8 PM 3:53
CLERK
KING COUNTY COUNCIL

LEASE AGREEMENT

Between

KING COUNTY

And

SAINT-GOBAIN CONTAINERS, INC.

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made as of this ____ day of _____ 2012 by and between KING COUNTY, a Washington municipal corporation and political subdivision of the State of Washington ("Lessor"), and SAINT GOBAIN CONTAINERS, INC., a Delaware corporation ("Lessee").

RECITALS

- A. Lessor is a political subdivision of the State of Washington. Lessee is a Delaware corporation, and is successor in interest of the original lessee under the Lease.
- B. The property was acquired by Lessor between 1912 and 1913 as part of a bond-funded acquisition project to secure dock sites for a comprehensive harbor development. The property is held in public trust and is subject to the provisions of the King County Code, which are incorporated herein.
- C. Lessor and Lessee originally entered into that certain Lease dated March 7, 1966 for an initial term of 35 years to be used primarily for manufacturing, industrial and warehouse space. Lessee was required to improve the property by constructing certain improvements.
- D. Lessor and Lessee have adjusted the rent and extended the Lease repeatedly through a series of amendments and seek to enter into a new Lease in an effort to extend the term and address several issues, including but not limited to the rental rate, ownership status of the improvements upon termination of the Lease and environmental indemnification.

The foregoing Recitals are hereby incorporated into this Lease. For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree to amend and extend the Lease as follows:

1. **LEASED PREMISES:**

1.1 Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the following described real property:

(a) Assessor's Tax Parcels 192404-9002 and 192404-9043 commonly known as 5801 East Marginal Way South and 5427 Ohio Avenue South, Seattle, Washington, a legal description of which is attached hereto as Exhibit A ("Premises A").

Premises A consists of approximately four hundred seventy-three thousand eight hundred and eighty-one (473,881) square feet of upland and fifty-two thousand six hundred fifty-three (52,653) square feet of submerged land for a total of

approximately five-hundred twenty-six thousand five-hundred twenty-three (526,523) square feet of ground all as shown on the attached Exhibit B.

(b) The approximate southerly half of Assessor's Tax Parcel 192404-9051 commonly known as 5409 Ohio Avenue South, Seattle, Washington, a legal description of which is attached hereto as Exhibit A ("Premises B").

Premises B consists of approximately eighty-four thousand four hundred eighty-nine (84,489) square feet of upland and fourteen thousand nine hundred sixty-two (14,962) square feet of submerged land for a total of approximately ninety-nine thousand four hundred fifty-one (99,451) square feet of ground all as shown on the attached Exhibit B..

(c) Definitions. As used in this Lease, the following definitions shall apply:

- (i) "Existing Improvements" shall mean any and all improvements to Premises A that were previously constructed by Lessee as of the date of this Lease.
- (ii) "New Improvements" shall mean any improvements and/or alterations constructed by Lessee after the date of this Lease on either Premises A or Premises B with the approval of Lessor.
- (iii) "Premises" shall mean collectively Premises A and Premises B and apply to both the Existing Improvements and the New Improvements unless specifically provided otherwise in this Lease.

1.2 Demolition of Improvements Located in Premises B. Premises B includes certain improvements including a warehouse, office building and shed. Lessee desires to have the warehouse and office building demolished except for the slabs. Lessee shall be permitted to use the shed subject to the terms and conditions of this Lease except that no Rent shall be payable for such use. Lessee shall contract for the necessary demolition subject to Lessor's prior written approval of demolition specifications and plans, salvage and recovery of materials, and cost (the "Approved Demolition"). Subject to Lessor's reasonable approval of the completed Approved Demolition, the cost of Approved Demolition shall be paid by Lessee and credited against Lessee's Rent payable to Lessor hereunder. Such credit shall be applied to Rent payments hereunder commencing with the first Rent payment due after Lessee's completion of and Lessor's approval of the Approved Demolition and continuing until such time as all costs for the Approved Demolition have been re-captured by Lessee.

1.3 Acceptance of the Premises. Lessee has inspected and accepts the condition of the Premises and it is understood and agreed by both Lessee and Lessor that the Premises are leased on an "as is" basis without any obligation on the part of Lessor to make any changes, improvements, or to incur any expenses whatsoever for the maintenance or repair of the Premises except as otherwise expressly provided in this Lease. Lessee hereby agrees to make any changes to the Premises necessary to conform to federal, state and local law applicable to Lessee's use of the Premises; provided, however, any changes necessitated by any applicable law enacted by Lessor after the Commencement Date shall be done at Lessor's sole expense.

1.4 Construction Defects. Lessor shall not be liable to Lessee for claims or damages arising from any defect in the construction of the Premises, or the present condition thereof, whether known or unknown.

1.5 Quiet Enjoyment. So long as Lessee is not in default under this Lease and subject to the specific provisions, covenants and agreements contained in this Lease, Lessor covenants and agrees that the quiet and peaceful possession and enjoyment of the Premises by Lessee shall not be disturbed or interfered with by Lessor or by any other party claiming by or through Lessor.

2. **TERM:**

2.1 Lease Term. The initial term of this Lease ("Term") for Premises A shall commence on March 1, 2011 ("Premises A Commencement Date") and shall end February 29, 2016. The Term of this Lease for Premises B shall commence on the effective date of approval of this Lease by the King County Council ("Premises B Commencement Date"), and shall end on February 29, 2016.

2.2 Option to Extend:

(a) For Premises A only, if Lessee is in compliance with the terms and conditions of this Lease, Lessee shall have the option to extend this Lease for one (1) additional five (5) year term (the "Extended Term") subject to the following:

- (1) Lessee's written notice to Lessor given not less than twelve (12) months or more than eighteen (18) months in advance of expiration of the initial Lease Term;
- (2) Terms and conditions for any extended Lease Term shall remain unchanged during the Extended Term. Rent shall be adjusted as provided in Section 3.2 ("Adjustments to Rent") herein. This Option is personal to Lessee and is not assignable to a third party except as otherwise provided herein.

(b) For Premises B only, if Lessee is in compliance with the terms and conditions of this Lease, Lessee shall have the option to extend this Lease subject to the following:

- (1) Lessee's written notice to Lessor given not less than twelve (12) months or more than eighteen (18) months in advance of expiration of the initial Lease Term;
- (2) Lessor's approval given at its sole and absolute discretion, which will be deemed given unless Lessor informs Lessee of its rejection within ninety (90) days after Lessee's notice to Lessor of its election to extend;
- (3) Agreement between the parties as to the duration of the additional Lease Term not to exceed an additional five (5) years (the "Extended Term");
- (4) Except as provided herein, terms and conditions for any extended Lease Term shall remain unchanged during the Extended Term. Rent shall be adjusted as provided in Section 3.2 ("Adjustments to Rent") herein based solely on the Fair Market Rental Value (as defined in Section 3.2.2) of Premises B as an unimproved property. This Option is personal to Lessee and is not assignable to a third party except as otherwise provided herein.

3. RENT.

3.1 Rent. Commencing on the Commencement Date, Lessee agrees to pay to Lessor monthly Rent for the Premises, as follows:

(a) For Premises A, the sum of Forty-Seven Thousand Two Hundred Thirty Dollars and Thirteen Cents (\$47,230.13) plus Leasehold Excise Tax (when applicable) of Six Thousand Sixty-Four Dollars and Thirty-Five Cents (\$6,064.35) for a total monthly Rent payment of Fifty-Three Thousand Two Hundred Ninety-Four Dollars and Forty-Eight Cents (\$53,294.48).

For the purpose of calculating Rent for Premises A pursuant to this Section 3.1(a) during the Term of this Lease (including any and all extensions or renewals hereof), the Existing Improvements and New Improvements shall not be considered.

(b) For Premises B, the sum of Eight Thousand Five Hundred Twenty-Nine Dollars and Forty-Four Cents (\$8,529.44) plus Leasehold Excise Tax (when applicable) of One Thousand Ninety-Five Dollars and Eighteen Cents (\$1,095.18) for a total monthly Rent payment of Nine Thousand Six Hundred Twenty-Four Dollars and Sixty-Two Cents (\$9,624.62).

For the purpose of calculating Rent for Premises B pursuant to this Section 3.1(b) during the Term of this Lease (including any and all extensions or renewals hereof), New Improvements shall not be considered.

The parties acknowledge and agree that this rental amount is a fair approximation of the Fair Market Rent of the Premises at the commencement of this Lease.

Notwithstanding anything to the contrary above, if the State of Washington decreases the Leasehold Excise Tax rate or if Lessor is authorized not to levy such tax, the Rent shall be revised to decrease or eliminate the portion attributable to the Leasehold Excise Tax, as applicable.

The Rent shall be paid to Lessor in advance on or before the first day of each and every month during the term, at such place as Lessor may designate, without any prior demand, and without any abatement, deduction or setoff whatsoever, except as specifically provided in Section 1.2. If the Term commences on any day other than the first day of a calendar month, Rent for any fractional month shall be prorated based upon the actual number of days in such fractional month. Said rental is exclusive of any other sale, franchise, business or occupation, or other tax based on rents. Should any such taxes apply during the Term of this Lease, the rent shall be increased by such amount. All Rent payments shall be made payable to the KING COUNTY FINANCE OFFICE and shall be paid or forwarded to the following address or such other address as Lessor may designate in writing:

King County Real Estate Services Section
 King County Administration Building, Room 830
 ADM-ES-0830
 500 Fourth Avenue
 Seattle, WA 98104-2337

3.2 Adjustments to Rent.

3.2.1 Fair Market Rental Value. Lessor and Lessee agree that the Rent for the initial Lease Term was based on Fair Market Rental Value as defined herein. Lessor and Lessee shall adjust the Rent to the then current Fair Market Rental Value beginning on the first day of any subsequent Lease Term with subsequent adjustments every five (5) years thereafter (the "Rent Adjustment Date"). For the purpose of calculating Rent for the Premises under this Section 3.2, the Existing Improvements and New Improvements shall not be considered part of the Premises.

3.2.2 Fair Market Rental Value Defined. For all purposes required under this lease, "Fair Market Rental Value" is defined as: An amount in the competitive market that a well-informed and willing lessor, who desires but is not required to lease, would accept, and which a well-informed and willing lessee, who desires but is not required to lease, would pay for the use of the Premises, after due consideration of all the elements reasonably affecting value.

3.2.3. Appraisal Criteria. All appraisals shall be based upon the following criteria, consistent with the terms of this Lease:

- (a) Current market conditions and trends which affect the value of the Premises;
- (b) Potential market conditions;

(c) Impact on property value of temporary and permanent encumbrances upon the property such as leases, easements and any other arrangement which encumbers any portion of the Premises; and

(d) Any other factors which, in the professional judgment of the appraiser, affect the value of the Premises.

3.2.4. Notice of Rent Adjustment. Lessor shall provide Lessee advance written notice of the proposed adjusted Rent at least one hundred and eighty (180) days prior to the Rent Adjustment Date, including the basis thereof in the form of a written appraisal report prepared by a disinterested appraiser who shall be a member of the Appraisal Institute or other appraisal society or association having equivalent ethical and professional standards, with at least 10-years of appraisal experience in the evaluation of properties with similar characteristics to the subject property. Unless Lessee, within thirty (30) days following receipt of notice from Lessor, provides Lessor written notice of its rejection of the proposed adjusted rent together with Lessee's statement of the amount Lessee considers to be the Fair Market Rental Value, the rent as adjusted by Lessor will become the Rent for the succeeding Lease Term. If Lessee so notifies Lessor of its rejection of the adjusted rent, the Lessor and Lessee shall negotiate in good faith in an attempt to agree upon the rent adjustment. Should Lessor and Lessee be unable to agree upon the Fair Market Rent following such good faith negotiations, the Fair Market Rent shall be set pursuant to Section 3.3 below.

3.3. Arbitration.

3.3.1. If, thirty (30) days after Lessor receives Lessee's notice of its rejection of the proposed rent as adjusted, Lessee and Lessor cannot agree upon the rent adjustment, the rent for the succeeding Lease Term will be adjusted by arbitration. Lessee and Lessor will each select one disinterested arbitrator, and the two selected arbitrators will select a third disinterested arbitrator. For purposes of this Section 3.3, the term "disinterested arbitrator" shall mean not having been an employee of, or retained under contract by, either Lessor or Lessee for a period of one year before the arbitration, and shall have no financial interest in the subject of the arbitration, except that the appraiser retained by Lessor may be the same appraiser who performed the initial appraisal called for in Section 3.2.4 above.

3.3.2. Lessor will provide Lessee written notice of the name and address of its selected arbitrator and his or her qualifications. Unless otherwise agreed in writing by Lessor, Lessee shall provide Lessor written notice of the name and address of Lessee's selected arbitrator and his or her qualifications within thirty (30) days after Lessee's receipt of Lessor's notice. If Lessee fails to so provide its written notice to Lessor within the time specified in this Section 3.3.2, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the proposed rent as adjusted by Lessor shall become the Rent for the succeeding five (5) year period.

3.3.3. If the two arbitrators have not selected a third arbitrator within thirty (30) days after the selection of the last selected of the two, either Lessee or Lessor may apply to the Presiding Judge of the Superior Court in King County for the appointment of a third arbitrator.

3.3.4. Each arbitrator will be a member of the American Institute of Real Estate Appraisers, or its successor entity, or other appraisal society or association having equivalent ethical and professional standards. If, in the future, a licensing requirement for real estate appraisers is imposed by any legislative body with jurisdiction thereof, each arbitrator shall also be licensed. Each party shall have the right to disqualify any arbitrator who does not meet the requirements of this Section 3.3.4 by sending a written notice to the other party and to all the arbitrators stating the grounds for disqualification. If the disqualified arbitrator is a party-appointed arbitrator, then that party shall, within fourteen days after its receipt of the other party's notice of disqualification, appoint another arbitrator who meets the requirements of this section to serve in place of the party's disqualified arbitrator. If the disqualified arbitrator is the third arbitrator, then the two party-appointed arbitrators shall, within fourteen days after their receipt of a party's notice of disqualification, select a third arbitrator who meets the requirements of this section to serve in place of the disqualified arbitrator.

3.3.5. The arbitrators shall give the parties sixty (60) days' notice in writing of the date on which the arbitration is to commence. Unless otherwise agreed in writing by Lessor and Lessee, each party shall, no later than thirty days before the arbitration is scheduled to commence, provide the other party with a copy of an appraisal report prepared by a member of the American Institute of Real Estate Appraisers, or its successor entity, or other appraisal society or association having equivalent ethical and professional standards, that supports that party's claim of Fair Market Rental Value. If Lessee fails to so provide a copy of its appraisal report to Lessor, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the rent as adjusted by Lessor shall become the Rent for the succeeding Lease Term.

3.3.6. The three arbitrators will determine the fair Market Rental Value as defined in Section 3.2.2 for the Premises by applying the Appraisal Criteria provided in Section 3.2.3 for the succeeding Lease Term. The decision of a majority of the arbitrators will bind both Lessee and Lessor. Both Lessor and the Lessee agree that all non-mandatory provisions of RCW 7.04A are waived and that, unless requested by a majority of the arbitration panel, no formal hearing will be held, no witnesses will testify, and no attorney's will participate in the arbitration. At the conclusion of the arbitration, the arbitrators will submit a written report in counterpart copies to Lessee and Lessor, which shall state their determination of the Rent to be paid by Lessee for the succeeding Lease Term. The report shall contain all pertinent evidence in support of the conclusion together with a discussion explaining the reasoning for such conclusion.

3.4. Cost of Arbitration. Lessor and Lessee shall each pay the costs of its own appraisal and shall bear the expense of its own counsel, and any other of its representatives and/or experts that may be required to prepare for or, in the event it is requested by the arbitration panel, participate in the arbitration. Each party shall also pay the fees and expenses of its selected arbitrator. The fees and expenses of the third arbitrator and all other costs of the arbitration will be divided equally between Lessee and Lessor.

3.5. Rent Pending Adjustment and Retroactivity. In the event resolution of the proposed rental adjustment is not completed either by negotiation or arbitration prior to the Rent Adjustment Date:

3.5.1. Lessee shall, pending resolution of such rent adjustment, continue to pay Lessor the Rent then in effect; and

3.5.2. The adjusted rent, as determined either by negotiation or arbitration, shall be retroactive to the Rent Adjustment Date.

3.5.3. Lessor, at its option, may elect to require Lessee to pay interest in the amount of twelve percent (12%) per annum commencing on the Rent Adjustment Date on any sum due as a result of a retroactive increase.

3.6 Late Charges.

(a) Lessee hereby acknowledges that late payment by Lessee to Lessor of Rent, or any portion thereof, or any other sums due hereunder will cause Lessor to incur costs not otherwise contemplated by this Lease. Accordingly, if any installment of Rent, or any portion thereof, or any other sum due from Lessee shall not be received by Lessor within ten (10) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay Lessor a late charge equal to One Hundred Dollars (\$100.00) or five percent (5%) of such overdue amount, whichever is greater. The parties agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

(b) Unless caused by Force Majeure, in the event that a late charge is payable in this Lease or otherwise, whether or not collected, for three (3) installments of Rent and/or other remuneration in any 12-month period, then Rent and/or other remuneration shall, at Lessor's option, become due and payable quarterly in advance, rather than monthly, notwithstanding any other provision of this Lease to the contrary.

(c) In addition to the late charges provided for in this Section, interest shall accrue on any unpaid Rent and/or other remuneration, or any other sums due hereunder, exclusive of retroactive Rent as provided in Section 3.5.3, at the rate of eighteen percent (18%) per annum or the maximum rate provided by law, whichever is less, ("the Default Rate") from the date due until paid.

3.7 Rent Defined. Lessor and Lessee agree that the term "Rent" shall mean and refer collectively to sums denominated as either Rent, Percentage Rent (if any), Additional Rent (if any) or any such other sums or charges otherwise payable by Lessee under the terms of this Lease. Failure by Lessee to pay any sum denominated as Rent shall entitle Lessor to pursue any or all remedies specified in this Lease as well as remedies otherwise allowed by law.

4. **SECURITY AND DAMAGE DEPOSIT.**

4.1 Security and Damage Deposit. Not applicable.

5. **USE OF PREMISES.**

5.1 Use of Premises. Lessee shall use the Premises for manufacturing, industrial, warehousing, office, loading and/or staging of commercial vehicles and all other purposes incidental thereto and for no other purpose without the prior written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed.

5.2 General Standards Regarding Use.

5.2.1. Lessee shall occupy and use the Premises for the purpose set forth in Section 5.1 in a commercially acceptable manner continuously during the entire Term of this Lease, with the exception of temporary closures for such periods as may be reasonably necessary and commercially reasonable under the circumstances or other reasons beyond Lessee's reasonable control.

5.2.2. Lessee shall not use or occupy or permit the Premises or any part thereof to be used or occupied, in whole or in part, in a manner which would in any way: (i) violate any present or future Legal Requirements, (ii) violate any of the covenants, agreements, provisions and conditions of this Lease, (iii) violate the certificate of occupancy then in force with respect thereto, (iv) as will constitute a public or private nuisance, (v) impair, in Lessor's reasonable judgment, with the character, reputation or appearance of Lessor, or (vi) occasion discomfort, inconvenience or annoyance to either Lessor or its adjoining tenants. Lessor hereby acknowledges and agrees that Lessee's current use of the Premises satisfies items (iv) through (vi) above. For purposes of this Lease, the term "Legal Requirements" shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, which may be applicable to or have jurisdiction over the Premises, or the sidewalks or streets adjacent thereto and all requirements, obligations and conditions of all instruments of record on the date of this Lease.

5.2.3. Lessee shall not conduct or permit to be conducted without the prior written consent of Lessor, any auction, fire, bankruptcy, "going out of business" or other distress sales of any nature upon or from the Premises, whether voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other insolvency proceeding, unless ordered by a court of competent jurisdiction.

5.3 Continuing Compliance. Throughout the term of this Lease, Lessee shall, at its own cost and expense, promptly and diligently observe and comply with: (i) all Legal Requirements (including, without limitation, those relating to environmental matters) and the requirements of any fire insurance rating organization and all insurance companies writing

policies covering the Premises or any part or parts thereof; and (ii) all permits, licenses, franchises and other authorizations required for Lessee's use of the Premises or any part thereof. Lessee shall comply with each of these whether or not they are now in force or at any time in the future may be passed, enacted, or directed.

5.4 No Liens. Lessee will not directly or indirectly create or permit to be created and/or to remain, a Lien upon Lessor's fee interest in the Premises. In the event any such Lien(s) have been created by or permitted by Lessee in violation of this provision, Lessee shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Lessee shall also defend (with counsel approved by Lessor), fully indemnify, and hold entirely free and harmless Lessor from any action, suit or proceeding brought on or for the enforcement of such lien(s). As used in this Section, "Lien" shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises.

6. OPERATING EXPENSE.

6.1 This Lease shall be absolute net meaning that Lessee shall be responsible for and directly pay all operating expense including, without limitation, repair, maintenance, utilities, insurance and property tax (Real Estate Excise Tax is included in Rent) and assessments including, without limitation, surface water management charges and similar fees and assessments from improvement or special districts formed subsequent to the Commencement Date. Lessee shall be responsible for and directly pay all capital expense including, without limitation, repair, replacements, and costs to comply with governmental regulations relating to Lessee's occupancy and operation from the Premises and costs to remedy environmental problems related to Lessee's occupancy and operation of the Premises, if any.

6.2 Utilities. Lessee shall be liable for and shall pay throughout the term of this Lease, all charges for all utility services furnished to the Premises, including, but not limited to, light, heat, electricity, ADT or equivalent, gas, water, sewerage, recycling, garbage disposal and janitorial services.

7. ALTERATIONS.

7.1 Limitation on Alterations. Except as pertaining to alterations, fixtures or improvements located entirely within Existing Improvements, Lessee shall make no material changes, alterations, additions, substitutions or improvements (collectively referred to as "Alterations") to the Premises, unless Lessee shall first deliver to Lessor plans and specifications for, and obtain Lessor's prior written approval of, such Alterations, which shall not be unreasonably withheld, conditioned or delayed. All such Alterations shall be done at Lessee's sole cost and expense and at such times and subject to such conditions as Lessor may from time to time reasonably designate. For purposes of this Section 7.1, the term "Premises" shall include both the Existing Improvements and New Improvements.

7.2 Requirements for All Alterations. In addition to, and not in lieu of, conditions imposed by Lessor pursuant to Section 7.1, any alterations or improvements permitted by

Lessor, including all initial improvements made by Lessee as a condition or requirement under the Lease, shall be performed: (i) in a good and workmanlike manner and (ii) in compliance with all Legal Requirements. In addition, prior to commencement of any Alterations, Lessee shall furnish to Lessor proof of insurance for any and all contractors working on behalf of Lessee in the minimum form and limits as set forth in Sections 12. In addition to, and not in lieu of, conditions imposed by Lessor pursuant to Section 7.1, any alterations or existing improvements made by Lessee, including original improvements made as a condition of, and consideration for, the Lease shall be surrendered upon expiration of earlier termination of this Lease, free of all encumbrances, liens or security interests, in accordance with Section 22.1 below.

7.3 Trade Fixtures. Lessee shall retain ownership of all trade fixtures and business equipment and furnishings from time to time installed by Lessee at its expense. Lessee may remove any of such fixtures, equipment or furnishings at any time during the term and shall remove all thereof prior to the expiration of the term. Any such property not removed at the expiration of the term shall, at the election of Lessor, become the property of Lessor without payment to Lessee, or be deemed abandoned and removed by Lessor, at Lessee's expense. Upon any removal of such property, Lessee shall promptly repair any and all damage to the Premises caused thereby and reimburse Lessor for its costs and expenses in removing any such property not removed by Lessee and repairing any such damage not repaired by Lessee; this covenant shall survive the termination of this Lease.

8. MAINTENANCE AND REPAIR.

8.1 Maintenance and Repair by Lessee.

(a) Lessee shall maintain Existing Improvements and New Improvements in accordance with all Legal Requirements.

(b) Lessee shall also keep the Premises (including the outside areas) neat, clean and in sanitary condition, free from infestation of pests and conditions which might result in harborage for, or infestation of pests. As used in this Section, the word "pests," as used herein, shall include without limitation, rodents, insects, and birds in numbers to the extent that a nuisance is created.

8.2 If Lessee fails to comply with all or any portion of Lessee's maintenance and repair requirements provided in Section 8.1(a) and (b), after thirty (30) days' notice from Lessor, Lessor may, but shall not be obligated to, enter upon the Premises and perform such maintenance and repair and Lessee agrees to pay the costs thereof to Lessor upon receipt of a written demand. Any unpaid sums under this section shall be payable as additional rent on the next rent payment date due following the written demand and will bear interest at the maximum rate allowed by Washington State Law.

9. TAXES.

9.1 Payment of Taxes. Lessee shall be liable for, and shall pay throughout the term of this Lease, all real property taxes and assessments including assessments of improvement districts formed subsequent to the Commencement Date of this Lease including, without limitation, surface water management charges and similar fees, all license fees and all taxes payable for, or on account of, the activities conducted on the Premises and all taxes on the property of Lessee on the Premises and any taxes on the Premises and/or on the leasehold interest created by this Lease and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, the rentals payable hereunder, whether imposed on Lessee or on Lessor. All other tax amounts for which Lessor is or will be entitled to reimbursement from Lessee shall be payable by Lessee to Lessor at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Lessee shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by it.

9.2 Personal Property Taxes. Lessee shall pay or cause to be paid, prior to delinquency, any and all taxes and assessments levied upon all trade fixtures, inventories and other real or personal property placed or installed in and upon the Premises by Lessee. If any such taxes on Lessee's personal property or trade fixtures are levied against Lessor or Lessor's property, and if Lessor pays the taxes based upon such increased assessment, Lessee shall, upon demand, repay to Lessor the taxes so levied.

9.3 Challenge of Property Tax Assessment. To the extent that Lessee considers it appropriate, Lessee shall have the right but not the obligation to challenge any real property ad valorem tax assessment on the subject property based on reasonable evidence of fair market value. Lessee will be responsible for the cost of such appeals of property tax assessment.

10. COMMON AREAS.

Not Applicable.

11. **INDEMNITY AND HOLD HARMLESS.** Lessee agrees to indemnify and hold Lessor harmless as provided herein to the maximum extent possible under law. Accordingly, the Lessee agrees for itself, its successors, assigns or by others including, without limitation, all persons directly or indirectly employed by Lessee, or any agents, contractors, subcontractors, licensees or invitees of Lessee, to defend, indemnify, and hold harmless Lessor, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Lessee's exercise of rights and privileges granted by this Lease, except to the extent of Lessor's sole negligence. The Lessee's obligations under this section shall include:

(a) The duty to promptly accept tender of defense and provide defense to Lessor with legal counsel reasonably acceptable to Lessor at the Lessee's own expense; and

(b) Indemnification of claims made by the Lessee's own employees or agents;

(c) Waiver of the Lessee's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify Lessor, which waiver has been mutually negotiated by the parties.

In the event it is necessary for Lessor to incur attorney's fees, legal expenses or other costs to enforce the provisions of this section, all such reasonable fees, expenses and costs shall be recoverable from the Lessee.

The provisions of this Section 11 shall survive the expiration, abandonment or termination of this Lease for a period of two (2) years. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

12. **FIRE INSURANCE.**

[Not applicable]

13. **INSURANCE REQUIREMENTS.** By the date of execution of this Lease and throughout the Lease Term and any extension thereof, the Lessee shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with exercise of the rights and privileges granted by this lease, by the Lessee, his agents, representatives, employees/subcontractors. The cost of such insurance shall be paid by the Lessee.

By requiring such minimum insurance coverage, Lessor shall not be deemed or construed to have assessed the risks that may be applicable to the Lessee under this contract. The Lessee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

In the event that Lessee does not provide insurance coverage as required herein, Lessor reserves that right to purchase such insurance coverage on Lessee's behalf subject to Lessee's reimbursement of the cost as Additional Rent.

For all coverages: Each insurance policy shall be written on an "Occurrence" form.

13.1 Minimum Scope of Insurance. Coverage shall be at least as broad as:

General Liability: Insurance Services Office Form No. CG 00 01 Ed. 11-88, covering COMMERCIAL GENERAL LIABILITY.

13.2 Minimum Limits of Insurance. The Lessee shall maintain limits for General Liability no less than **\$1,000,000 per occurrence** and **\$2,000,000 aggregate** for bodily injury, personal injury, and property damage.

13.3. Deductibles and Self-insured Retentions. The deductible and or self-insured retention of the policies shall not limit or apply to the Lessee's liability to the County and shall be the sole responsibility of the Lessee.

13.4 Other Insurance Provisions. The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:

General Liability Policy:

(a) King County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Lessee in connection with this Lease.

(b) The Lessee's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the Lessee's insurance or benefit the Lessee in any way.

(c) The Lessee's insurance shall apply separately to each insured against whom a claim is made and or lawsuit is brought, except with respect to the limits of the insurer's liability.

All Policies:

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after thirty (30) days prior notice - return receipt requested, has been given to the County.

13.5 Acceptability of Insurers. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated with Bests' with minimum surpluses, the equivalent of Bests' surplus size VIII.

If at any time, of the foregoing policies fail to meet the above stated requirements, the Lessee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.

13.6 Verification of Coverage. Lessee shall furnish the County with certificate(s) of insurance and endorsement(s) to Lessor's reasonable satisfaction. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms recognized as standard within the insurance industry and are to be received and approved by Lessor prior to the commencement of activities associated with the

Lease. Lessor reserves the right to require complete certified copies of all required insurance policies at any time upon reasonable notice to Lessee.

14. **MUTUAL RELEASE AND WAIVER.** To the extent a loss is covered by insurance in force, Lessor and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies, including any extended coverage endorsements hereto; provided that this agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of Lessor or the Lessee.

15. **DAMAGE OR DESTRUCTION.**

15.1 **Duty to Repair.** Except as specifically required under Section 8 above, Lessee shall have no duty to repair the Existing Improvements or New Improvements. Additionally, Lessee shall have no duty to repair the Premises which are caused by the elements, earthquake, accident or other casualty, (collectively, "Casualty").

15.2 **Right to Terminate.** Lessee may elect to terminate this Lease in the event that Lessee, in its sole judgment, concludes that the damage to the Premises or any buildings or structures of which the Premises are a part cannot be repaired within thirty (30) days of the Casualty (with the repair work and the preparations therefore to be done during regular working hours on regular work days). In the event that Lessee elects to terminate this Lease, Lessee shall advise Lessor of that fact within thirty (30) days of the date of the Casualty and notify Lessor of the date, not more than ninety (90) days after the Casualty, on which the Lease will terminate. Lessee's decision whether to repair or restore the Premises shall in all instances be limited to the availability of insurance proceeds, which shall be subject to the sole discretion of Lessee. All costs associated with the repair or rebuilding of the Premises pursuant to this Section 15 shall be at the sole expense of Lessee. In the event Lessee fails to provide notice to Lessor of its commitment to rebuild or repair the Premises or any buildings or structures of which the Premises are a part, within thirty (30) days of the Casualty, or if Lessee has failed to complete the repairs or rebuilding of the Premises, or any buildings or structures of which the Premises are a part, within 180 days of notifying Lessor of the date on which such repairs or rebuilding shall commence, Lessor may terminate this Lease by giving Lessee at least 90 days' notice of its intent to terminate. Notwithstanding the previous sentence, Lessee shall have no obligation to repair or rebuild any of the Existing Improvements and Lessor shall have not right to terminate this Lease based upon such failure, unless such failure to repair or rebuild results in the failure of Lessee to utilize the Premises pursuant to the terms of Section 5 above

15.3 **Abatement of Rent.** Unless the casualty results from Lessee's negligence or breach of the terms of this Lease, the Rent and Additional Rent, if any, shall be abated for any portion of the Premises that is rendered untenable or inaccessible from the period from the date of the Casualty through the date of substantial completion of the repairs to the Premises (or to the date of termination of the Lease if either party shall elect to terminate the Lease). Such abatement of Rent and Additional Rent, if any, shall be proportionate to Lessee's loss of use. Lessor shall not otherwise be liable to Lessee for any loss in the use in

the whole or any part of the Premises (including loss of business) and/or any inconvenience or annoyance occasioned by the Casualty, by any damage resulting from the Casualty, or by any repair, reconstruction or restoration.

16. ASSIGNMENT AND SUBLEASE.

16.1.1. Prohibition. Except as provided in Section 16.4 and with respect to existing subleases with JA Jacks and eCullet for portions of the Premises, Lessee shall not, in whole or in part, assign, sublet, license or permit occupancy by any party other than Lessee of all or any part of the Premises, without the prior written consent of Lessor in each instance. If Lessee desires to assign, sublet, license or permit occupancy for the whole or part of the Premises, Lessee shall request the consent of Lessor in writing at least sixty (60) days prior to the proposed assignment, sublet, license or permit to occupy. Lessee shall at the time the Lessee requests the consent of Lessor, deliver to Lessor such information in writing as Lessor may reasonably require respecting the proposed assignee, subtenant or licensee including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee, subtenant or licensee. Within twenty (20) business days after receipt of all required information, Lessor shall, in its sole discretion, elect one of the following: (a) to consent to such proposed assignment, sublease or license; (b) to refuse such consent; or (c) condition such proposed assignment on the provision of financial guarantees.

16.1.2. As a condition for Lessor's consent to any assignment, encumbrance or sublease, except with regard to the assignment provided for in Section 16.4, Lessor may require that the assignee, sublessee or licensee remit directly to Lessor on a monthly basis, all monies due to Lessee by said assignee, sublessee or licensee (except with respect to excess rentals otherwise due Lessee pursuant to Section 16.2. In addition, except as provided in Section 16.4, a condition to Lessor's consent to any assignment, sublease or license of this Lease or the Premises shall be the delivery to Lessor of a true copy of the fully executed instrument of assignment, sublease or license and an agreement executed by the assignee, sublessee or licensee in form and substance satisfactory to Lessor and expressly enforceable by Lessor, whereby the assignee, sublessee or licensee assumes and agrees to be bound by the terms and provisions of this Lease and perform all the obligations of Lessee hereunder. In all subleases authorized by Lessor, the term of the sublease shall be at least one (1) day less than the Lessee's term. Any unauthorized sublease equal in duration to the term of Lessee shall be null and void. For any proposed assignment, sublease or license wherein the assignee, sublessee or licensee is unable to reasonably satisfy Lessor as to its financial standing to satisfy the duties and obligations of lessee under this Lease, Lessor may condition its approval on the provision of reasonable financial guarantees in form and amount sufficient to guarantee performance.

16.1.3. In the event of any assignment, Lessee and each respective assignor, waives notice of default by the tenant in possession in the payment and performance of the Rent, covenants and conditions of this Lease and consents that Lessor may in each and every instance deal with the tenant in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Lease and modify the same, and in general deal with the tenant then in possession without notice to or consent of any assignor, including

Lessee; and any and all extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Lessee and of each respective assignor.

16.1.4. Lessee agrees that any sublease or license will contain a provision in substance that if there be any termination whatsoever of this Lease then the subtenant or licensee, at the request of Lessor, will attorn to Lessor and the sublessee or licensee, if Lessor so requests, shall continue in effect with Lessor, but Lessor shall be bound to the subtenant or licensee in such circumstances only by privity of estate. Nothing herein shall be deemed to require Lessor to accept such attornment.

16.1.5. Except as provided in Section 16.4, no assignment, subletting or license by Lessee shall relieve Lessee of any obligation under this Lease, including Lessee's obligation to pay Rent or any other sum hereunder. Any purported assignment, except as provided in Section 16.4, subletting or license contrary to the provisions hereof without consent shall be void. The consent by Lessor to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

16.1.6. Lessee shall reimburse Lessor in the sum of Five Hundred Dollars (\$500.00) plus any reasonable administrative fees and expenses incurred by Lessor in connection with any request by Lessee for consent to an assignment, subletting or license, except for conditional assignment as provided in Section 16.4.

16.2 Excess Rental. If Lessee assigns its interest, other than to a subsidiary, affiliate or parent company, Lessee (Assignor) shall pay Lessor, as Additional Rent, at least seventy-five percent (75%) of the Assignment Premium derived from that assignment. "Assignment Premium" shall mean all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee (Assignor) from the assignee for, or by reason of, the assignment (including all amounts received by Lessee (Assignor) for the Premises. If lessee subleases, other than to a subsidiary, affiliate or parent company of Lessee, Lessee shall pay Lessor, as Additional Rent, seventy-five percent (75%) of the Sublease Premium derived from that sublease. "Sublease Premium" shall mean all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee from the sublessee for, or by reason of, the sublease Lessee shall pay the Assignment Premium or Sublease Premium to Lessor as and when Lessee receives payment from such assignee.

(a) Credits. The following shall be subtracted from what otherwise would be owed for a Sublease Premium or Assignment premium:

- (1) Any costs, fees or commissions actually paid by Lessee (Assignor) to procure the assignment or sublease, amortized over the term of the assignment or sublease, including, without limitation, fees and commissions paid to attorneys and licensed real estate brokers;
- (2) The actual cost of leasehold improvements undertaken by Lessee solely to prepare the space for the assignee or sublessee

(amortized over the term of the assignment or sublease commencing with the date on which the assignment or the sublease term commences);

- (3) The unamortized cost of improvements, if any, determined on a straight-line basis over the term of the original lease, not the assignment or sublease, as certified to Lessor by Lessee's independent certified public accountant (at Lessee's expense, the cost of which may be deducted from the Sublease or Assignment Premium); and
- (4) Fixed rent and additional rent allocable to the space covered by such sublease.

16.3 Scope. Except as provided below or in Section 16.4, the prohibition against assigning or subletting contained in this Section 16 shall be construed to include a prohibition against any assignment or subletting by operation of law. However, for purposes of this Section 16, any sale, transfer or other disposition in the aggregate of fifty percent (50%) or more of the equity ownership in Lessee (i.e. stock with respect to tenant corporation, partnership interests with respect to a tenant partnership, etc.) shall not be deemed an assignment requiring Lessor's consent thereto. If this Lease be assigned or if the Premises or any part thereof be sublet or occupied by anybody other than Lessee, Lessor may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess Rent so collected in accordance with the terms of Section 16.2, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. Unless otherwise provided in any consent by Lessor, no assignment or subletting shall affect the continuing primary liability of Lessee (which, following assignment, shall be joint and several with the assignee), and Lessee shall not be released from performing any of the terms, covenants and conditions of this Lease.

16.4. Conditional Approval To Assign Lease. Notwithstanding any provision to the contrary, Lessee may desire to assign this Lease as part of the sale of its parent division prior to the expiration or earlier termination of the Term and including any Extended Term. Lessor shall grant its one-time consent to assign this Lease pursuant to a sale of the entire corporate division of which Lessee is a part, conditioned upon execution of an assumption agreement containing the following terms: (i) the assignee shall assume all duties, obligations and liabilities of the Lease, including but not limited to, the hazardous materials provisions of Section 23; (ii) the assignee shall represent and warrant that at the time of assignment it does possess the assets and financial capability to fulfill all duties, obligations and liabilities in the Lease and arising therefrom; and (iii) assignee shall indemnify and hold harmless assignor from all liability arising from all duties, obligations and liabilities in the Lease, including but not limited to, the provisions of Section 23. Any attempted assignment of this Lease not in conformance with the conditions for assumption provided herein shall be null and void. Lessee shall present the assumption agreement contemplated herein to Lessor in advance of execution for its approval, which shall not be unreasonably withheld,

conditioned or delayed. The conditional right of assignment provided in this Section 16.4 is personal to Lessee and shall not be assigned to any other party.

17. DEFAULT.

17.1 Defaults. Time is of the essence of this Lease. The occurrence of any one or more of the following events constitutes a default of this Lease by Lessee with or without notice from Lessor:

(a) The failure by Lessee to make any payment of Rent, or any other payment required by this Lease, within ten (10) days of when due.

(b) The failure by Lessee to observe or perform any covenant, condition, or agreement to be observed or performed by Lessee in this Lease, including, but not limited to, failure to make any improvement or alteration required by the Lease and Lessee's failure to cure the same within thirty (30) days of written notice by Lessor; provided, however if the same cannot be cured within such thirty (30) day period, as long as is reasonably necessary under the circumstances.

(c) The discovery by Lessor that any required report, financial statement, request for approval or consent, or background statement provided to Lessor by Lessee, any successor, grantee, or assign was materially false.

(d) The filing of a petition in bankruptcy by or against Lessee, Lessee being adjudged bankrupt or insolvent by any court, a receiver of the property of Lessee being appointed in any proceeding brought by or against Lessee, Lessee making an assignment for the benefit of creditors, or any proceeding being commenced to foreclose any mortgage or other lien on Lessee's interest in the Premises or on any personal property kept or maintained on the Premises by Lessee.

17.2 Remedies.

(a) Whenever any default (other than a default under Section 17.1(c) above, upon which termination of this Lease shall, at Lessor's option, be effective immediately upon notice) continues unremedied in whole or in part for thirty (30) days after written notice is provided by Lessor to Lessee, unless the same cannot reasonably be remedied within said thirty (30) days period, in which event Lessee shall have a reasonable time to cure the same (or for ten (10) days after written notice in the case of default for failure to pay any Rent, or other required payment when due), this Lease and all of Lessee's rights under it will automatically terminate if the written notice of default so provides. Upon termination, Lessor may reenter the Premises using such force as may be reasonably necessary and remove all persons and property from the Premises. Lessor will be entitled to recover from Lessee all unpaid Rent or other payments and damages incurred because of Lessee's default including, but not limited to, the costs of re-letting, advertising, leasing commissions, and reasonable attorney's fees and costs ("Termination Damages"), together with interest on all Termination Damages at the Default Rates from the date such

Termination Damages are incurred by Lessor until paid. The "Default rate" is defined as an interest rate of 18 percent or the maximum amount allowed by law, whichever is greater.

(b) In addition to Termination Damages, and notwithstanding termination and reentry, Lessee's liability for all Rent or other charges which, but for termination of the Lease, would have become due over the remainder of the Lease term ("Future Charges") will not be extinguished and Lessee agrees that Lessor will be entitled, upon termination for default, to collect as additional damages, a Rental Deficiency. "Rental Deficiency" means an amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining Lease term, reduced to net present value. In this case, the Rental Deficiency must be paid to Lessor in one lump sum, on demand, and will bear interest at the Default Rate until paid. For purposes of this subparagraph, "net present value" is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

(c) If this Lease is terminated for default as provided in this Lease, Lessor shall use reasonable efforts to re-let the Premises in whole or in part, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the Lease term), for such use or uses and, otherwise on such terms and conditions as Lessor, in its sole discretion, may determine.

(d) In addition to the rights granted by Section 7.3, if upon any reentry permitted under this Lease, there remains any personal property upon the Premises, Lessor, in its sole discretion, may remove and store the personal property for the account and at the expense of Lessee. In the event Lessor chooses to remove and store such property, it shall take reasonable steps to notify Lessee of Lessor's action. All risks associated with removal and storage shall be on Lessee. Lessee shall reimburse Lessor for all expenses incurred in connection with removal and storage as a condition to regaining possession of the personal property. Lessor has the right to sell any property which has been stored for a period of 30 days or more, unless Lessee has tendered reimbursement to Lessor for all expenses incurred in removal and storage. The proceeds of sale will be applied first to the costs of sale (including reasonable attorneys' fees), second to the payment of storage charges, and third to the payment of any other amounts which may then be due and owing from Lessee to Lessor. The balance of sale proceeds, if any, will then be paid to Lessee.

17.3 Remedies Cumulative. All rights, options and remedies of Lessor contained in this Lease shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease.

18. **ASSURANCE OF PERFORMANCE.** In the event a default in the performance of any obligation under this Lease which remains uncured for more than thirty (30) days after demand, Lessor may request and the Lessee shall provide adequate assurance of the future performance of all obligations under this Lease. The adequacy of any assurance shall be determined according to commercially reasonable standards for Lessors of real property in the County of King, State of Washington. Adequate assurance shall include, but

not be limited to, a deposit in escrow, a guarantee by a third party acceptable to Lessor, a surety bond, or a letter of credit. Lessee's failure to provide adequate assurance within twenty (20) days of receipt of a request shall constitute a material breach and Lessor may in its discretion terminate this Lease.

19. TERMINATION OTHER THAN FOR DEFAULT.

19.1 Environmental Mitigation by Lessor. In the event that Lessor shall require the use of some portion of the Premises for the purpose of mitigating Lessor's liability pertaining to any action or threatened action brought against Lessor by an agency of the federal or state governments in any court of competent jurisdiction for alleged environmental contamination of the Lower Duwamish River, whether or not directly related to the property on which the Premises are located and Lessor's Environmental Mitigation (defined below) of that portion of the Premises does not materially interfere with Lessee's Use of Premises as reasonably determined by Lessee, then this Lease may be terminated by Lessor as to only that portion of the Premises by written notice delivered or mailed by Lessor to Lessee not less than ninety (90) days before the termination date specified in the notice. If Lessee is not in material default of this Lease on the effective date of such termination, Rent shall be adjusted in proportion to the area of the Premises so terminated. Environmental Mitigation shall be defined as measures taken by Lessor to satisfy its obligations pursuant to a settlement agreement, consent decree, agency order or court order entered into with, or issued by, a government agency with applicable authority and jurisdiction or administrative body thereof or court, including but not limited to recording of a conservation easement or deed restriction and/or physical improvements relating to habitat conservation for threatened or endangered species. In addition to a partial reduction in Rent, Lessee shall be entitled to any other damages for which it would be entitled pursuant to a Condemnation pursuant to Section 19.2 below. Lessee shall be entitled to an amount equal to the fair market value of its leasehold interest in the Premises and the entire fair market value of all improvements located on or upon the Premises

19.2 Condemnation.

(a) Total Taking. In the case of a taking by eminent domain or otherwise of either all of the Premises or such portion of either the Premises or any buildings or structures of which the Premises are a part such that Lessee, in its reasonable judgment, may no longer fully enjoy the use the premises for the Use contemplated in this Lease, this Lease shall terminate as of the date of such taking. If Lessee is not in material default of this Lease on said date, any Rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

(b) Partial Taking. In the case of a taking of a portion of the Premises or any buildings or structures of which the Premises are a part that shall *not*, in Lessee's judgment, be required for reasonable use of the Premises, this Lease shall continue in full force and effect, and the Rent shall, as of the date of such taking, be equitably reduced based on the proportion by which the Premises (but not the buildings or structures of which the Premises are a part) is reduced.

(c) Damages. For any taking pursuant to any provision of Section 19, Lessee shall be entitled to independently pursue its claims against the condemning authority for compensation based on the fair market value of its leasehold interest in the Premises, including any above-ground improvements (excluding landfill) thereon. Subject to the previous sentence, Lessor reserves all right to the damage award or payment for taking by eminent domain as relates to the real property, and Lessee waives all claim whatsoever against Lessor for damages for termination of its leasehold or for interference with its business. Lessor and Lessee further agree that all decisions regarding how the eminent domain proceeding should be handled with regard to compensation for the Premises shall be made in the sole discretion of Lessor (specifically including any response to a motion for order adjudicating public use and necessity or and request for immediate possession), and Lessee shall take no actions or steps which interfere with Lessor's ability to control the handling of the eminent domain proceeding. With respect to the Existing Improvements and any New Improvements, Lessor and Lessee agree that Lessee shall be entitled to the fair market value thereof.

(d) Eminent Domain. The term "eminent domain" as used in this Section 19 shall including taking or damaging of property by, through or under any governmental or quasi-governmental authority and the purchase or acquisition in lieu thereof.

19.3 Court Decree.

In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by Lessor of any of its obligations under this Lease, then Lessee may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any non-discharged rights and obligations that accrued prior to the effective date of termination, which obligations shall expressly exclude those relating to Hazardous Materials and Environmental Compliance as provided in Section 23) shall thereupon terminate. If Lessee is not in monetary default of this Lease (defined as a failure to timely pay Rent or any other sum due under this Lease) on the effective date of such termination, any Rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

20. ACCESS; EASEMENTS

20.1 Access to Premises. Lessor shall have the right to show the Premises at all reasonable times during business hours of Lessee to any prospective purchasers, tenants or mortgagees of the same, and may at any time enter upon the Premises, or any part thereof, for the purpose of ascertaining the condition of the Premises or whether Lessee is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from the Lessee. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance notice to Lessee (which shall be at least 48 hours advance notice, except that no notice shall be required in the event of an emergency).

20.2 Easements.

(a) The Parties recognize that the Premises may need to be modified to install or revise drainage facilities on the Premises and Lessor's property adjacent to the

Premises. Lessor is hereby granted a continuous easement or easements that Lessor believes may be necessary within the Premises of Lessee, without any additional cost to Lessor for the expressed purpose of modifying, installing, replacing, relocating or repairing storm water drainage facilities, including but not limited to pipes, channels, ditches, holding basins, swales and other related improvements. Lessor, or its authorized agent, shall have the right to enter the Premises of Lessee for the aforementioned purpose. Upon reasonable advance written notice to Lessor. Provided, however, that Lessor by virtue of such use, does not materially interfere with Lessee's use of Premises as provided herein.

(b) In the event that Lessor's use of Premises as provided in Section 20.2(a) temporarily interferes with Lessee's use or occupancy, an equitable adjustment in Rent, or in the cost required to modify the Premises to allow the Lessee to operate its business, will be negotiated and paid by Lessor to Lessee.

21. NONWAIVER; RIGHT TO PERFORM

21.1 Receipt of Monies Following Termination. No receipt of monies by Lessor from Lessee after the termination or cancellation of this Lease in any lawful manner shall (i) reinstate, continue or extend the term of this Lease; (ii) affect any notice theretofore given to Lessee; (iii) operate as a waiver of the rights of Lessor to enforce the payment of any Rent and fees then due or thereafter falling due; or (iv) operate as a waiver of the right of Lessor to recover possession of the Premises by proper suit, action, proceeding or remedy; it being agreed that after the service of notice to terminate or cancel this Lease, or after the commencement of suit, action or summary proceedings, or any other remedy, or after a final order or judgment for the possession of the Premises, Lessor may demand, receive and collect any monies due, or thereafter falling due, without in any manner affecting such notice, proceeding, suit, action or judgment; and any and all such monies collected shall be deemed to be payments on account of the use and occupation and/or Lessee's liability hereunder.

21.2 No Waiver of Breach. The failure of Lessor to insist in any one or more instances, upon a strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver of or relinquishment for the future of the performance of such covenant, or the right to exercise such option, but the same shall continue and remain in full force and effect. The receipt by Lessor of the Rent or fees, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by Lessor of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Lessor. The consent or approval of Lessor to or of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent or approval to or of any subsequent similar acts by Lessee.

21.3 No Waiver of Rent. The receipt by Lessor of any installment of Rent or of any amount shall not be a waiver of any Rent or other amount then due.

21.4 Application of Payments. Lessor shall have the right to apply any payments made by Lessee to the satisfaction of any debt or obligation of Lessee to Lessor, in Lessor's

sole discretion and regardless of the instructions of Lessee as to application of any such sum, whether such instructions be endorsed upon Lessee's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by Lessor of a check or checks drawn by others than Lessee shall in no way affect Lessee's liability hereunder nor shall it be deemed an approval of any assignment of this Lease or subletting by Lessee.

21.5 Lessor's Right to Perform. Upon Lessee's failure to perform any obligation or make any payment required of Lessee hereunder, Lessor shall have the right (but not the obligation) to perform such obligation of Lessee on behalf of Lessee and/or to make payment on behalf of Lessee to such parties. Lessee shall reimburse Lessor the reasonable cost of Lessor's performing such obligation on Lessee's behalf, including reimbursement of any amounts that may be expended by Lessor, plus interest at the Default Rate.

22. SURRENDER AND HOLDING OVER

22.1

(a) Surrender. The Existing Improvements and any New Improvements shall remain the property of Lessee during the term of this Lease (and all extensions and renewals hereof). At the expiration or sooner termination of this Lease (including all extension or renewals thereof), Lessee shall promptly surrender possession of the Premises to Lessor with all Existing Improvements and New Improvements and fixtures (unless specifically provided for elsewhere in the Lease) demolished and/or removed, excluding any landfill or earthwork abutting the Duwamish River, unless Lessor has provided Lessee written notice prior to expiration or earlier termination of this Lease, at Lessor's sole election, that no demolition or removal is required, and in such event all Existing Improvements and New Improvements and fixtures (unless specifically provided for elsewhere in this Lease) shall revert to Lessor without compensation to Lessee (Lessee agrees to deliver to Lessor all keys that it may have to any and all parts of the Existing Improvements and New Improvements. If the Premises are not surrendered as provided in this Section, Lessee shall indemnify and hold Lessor harmless against loss or liability, including claims by third parties, resulting from the delay by Lessee in so surrendering the Premises, including, without limitation, any claims made by any succeeding occupant founded on such delay.

(b) Additional Terms. Lessor and Lessee may, from time to time, agree to negotiate the terms and conditions for additional extension(s) of the term beyond the expiration of the Extended Term. Should Lessor and Lessee mutually agree to such additional extension(s) of this Lease, the Rent shall be calculated as provided in Section 3 herein and Lessee's obligations pursuant to Section 22.1 shall continue to defer until expiration or sooner termination of such additional extended term.

22.2 NOT APPLICABLE

22.3 Holding Over. If Lessee, with the consent of Lessor, holds over after the expiration or sooner termination of this Lease, the resulting tenancy will, unless otherwise mutually agreed, be on a month-to-month basis. During such month-to-month tenancy,

Lessee shall pay to Lessor the same rental rate that was in effect immediately prior to the month-to-month tenancy. Lessee will continue to be bound by all of the additional provisions of this Lease insofar as they may be pertinent. In the event that Lessee, without the consent of Lessor, holds over after the expiration or sooner termination of this Lease, said occupancy shall be as a Tenant at sufferance on a month-to-month basis subject to all of the terms of this Lease except that Lessee shall pay to Lessor rent at one hundred fifty percent (150%) of the rental rate that was in effect immediately prior to said month-to-month tenancy.

22.4 For Rent Signs. Lessor shall have the right to place and maintain "For Rent" signs in conspicuous places on the Premises for ninety (90) days prior to the expiration or sooner termination of this Lease.

23. HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE.

23.1 Definitions. "Hazardous Materials" as used herein shall mean:

(a) Any toxic substances or waste, sewage, petroleum products, radioactive substances, medical, heavy metals, corrosive, noxious, acidic, bacteriological or disease-producing substances; or

(b) Any dangerous waste or hazardous waste as defined in:

(1) Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or

(2) Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or

(c) Any hazardous substance as defined in:

(1) Comprehensive Environmental Response, Compensation and Liability Act of 1980 as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or

(2) Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

(d) Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended (the foregoing are referred to collectively as the "Laws")

23.2 Lessee shall not without first obtaining Lessor's prior written approval, use, generate, release, handle, spill, store, treat, deposit, transport, or dispose of any Hazardous Materials in, on, or about the Premises, or transport any Hazardous Material to or from the

Premises, and only in the event Lessor approves of any of the foregoing, except that Lessee is not required to obtain Lessor's approval to use, handle, store and transport Hazardous Material used in the ordinary course of Lessee's business. In such event, Lessee agrees that such activity shall occur safely and in compliance with all applicable federal, state, and local laws, ordinances and regulations.

23.3 Environmental Compliance.

(a) Lessee shall, at Lessee's own expense, comply with all federal, state and local laws, ordinances and regulations now or hereafter affecting the premises, Lessee's business, or any activity or condition on or about the Premises, including, without limitation, all laws, ordinances and regulations related to Hazardous Materials and all other environmental laws, ordinances and regulations, and any other laws relating to the improvements on the Premises, soil and groundwater, storm water discharges, or the air in and around the Premises, as well as such rules of general applicability as may be formulated by local jurisdictions ("the Laws"). Lessee warrants that its business and all activities to be conducted or performed in, on, or about the Premises shall comply with all of the Laws. Lessee agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations may be necessary at any time during the lease to comply with the Laws.

(b) Lessee shall not cause or permit to occur any violation of the Laws on, under, or about the Premises, or arising from Lessee's use or occupancy of the Premises, including, but not limited to, soil and ground water conditions.

(c) Lessee shall promptly provide all information regarding any activity of Lessee related to Hazardous Materials on or about the Premises that is reasonably requested by Lessor. Except as required under any applicable law, Lessor shall treat such information as confidential and shall not disclose the same to any other person or entity. If Lessee fails to fulfill any duty imposed under this Section 23 within a reasonable time, Lessor may do so; and in such case, Lessee shall cooperate with Lessor in order to prepare all documents Lessor deems reasonably necessary and appropriate to determine the applicability of the Laws to the Premises and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon Lessor's request. No such action by Lessor and no attempt made by Lessor to mitigate damages shall constitute a waiver of any of Lessee's obligations under this Section 23.

(d) Lessee shall, at Lessee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities ("the Authorities") under the Laws.

(e) Should any Authority demand that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Lease at or from the Premises, or which arises at any time from Lessee's use or occupancy of the Premises, then Lessee shall, at Lessee's sole expense, prepare and submit the required plans and all related bonds and other financial assurances; and Lessee shall carry out all such cleanup plans. Lessee shall

provide Lessor a copy of any proposed cleanup plans at the time the same are submitted to the applicable Authority.

23.4 Indemnification.

(a) Lessee shall be liable to Lessor for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any Authority with respect to Lessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials in or about the Premises. Lessee shall indemnify, defend, and save Lessor harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon Lessor (as well as Lessor's reasonable attorney's fees and costs) by any Authority as a result of Lessee's unlawful use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials, or from Lessee's failure to provide all information, make all submissions, and take all steps required by all Authorities under the Laws.

(b) Lessee shall indemnify and hold Lessor harmless from any and all claims, liabilities, lawsuits, damages, and expenses, including reasonable attorney's fees, for bodily injury or death, property damage, loss, or costs caused by or arising from the use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Lessee or any of its agents, representatives or employees in, on, or about the Premises occurring during the term of the this Lease, or arising at any time from Lessee's use or occupancy of the Premises.

23.5 Reporting Requirements. Lessee shall comply with the Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities.

23.6 Right to Check on Lessee's Environmental Compliance. Lessor expressly reserves the right, and Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Premises as Lessor, in its reasonable discretion, shall determine to be necessary in order to evaluate any potential environmental problems.

23.7 Remedies. Upon Lessee's default under this Section 23 HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE, Lessor shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to Lessor:

(a) To recover from Lessee any and all damages associated with the default, including but not limited to, reasonable response, remediation and cleanup costs and charges, civil and criminal penalties and fees, adverse impacts on marketing the Premises or any other adjacent areas of the Premises or adjacent Lessor-owned property, loss of business and sales by other of Lessor's tenants, diminution of value of the Premises and/or other adjacent areas owned by Lessor, the loss of or restriction of useful space in the Premises and/or other adjacent areas owned by Lessor, any and all damages awarded by a court of competent jurisdiction to third parties, and Lessor's reasonable attorney's fees and costs.

23.8 Remediation on Termination of Lease. Upon the expiration or earlier termination of this Lease, Lessee shall remove, remediate or clean up any Hazardous Materials on or emanating from, the Premises that were caused by Lessee or any of its subtenants ("Termination Cleanup"). Lessee shall undertake whatever other action may be necessary to bring the Premises into full compliance with the Laws. The process for such termination Clean-up is subject to Lessor's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. If Lessee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, Lessor may elect to perform such Termination Cleanup after providing Lessee with written notice of Lessor's intent to commence Termination Cleanup, and after providing Lessee a reasonable opportunity, which shall be not less than ninety (90) days after such notice (unless Lessor is given notice by a government agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time, in which case Lessor give Lessee notice of such shorter time), to commence or resume the Termination Cleanup process. If Lessor performs such Termination Cleanup after said notice and Lessee's failure to perform same, Lessee shall pay all of Lessor's reasonable and unavoidable costs.

23.9 Survival. Lessee's obligations and liabilities under this Section 23, HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE, shall survive the expiration or earlier termination of this Lease, including any extension thereof.

24. **MISCELLANEOUS**

24.1 Notice. All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, by facsimile or by recognized overnight courier addressed as follows:

To Lessor:

King County Real Estate Services Section
King County Administration Building
ADM-ES-0830
500 - 4th Avenue, Room 830
Seattle, WA 98104-2337

To Lessee:

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices shall be deemed delivered (i) when personally delivered; (ii) on the third day after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; (iii)

on the date transmitted by facsimile, if the facsimile is confirmed received; or (iv) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient.

Payments may be made in the manner provided for notice or may be delivered by regular mail (postage prepaid); provided, payments made by regular mail (postage prepaid) shall be deemed delivered when actually received by Lessor.

24.2 Heirs, Agents and Assigns. Without limiting any provisions of this Lease pertaining to assignment and subletting, the provisions of this Lease bind the heirs, successors, agents and assigns of any of the parties to this Lease.

24.3 Brokers. Lessor and Lessee each warrant to the other that it has had no discussions, negotiations and/or other dealings with any real estate broker or agent other than _____ in connection with the negotiation of this Lease, and that it knows of no other real estate broker or agent who is or may be entitled to any commission or finder's fee in connection with this Lease. Lessor and Lessee each agree to indemnify and hold the other harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, attorneys' fees and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent other than Broker(s). This Section is not intended to benefit any third parties and shall not be deemed to give any rights to brokers or finders. No commission(s) or finders fee(s) shall be paid to Lessee, employee(s) of Lessee or any unlicensed representative of Lessee. Lessor and Lessee shall each pay its respective Broker pursuant to their respective separate agreements with such Broker; *provided, however*, Lessor's Broker (if any) shall be free (but without obligation, except as separately agreed between Lessor's Broker and Lessee's Broker) to share the commission payable to it with Lessee's Broker as Lessor's Broker sees fit.

24.4 Consent. Whenever Lessor's prior consent or approval is required by this Lease, the same shall not be unreasonably withheld or delayed, but may, if otherwise specifically provided by this Lease, be granted or denied in Lessor's sole and absolute discretion.

24.5 Relationship to Lessor and Lessee. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Lease nor any acts of Lessee and Lessor shall be deemed to create any relationship other than that of Lessee and Lessor.

24.6 Time. Time is of the essence of each and every one of Lessee's obligations, responsibilities and covenants under this Lease.

24.7 Recording. Lessee shall not record this Lease or any memorandum thereof without Lessor's prior written consent.

24.8 Subordination, Attornment. Unless otherwise designated by Lessor, this Lease shall be subordinate to all existing or future mortgages and deeds of trust on the Premises or any larger property of which the Premises may be a part, and to all extensions, renewals or replacements thereof. Within ten (10) days of Lessor's request, Lessee shall execute and deliver all instrument or certificates which may be necessary or appropriate to reflect such subordination. Notwithstanding the foregoing, Lessee shall not be required to subordinate to future mortgages or deeds of trust unless the mortgagee or beneficiary under the deed of trust agrees that if it becomes the owner of the property, it will recognize the Lease as long as Lessee is not in default. Within ten (10) days of Lessor's request, Lessee shall also execute and deliver to third parties designated by Lessor an estoppel certificate or letter in the form requested by Lessor or any lender the correctly recites the facts with respect to the existence, terms and status of this Lease. Lessee agrees to attorn to any successor to Lessor following any foreclosure, sale or transfer in lieu thereof. The foregoing notwithstanding, Lessor shall not be required to subordinate its interest in the fee estate of the Premises to any Deed of Trust, Mortgage or other encumbrance.

24.9 Nondiscrimination – Services.

(a) Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, sexual orientation, gender identity or expression, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification in furnishing, or by refusing to furnish to such person or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby.

(b) It is agreed that Lessee's noncompliance with the provisions of this clause shall constitute a material breach of this Lease. In the event of such noncompliance, Lessor may take appropriate action to enforce compliance, may terminate this Lease, or may pursue such other remedies as may be provided by law.

24.10 Nondiscrimination – Employment. Lessee covenants and agrees that in all matters pertaining to the performance of this Lease, Lessee shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons with respect to sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, sexual orientation, gender identity or expression, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification and, in particular:

(a) Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from all qualified individuals, and

(b) Lessee will comply strictly with all requirements of applicable federal, state and local laws or regulations (specifically the terms of R.C.W. 49.60, Title VII of the Civil Rights Act of 1964 and King County Code 12.16.125) issued pursuant thereto relating to the establishment of nondiscriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's

sex, age, race, color, creed, national origin, marital status, sexual orientation, gender identity or expression, or the presence of any sensory, mental, or physical handicap.

24.11 [Not applicable to single user facilities]

24.12 Joint and Several Liability. Each and every party who signs this Lease, other than in a representative capacity, as Lessee, shall be jointly and severally liable hereunder. It is understood and agreed that for convenience the word "Lessee" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Lease, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual lessee or lessees under this agreement.

24.13 Captions. The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.

24.14 Governing Law; Venue. This Lease shall be construed under the laws of Washington. Exclusive jurisdiction and venue for any action relating hereto shall be in the state or federal courts located in King County, Washington.

24.15 Attorneys' Fees. In the event that either party shall be required to bring any action to enforce any of the provisions of this Lease, or shall be required to defend any action brought by the other party with respect to this Lease, and in the further event that one party shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts.

24.16 Invalidity of Particular Provisions. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or enforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

24.17 Survival of Indemnities. Unless expressly provided otherwise in this Lease, all indemnities provided in this Lease shall survive the expiration or any earlier termination of this Lease. In any litigation or proceeding within the scope of any indemnity provided in this Lease, Lessee shall defend Lessor at Lessee's expense by counsel reasonably satisfactory to Lessor.

24.18 Entire Agreement; Amendments. This Lease, together with any and all exhibits attached hereto, shall constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

IN WITNESS WHEREOF the parties hereto have signed this Lease as of the day and year first above written.

LESSEE:
Saint-Gobain Containers, Inc.

LESSOR:
King County, a Political Subdivision of the
State of Washington

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED BY CUSTODIAL AGENCY:

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Senior Deputy Prosecuting Attorney

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

On this day personally appeared before me _____ to me known to be the _____ of the _____ that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and that he was authorized to execute the said instrument.

GIVEN under my hand and official seal this _____ day of _____, 20 ____.

NOTARY PUBLIC in and for the State of Washington residing at _____ My appointment expires _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that _____ signed this instrument, on oath stated that (he/she) was authorized by the **King County Executive** to execute the instrument, and acknowledged it as the Manager, Property Services Division of King County, Washington to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

Date:

NOTARY PUBLIC in and for the State of Washington residing at _____ My appointment expires _____

EXHIBIT A
LEGAL DESCRIPTION

Premises A. Parcels #192404-9002 and 192404-9043

Beginning at the point of intersection of the East and West centerline of Section 19, Township 24 North, Range 4 East, W.M., in King County, Washington, with the West margin of Ohio Avenue South, as condemned by the City of Seattle, under ordinance no. 46352, said point being 931.32 feet South 89°40'08" West from the East quarter corner of said Section 19; thence South 5°40'09" West along the westerly margin of Ohio Avenue South as condemned by Ordinance No. 46352 for the distance of 265.52 feet to the true point of beginning. Thence continuing South 5°40'09" West for a distance of 915.38 feet to the intersection of the west margin of Ohio Avenue South with the Government Meander Line, thence South 23°02'29" West along the Government Meander Line for a distance of 218.88 feet to an intersection of the Government Meander Line and the east margin of the Commercial Waterway District No.1 Duwamish Waterway;

Thence North 19°35'39" West along said east margin for a distance of 1300.00 feet, thence South 79°35'39" East for a distance of 622.29 feet to the true point of beginning, comprising a total area of 380,212.20 square feet; being 8.7285 acres.

Together with, beginning at the point of intersection of the East and West centerline of Section 19, Township 24 North, Range 4 East, W.M., in King County, Washington, with the West margin of Ohio Avenue South, as condemned by the City of Seattle, under ordinance no. 46352, said point being 931.32 feet South 89°40'08" West from the East quarter corner of said Section 19; thence continuing South 5°40'09" West along the westerly margin of Ohio Avenue South as condemned by Ordinance No. 46352 for a distance of 48.28 feet to the true point of beginning. Thence continuing South 5°40'09" West for a distance of 217.24 feet; thence North 79°35'39" West for a distance of 622.29 feet to the east margin of Commercial Waterway District No.1 Duwamish Waterway; thence North 19°35'39" West along said easterly margin for a distance of 250.00 feet; thence South 75°35'39" for the distance of 729.35 feet to the to the true point of beginning, comprising a total area of 146,321.79 square feet; being 3.3591 acres.

Premises B Southerly Portion of Parcel #192404-9051

The Southerly 120 foot of the following described real property situated in King County, Washington, to-wit:

Beginning at the point of intersection of the East and West centerline of Section 19, Township 24 North, Range 4 East, W.M., in King County, Washington, with the West margin of Ohio Avenue South as condemned by the City of Seattle, under ordinance no. 46352, said point being 931.32 feet South 89°40'08" West from the East quarter corner of said Section 19; thence South 5°40'09" West along the westerly margin of Ohio Avenue South as condemned by ordinance 46352 for a distance of 48.28 feet to the true point of beginning; Thence North 5°40'09" East for a distance of 247.05 feet to the point of intersection of said westerly margin of Ohio Avenue South with the southerly margin of 20 foot wide alley as condemned by the City of Seattle, under ordinance no. 43273; thence North 79°35'39" West along said southerly margin for a distance of 851.09 feet to the easterly margin of Commercial Waterway District No.1 Duwamish Waterway; thence South 19°35'39" East, along said easterly margin a distance of 284.28 feet;; thence South 79°35'39" East a distance of 729.35 feet to the true point of beginning.

