

**ATTACHMENT A:**

**LEASE AGREEMENT**

# LEASE AGREEMENT

Between

KING COUNTY

And

Ardagh Glass Inc.

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made as of this \_\_\_\_\_ day of \_\_\_\_\_ 2022 (the "Effective Date") by and between KING COUNTY, a Washington municipal corporation and political subdivision of the State of Washington ("Lessor"), and Ardagh Glass Inc., a Delaware corporation ("Lessee") (Lessor and Lessee are each individually a "Party" and are collectively referred to as the "Parties").

### RECITALS

A. Lessor is the owner of real property located within the City of Seattle, King County, Washington, identifiable as the Tax Parcels 1924049051, 1924049043, and 1924049002 and legally described in **Exhibit A** (the "Real Property").

B. Lessee currently occupies portions of the Premises pursuant to a lease dated May 21, 2012 between Lessor and Lessee (under its former name, "Saint-Gobain Containers, Inc."), which lease was amended by a First Amendment of Lease Agreement dated January 1, 2017, an Agreement and Second Amendment of Lease dated February 19, 2021, an Agreement and Third Amendment of Lease dated August 5, 2021, and an Agreement and Fourth Amendment of Lease dated February 1, 2022 and expires on September 1, 2022 (the lease, as amended, being the "2012 Lease"). The premises subject to the 2012 Lease include the real property identifiable as Tax Parcels 1924049043 and 1924049002 and the portion of Tax Parcel 1924049051 defined as Parcel B in the 2012 Lease. The portion of Tax Parcel 1924049051 that comprises part of the Premises other than the portion described as Parcel B in the 2012 Lease is referred to herein as the "United Western Parcel."

C. Lessee (and its predecessors) previously occupied the Premises, with the exception of portions included within Tax Parcel No. 1924049051, pursuant to a lease dated March 7, 1966 (the "1966 Lease").

D. Lessee currently operates a glass manufacturing facility adjacent to the Premises on Tax Parcel No. 1722802315, which was previously operated by Lessee's predecessors ("Lessee's Manufacturing Facility").

E. Lessee maintains a number of environmental permits that are required to operate Lessee's Manufacturing Facility, including a Title V Air Emissions Permit issued by the Puget Sound Clean Air Agency, Permit No. 11656 (the "Title V Operating Permit"), and an Industrial Stormwater General Permit issued by the Washington Department of Ecology, Permit No. WAR001134.

F. Pursuant to King County Code 4.56.160.C.1.c, King County must evaluate the environmental compliance history of a prospective lessee prior to awarding a lease. In accordance with this requirement, the Parties have agreed to include provisions in this Lease to ensure Lessee's long-term environmental compliance at Lessee's Manufacturing Facility, in addition to Lessee's environmental compliance at the Premises.

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 as follows:

## 1. LEASED PREMISES

1.1 Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor approximately 16.2 acres of land (of which only approximately 14.5 acres are usable), a legal description of which is attached hereto as **Exhibit A**, improved with a warehouse consisting of approximately 150,841 square feet of net rentable area (the "Ardagh Building"), an office/warehouse building consisting of 18,720 square feet of net rentable area currently occupied by Lessee's subtenant (the "JA Jacks Building"), another warehouse on the United Western Parcel consisting of approximately 69,210 square feet of net rentable area (the "United Western Building"), and other related improvements in place as of the Commencement Date (as defined in Section 2.1 below) (collectively, the "Existing Improvements") upon and subject to the terms, covenants and conditions set forth herein. The Existing Improvements and the Real Property, described in **Exhibit A**, are collectively referred to as the "Premises," and are depicted on **Exhibit B**, attached hereto.

1.2 Demolition of Existing Improvements on United Western Parcel. Lessee desires to have the Existing Improvements on the United Western Parcel demolished. Lessee shall be permitted to use such Existing Improvements until the same are demolished subject to the terms and conditions of this Lease; provided that Rent for the Premises shall be prorated so that no Rent shall be payable for use of the United Western Parcel until the completion of the demolition of the Existing Improvements, subject to the time limits imposed pursuant to Section 3.1. Lessee shall contract for the necessary demolition; provided, however, Lessee shall not initiate any such demolition until Lessor has approved the demolition specifications and plans, salvage and recovery of materials, schedule for completion, and cost (the "Approved Demolition"). In the event Lessee anticipates a change or changes in the Approved Demolition that will result in an increase in cost after Lessor's approval of the same, Lessee shall inform Lessor and secure Lessor's approval of such change(s), which approval shall not be unreasonably withheld. Subject to Lessor's reasonable approval of the completed Approved Demolition and changes thereto, if any, Lessee shall receive a rent credit in the amount of the costs actually incurred by Lessee in accomplishing the demolition that are consistent with the Approved Demolition and approved changes (the "Demolition Rent Credit"). 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. In connection with the Approved Demolition, Lessee shall cause all contractors and subcontractors to remove, handle, transport, and dispose of demolition-derived waste, building materials, debris, or other materials that contain Hazardous Materials in compliance with all applicable Environmental Laws. Lessee's indemnification obligations pursuant to Section 23.5 extend to any failure to comply with the preceding sentence.

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 that Lessee shall have no such obligation with respect to the Existing Improvements on the United Western Parcel (with the exception of the rail transportation improvements on the United Western Parcel, which Lessee shall maintain to the condition received by Lessee as of the Lease Commencement Date), which improvements Lessee intends to demolish in accordance with Section 1.2 above.

1.4 Construction Defects. Lessor shall not be liable to Lessee for claims or damages arising from any defect in the construction of the Existing Improvements at the Premises, or the present condition thereof, whether known or unknown. Lessee hereby waives any and all claims against Lessor that may arise relating to the condition of the Existing Improvements or any defect in the construction thereof, and assumes the risk of occupying all of the Existing Improvements.

1.5 Quiet Enjoyment. So long as Lessee is not in default under this Lease past any applicable notice and cure period, 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 Condition Precedent and Commencement Date. The “Commencement Date” for this Lease shall be the date that both of the following have occurred: (1) the Lease has been approved by the Metropolitan King County Council; and (2) the Lease has been executed by both parties. The Parties agree that simultaneous with the Commencement Date, the 2012 Lease, and any subleases, licenses, or similar arrangements thereunder shall expire, and the Parties shall have no further rights or obligations thereunder, except for rights and obligations as expressly stated therein to survive such expiration.

2.2 Lease Term. The term of this Lease (“Term”) shall be for a period of ten (10) years, commencing on the Commencement Date and terminating on the tenth (10th) anniversary of the Commencement Date, unless extended or earlier terminated as provided in this Lease.

2.3 Extension Term. Provided that Lessee shall have elected to either pursue the Furnace 3 Rebuild or has permanently shut Furnace 3 on or before December 31, 2025, as that date may be extended pursuant to Section 25.3, and further provided that Lessee is not in default under the terms of this Lease, Lessee shall have the option to extend this Lease for one (1) additional ten (10) year term (the “Extension Term”) subject to the following:

2.3.1 Lessee's written notice to Lessor given not less than twelve (12) months or more than eighteen (18) months in advance of the expiration of the initial Term;

2.3.2 The terms and conditions of this Lease shall remain unchanged during the Extension Term except that Rent shall be adjusted as provided in Section 3.2.2 ("Adjustments to Rent") herein.

2.3.3 The option to extend the Term is personal to Lessee and is not assignable to a non-related third party except as otherwise provided herein.

2.4 Early Termination. Notwithstanding the foregoing, if prior to the expiration of the Term, Lessee ceases its operations at the Premises or Lessee's Manufacturing Facility or relocates its operations from the Premises or Lessee's Manufacturing Facility, Lessor may, but shall not be obligated to, terminate this Lease upon written notice to Lessee, in which event the Lease shall terminate on the date which is one hundred eighty (180) days following the receipt of such notice of termination if Lessor requires demolition or removal of improvements and alterations pursuant to Section 7.2; or alternately, sixty (60) days following the receipt of such notice of termination if Lessor does not require demolition or removal of improvements and alterations pursuant to Section 7.2. If this Lease is terminated pursuant to this Section 2.4, Lessee shall not be relieved of any of its duties to surrender the Premises pursuant to Sections 22 and 23, nor shall it be relieved of any of its obligations that are intended to survive Lease expiration or earlier termination of the Lease, and Lessee shall waive any and all claims or other recourse it may have against Lessor related to the termination. For the purposes of this Section 2.4 Lessee shall be considered to have ceased or relocated its operations if either of the following occurs: (x) Lessee has permanently surrendered Lessee's Title V Operating Permit for Lessee's Manufacturing Facility; or (y) if the combined total number of Lessee's employees sited at Lessee's Manufacturing Facility as of the Commencement Date is reduced to fewer than 150 employees in total on a stabilized basis during the Term (a "Job Loss Termination"). A reduction of employment on a stabilized basis shall be a reduction of employment lasting for a period in excess of twenty-four (24) consecutive months, excluding if caused by or such time during which Lessee is either executing a furnace rebuild at Lessee's Manufacturing Facility or such time during which Lessee's operations at the Property and/or Lessee's Manufacturing Facility are subject to force majeure events. Further, the determination of a stabilized basis will be tolled for the duration of time that Lessee is either executing a furnace rebuild at Lessee's Manufacturing Facility or such time during which Lessee's operations and the Property and/or Lessee's Manufacturing Facility are subject to force majeure events.

For purposes of tracking the number of employees at Lessee's Manufacturing Facility pursuant to this section, Lessee shall: (i) provide to Lessor every January 31 and every July 31 during the Term of the Lease an affidavit, certified as accurate by a corporate officer of Lessee, confirming that the combined total number of Lessee's employees sited at Lessee's Manufacturing Facility has or has not been reduced to fewer than 150 employees in total on a stabilized basis as provided herein; and (ii) if ever applicable provide to Lessor a copy of any WARN Act notice relating to Lessee's Manufacturing Facility within twenty (20) days of the issuance of such notice. Lessee's failure to provide either such notice timely

shall not constitute a default under this Lease unless Lessor has requested either such notice and Lessee shall have failed to provide such notice (if applicable) within twenty (20) days of such Lessor request. In addition, Lessor shall have the one-time right, exercisable on not less than forty-five (45) days' notice, to audit those records for Lessee's Manufacturing Facility that relate directly to the employment count at Lessee's Manufacturing Facility. The audit shall be conducted under such reasonable conditions relating to the time, place and manner of the audit as to which the parties may agree. In connection with such audit, Lessee shall be entitled to redact proprietary or personal employee information from any records produced.

If the Lessor gives notice of termination based on a Job Loss Termination event ("Lessor's Notice of Termination"), Lessee may elect in writing to Lessor within sixty (60) days that Lessee will remedy the Job Loss Termination event by increasing the total number of Lessee's employees sited at the Lessee's Manufacturing Facility above the 150 employee threshold noted above ("Lessee Job Loss Remedy"). If Lessee elects the Lessee Job Loss Remedy, then Lessee shall have twelve (12) months from the date of receipt of Lessor's Notice of Termination to implement the Lessee Job Loss Remedy. If Lessee timely implements the Lessee Job Loss Remedy, then Lessor's notice of termination shall be of no effect and the Lease will remain in full force and effect. If Lessee fails timely to implement the Lessee Job Loss Remedy, then the Lease will automatically terminate eighteen (18) months from the date of receipt of Lessor's Notice of Termination.

During the Extension Term (if applicable), the early termination provisions of this subsection shall remain in force, subject to the following modifications:

- Lessee shall have 120 days following Lessor's Notice of Termination to provide notice that Lessee is exercising Lessee Job Loss Remedy.
- If Lessee elects the Lessee Job Loss Remedy, then Lessee shall have eighteen (18) months from the date of receipt of Lessor's Notice of Termination to implement the Lessee Job Loss Remedy.

If Lessee fails timely to implement the Lessee Job Loss Remedy, then the Lease will automatically terminate twenty-four (24) months from the date of receipt of Lessor's Notice of Termination.

### 3. RENT

3.1 Rent. Commencing on the Commencement Date, Lessee shall pay to Lessor a minimum monthly rent of Two Hundred and Fifteen Thousand Dollars (\$215,000) plus Twenty Seven Thousand, Six Hundred and Six Dollars (\$27,606) in leasehold excise tax for a total of Two Hundred, Forty-Two Thousand, Six Hundred and Six Dollars (\$242,606) (attributable to both the land and improvements) ("Base Rent"), in advance on or before the first day of each and every month of the Term until the Lease expires or is terminated except as otherwise provided in this Section 3.1. Base Rent for the first partial month and full month shall be delivered to Lessor within thirty (30) days after the Commencement Date. Base Rent for partial months shall be prorated. The parties acknowledge and agree



that this rental amount is a fair approximation of the fair market rental value of the Premises as of the Commencement Date. Notwithstanding the foregoing, Tenant shall not be required to pay Base Rent for the first two (2) months of the Lease Term ("Tenant's Abated Rent"). In the event the Commencement Date does not occur on the first day of the month, Tenant's Abated Rent shall be prorated across the affected months as a sixty (60) day rent credit. In addition, and notwithstanding the foregoing, until the demolition work contemplated under Section 1.2 above shall be completed or would have been completed had Tenant diligently engaged in and completed the work in accordance with the schedule comprising part of the Approved Demolition, but in no event for a period longer than twelve (12) full months, plus any partial month at the outset, following the Commencement Date, the Base Rent payable by Lessee shall be One Hundred Seventy-Four Thousand Nine Hundred Ninety-One and 50/100 Dollars (\$174,991.50) plus Twenty-Two Thousand Four Hundred Sixty-Eight and 91/100 Dollars (\$22,468.91) in leasehold excise tax for a total of One Hundred Ninety-Seven Thousand Four Hundred Sixty and 41/100 Dollars (\$197,460.41).

### 3.2 Adjustments to Rent.

3.2.1 Annual Base Rent Increases. Subject to Section 3.2.2 below, Base Rent shall increase annually on each anniversary of the Commencement Date by three percent (3%). For the avoidance of doubt, in the event the Base Rent is adjusted pursuant to Section 3.2.2 below on the Base Rent Adjustment Date (as defined in Section 3.2.2 below), the Base Rent shall not also be subject to an annual percentage increase pursuant to this Section 3.2.1 until the next anniversary of the Commencement Date following the applicable Base Rent Adjustment Date.

3.2.2 Fair Market Rental Value Adjustment. Lessor and Lessee agree that the Base Rent for the initial rent period is based on the fair market rental value as defined herein. Commencing on the fifth (5<sup>th</sup>) anniversary of the Commencement Date (the "Base Rent Adjustment Date"), the Base Rent payable by Lessee during the subsequent five (5) years of the Term shall be adjusted pursuant to this Section 3.2.2 to reflect the fair market rental value adjustment required hereunder.

(a) Lessor shall provide Lessee advance written notice of the proposed adjusted Base Rent at least one hundred and eighty (180) days prior to the Base Rent Adjustment Date, including the basis thereof in the form of a written appraisal report or opinion of value prepared by a disinterested appraiser who shall be a member of an appraisal society or comparable association having equivalent ethical and professional standards with at least ten (10) years of appraisal experience in the evaluation of properties with similar characteristics to the Premises. Unless Lessee, within thirty (30) days following receipt of notice from Lessor, provides Lessor written notice of its rejection of the proposed adjusted Base Rent together with Lessee's statement of the amount Lessee considers to be the fair market rental value, the proposed adjusted Base Rent shall become the Base Rent for the next five (5) year period. If Lessee so notifies Lessor of its rejection of the proposed adjusted Base Rent, Lessor and Lessee shall negotiate in good faith in an attempt to agree upon the fair market rental value adjustment. Should Lessor and Lessee be unable to agree upon the fair market rental value adjustment following such good faith

negotiations, the fair market rental value adjustment shall be set pursuant to Sections 3.2.2(b), (c), (d), (e) and (f) below.

(b) If, thirty (30) days after Lessor receives Lessee's notice of its rejection of the proposed adjusted Base Rent, Lessor and Lessee cannot agree upon the fair market rental value adjustment, the Base Rent for the period will be adjusted by arbitration. Lessor and Lessee will each select one (1) disinterested arbitrator, and the two (2) selected arbitrators will select a third (3rd) disinterested arbitrator. For purposes of this Section 3.2.2, 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 (1) year before the arbitration (unless waived by the Parties), 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 3.2.2(a) above. 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 3.2.2(b), 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 Base Rent for the next five (5) year period. If the two (2) arbitrators have not selected a third (3rd) arbitrator within thirty (30) days after the selection of the last selected of the two (2), either Lessor or Lessee may apply to the Presiding Judge of the Superior Court in King County for the appointment of a third (3rd) arbitrator.

(c) Each arbitrator must be a member of an appraisal society or comparable 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 3.2.2(c) 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 (14) 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 (3rd) arbitrator, then the two (2) party-appointed arbitrators shall, within fourteen (14) days after their receipt of a party's notice of disqualification, select a third (3rd) arbitrator who meets the requirements of this section to serve in place of the disqualified arbitrator.

(d) 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 (30) days before the arbitration is scheduled to commence, provide the other party with a copy of an appraisal report prepared by a member of an appraisal society or comparable 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 within such thirty (30) day period, Lessor shall provide Lessee with written notice of such failure

to respond and a further fifteen (15) days within which to provide such information. If Lessee fails to so provide a copy of its appraisal report to Lessor within such fifteen (15) day period, 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 Base Rent for the next five (5) year period. The three (3) arbitrators will determine the fair market rental value for the Premises by applying the appraisal criteria provided herein for the next five (5) year period, which amount shall not be less than the lower of the adjusted Base Rent amounts initially proposed by the two (2) disinterested arbitrators nor greater than the higher of the adjusted Base Rent amounts initially proposed by the two (2) disinterested arbitrators. 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 attorneys 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 Base Rent to be paid by Lessee for the succeeding five (5) year period. The report shall contain all pertinent evidence in support of the conclusion together with a discussion explaining the reasoning for such conclusion.

(e) 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 shall be divided equally between Lessor and Lessee.

(f) 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. The value of the Existing Improvements to the extent usable by a third party shall be included in the determination of fair market rental value, but the value of any improvements made by Lessee, or by any other person authorized by Lessor under the Lease to use the Premises, during the Term of this Lease including any extension thereof shall not be included. Further, 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) the impact on property value of temporary and permanent encumbrances upon the property such as 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. Notwithstanding the foregoing, for purposes of calculating Base Rent pursuant to this Section 3.2.2 during the Term of this Lease, including any extension thereof, Lessor and Lessee acknowledge and agree that the determination of Base Rent for the Premises shall also, to the extent applicable, account for the following characteristics: an industrial warehouse complex with maritime use, in the greater South Seattle market which are of similar age, quality and condition.

3.2.3 Base 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 Base Rent Adjustment Date: (i) Lessee shall, pending resolution of such rent adjustment, continue to pay Lessor the Base Rent then in effect; (ii) the adjusted Base Rent, as determined either by negotiation or arbitration, shall be retroactive to the Base Rent Adjustment Date; and (iii) Lessor and Lessee shall reconcile any outstanding amounts within sixty (60) days of final resolution of any such Base Rent adjustment. Lessor, at its option, may elect to require Lessee to pay interest in the amount of twelve percent (12%) per annum commencing on the date which is sixty (60) days after Base Rent Adjustment Date on any sum due as a result of a retroactive increase.

3.3 Taxes. A Leasehold Excise Tax levied by the State of Washington under RCW Chapter 82.29A is included in Base Rent and will be paid by Lessee directly to Lessor as part of the payment of Rent (as defined Section 3.6 below). Taxes so collected will then be forwarded to the Washington State Department of Revenue. Lessee shall pay throughout the Term of this Lease all license and excise fees covering the business conducted by Lessee on the Premises.

3.4 Payment. Except as provided in Section 3.1, all Base Rent is to be paid to Lessor in full on or before the first day of each and every month during the Term, without any prior demand, and without any abatement, deduction or setoff whatsoever, except as specifically set forth herein or as authorized in writing signed by the Director of the Facilities Management Division of King County or other authorized representative. All Base Rent and any other sums due hereunder 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

3.5 Late Payment. Interest shall accrue on any unpaid Base Rent or Additional Rent hereunder, at the rate of twelve percent (12%) per annum or the maximum rate provided by law, whichever is less, from the date due until paid.

3.6 Rent Defined. Lessor and Lessee agree that the term "Rent" shall mean and refer collectively to sums denominated as either Base Rent, Additional Rent (as hereinafter defined), if any, or any such other sums or charges otherwise payable by Lessee under the terms of this Lease. "Additional Rent" shall mean any sums owing from Lessee to Lessor, other than Base Rent, which are specifically termed Additional Rent. Failure by Lessee to pay any sum denominated as Rent beyond any applicable notice and cure period 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

On the Lease Commencement Date, Lessee shall deposit with Lessor the sum of two hundred and fifty thousand dollars (\$250,000.00) as a security deposit to secure Lessee's obligation to pay Rent and any other sums due under this Lease. The security deposit shall be the only sum to be credited toward payment of the last month's Rent installment upon expiration or earlier termination of this Lease. The return of the security deposit, or any portion of it, shall be conditioned upon the performance of all of Lessee's duties and obligations herein. Within Ninety (90) days after expiration or earlier termination of this Lease and vacation of the Premises, Lessor will return any sum due to Lessee from the security deposit. Furthermore, Lessee acknowledges and agrees that all Rent, taxes, late charges, utility invoices and any other sum due and payable under this Lease, unless previously paid by Lessee, shall be deducted from the security deposit, as well as the costs to repair damage and clean the Premises. The security deposit will not be held in a special or segregated account and shall pay no interest.

#### 5. USE OF PREMISES

5.1 Use of Premises. Lessee shall use the Premises for industrial, warehousing, distribution, manufacturing, processing and storage of raw materials, loading and staging of commercial vehicles, and associated offices uses, and for 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.

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; or (iv) create a public or private nuisance. 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, the Real Property or the sidewalks or streets adjacent thereto and all requirements, obligations and conditions of all instruments of record.

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 applicable Legal Requirements; 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 (as hereinafter defined) 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, within sixty (60) days after notice of its filing, either (a) pay the claimant, (b) bond over such Lien or (c) remove such Lien by any other lawful means. In the event of any contest or protest of such Lien by Lessee in compliance with this Section 5.4, Lessor agrees that it will not pay the claimant or discharge the Lien on Lessee's account provided Lessee complies with the provision of the foregoing sentence; and Lessee shall be under no obligation to Lessor for any sums expended by Lessor in violation of this sentence. Subject to the foregoing, Lessee shall also defend (with counsel reasonably 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.

5.5 Signs. From and after the Commencement Date, no new commercial sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by Lessee on any part of the outside of the Premises without the prior written consent of Lessor, provided that such consent shall not be unreasonably withheld, conditioned or delayed. If Lessee violates this provision, Lessor may remove the sign without any liability and may charge the reasonable expense incurred by such removal to Lessee provided, however, Lessor shall give Lessee written notice of Lessee's violation of this provision and Lessee shall have fifteen (15) days after receiving the notice within which to remove any such sign or apply for consent. All signs erected or installed by Lessee shall be subject to any federal, state or local statutes, ordinances or regulations applicable to signs. Additionally, Lessor shall have the right to place and maintain "For Lease" or "For Sale" signs in conspicuous places on the Premises for ninety (90) days prior to the expiration or sooner termination of this Lease.

## 6. OPERATING EXPENSES

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 and assessments including, without limitation, surface water management charges and similar fees and assessments from improvement or special districts. 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 to the extent arising from Lessee's occupancy and operation of the Premises, if any, during the Term of this Lease or the 2012 Lease. Notwithstanding the foregoing, Lessee's responsibility to perform and pay for any capital expenses to remedy environmental problems shall be subject to Section 23, Hazardous Substances.

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, security services, gas, water, sewerage, recycling, garbage disposal and janitorial services so that the same shall not become a lien against the leased Premises. The interruption or curtailment of any service or utility shall not constitute a constructive eviction and shall not entitle Lessee to damages or any abatement of Rent or any other claim against Lessor. The location of any utility infrastructure not currently in place shall be approved in advance by Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed.

## 7. ALTERATIONS

7.1 Lessee shall make no alterations or improvements to or upon the Premises, or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining written approval from Lessor, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, any alterations or improvements to the Premises which Lessee reasonably believes, based on an estimate from a third-party contractor, will cost less than one hundred thousand dollars (\$100,000) to perform, shall not require Lessor's prior written approval. Lessee shall submit plans and designs for any proposed improvements or alterations to Lessor when seeking Lessor's consent to improve or alter the Premises. Lessee shall timely submit any additional plans, designs, or other information requested by Lessor. Lessor may condition its approval on compliance with additional requirements, including but not limited to interim and final inspections and approvals, supplying as-built drawings, and payment and performance bonds. Except as otherwise provided herein, Lessee shall secure any and all governmental permits or other authorizations required in connection with any such work, and such work shall comply with all Legal Requirements. Lessee shall use only contractors and professional service providers that are licensed and authorized to do business in Washington State. Lessor's rights of review and approval under this Section 7.1 are in addition to and separate from any permits or other processes that may be required by law. Any alterations or improvements permitted by Lessor, including all initial improvements made by Lessee as a condition or requirement under the Lease, as applicable, shall be performed in a good and workmanlike manner. 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 Tenant in the minimum form and limits as set forth in Sections 12 and 13.

7.2 Upon expiration or earlier termination of this Lease, Lessee shall demolish or remove, at Lessee's sole expense, (i) all Existing Improvements and (ii) all alterations

or improvements erected or made on the Premises by or for Lessee be demolished or removed. Lessor shall notify Lessee at least one hundred and eighty (180) days prior to the expiration of this Lease whether Lessor requires such demolition or whether Lessor elects that such alterations or improvements need not be demolished or removed, and in such event all such improvements and alterations (unless specifically provided for elsewhere in this Lease) shall revert to Lessor without compensation to Lessee.

7.3 For any improvements or alterations that involve excavation of soil or disturbance of groundwater, Lessee shall have on site an environmental professional, provided at Lessee's sole cost, with the necessary qualifications and experience to identify possible Hazardous Materials that may be encountered. The environmental professional shall be responsible to observe excavation activities, using standard practices commonly used by environmental professionals in the field, for the purpose of identifying possible Hazardous Materials. If the environmental professional identifies possible Hazardous Materials, Lessee shall notify Lessor within forty-eight (48) hours of discovery. If required by applicable Environmental Laws, Lessee shall immediately stop work in the area that may contain Hazardous Materials. Lessee shall not resume work that has been stopped until authorized by Lessor. Lessee shall not remove from the site any soil or groundwater that may contain Hazardous Materials pending review by Lessor. Lessee shall submit a remediation plan prepared by Lessee's environmental consultant to Lessor for Lessor's approval, which such approval shall not be unreasonably withheld, conditioned or delayed by Lessor. Lessee will perform the remediation, under terms and conditions agreed to by the parties and shall be responsible for all costs and expenses associated with remedial actions for releases or threatened releases of Hazardous Materials caused or contributed to by Lessee, including Lessee's exacerbation of Hazardous Materials existing on the Premises prior to this Lease; provided that Lessee's responsibility shall be solely to the extent of its contribution. Lessee shall ensure that any agents, contractors, or consultants are informed of and comply with the requirements in this Section 7.3.

## 8. MAINTENANCE AND REPAIR

8.1 Maintenance and Repair by Lessee. Lessee shall, without cost or expense to Lessor, maintain the Existing Improvements (other than the Existing Improvements on the United Western Parcel, with the exception of the existing rail transportation improvements, which shall be maintained to the condition received by Lessee at the Lease Commencement Date) and any alterations, landscaping, fixtures and equipment which may now or hereafter exist thereon, in accordance with all Legal Requirements and except for reasonable wear and tear at all times preserve the Premises in good and safe repair. Lessee shall also keep the Premises clean and in sanitary condition, free from infestation of pests and conditions which might result in harborage for, or infestation of pests. Lessee shall be responsible for prompt snow removal in all parking and access areas of the Premises whenever necessary to ensure safe access. As used in this Section, the word "pests," shall include without limitation, rodents, insects, and birds in numbers to the extent that a nuisance is created. Lessee shall throughout the Term of this Lease (including any extension thereof), without cost or expense to Lessor take and use all measures reasonably necessary to secure the Premises from trespassers. Notwithstanding the foregoing, pending completion of the Approved Demolition, Lessee shall be solely responsible for securing



the Existing Improvements on the United Western Parcel in order to prevent trespassers, vandals or any other unapproved entry.

8.2 Lessor Right to Cure. If, after thirty (30) days' written notice from Lessor, or such longer period as reasonably required to complete the maintenance and repair work, Lessee fails to comply with all or any portion of Lessee's obligations pursuant to Section 8.1, Lessor may, but shall not be obligated to, enter upon the Premises and perform such maintenance and repair and Lessee agrees to pay the reasonable costs thereof to Lessor within thirty (30) days after receipt of a written demand, together with reasonable supporting documentation. Any unpaid sums under this Section 8.2 shall be payable as Additional Rent.

9. [INTENTIONALLY DELETED]

10. TAXES

10.1 Payment of Taxes. Lessee shall be liable for, and shall pay throughout the Term of this Lease, all real property taxes and assessments, to the extent attributable to the Premises (other than Leasehold Excise Tax), 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 thirty (30) days' written notice of the amounts payable by it.

10.2 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, within thirty (30) days, repay to Lessor the taxes so levied.

10.3 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.

11. **[INTENTIONALLY DELETED]**

12. **INDEMNITY AND HOLD HARMLESS**

12.1 Lessee agrees for itself, its successors and assigns, to defend, indemnify and hold harmless Lessor, its officers, appointed and elected officials, employees, agents, consultants, successors and assigns (collectively, "Lessor Parties") from and against liability for all claims, demands, suits and judgments, including costs of defense thereof (collectively, "Claims"), 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 or intentional misconduct. The Lessee's obligations under this Section 12 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;

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

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

12.2 Lessee shall require its general contractors to indemnify and hold Lessor harmless from and against liability for all Claims arising out of or in connection with the design, development or construction of any improvements or alterations of the Premises, except to the extent of Lessor's sole negligence or intentional misconduct. The indemnification and hold harmless language shall be at least as broad as that set forth in this Section 12.1 above.

12.3 In the event it is necessary for Lessor to incur attorneys' fees, legal expenses or other costs to enforce the provisions of this Section 12, all such reasonable fees, expenses and costs shall be recoverable from Lessee or, if applicable, the Lessee's contractors and subcontractors pursuant to Section 12.2 above.

12.4 In the event it is determined that RCW 4.24.115 applies to this Lease, the Lessee agrees to defend, hold harmless and indemnify Lessor to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of Lessor to the full extent of Lessee's negligence.

12.5 The provisions of this Section 12 shall survive the expiration or earlier termination of this Lease. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

## 13. INSURANCE

### 13.1 Insurance Requirements.

13.1.1 Commencing on the Commencement Date, Lessee shall procure and maintain during the Term of this Lease insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the exercise of the rights and privileges granted by this Lease or by, or on behalf of, Lessee. The cost of said insurance shall be paid by Lessee. By requiring such minimum insurance coverage, Lessor shall not be deemed or construed to have assessed the risks that may be applicable to Lessee under this Lease. 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. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

13.1.2 For all insurance coverages required pursuant to this Section 13, each insurance policy shall be written on an "occurrence" form provided that Lessee may obtain Professional Liability Insurance on a claims made basis. If coverage is provided on a claims made basis, such coverage shall extend for a period of three (3) years after the expiration of the Lease.

13.2 Business Interruption Insurance. Lessee shall carry "All Risk property insurance, including business interruption coverage to provide for the continuing expenses of Rent in an amount equal to the full replacement value of all improvements, structures and buildings located on the Premises and rental coverage equal to at least twelve (12) months. The policy shall include Lessor as a loss payee for its vested interest in the Premises and the Real Property. A certificate of insurance must be provided to Lessor prior to the first day Lessee or any of its employees first enters onto the Premises for any reason relating to this Lease. Lessor will not carry insurance on Lessee's personal property, fixtures, improvements or alterations.

### 13.3 Liability Insurance.

13.3.1 Commercial General Liability Insurance. Coverage shall be at least as broad as General Liability: Insurance Services Office Form No. CG 00 01 current edition, or its equivalent, including Explosion & Collapse and Underground Damage (XCU). The Lessee shall maintain limits for General Liability no less than \$5,000,000.00 per occurrence for bodily injury and property damage, and \$5,000,000.00 general aggregate, to include Marine General Liability coverage for commercial exposures including loading, unloading and work on or around boats, skiffs, floating platforms, barges, and including work on or around docks and piers. Marine General Liability coverage may be provided by either a commercial general liability or a "marine general liability" policy, or a combination of both; provided the Marine General Liability coverage shall only be required for Lessee or any of Lessee's subtenants to the extent such entity receives or ships via the Duwamish River and the entity engaged in receiving or shipping will have the obligation to maintain such insurance.

13.3.2 Commercial Automobile Liability. Insurance Services Office Form CA 01 or its equivalent covering Commercial Automobile Liability with a combined single limit of \$5,000,000.00 for each accident for bodily injury and property damage covering all owned, non-owned and hired vehicles.

13.3.3 Workers' Compensation. Statutory requirements of the State of operation. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, and Employer's Liability or "Stop Gap" with limits of \$1,000,000.00 each accident/disease/policy limit and shall be at least as broad as the protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

13.3.4 U.S. Longshoreman and Harbor Workers' (USL&H). Statutory requirements of Longshoreman and Harbor Workers' Compensation Act (administered by the U.S. Department of Labor) must be met and USL&H Employer's Liability coverage with a minimum limit of \$1,000,000 each occurrence must be maintained by Lessee or any of Lessee's subtenants to the extent such entity receives or ships via the Duwamish River and the entity engaged in receiving or shipping will have the obligation to maintain such insurance.

13.3.5 Pollution Liability Coverage. In the amount of \$1,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean-up costs and the loss of use of tangible property that has not been physically injured or destroyed. If Asbestos, Lead, or PCBs are a potential exposure, such insurance shall not exclude pollution arising out of Asbestos, Lead and/or PCB operations. Evidence of insurance must specifically state that coverage is included.

13.4 Deductibles and Self-Insured Retentions. Any deductible and or self-insured retention shall not limit or apply to Lessee's liability to the Lessor and shall be the sole responsibility of Lessee.

13.5 Other Insurance Provisions. The insurance policies required in this Lease are to contain the following provisions:

(a) Lessor, its officers, officials, agents and employees are to be covered as additional insureds as their interest may appear under this Lease for full coverage and policy limits under Lessee's Commercial General Liability and Commercial Automobile Liability policies as respects liability arising out of activities performed by Lessee in connection with this Lease.

(b) The Lessee's insurance coverage shall be primary insurance as respects Lessor, its officers, officials and employees. Any insurance and/or self-insurance maintained by Lessor shall not contribute with the Lessee's or Contractor's (as defined in Section 13.7 below) insurance or benefit the Lessee or Contractor 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.

(d) Upon receipt of notice from its insurer's, Lessee shall use commercially reasonable efforts to provide Lessor with thirty (30) days' prior written notice of cancellation of any required coverage.

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

13.7 Contractor's Insurance. In the event Lessee makes improvements to the Real Property, Lessee shall require its contractors and subcontractors (collectively, "Contractors") to obtain and maintain substantially the same insurance with substantially the same limits as required of Lessee. In addition, Lessee shall require its Contractors to provide, for the duration of construction of any improvements or alteration:

(a) Builders Risk insurance covering interests of Lessor, Lessee and the Contractor in the work, in the amount of the completed value of the improvements with no coinsurance provisions. Such Builders Risk insurance will be on an all-risk policy form and will insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work shall have a deductible no larger than \$5,000.00 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by Lessor upon written request by Contractor and written acceptance by Lessor. Any increased deductibles accepted by Lessor shall remain the responsibility of the Contractor. The Builders Risk insurance will be maintained until final acceptance of the work by Lessee. Lessee will require its Contractors to provide copies of insurance certificates or insurance policies to Lessor upon request.

(b) Professional Liability /Errors and Omissions insurance with a limit of \$1,000,000.00 per claim/aggregate. The Contractor shall submit proof of insurance as part of the required submittals or provide evidence of compliance from its subcontractor that these insurance requirements have been met thirty (30) days prior to beginning the work designated to be performed by a professional.

(c) Contractor's Pollution Liability Coverage. In the amount of \$1,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean-up costs and the loss of use of tangible property that has not been physically injured or destroyed. If Asbestos, Lead, or PCBs are a potential exposure, such insurance shall not exclude pollution arising out of Asbestos, Lead and/or PCB operations. Evidence of insurance must specifically state that coverage is included.

13.8 If at any time, any of the foregoing policies fail to meet the requirements stated in this Section 13, Lessee shall, upon notice to that effect from Lessor, promptly obtain or require its Contractor to obtain a new policy, and shall submit the same to Lessor, with the appropriate certificates and endorsements for approval.

13.9 Verification of Coverage. Lessee shall furnish Lessor with certificate(s) of insurance and additional insured endorsement(s) required by this Lease. The certificate(s) and endorsement(s) for each insurance policy are to be signed by authorized representative of Lessee's insurer. The certificates and endorsements for each insurance policy are to be on forms reasonably approved by Lessor and are to be received and approved by Lessor within five (5) days of the Commencement Date of this Lease.

#### 14. **WAIVER OF SUBROGATION**

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 waiver shall be inapplicable if it would have the effect of invalidating any insurance coverage of Lessor or Lessee. Lessee shall, within thirty (30) days of receiving an invoice from Lessor, reimburse Lessor for any reasonable and actual out-of-pocket costs paid by Lessor resulting from any deductible under Lessor's coverage.

#### 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 any alterations or improvements to or upon the Premises. Additionally, Lessee shall have no duty to repair damage to the Existing Improvements or any alterations or improvements to or upon the Premises caused by fire, the elements, earthquake or other casualty.

15.2 Right to Terminate. In the event Existing Improvements or any alterations or improvements on the Premises are totally or partially destroyed by fire, the elements, earthquake or other casualty (collectively "Casualty"), Lessee shall have the option to reconstruct such facilities to their original condition within eighteen (18) months after their destruction, said eighteen (18) month period to be reasonably extended by Lessor if Lessee is delayed in obtaining required permits or an insurance settlement or is otherwise promptly proceeding to reconstruct the facilities. Should Lessee elect not to reconstruct, Lessee shall assign and make payable to King County the insurance proceeds payable as a result of the destruction of such improvements net of amounts Lessee is required to expend to raze partially destroyed improvements and secure the Premises. Lessee may elect to terminate this Lease in the event that Lessee concludes that the damage to the Premises or Improvements of which the Premises are a part cannot be reconstructed within thirty (30) days of the Casualty (with the repair work and the preparations therefor 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. 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 Improvements 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 within eighteen (18) months after the Casualty occurred, Lessor may terminate this Lease by giving Lessee at least ninety (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 or any alterations or improvements to or upon the Premises and Lessor shall have no right to terminate this Lease based upon Lessee's failure to rebuild unless such failure results in the inability of Lessee to utilize the Premises as required by this Lease.

15.3 Abatement of Rent. Unless the casualty results from Lessee's negligence or breach of the terms of this Lease, the Base Rent and Additional Rent, if any, shall be abated for any portion of the Premises that is rendered untenantable 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). Notwithstanding the foregoing, Lessee shall not be entitled to any abatement of Rent and Additional Rent for improvements or alterations Lessee elects not to repair or rebuild. Such abatement of Base 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 Prohibition. Except as otherwise provided in Section 16.4 below and except for the subleases described in **Exhibit D**, attached hereto, which sublease arrangements have previously been reviewed and approved by Lessor, Lessee shall not, in whole or in part, assign, sublet, license or permit the 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, which consent shall not be unreasonably withheld, conditioned or delayed. If Lessee desires to assign, sublet, license or permit the 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 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 thirty (30) 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; or (b) to reasonably refuse such consent by providing the grounds for such refusal.

16.1.1 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, which instrument will include

a provision whereby the assignee, sublessee or licensee assumes and agrees to be bound by the terms and provisions of this Lease as they relate to the portion of the Premises affected by the instrument and perform all the obligations of Lessee hereunder as they relate to the portion of the Premises affected by the instrument. In the event that Lessee shall be in default in the performance or fulfillment of any obligation hereunder with respect to the portion of the Premises affected by an assignment, sublease or license, and shall fail to cure such default after notice from Lessor and an opportunity to cure such default, Lessee's rights to enforce obligations of the assignee, sublessee, or licensee under the assignment, sublease or license shall automatically (and without the requirement of other authorization from Lessee) be assigned to Lessor for purposes of enforcing such obligations. In all subleases authorized by Lessor, the term of the sublease shall be at least one (1) day less than the Term of this Lease. Any unauthorized sublease equal in duration to the Term 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 and ability 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.

16.1.2 In the event of any assignment, but not a sublease or license hereunder, 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, provided, however, that no such extension, indulgence, dealing, modification or waiver shall act to increase Lessee's liability under this Lease.

16.1.3 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.

16.1.4 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, 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.

16.1.5 Lessee shall reimburse Lessor in the sum of Five Hundred Dollars (\$500.00) plus any reasonable and actual out-of-pocket administrative fees and expenses



incurred by Lessor in connection with any request by Lessee for consent to an assignment, subletting or license.

16.2 Excess Rental. If Lessee assigns its interest other than to a Lessee Affiliate (as defined in Section 16.4 below), Lessee shall pay Lessor, as Additional Rent, fifty percent (50%) of the Assignment Premium (as hereinafter defined) 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 from the assignee to the extent reasonably attributable to the assignment for the Premises. If Lessee subleases, other than to a Lessee Affiliate, Lessee shall pay Lessor, as Additional Rent, fifty percent (50%) of the Sublease Premium (as hereinafter defined) 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 the Sublease Premium to Lessor as and when Lessee receives payment from such transferee.

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

- (i) Any costs, fees or commissions actually paid by Lessee 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;
- (ii) The actual cost of leasehold improvements undertaken by Lessee to the extent made 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);
- (iii) 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 Assignment Premium or the Sublease Premium); and
- (iv) Rent allocable to the space covered by such sublease.

16.3 Scope. 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, following a material default by Lessee under the terms and conditions of this Lease past any applicable notice and cure period, collect rent due 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 Permitted Transfers. Notwithstanding anything to the contrary contained in the Lease, Lessee may, without Lessor's consent, and without first offering such space to Lessor, sharing any fees or rent with Lessor, or suffering any increase in Lessee's rental obligations or any loss of Lessee's rights under the Lease, assign the Lease to, sublet the Premises or any part thereof to, or permit the use of the Premises or any part thereof by, any entity directly or indirectly controlled by, in control of or under common control with, Lessee, or any entity that acquires all or part of Lessee, that is acquired in whole or in part by Lessee, that results from the merger or consolidation with Lessee, or that purchases all or a substantial portion of Lessee's assets located at, or the business conducted by Lessee in and from, the Premises (and such affiliates (collectively, a "Lessee Affiliate") shall have the same rights as Lessee under this Section 16.4), provided, however, that no such transfer to a Lessee Affiliate shall relieve Lessee of any liability hereunder. Further, no change of stock ownership or control of Lessee shall constitute an assignment or transfer hereunder.

## 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 an "Event of Default" of this Lease by Lessee with or without notice from Lessor:

(a) Failure to Pay. Lessee fails to make any payment of Rent, or any other sum due under this Lease, within ten (10) days after notice of non-payment from Lessor.

(b) Failure to Perform. Lessee breaches or fails to observe or perform any of Lessee's nonmonetary obligations in this Lease and the breach or failure continues for a period of thirty (30) days after written notice by Lessor; provided, that if said breach or failure cannot reasonably be cured within such thirty (30) day period, Lessee's breach or failure is not an Event of Default if Lessee commences to cure its breach or failure within the thirty (30) day period and thereafter diligently pursues the cure and effects the cure to completion.

(c) Misrepresentation. The existence of any intentional and material misrepresentation or omission in any financial statements, correspondence or other information provided to Lessor by or on behalf of Lessee, any successor, grantee or assign

in connection with (i) Lessee's negotiation or execution of this Lease; (ii) Lessor's evaluation of Lessee as a prospective tenant at the Premises; (iii) any proposed or attempted assignment or sublease requiring the consent of Lessor; (iv) any consent or approval Lessee requests under this Lease; or (v) Lessee's notices and disclosures to Lessor pursuant to Section 2.4.

(d) Other Defaults. (i) Lessee makes a general assignment or general arrangement for the benefit of creditors; (ii) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Lessee; (iii) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Lessee and is not dismissed within sixty (60) days; (iv) a trustee or receiver is appointed to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease and possession is not restored to Lessee within thirty (30) days; or (v) substantially all of Lessee's assets located at the Premises or Lessee's interest in this Lease is subjected to attachment, execution or other judicial seizure not discharged within thirty (30) days. If a court of competent jurisdiction determines that any act described in this Section 17 does not constitute an Event of Default, and the court appoints a trustee to take possession of the Premises (or if Lessee remains a debtor in possession of the Premises) and such trustee or Lessee transfers Lessee's interest hereunder, then Lessor is entitled to receive, as Additional Rent, the amount by which the rent (or any other consideration) paid in connection with the transfer exceeds the Rent otherwise payable by Lessee under this Lease.

17.2 Remedies. Upon the occurrence of any Event of Default, Lessor, at any time and from time to time, and without preventing Lessor from exercising any other right or remedy, may exercise any one or more of the following remedies:

(a) Termination of Lease. Terminate this Lease effective on the date Lessor specifies in its termination notice to Lessee, provided such date shall not be less than thirty (30) days from Lessee's receipt of such notice to terminate. Upon termination, Lessee will immediately surrender possession of the Premises to Lessor. If Lessor terminates this Lease, Lessor may recover from Lessee and Lessee will pay to Lessor on demand all reasonable damages Lessor incurs by reason of an Event of Default, including, without limitation, (i) all Rent due and payable under this Lease as of the effective date of the termination; (ii) any amount necessary to compensate Lessor for any detriment proximately caused Lessor by Lessee's failure to perform its obligations under this Lease or which in the ordinary course would likely result from Lessee's failure to perform, including, but not limited to, any re-entry costs incurred by Lessor; (iii) all unamortized real estate brokers' fees in connection with this Lease; (iv) the dollar value of any rent credits or rent reductions; and (v) an amount equal to the amount by which the present worth, as of the effective date of the termination, of the Rent and any other charges payable by Lessee under this Lease for the balance of the Term remaining after the effective date of the termination (assuming no termination) exceeds the present worth, as of the effective date of the termination, of a fair market rental value for the Premises for the same period (as Lessor reasonably determines the fair market rental value). For purposes of this section, Lessor will compute present worth by utilizing a discount rate of eight percent (8%) per annum. Nothing in this section limits or prejudices Lessor's right to prove and obtain

damages in an amount equal to the maximum amount allowed by law, regardless of whether such damages are greater than the amounts set forth in this section.

(b) Self Help. Subject to Section 8.2 above, perform the obligation on Lessee's behalf without waiving Lessor's rights under this Lease, at law or in equity and without releasing Lessee from any obligation under this Lease. Lessee will pay to Lessor, as Additional Rent, all sums Lessor pays and obligations Lessor incurs on Lessee's behalf under this section.

(c) Other Remedies. Any other right or remedy available to Lessor under this Lease, at law or in equity.

(d) Costs. Subject to Section 22.2 below, Lessee will reimburse and compensate Lessor on demand and as Additional Rent for any reasonable loss Lessor incurs in connection with, resulting from or related to an Event of Default, regardless of whether suit is commenced or judgment is entered. Such loss includes all reasonable legal fees, costs and expenses (including paralegal fees and other professional fees and expenses) Lessor incurs investigating, negotiating, settling or enforcing any of Lessor's rights or remedies or otherwise protecting Lessor's interests under this Lease, and associated re-letting costs incurred by Lessor, all unamortized real estate brokers' fees in connection with this Lease, and the dollar value of any rent credits or rent reductions. In addition to the foregoing, Lessor is entitled to reimbursement of all of Lessor's fees, expenses and damages, including, but not limited to, reasonable attorneys' fees and paralegal and other professional fees and expenses, Lessor incurs in connection with protecting its interests in any bankruptcy or insolvency proceeding involving Lessee, including, without limitation, any proceeding under any chapter of the Bankruptcy Code; by exercising and advocating rights under Section 365 of the Bankruptcy Code; by proposing a plan of reorganization and objecting to competing plans; and by filing motions for relief from stay. Such fees and expenses are payable on demand, or, in any event, upon assumption or rejection of this Lease in bankruptcy.

(e) Waiver and Release by Lessee. Lessee waives and releases all Claims Lessee may have resulting from Lessor's re-entry and taking possession of the Premises by any lawful means and removing and storing Lessee's property as permitted under this Lease, regardless whether this Lease is terminated, and, to the fullest extent allowable under the law, Lessee releases and will indemnify, defend (with counsel reasonably acceptable to Lessor), protect and hold harmless the Lessor Parties from and against any and all Claims occasioned by Lessor's lawful re-entry of the Premises and disposition of Lessee's property. No such reentry is to be considered or construed as a forcible entry by Lessor.

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 of 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. CONDEMNATION**

19.1 Lessor and Lessee will immediately notify the other in writing of the receipt of notice of any proceedings with respect to a condemnation or intent of any authority to exercise the power of eminent domain.

19.2 If all of the Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the Term of this Lease, this Lease terminates as of the date condemner takes possession, and Lessee will have no claim or interest in or to any Lessor award of just compensation except that the Lessee will be entitled to an amount equal to the fair market value of the Lessee's leasehold interest in the Premises and Lessee's interest in any improvement taken by the condemner made to the Premises by the Lessee and amortized on a straight-line basis over the Term of the Lease, but not to exceed the amount of that part, if any, of the award attributable to the value of the improvements.

19.3 If part of the Premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the Term of this Lease, either Lessor or Lessee may choose to terminate this Lease as of the date the condemner takes possession. If neither Lessor nor Lessee elects to terminate this Lease, the Rent will be reduced in the same proportion that the value of the portion of the Premises to be taken bears to the value of the entire Premises as of the date condemner takes possession. Lessee will have no claim or interest in or to any award of just compensation or damages except that the Lessee will be entitled to an amount equal to the fair market value of the Lessee's leasehold interest in the part taken by the condemner, including the value of any improvements made to the Premises by the Lessee amortized on a straight-line basis over the Term of the Lease, but not to exceed the amount of that part, if any, of the award attributable to the value of the improvements.

19.4 If temporary use of all or a portion of the Premises is taken by any lawful authority for a period which would reduce the leasehold and, consequently, would cause the Premises to be untenable for the use by Lessee for the Permitted Use, either party may choose to terminate this Lease. If either party elects to terminate the Lease, the Lease will terminate the date the condemner takes possession and Lessee will have no claim or

interest in or to any award of just compensation except that the Lessee will be entitled to an amount equal to the fair market value of the Lessee's leasehold interest, including the value of any improvements made to the Premises by the Lessee, amortized on a straight-line basis over the Term of the Lease, but not to exceed the value of the leasehold interest. If neither party elects to terminate this Lease, the Lease will continue in full force and Lessee will be entitled to receive any award from the condemner for the use of all or part of the Premises, except that Lessee may elect to have the Rent reduced by the amount proportionally attributable to any partial temporary taking, in which event Lessee shall not be entitled to any portion of the award attributable to such continued use.

19.5 It is understood and agreed that Lessee shall not be party to any negotiation or proceedings at law wherein Lessor claims compensation other than that which is defined statutorily as constituting "just compensation."

## 20. ACCESS; EASEMENTS

20.1 Any provision to the contrary in this Lease notwithstanding, Lessor reserves for itself and for its contractors and other persons or entities authorized by Lessor the right to inspect the Premises at any and all reasonable times during normal business hours throughout the Term of this Lease on no less than two (2) business days' notice to ascertain the condition of the Premises or whether Lessee is observing and performing the obligations assumed by it under this Lease, provided that Lessor shall not unreasonably interfere with Lessee's Permitted Use. The right of inspection reserved to Lessor hereunder shall impose no obligation on Lessor to make inspections to ascertain the condition of the Premises or undertake additional obligations of any kind, and shall impose no liability upon Lessor for failure to make such inspections or undertake additional obligations of any kind. Lessor also reserves the right to show the Premises at all reasonable times during business hours of Lessee on no less than two (2) business days' notice to any prospective purchasers, tenants or mortgagees.

To the extent Lessor does not have direct access to such adjacent properties via public streets or roads, Lessee shall provide access across established routes of ingress and egress to the Premises at all reasonable times to Lessor, its contractors and other persons or entities authorized by Lessor, for the purpose of ingress and egress to adjacent property owned or leased by Lessor. Lessor shall cause all such parties to abide by all reasonable security requirements of Lessee. Lessor and Lessee acknowledge and agree that Lessor, its contractors, vendors and other persons or entities authorized by Lessor shall have access to the outdoor areas of the Premises for the following purposes (a) to access adjacent property owned or leased by Lessor and to conduct redevelopment or other activities on that property to the extent Lessor does not have direct access to such adjacent property via public streets and roads; or (b) to conduct any sampling or monitoring required by a regulatory agency or permit held by Lessor. Lessor, its contractors and other entities authorized by Lessor are hereby granted a continuous easement or easements over, along and under the outdoor areas of the Premises, in its sole and absolute discretion, believes may be necessary within the Premises, without any additional cost to Lessor or Lessee, to carry out the activities set forth in this Section 20, provided, however, that no such easement shall materially increase Lessee's obligations or materially decrease Lessee's

rights under this Lease. Lessor, its contractors and other entities described in this Section 20 shall have the right to enter and use the Premises for the aforementioned purposes.

## 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 either party 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 either party 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 either party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. The consent or approval of either party to or of any act by the other party requiring the approving party's consent or approval shall not be deemed to waive or render unnecessary the approving party's consent or approval to or of any subsequent similar acts by the requesting party.

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 under this Lease, 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 for payments owed by Lessee under this Lease shall not otherwise 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. Subject to Section 8.2 above, upon Lessee's failure to perform any obligation or make any payment required of Lessee hereunder past any applicable notice and cure period, 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. Upon written notification to Lessee of any out-of-pocket costs incurred by Lessor under this Section 21, together with reasonable supporting documentation, Lessee shall reimburse Lessor such costs within thirty (30) days. Neither the failure to provide timely written notice or the passage of time shall be deemed to constitute a waiver of Lessor's rights hereunder.

## 22. SURRENDER AND HOLDING OVER

22.1 Surrender. With the exception of the Existing Improvements on the United Western Parcel, which are the property of Lessor, the Existing Improvements and any alterations 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, alterations and Fixtures (unless specifically provided for elsewhere in the Lease) demolished and/or removed, unless Lessor has provided Lessee written notice at least one hundred eighty (180) days 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, alterations and fixtures (unless specifically provided for elsewhere in this Lease) shall revert to Lessor without compensation to Lessee. Lessee shall return the Premises in as good condition as existed on the Effective Date of this Lease, reasonable wear and tear and casualty loss excepted. Lessee agrees to deliver to Lessor all keys that it may have to any and all parts of the Existing Improvements and the alterations. Lessee shall assign to Lessor any warranties in force at the time of surrender. If the Premises are not surrendered as provided in this Section 22, 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.

22.2 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 Base Rent at one hundred fifty percent (150%) of the rental rate that was in effect immediately prior to said month-to-month tenancy.



## 23. HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE

23.1 Definitions. "Hazardous Materials Contamination" shall mean the contamination of improvements, facilities, soil, ground water, surface water, storm water, rock, air, vegetation, sediments, fish or other natural resources, or other elements in, on, under, of or adjacent to the Premises by Hazardous Materials, or the contamination of any other real or personal property as the result of Hazardous Materials at any time emanating from, or migrating through or coming to rest on or in, the Premises. "Hazardous Materials" as used herein shall mean:

(a) Any toxic substances or waste, sewage, petroleum products, radioactive substances, medical waste, heavy metals, corrosive, noxious, acidic, bacteriological or disease-producing substances, including, without limitation: Asbestos; polychlorinated biphenyls; underground storage tanks, whether empty, filled, or partially filled with any substance; any substance the presence of which on the Premises is prohibited by any federal, state, county, municipal or other local governmental statutes, regulations, ordinances, resolutions, permits or other requirements; and other substances which by any federal, state, county, municipal or other local governmental statutes, regulations, ordinances, resolutions, permits or other requirements require special handling or notification in its collection, storage, treatment, use or disposal;

(b) Any dangerous waste, hazardous waste, extremely hazardous waste, hazardous substance, pollutant, pollution, contaminant or contamination as defined in the following statutes or their implementing regulations as such statutes and regulations may be amended from time to time:

- (i) Washington Clean Air Act (RCW Ch. 70.94);
- (ii) Washington Solid Waste Management Recovery and Recycling Act (RCW Ch. 70.95);
- (iii) Washington Hazardous Waste Fees Act, (RCW Ch. 70.95E);
- (iv) Washington Nuclear Energy and Radiation Act, (RCW Ch. 70.98);
- (v) Washington Radioactive Waste Storage and Transportation Act of 1980 (RCW Ch. 70.99);
- (vi) Washington Hazardous Waste Management Act (RCW Ch. 70A.300);
- (vii) Washington Model Toxics Control Act ("MTCA") (RCW Ch. 70A.305);
- (viii) Washington Underground Petroleum Storage Tanks Act (RCW Ch. 70.148);

- (ix) Washington Water Pollution Control Act (RCW Ch. 90.48);
- (x) Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, (7 U.S.C. 136 et seq.);
- (xi) Federal Toxic Substances Control Act (15 U.S.C. 2601 et seq.);
- (xii) Federal Water Pollution Control Act, also known as the Clean Water Act (33 U.S.C. 1251 et seq.);
- (xiii) Federal Oil Pollution Control Act of 1990 (33 U.S.C. 2701 et seq.);
- (xiv) Federal Safe Water Drinking Act (42 U.S.C. 300f et seq.);
- (xv) Federal Hazardous Materials Transportation Act (49 U.S.C. 5101 et seq.);
- (xvi) Federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.);
- (xvii) Federal Clean Air Act (42 U.S.C. 7401 et seq.); or
- (xviii) Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. 9601 et seq.); and
- (xix) Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are defined, regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

(c) For purposes of this Section 23, “Lessee” shall mean Lessee, and its sublessees, contractors, agents, employees, representatives, guests, invitees or affiliates.

(d) For the purposes of this Section 23, “Pre-Existing Hazardous Materials” shall mean (i) any Hazardous Materials that were in, on, or under the premises leased by Lessee pursuant to the 2012 Lease (other than any portion of Tax Parcel No. 1924049051) prior to the commencement of the term of the 1966 Lease; (ii) any Hazardous Materials that were in, on, or under the portion of Tax Parcel No. 1924049051 described as Parcel B in the 2012 Lease prior to the commencement of the 2012 Lease, provided the presence of the Hazardous Materials in, on, or under Parcel B is not attributable to Lessee’s or Lessee’s corporate predecessors’ occupancy of the remaining portion of the Premises prior to the commencement date of the 2012 Lease; and (iii) any Hazardous Materials that were in, on, or under the United Western Parcel prior to the Commencement Date, provided the presence of the Hazardous Materials in, on, or under the United Western Parcel is not attributable to Lessee’s or Lessee’s corporate predecessors’ occupancy of the remaining portion of the Premises prior to the Commencement Date.

23.2 Disclaimer and Release. Lessor makes no representations or warranties relating to Hazardous Materials that may be situated on, in, under or adjacent to the Premises. Lessor specifically disclaims any and all representations or warranties in connection with any condition on, in or adjacent to the Premises which might be determined to be Hazardous Materials Contamination. Lessee, for itself and its successors and assigns, releases Lessor, its successors, assigns, officers, directors, shareholders, agents, officials, attorneys and employees from any Environmental Claims (as defined in Section 23.5 below) arising from or related to the existence of Hazardous Materials or Hazardous Materials Contamination, including but not limited to Environmental Claims against Lessor for contribution or cost recovery under MTCA or CERCLA. The foregoing release does not apply to, nor release Lessor from, any contractual obligations pursuant to Section 23 of this Lease or apply to Environmental Claims related to the Lower Duwamish Waterway Superfund site, which is the subject of an ongoing allocation process.

23.3 Lessee's Duties. Except for commercially reasonable quantities of Hazardous Materials customarily used in warehousing, loading and staging of commercial vehicles and office use, Lessee shall not, without first obtaining Lessor's prior written approval, generate, handle, store, treat, transport or otherwise use any Hazardous Materials in, on, about, around or emanating from the Premises, or transport any Hazardous Material to or from the Premises. Lessee agrees that such activity shall occur safely and in compliance with all applicable Environmental Laws (as defined in Section 23.4.1 below). Lessee shall exercise the utmost care with respect to its storage and use of Hazardous Materials. Lessee shall exercise the utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Materials, and the foreseeable consequences of those acts or omissions. "Utmost Care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances.

#### 23.4 Environmental Compliance at the Premises.

23.4.1 Lessee shall, at Lessee's own expense, comply with all federal, state and local laws, ordinances, regulations, permits, decrees or other government requirements now or hereafter affecting the Premises, Lessee's business or any activity or condition on, about, around or emanating from the Premises, including, without limitation, all laws, ordinances, regulations, permits, decrees or other government requirements related to Hazardous Materials and all other environmental laws, ordinances, regulations, decrees and any other laws relating to the improvements on the Premises, soil, ground water, surface water including storm water discharges, or the air or other elements in, around, and/or emanating from the Premises, as well as such requirements as may be formulated by King County and the state or federal government as part of any permit, settlement, or agreement relating to the Premises (collectively, "Environmental Laws"). Lessee warrants that its business and all activities to be conducted or performed in, on, around or about the Premises shall comply with all Environmental Laws. Lessee shall not cause or permit to occur any violation of Environmental Laws on, under, around or about the Premises, or arising from or relating to Lessee's use or occupancy of the Premises, including, but not limited to, soil and ground water contamination. If the use of Hazardous Materials related to Lessee's use or occupancy of the Premises results in a violation of Environmental Laws, and/or a release or threatened release of Hazardous Materials, Lessee shall submit to Lessor

any plans for remedying the violations or release or threatened release, and shall implement any reasonable remedial measures that Lessor may require in addition to any measures that may be required by regulatory authorities. With respect to Lessee's tenancy of the Premises and subject to Section 26.3 for those matters reportable under Section 26.2, Lessee agrees to change, reduce or stop any non-complying activity and to install necessary equipment, safety devices, pollution control systems or other installations, or perform any investigation, remediation, mitigation or other actions that may be necessary at any time during the Lease to comply with applicable Environmental Laws or remedy a release or threatened release, or, if necessary to comply with applicable Environmental Laws, to do all of these things; and Lessee further agrees to fully cooperate with requests from Lessor to comply with applicable Environmental Laws or remedy a release or threatened release.

23.4.2 Lessee shall immediately notify Lessor if Lessee becomes aware of any of the following events, and shall provide Lessor with copies of any written communications to or from any agency with jurisdiction concerning any of the events:

- (a) A release or threatened release of Hazardous Materials;
- (b) Any lien or action arising from Hazardous Materials;
- (c) Any actual or alleged violation of any of Environmental Laws, including any inspection reports or any other notice received from any agency with jurisdiction that Lessee may be in violation of any Environmental Laws; and
- (d) Any notification from EPA or the Washington State Department of Ecology that remediation or removal of Hazardous Materials is or may be required at the Premises.

23.4.3 Lessee shall not undertake, or allow others to undertake by Lessee's permission or acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Materials. If Lessee's act, omission or breach of obligation under this Lease, including any disturbance or exacerbation of Pre-Existing Hazardous Materials, results in a release of Hazardous Materials into the environment on, about or migrating from the Premises that exceeds regulatory cleanup levels under MTCA or CERCLA for the unrestricted use of the Premises, Lessee shall, at Lessee's sole expense, promptly take all actions necessary to remediate (and to dispose of such in accordance with applicable Environmental Laws) all of such Hazardous Materials as required by supervising regulatory agencies or as required by Lessor.

23.4.4 Should any Authority or Lessor demand that a remedial investigation and/or cleanup plan be prepared and that a remedial investigation and/or cleanup be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that arises at any time from the Lessee's use or occupancy of the Premises, including any disturbance or exacerbation of Pre-Existing Hazardous Materials, Lessee shall in all instances obtain Lessor's written approval of any remedial investigation or cleanup plan prior to submittal to such Authority. Lessee shall prepare and submit all required plans, post all related bonds or financial assurances, and carry out such cleanup at

Lessee's sole cost and expense. Should any Authority demand that a remedial investigation and/or cleanup plan be prepared and that a remedial investigation and/or cleanup be undertaken regarding Pre-Existing Hazardous Materials, Lessee shall inform Lessor of such demand and Lessor shall have complete responsibility to respond to and comply with any such demand, including, but not limited to, conducting any remedial investigation or cleanup plan, posting all related bonds or financial assurances, at Lessor's sole expense, except in the event that Lessee's acts, omissions, or breach of obligations under this Lease has resulted in the release or exacerbation of the Pre-Existing Hazardous Materials.

23.4.5 Lessee shall promptly provide all information regarding any activity of Lessee related to Hazardous Materials on or about the Premises and that is requested by Lessor. 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 that Lessor in its sole discretion may deem necessary or appropriate to determine the applicability of Environmental 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.

23.4.6 Lessee, 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 Environmental Laws and shall provide Lessor with the same information and submittals upon written request by Lessor within ten (10) days. Documents subject to this requirement include, but are not limited to, permit applications, any reports or sampling data submitted to permitting agencies, studies, or audits, and any reporting necessary for the existence, location and storage of Hazardous Materials on the Premises. If Lessee conducts soil, groundwater, or surface water sampling on the Premises not required by the Authorities under Environmental Laws, Lessee shall provide Lessor with thirty (30) calendar days advance written notice in non-emergencies and reasonably practical written notice in emergencies. Absent an emergency, Lessor is entitled to obtain split samples. In an emergency, Lessor is entitled to obtain split samples provided Lessor gives Lessee twenty-four (24) hours advance written notice requesting split samples.

23.5 Indemnification. Lessee shall be fully and completely liable to Lessor for, and shall indemnify and hold Lessor Parties harmless from and against, any and all claims, liabilities, lawsuits, damages, demands, suits, losses, judgments and costs, including but not limited to removal, remedial action or other costs recoverable under CERCLA or MTCA; any and all other requirements, charges, interest, fees, oversight costs or penalties (civil or criminal or both) imposed by any authority; and all other expenses including but not limited to claims for bodily injury or death, property damage, diminution in value or loss of use, including attorneys' fees and other costs of defense (collectively, "Environmental Claims") caused by or arising from (1) the use, disposal, transportation, generation, past, present or future release or threatened release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Lessee in, on, around, about or emanating from the Premises occurring during the Term of this Lease or at any time if caused by Lessee or Lessee's corporate predecessors, including exacerbation or

disturbance of existing Hazardous Materials that were released in, on or about the Premises prior to the Lease; or 2) Lessee's failure to comply with any obligation in Section 23 of this Lease. Without limiting the generality of the foregoing, the Parties acknowledge that Environmental Claims, as defined herein, are not limited to third party Claims, but include Environmental Claims made or incurred by Lessor. Lessee's duties under this Section 23.5 include the duty to pay or reimburse Lessor's reasonable costs to monitor or oversee Lessee's cleanup or other corrective work, including but not limited to third party engineering and other consulting services, sampling and studies, confirmatory testing, compliance monitoring, and administrative costs and expenses incurred in procuring and managing the same. All Environmental Claims involving the release or presence of Hazardous Materials shall be subject to this Section 23, and not the indemnity and liability provisions of Section 12. Notwithstanding the foregoing, Lessee's obligations under this Section 23.5 do not apply to Pre-Existing Hazardous Materials, except with respect to Environmental Claims involving Lessee's disturbance or exacerbation of said Pre-Existing Hazardous Materials, or Lessee's obligations pursuant to Section 1.2.

23.6 Right to Check on Lessee's Environmental Compliance. In addition to any other rights available to Lessor under this Lease, 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 advisable in order to evaluate any potential environmental problems, including but not limited to Hazardous Materials Contamination. This includes the right to conduct sampling, tests and audits to determine the existence, scope or effects of Hazardous Materials. Lessor's examinations, tests, inspection and reviews of the Premises and the Real Property will be conducted in a manner that will not unreasonably interrupt the Lessee's use of the Premises.

23.7 Remedies. Upon Lessee's default under this Section 23 past any applicable notice and cure period, Lessor shall be entitled to the following rights and remedies without limitation and in addition to any other rights and remedies that may be available to Lessor under this Lease or by statute, common law or equity, in Lessor's sole and absolute discretion:

(a) At Lessor's option, to perform such investigation, response, remedial action, cleanup and/or other action as may be required to bring the Premises and any other areas affected by Lessee's default into compliance with Environmental Laws or with Section 23 of this Lease in such manner and by such means as may be deemed appropriate by Lessor in its sole discretion, and to recover from Lessee all of Lessor's direct and indirect costs, expenses and charges incurred in connection therewith, including but not limited to administrative costs, compliance monitoring and post-cleanup confirmatory testing; and/or

(b) To recover from Lessee any and all damages associated with the default, including but not limited to: investigation, response, remedial action, cleanup and corrective work costs, expenses and charges, including any interest thereon; civil and criminal penalties and fees; adverse impacts on marketing the Premises or any other property regardless of ownership to the extent Lessor is held liable for any such damages

due to Lessee's use and occupancy of the Premises; incidental and consequential damages suffered by Lessor or other lessees on the Premises; diminution of value of the Premises; the loss of or restriction of useful space in the Premises and/or other adjacent areas owned by Lessor; any and all damages and claims asserted by third parties; and Lessor's reasonable attorneys' fees and costs.

#### 23.8 Remediation on Termination of Lease.

23.8.1 Termination Cleanup. Upon the expiration or earlier termination of this Lease, Lessee shall undertake whatever action may be necessary to bring the Premises into full compliance with Environmental Laws and related cleanup standards and with Section 23 of this Lease ("Termination Cleanup"). The process for such Termination Cleanup is subject to Lessor's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Lessor's approval of such a Termination Cleanup process shall not be construed as being a waiver of its rights to recover costs and damages from Lessee pursuant to any of the provisions of this Section 23 or as otherwise allowed by statute, common law, or equity. Notwithstanding anything to the contrary in this Section 23.8, Lessee's Termination Cleanup obligations shall not be triggered by Pre-Existing Hazardous Materials unless the Termination Cleanup is required due to Lessee's disturbance or exacerbation of the Pre-Existing Hazardous Materials.

23.8.2 Lessor's Option to Perform Termination Cleanup. 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 its 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 shall 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 costs and expenses consistent with Sections 23.5 and 23.7; provided that this Section 23.8.2 shall not be construed as a waiver of Lessor's rights to recover costs and damages from Lessee pursuant to any of the provisions of Section 23 or as otherwise allowed by statute, common law, or equity.

23.9 Survival. Lessee's obligations and liabilities under this Section 23 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 recognized overnight courier, or by e-mail (with a copy by mail) 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  
E-mail: [RES-LeaseAdmin@kingcounty.gov](mailto:RES-LeaseAdmin@kingcounty.gov)

***To Lessee:***

Ardagh Glass Inc.  
10194 Crosspoint Blvd., Suite 410  
Indianapolis, IN 46033  
Attn: Chief Financial Officer  
E-mail: [Thomas.holz@ardaghgroup.com](mailto:Thomas.holz@ardaghgroup.com)

With copy to:

Ardagh Group  
8770 Bryn Mawr Avenue  
Chicago, IL 60631  
Attn: Joshua Markus, General Counsel  
E-mail: [Joshua.markus@ardaghgroup.com](mailto:Joshua.markus@ardaghgroup.com)

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 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; or (iv) on the date of delivery (whether accepted or refused) when sent by e-mail, provided that the copy required to be delivered by mail concurrently therewith is tendered to the U.S. Post Office or overnight carrier on the same business day as such e-mail notice. 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 warrants to the other that it has had no discussions, negotiations and/or other dealings with any real estate broker or agent in connection with the negotiation of this Lease, other than Kidder Matthews representing Lessor and Colliers International representing Lessee, 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 as noted above. 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. Lessee shall pay its broker pursuant to separate agreement.

24.4 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.

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

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

24.7 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, and to all extensions, renewals or replacements thereof. Within ten (10) days of Lessor's request, Lessee shall execute and deliver all instruments or certificates which may be necessary or appropriate to reflect such subordination. Notwithstanding the foregoing, Lessee shall not be required to subordinate to any 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 that 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.

24.8 Nondiscrimination. Lessee shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age, except by minimum age and retirement provisions or unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Ch. 12.16.125. Lessee shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Lease and shall be grounds for cancellation, termination or

suspension, in whole or in part, of the Lease and may result in ineligibility for further agreements with Lessor.

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

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

24.11 Attorneys' Fees/Collection Charges. In the event legal action is brought by either party to enforce any of the terms, conditions, or provisions of this Lease, the prevailing party shall recover against the other party in addition to the costs allowed by law, such sum as the court may adjudge to be a reasonable attorneys' fees and costs.

24.12 Survival of Indemnities: Choice of Counsel. 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.

24.13 Exhibits. The following Exhibits are made a part of this Lease:

- Exhibit A: Legal Description of Real Property and Premises
- Exhibit B: Diagram of Real Property and Premises
- Exhibit C: Sketch that includes a Diagram of Furnace 3

24.14 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. As of the Commencement Date, this Lease supersedes and terminates the 2012 Lease and any subleases, licenses or similar arrangements thereunder.

24.15 Severability. If any term or provision of this Lease or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.

24.16 No Presumption Against Drafter. Lessor and Lessee understand, agree and acknowledge that this Lease has been freely negotiated by both parties and that, in the event of any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

## 25. FURNACE 3 REBUILD/SHUTDOWN

25.1 Lessee operates a number of glass melting furnaces at Lessee's Manufacturing Facility. Due to its age and emissions performance, the Parties have determined that either rebuilding or permanently retiring from service "Furnace 3" at Lessee's Manufacturing Facility, depicted on the attached EXHIBIT C, will provide substantial improvements to the air emissions from Lessee's Manufacturing Facility and help ensure Lessee's continued future compliance with its Title V Operating Permit. No later than June 30, 2023, Lessee shall provide written notice to Lessor that by December 31, 2025, Lessee will either: 1) rebuild Furnace 3 (the "Furnace 3 Rebuild"); or 2) permanently cease operation of Furnace 3 (the "Furnace 3 Shutdown"). If Lessee elects to pursue the Furnace 3 Rebuild, Lessee shall rebuild Furnace 3 with emissions reduction abatement equipment as required by applicable Environmental Laws. If Lessee pursues the Furnace 3 rebuild, within ten (10) days of achieving ninety (90) percent design completion for the project, Lessee shall provide to Lessor a courtesy copy of Lessee's Furnace 3 rebuild plan; provided, such rebuild plan shall not be subject to comment or approval by Lessor. Within thirty (30) days of completing the Furnace 3 Rebuild, Lessee and Lessor shall schedule a mutually agreeable date for Lessor and its consultant (if Lessor desires) to inspect Furnace 3 to ensure compliance with this Section 25.

25.2 If Lessee pursues the Furnace 3 Shutdown in lieu of the Furnace 3 Rebuild, Lessee shall apply to remove Furnace 3 from Lessee's Title V Operating Permit. Lessee shall provide the Lessor with a courtesy copy of Lessee's shutdown plan; provided such shutdown plan shall not be subject to comment or approval by Lessor. Additionally, Lessee shall provide Lessor notice when Lessee has received verification that Lessee's Title V Operating Permit has been revised to remove Furnace 3. Within thirty (30) days of completing the Furnace 3 Shutdown, Lessee and Lessor shall schedule a mutually agreeable date for Lessor and its consultant (if Lessor desires) to inspect Furnace 3 to ensure compliance with this Section 25.

25.3 In the event Lessee does not complete either the Furnace 3 Rebuild or the Furnace 3 Shutdown by December 31, 2025, unless caused by events beyond Lessee's reasonable control, including, without limitation, failure by any governmental agency to issue any permits required for the completion of the Furnace 3 Rebuild (provided that Lessee made all required submissions to governmental agencies in a timely fashion and said agencies have had adequate time for review), Lessor reserves the right, in its sole and absolute discretion to terminate this Lease early, by providing Lessee with two hundred and forty (240) days advance notice (the "Furnace 3 Early Termination Notice"). After receipt of the Furnace 3 Early Termination Notice, if Lessee completes either the Furnace 3 Rebuild or the Furnace 3 Shutdown prior to the expiration of the two hundred and forty day (240-day) period (the "Early Termination Period") which commences on the date of the Furnace 3 Early Termination Notice, Lessor's early termination right contemplated in this Section 25 shall be null and void. If Lessor elects to terminate this Lease pursuant to this Section 25, Lessee shall be required to perform all monetary and non-monetary obligations, including the payment of Rent until the Early Termination Period expires, and all of Lessee's obligations that are intended to survive expiration or earlier termination of

the Lease shall continue to be binding on Lessee, and Lessee shall waive any and all claims or other recourse it may have against Lessor related to the termination.

## **26. ENVIRONMENTAL COMPLIANCE AT LESSEE'S MANUFACTURING FACILITY**

26.1 Lessor's willingness to extend a new lease to Lessee is conditioned on Lessee coming into, and maintaining, continuous compliance with any Environmental Permits it holds now, or in the future, for Lessee's Manufacturing Facility. The term "Environmental Permits" shall include any permit, authorization or approval issued by a federal, state, local, or regional environmental regulatory agency or board (each a "Permitting Agency") for stormwater or wastewater discharges or air emissions from Lessee's Manufacturing Facility.

26.2 Compliance Reporting. Lessee shall provide Lessor with a semi-annual environmental compliance report ("Compliance Report") by the fifteenth day of February for the six-month period ending December 31 and by the fifteenth day of August for the six-month period ending June 30, each year during the Term. The Compliance Report shall summarize each instance in which Lessee exceeded any benchmarks or limitations in its Environmental Permits, or otherwise violated any conditions of any environmental permits, in the preceding six-month period, and whether each such instance constitutes a permit violation of the permit, authorization or approval in question. For purposes of reporting under this Lease, each such incident will be considered an "Environmental Incident." The Compliance Reports shall also detail Lessee's progress on any ongoing corrective actions and on any infrastructure replacements at Lessee's Manufacturing Facility which Lessee was required to perform as a condition of this Lease. Within 30 days following receipt of a Compliance Report that includes any Environmental Incident(s), Lessor may, at its sole and absolute discretion, require Lessee to provide a report detailing how Lessee plans to remedy the Environmental Incident(s), and what conditions led to the Environmental Incident(s) ("Corrective Action Report"). Lessee shall provide such Corrective Action Report to Lessor within forty-five (45) days of such request. In the Corrective Action Report Lessee shall indicate whether any such Environmental Incident(s) are subject to an existing or pending consent decree, order, settlement, or corrective or enforcement action and shall include Lessee's schedule for planned corrective actions, if any, and indicate whether such corrective actions have been approved by the Permitting Agency that issued the Environmental Permit (each, a "Corrective Action"). Within 30 days of receipt of Lessee's Corrective Action Report, Lessor shall provide Lessee with written notice of any objection to a Corrective Action, or to Lessee's failure to take or plan a Corrective Action, if Lessee is not acting in accordance with good pollution control practices, or if the Environmental Incident(s) reflect an ongoing pattern of material exceedances and/or noncompliance (each, an "Objection"). In any event, Lessor may not object to Corrective Actions that have been approved by the Permitting Agency or are the subject of an existing or pending consent decree, order, settlement, or corrective or enforcement action.

26.3 Curing Lessor Objections. In the event Lessor lodges an Objection with Lessee, representatives of Lessor and Lessee shall meet within thirty (30) days, or a longer period agreed to by Lessor, and make a good faith effort to resolve Lessor's objections. If

following such discussions Lessor, in its sole discretion, is not satisfied with the resolution of its Objection because Lessor has determined that Lessee's proposals to resolve the Objection will not prevent a threat to public health, Lessor shall provide Lessee with written notice ("Cure Period Notice") of a cure period ("Cure Period"); provided, that the Cure Period Notice cannot modify any requirements of an existing Environmental Permit condition nor require Lessee to implement a corrective action that could not be required by the relevant Permitting Agency. Lessor shall determine the length of the Cure Period based on a good faith estimate of the time reasonably required to correct the conditions that are subject to the Cure Period Notice, except that the Cure Period shall not be less than six months. The Cure Period Notice shall identify specific conditions which Lessee must correct during the Cure Period to remedy the Environmental Incident(s).

26.4 Early Termination. If Lessee has not completed action(s) to resolve such condition(s) by the end of the Cure Period, then at its sole and absolute discretion Lessor may terminate this Lease; provided that (i) if Lessee has commenced such cure within the Cure Period, and has been unable to complete the cure within the Cure Period for reasons outside the reasonable control of Lessee, the Cure Period shall be automatically extended for an additional six-month term; and (ii) if during the Cure Period the Permitting Agency shall determine that the Environmental Incident(s) have been cured, such determination shall constitute a cure for the purposes of this Section 26. Additionally, should a permitting agency terminate any Environmental Permit coverage of Lessee's Manufacturing Facility for cause, and such termination be finally adjudicated, it shall be at Lessor's sole and absolute discretion whether to terminate the Lease on that basis. If Lessor elects to terminate the Lease on either bases outlined above, the Parties' rights and obligations under the Lease shall terminate, except those that are explicitly intended to survive expiration or earlier termination, and Lessee shall waive any and all claims or other recourse it may have against Lessor related to the termination.

## 27. SOURCE TRACING

Lessee is preparing to install new stormwater treatment and make associated changes to the storm drain system for the Premises and Lessee's Manufacturing Facility as corrective actions in accordance with the Department of Ecology's Industrial Stormwater General Permit (ISGP). Before making changes to the existing storm drain system, Lessee shall sample storm drain solids from a catch basin, sump, pipe or other feature that is representative of the sediments deposited into the Outfall 2 collection system for PCBs, in accordance with Ecology's Stormwater Sampling Manual (Dec. 2015). Within one year after completing the planned changes to the storm drain system and installation of new stormwater treatment system, Lessee shall sample storm drain solids, at Lessee's Manufacturing Facility and the Premises, in accordance with conditions S5 and S6 of the ISGP. Lessor has been provided an opportunity to review and comment on the sampling plan, which sampling plan shall be designed to facilitate use of the collected data to investigate the source of any PCB concentrations in excess of 120 ug/kg that may be detected, and Lessor has approved the sampling plan. Lessee shall also disclose any

relevant information and/or documents sought by Lessor to help determine potential sources of contamination to stormwater at the Premises, at Lessor's request.

**28. FORCE MAJEURE**

Neither Party shall be liable to the other or deemed in default under this Lease if and to the extent that such party's timely performance of this Lease is prevented by reason of Force Majeure. "Force Majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force Majeure includes acts of God, war, riots, strikes, fire, floods, epidemics or other similar occurrences. Notwithstanding anything to the contrary contained in this Lease, Lessee shall not be relieved of its obligations to make timely payments of Base Rent, Additional Rent, or any other sums owing under this Lease throughout the pendency of any Force Majeure, and Lessee's nonpayment of any Base Rent, Additional Rent, or other sums owing throughout the pendency of such Force Majeure shall be subject to the Default provisions of Section 17 of this Lease.

SIGNATURES ON THE FOLLOWING PAGE

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

LESSEE:  
Ardagh Glass Inc., a Delaware corporation,

By: 

Title: CFO

Date: March 17, 2022

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

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

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

Date: \_\_\_\_\_

APPROVED BY CUSTODIAL AGENCY:

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

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

APPROVED AS TO FORM:

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

Senior Deputy Prosecuting Attorney

ATB

STATE OF Indiana )  
 ) ss  
COUNTY OF Marion )

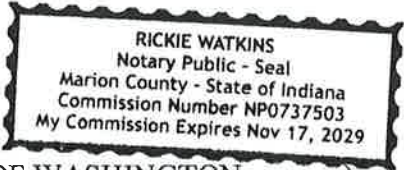
Tom Holz CFO

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 17 day of March,  
2022

Rickie Watkins

NOTARY PUBLIC in and for the State of Indiana residing at Marion County



My appointment expires Nov. 17, 2029

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 Director, Facilities Management 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 of the Premises**

|                     |   |
|---------------------|---|
| Tax account numbers | 192404-9002 - 5801 East Marginal Way, Seattle |
|                     | 192404-9043 - 5427 Ohio Avenue South, Seattle |
|                     | 192404-9051 - 5409 Ohio Avenue South, Seattle |

**9002:** Portion of SE  $\frac{1}{4}$  of Section 19, Township 24 North, range 4 East, W.M., Beginning at intersection of East and West centerline said Section & West margin of Ohio Avenue.; thence Southwesterly along said margin 265.52 ft. to true Point of beginning; thence continuing Southwesterly along said margin to intersection with government Meander Line; thence s. 23-02-29 W. along meander line 218.88 ft. to East margin of Commercial Waterway No. 1; thence Northwesterly along said East margin 1300 ft.; thence S. 79-35-39 E 622.29 ft. to true Point of beginning.

**9043:** Portion of East  $\frac{1}{2}$  of Section 19, Township 24 North, Range 4 East, W.M., Beginning at intersection of East & West centerline of said Section & west margin of Ohio Avenue; thence Southwesterly along said margin 48.28 ft. to True Point of Beginning; thence continuing Southwesterly along said margin 217.24 ft.; thence N. 79-35-39 W. to East Margin of Commercial Waterway Number 1; thence Northwesterly along said East margin 250 ft.; thence S. 79-35-39 E. to True Point of Beginning.

**9051:** Portion of East  $\frac{1}{2}$  of Section 19, Township 24 North, Range 4 East, W.M., Beginning at intersection of East & West centerline of said Section & west margin of Ohio Avenue; thence Southwesterly along said West margin 48.28 ft. to true Point of Beginning; thence Northeasterly along said margin 247.05 ft.; thence N. 79-35-39 W. to Easterly margin of Commercial Waterway Number 1; thence Southeasterly along said Easterly margin 284.28 ft.; thence S. 79-35-39 W. to True Point of beginning; ALSO Beginning at intersection of East and West centerline of said Section & Westerly margin of East Marginal Way; thence Northwesterly along said margin 155.04 ft.; thence West at right angles to said Westerly margin to East margin of Ohio Street; thence Southwesterly along said east margin to East and West centerline; thence Easterly along said centerline to True Point of Beginning.

**Exhibit B**  
**Diagram of the Premises**





## SUBLEASE AGREEMENT

**THIS SUBLEASE AGREEMENT** (this "Sublease" or this "Lease") is made, executed and entered to be effective as of [\_\_\_\_\_, 2021] (the "Effective Date") by and between **ARDAGH GLASS INC.**, hereinafter called "LANDLORD", and **STRATEGIC MATERIALS, INC.**, hereinafter called "TENANT";

### WITNESSETH:

WHEREAS, LANDLORD is the owner of a leasehold interest in certain real property and improvements located at its Seattle, Washington facility, located at 5801 East Marginal Way, Seattle, Washington, fee simple title to a portion of which is owned by King County, Washington (the "County"); and

WHEREAS, LANDLORD (under its former name, Saint-Gobain Containers, Inc.) and TENANT are parties to a certain Sublease Agreement dated as of January 1, 2014 (the "Prior Sublease"), pursuant to which TENANT has subleased from LANDLORD one of LANDLORD's warehouse facilities commonly known as Warehouse #14 and containing approximately forty-five thousand (45,000) square feet for the purpose of conducting TENANT's business of providing cullet to the glass industry; and

WHEREAS, LANDLORD and TENANT desire to enter into this new Sublease Agreement by the terms of which TENANT is to continue to sublease from LANDLORD the real property subleased pursuant to the Prior Sublease for the purpose of conducting TENANT's business of providing cullet to the glass industry.

NOW, THEREFORE, for and in consideration of the premises, the parties hereto have agreed and do hereby mutually covenant, stipulate and agree as follows:

**1. INTERPRETATION AND GENERAL.** Unless otherwise specified herein to the contrary, the following terms shall have the following meanings in and for the purposes of this Lease:

- (a) **"Real Estate"** means all that part of the real estate delineated in attached Exhibit "A", together with all improvements thereon.
- (b) **"Leased Premises"** means the Real Estate and the existing building and other improvements shown upon Exhibit "A" as being leased to the TENANT hereunder, and all fixtures of the existing Building now or hereafter located upon or within the Real Estate.
- (c) **"Building"** means the building (as existing and to be renovated) being leased to the TENANT hereunder and known generally as Warehouse #14.
- (d) **"Rental"** means not only the rent reserved to the LANDLORD, as hereinafter provided, but also all other sums which the TENANT is obligated to pay as a condition of this Lease.

- (e) **"Lease"** means this Sublease Agreement.
- (f) **"Hereof", "herein", "agreement"** and words of similar import have reference to this Lease as a whole and not to any particular section, sub-section or clause hereof.
- (g) **"Purchase and Supply Agreement"** means that certain Purchase and Supply Agreement if and when executed, and entered into by and among LANDLORD and TENANT for the purchase and supply of cullet.
- (h) **"Master Lease"** means that certain Lease Agreement between Landlord and the County for a tract of real estate which includes the Leased Premises.
- (i) **"Hazardous Substances"** means, without limitation, flammables explosives, radioactive materials, asbestos containing materials (ACMs), polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, petroleum and petroleum products' chlorofluorocarbons (CFCs) and substances declared to be hazardous or toxic under any present or future federal, state or local law, ordinance or regulation.
- (j) **"County" or "Authority"** means the prime landlord identified in the Master Lease.

2. **TERM.** This Lease shall commence as of the Effective Date and, unless earlier terminated pursuant to the terms hereof, shall continue in full force and effect until (i) [August 31, 2026], (ii) the termination of the Master Lease, (iii) the termination of the Purchase and Supply Agreement (if and when executed), or (iv) such time as SMI ceases to supply cullet to Ardagh, whichever occurs first (the "Term"). Notwithstanding the foregoing, upon any event of material default under the Purchase and Supply Agreement (if and when executed) by TENANT and after failure to cure such event of default after applicable notice and at least a thirty-day cure period, LANDLORD, in addition to any other remedies available at law or in equity, may immediately terminate this Lease and thereafter, except for those obligations which expressly survive the expiration or earlier termination of this Lease, this Lease shall be of no further force or effect and TENANT shall have no further rights to the Leased Premises hereunder.

3. **RENTAL.** During the Term of this Lease, TENANT shall pay to LANDLORD base rent as rent for the Leased Premises. The base rent for the Term shall be equal to the sum of One Dollar (\$1) annually, paid by January 1 of each year of this Lease.

4. **ACCEPTANCE OF PREMISES.** The TENANT has continuously occupied the Leased Premises since the effective date of the Prior Sublease and has accepted the Leased Premises in its AS IS, WHERE IS condition, and acknowledges and agrees that LANDLORD has not made, nor is making any representations or warranties, express or implied, as to the condition of the Leased Premises.

5. **TENANT'S OBLIGATIONS.** In addition to the other obligations set forth herein, TENANT shall be responsible for and pay the following:

- (a) All utility costs, including electric, water and other charges incurred in connection with TENANT's use and occupancy of the Leased Premises. TENANT shall hold LANDLORD harmless for all costs or expenses LANDLORD may incur from TENANT's failure to pay utility bills or to perform any of its obligations with respect to the purchase of any utilities.
- (b) All maintenance, repairs and replacements to the Leased Premises and its equipment.
- (c) Any and all personal property ad valorem taxes assessed with respect to its property and shall indemnify the LANDLORD and hold it harmless from any liability whatsoever in connection with the taxes set forth in this paragraph. **Additionally, to the extent LANDLORD is responsible for any real estate taxes on the Leased Premises, TENANT shall reimburse LANDLORD for anysuch taxes within thirty (30) days of LANDLORD's notice to TENANT of the amount of any such taxes.**

MAINTENANCE AND REPAIRS. Except as hereinafter provided in connection with damage by fire, catastrophic structural failure, or other casualty, or a taking by or a sale under the threat of eminent domain, the TENANT shall, at all times during the term of this Lease, keep the Leased Premises in constant good condition and in a proper state of maintenance and repair, including windows, roof and other structural elements of the Leased Premises, including any and all facilities, devices and equipment now located in the interior of the Building, and all HVAC, electrical and plumbing equipment.

6. **USE, CONDUCT OF BUSINESS AND COMPLIANCE WITH LAW.** The Leased Premises shall be used and occupied exclusively by the TENANT for the purpose of process and supplying cullet, together with such other uses as may be reasonably related thereto, but for no other purpose whatsoever without the prior written consent of the LANDLORD. Such use and occupancy of the Leased Premises shall be in full and continuing compliance with all local, state, and federal laws with regard to the storage or maintenance of cullet and other recycled materials, including all environmental and/or OSHA requirements as the same may be promulgated from time to time. TENANT shall also be responsible for obtaining all necessary building, environmental and other permits necessary for operating its business upon the Leased Premises and agrees to observe and obey during the term of this Lease all laws, ordinances, rules and regulations promulgated by the proper governmental authorities, including all applicable laws, ordinances and environmental rules and regulations of all of TENANT's operations, and any subsequent rules, regulations or statutes which may be imposed or promulgated by any governmental agency having jurisdiction over the Leased Premises.

7. **ENVIRONMENTAL PROTECTION.**

- (a) TENANT shall not cause or permit to occur:
  - 1. any violation of any present or future federal, state or local law,



ordinance or regulation related to environmental conditions in or about the Leased Premises including, but not limited to, improvements or alterations made to the Leased Premises at any time by TENANT, its agents or contractors, or

2. the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Leased Premises, or the transportation to or from the Leased Premises of any Hazardous Substances, except as necessary and appropriate for TENANT's permitted use of the Leased Premises under this Lease in which case the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the applicable Environmental Laws (as hereinafter defined) and the current standards prevailing in the industry.

TENANT, at its sole cost and expense, shall comply with each present and future federal, state and local law, ordinance and regulation (including but not limited to, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Federal Resource Conservation and Recovery Act; the Federal Toxic Substance Control Act; the Clean Air Act; the Clean Water Act; the rules and regulations of the Environmental Protection Agency; or any other federal, state or municipal agency or governmental board or entity having jurisdiction over the Leased Premises; each individually and collectively referred to as the "Environmental Laws") related to environmental and ecological conditions in or about the Leased Premises or TENANT's use of the Leased Premises including, without limitation, all reporting requirements and the performance of any cleanups required by any governmental authorities. Without affecting the breadth or generality of the foregoing sentence, TENANT, at its sole cost and expense, shall implement best management practices ("BMP") applicable to its operations, including maintaining records and making reports, specified in the Stormwater Pollution Prevention Plan adopted under the stormwater discharge permit applicable to the Leased Premises. In addition and at its sole cost and expense, TENANT shall participate and cause its third-party air pollution control expert to participate in the development of a BMP and source control assessment report in accordance with the requirements of that certain Consent Decree filed on July \_\_, 2021, in Case No. 2:20-cv-00284-TSZ before the United States District Court for the Western District of Washington, in such form as the same may be entered by the court (the "Consent Decree"), and implement any BMPs or other source control measures adopted under the Consent Decree and applicable to the Leased Premises. TENANT shall promptly comply with any notice from any source issued pursuant to the environmental laws referenced in the immediately preceding sentence or with any notice from any insurance company pertaining to TENANT's use, occupancy, maintenance or alteration of the Leased Premises.

(b) TENANT shall immediately notify LANDLORD of any violation by TENANT, its employees, agents, representatives, customers, invitees or

contractors of the Environmental Laws on, under or about the Leased Premises and shall immediately deliver to LANDLORD any notice thereof received by TENANT relating thereto from any source.

(c) LANDLORD and its agent, upon 24 hour notice and in coordination with the plant manager, shall have the right, but not the duty, (except in the case of emergency when no notice shall be required) to inspect the Leased Premises and conduct tests thereon at any time to determine whether or the extent to which there has been a violation of Environmental Laws by TENANT or whether there are Hazardous Substances on, under or about the Leased Premises. In exercising its rights herein, LANDLORD shall not interfere with the daily operations of TENANT's business and shall use all reasonable efforts to minimize interference with TENANT's business. Such entry shall not constitute an eviction of TENANT, in whole or in part, and LANDLORD shall not be liable for any interference, loss, or damage to TENANT's property or business caused thereby.

If LANDLORD, any lender or governmental agency shall ever require testing to ascertain whether there has been a release of Hazardous Substances on, under or about the Leased Premises or a violation of the Environmental Laws, and such requirement arose in whole or in part because of any act or omission on the part of TENANT, then the reasonable costs thereof shall be reimbursed by TENANT to LANDLORD upon demand as Rental

(d) TENANT shall indemnify, defend, and hold harmless LANDLORD and the Authority, and their respective agents, contractors and employees from and against all fines, suits, claims, actions, damages, liabilities, costs and expenses (including attorney's, consultants' fees and costs of remediation) asserted against or sustained by any such person or entity arising out of or in any way connected with any environmental condition caused by TENANT at any time since the original occupation of the Leased Premises and/or TENANT's failure to comply with its obligations under this Section 7, which obligations shall survive the expiration or termination of this Lease.

**8. UTILITY CHARGES.** TENANT shall pay, in addition to all other sums required to be paid by it under the provisions of this Lease, all utility charges of whatsoever kind or nature, including sewage charges, water charges, electrical charges, gas charges, utility surcharges, fire protection charges, security charges and all similar expenses assessed or levied against the Leased Premises relating to the period of TENANT's occupancy hereunder. TENANT shall be solely responsible for obtaining and installing all separate metering equipment required for the Leased Premises.

TENANT understands, acknowledges and agrees that: (i) any one or more of the utilities or other services which are to be provided to the Leased Premises may be interrupted by reason of accident, emergency, or other causes beyond LANDLORD's control, or may be discontinued or diminished temporarily by LANDLORD or other persons until certain repairs, alterations, or improvements can be made; (ii) LANDLORD does not represent or warrant the uninterrupted availability of such utilities or services; and (iii) any such interruption shall not



be deemed a constructive eviction or disturbance of TENANT's right to possession, occupancy and use of the Leased Premises or any part thereof, or render LANDLORD liable to TENANT for damages by abatement of rent or otherwise or relieve TENANT from the obligation to pay Rental and otherwise perform its covenants under this Lease.

**9. INDEMNIFICATION.** Except to the extent the same are caused solely by LANDLORD'S gross negligence or intentional, or willful misconduct, TENANT agrees to absolutely defend, protect and save the LANDLORD and its agents, employees, and invitees harmless and indemnified against and from any penalty, damage, charge imposed for any loss, claim, fee or expense, including attorney's fees, occasioned by TENANT's occupancy or use of the Leased Premises, or any activity by TENANT or any guest or invitee of TENANT upon the Leased Premises. This obligation shall require TENANT to defend, protect, indemnify and save LANDLORD and its agents, employees, and invitees harmless from and against any and all claims and against any and all loss, damage, expense, liabilities, demands and causes of action, and any reasonable expenses (including attorneys' fees) incidental to the defense thereof by the LANDLORD, arising out of any failure of the TENANT in any respect to comply with and perform all of the requirements and provisions of this Lease, and against any and all loss, damage, expense, liabilities, demands and causes of action, and reasonable expenses (including attorneys' fees) incidental to the defense thereof by the LANDLORD resulting from any such breach.

**10. NON-LIABILITY; INDEMNIFICATION; INSURANCE.**

(a) Exculpation of LANDLORD; Waiver of Claims by TENANT. Unless the cause of such damage is due solely to the gross negligence or intentional misconduct of LANDLORD, LANDLORD nor its agents and employees shall have any liability to TENANT or its agents, employees, or invitees for any damage to TENANT's property, including any consequential damages arising therefrom, and whether or not caused, or alleged to be caused, in whole or part by the joint or several negligence, breach of contract, breach of warranty, or other breach of duty on the part of LANDLORD, or its agents or employees, or in any manner connected to the use, operation or management of the Real Estate. No such occurrence shall be deemed to be an actual or constructive eviction of TENANT from the Leased Premises. TENANT agrees to carry property insurance protecting against risk of loss or damage in amounts not less than full replacement costs, covering all of TENANT's trade fixtures, leasehold improvements and other personal property of TENANT located within or on the Leased Premises, and all such insurance shall contain or be endorsed with a clause permitting waiver of rights of recovery prior to a loss and waiving all rights of subrogation against LANDLORD. TENANT hereby waives all claims for recovery from LANDLORD and its agents, employees or invitees, for any loss or damage to the property of TENANT to the extent that such loss is or could have been insured by valid and collectible fire and extended coverage insurance policies in standard form containing a waiver of subrogation endorsement; it being the intent of the parties hereto to assign the entire risk of loss arising out of damage to TENANT's property to such insurance to be procured by TENANT at its own expense.

Additionally, TENANT shall procure and keep in effect at all times during the Term of this Lease, fire and extended coverage insurance, in an amount equal to full replacement of the Building, naming LANDLORD providing LANDLORD with Loss Payee status within a blanket provision. All such fire and extended coverage insurance which may be carried by TENANT with respect to the Building or the property of LANDLORD located therein shall contain or be endorsed with a clause permitting waiver of rights of recovery prior to a loss and waiving all rights of subrogation against LANDLORD. TENANT shall be liable to LANDLORD for the cost of repairing any damage to the Leased Premises, the Building, the Property or the other property of LANDLORD which is caused or contributed to by the act or omission of TENANT, or its agents, employees or invitees, to the extent that such damage is not insured by TENANT under its fire and extended coverage insurance policies.

(b) LANDLORD's Non-Liability. Unless caused in whole or in part by the gross negligence, or intentional act of LANDLORD, LANDLORD shall not be liable to TENANT, or any other person in the Leased Premises by TENANT's consent, invitation or license, express or implied, for any damage either to person or property sustained by reason of the condition of the Leased Premises, or any part thereof, or arising from the bursting or leaking of any water, gas, sewer or steam pipes, or due to any casualty or accident in or about the Building.

(c) TENANT's Public Liability Insurance For Premises. TENANT will procure and maintain during the Term of this Lease, a policy or policies of insurance, written by a responsible insurance company or companies satisfactory to LANDLORD, insuring both LANDLORD and TENANT against such losses, claims, demands or actions whatsoever for injury to or death of any one or more persons in any one occurrence as are insured under the ISO's most recent occurrence-based commercial general liability form to the limit of not less than Two Million Dollars (\$2,000,000) and for damage to property in an amount not less than One Million Dollars (\$1,000,000) arising from TENANT's conduct and operation of TENANT's business in the Leased Premises, and to furnish LANDLORD certificates evidencing the existence thereof.

(d) General Indemnity of LANDLORD. TENANT agrees to indemnify and save harmless LANDLORD from and against any and all claims made by or on behalf of any person, firm, or entity arising from any breach or default on behalf of TENANT in the performance of any covenant or agreement on its part to be kept, observed, or performed under this Lease, unless said damages, claims and/or liabilities are caused by the gross negligence, and/or intentional acts of LANDLORD. TENANT shall also indemnify, defend and hold harmless LANDLORD from and against all damages, claims, and/or liabilities whatsoever arising from any accident or injury occurring within the Leased Premises, unless said accident or injury is caused by the gross negligence, or intentional conduct of LANDLORD. The indemnification herein provided shall include all reasonable legal fees, expenses, and damages incurred in connection with any

such claim, action, or proceeding brought thereon.

(e) General Indemnity of TENANT. LANDLORD agrees to indemnify and save harmless TENANT from and against any claims made by or on behalf of any person, firm or entity arising from any breach or default by or on behalf of LANDLORD in the performance of any covenant or agreement on its part to be kept, observed or performed under this Lease. The indemnification herein provided shall include all reasonable legal fees, expenses and damages incurred in connection with any such claim, action or proceeding brought thereon.

(f) Policies. TENANT shall furnish to LANDLORD certificates of insurance evidencing the coverages required herein, and shall use best efforts to provide thirty (30) days' written notice to LANDLORD prior to cancellation or material change therein. TENANT shall also maintain at all times additional insurance in such amounts and with such terms of coverage as is required by all applicable laws. Where policies of insurance provided hereunder are both applicable to a single occurrence, such policies shall be treated as co-insurance, except that where one party owes the other a duty of indemnity under this section, the policy provided by the indemnitor shall be deemed primary coverage and the policy provided by the indemnitee shall be deemed excess coverage.

**11. ADDITIONS, CHANGES, ALTERATIONS AND DEMOLITION.** The TENANT shall not construct or demolish improvements upon the Real Estate and/or make additions to, or structural changes or alterations in, upon or with respect to any or all of the improvements to the Real Estate, without the written consent of the LANDLORD, which consent shall not be unreasonably withheld. As a condition to granting its consent to any alteration, LANDLORD may impose reasonable requirements, including, without limitation, requirements as to the manner and time for the performance of such alteration and the type and amount of insurance TENANT must acquire and maintain during the course of performance of such alteration. In addition, LANDLORD shall have the right for any improvements to: approve the contractors or mechanics performing the alteration, approve all plans and specifications for the alteration; review the work of TENANT's architects, engineers, contractors or mechanics and control any construction or other activities being undertaken within the Building, with LANDLORD to be reimbursed by TENANT for any costs incurred in connection with such review and/or control; and order reasonable changes in such alteration in instances in which materials or workmanship is defective or not in accordance with plans or specifications previously approved by LANDLORD. Such work shall be performed in a good and workmanlike manner at the sole expense of the TENANT. Any improvements or additions upon the Real Estate at the expiration of this Lease shall be deemed a part of the Leased Premises and shall be surrendered to the LANDLORD in good condition and repair, reasonable wear and tear and damage by fire or other casualty excepted; provided, however, that LANDLORD may, by written notice to TENANT issued concurrently with LANDLORD's approval of any plans and specifications for alterations or improvements, require TENANT, at its expense, to remove any or all alterations and repair any damage to the Leased Premises or the Building caused by such removal, prior to the expiration or termination of this Lease.

The provisions of this paragraph shall not apply to such items as are ordinarily designated as trade fixtures, temporary partitions or similar installations which may, from time to time, be installed in the Leased Premises under the provisions of paragraph 12 hereof.

**12. TRADE FIXTURES AND SIGNS.**

(a) The TENANT may, during the Term of this Lease, install such fixtures, equipment and appliances as may be reasonably necessary for the conduct of its business upon the Leased Premises. The TENANT may install, inscribe, paint or affix such signs, notices, pictures or advertisements with prior reasonable consent of LANDLORD, which consent shall not be unreasonably withheld or delayed.

(b) Fixtures, equipment and appliances may be affixed to the Leased Premises, and the TENANT may remove the same at will, and shall remove the same at the termination of this Lease if so requested by the LANDLORD. All damages incurred to the Leased Premises as a result of any affixation or removal hereunder shall be promptly repaired by and at the sole cost and expense of the TENANT. Any fixtures, equipment or appliances referred to herein not removed as herein permitted or required shall, at the option of the LANDLORD, be deemed abandoned by the TENANT, to be disposed of by the LANDLORD as its sole property.

**13. MECHANIC OR CONSTRUCTION LIENS.** The TENANT shall not permit, create, incur or impose, or cause or suffer others to permit, create, incur or impose, any lien or other obligation against the Leased Premises or the LANDLORD by reason of any work performed or materials furnished by, to or for the account of the TENANT; and the TENANT agrees to hold the LANDLORD harmless of and from any and all claims or demands by any contractor, subcontractor, materialman, laborer or any other third person against the Leased Premises or the LANDLORD relating to or arising because of such work or materials. The TENANT may contest any lien or other obligation referred to herein by making the deposits or taking the action permitted for the contesting of taxes under the provisions of this Lease, or taking such other action permitted by law; provided that in any event, the LANDLORD is reasonably satisfied that the Leased Premises and the LANDLORD is secure from loss or damage.

**14. LANDLORD'S ENTRY FOR INSPECTION.** The LANDLORD, or its representatives, shall have the right upon 24 hours' prior notice to TENANT, and in coordination with the plant manager, at reasonable times during the business hours of the TENANT (except in the case of emergencies, in which case LANDLORD shall only be required to provide as much notice as is practicable under the circumstances), to enter upon the Leased Premises for the purpose of examining and inspecting the same and of showing the Real Estate to prospective TENANT's or purchasers; said inspection, however, shall not unreasonably interfere with the business of the TENANT.

**15. DAMAGE BY FIRE OR OTHER CASUALTY; FORCE MAJEURE.**

(a) In the event the Leased Premises are damaged by fire, catastrophic structural failure, or other casualty, TENANT shall give prompt notice thereof to LANDLORD. Except as otherwise provided herein the same shall be repaired as soon as reasonably possible by the TENANT at its sole cost and expense; provided, however, in the event the fire or other casualty is caused by LANDLORD, said damage shall be repaired by LANDLORD. If damage to the Leased Premises as a result of such casualty is such that the Leased Premises cannot be used by TENANT for its permitted use for a period of nine (9) or more months, as reasonably estimated by LANDLORD, TENANT may cancel this Lease by giving written notice of such termination to LANDLORD within thirty (30) days after TENANT receives notice from LANDLORD of LANDLORD's estimate on the time needed to restore the Leased Premises. In the event of such termination, all Rental which would otherwise have been due and payable hereunder shall, from and after the date of such destruction, be deemed to have abated as of such date, and any prepaid Rental shall be refunded to the TENANT.

(b) In the event that either party is unable to perform any of its obligations under this Lease, to enjoy any of its benefits, because of natural disaster, which definition shall include, but not be limited to, hurricanes, flooding, wildfires, rising sea levels, subsidence, landslides and earthquakes, or decrees of governmental bodies related to, but not limited to epidemics, pandemics, martial law, terrorist acts (foreign or domestic) and climate change, not the fault of the affected party (a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Lease shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Lease. Notwithstanding anything to the contrary set forth above, in no event shall a Force Majeure Event suspend or otherwise delay any obligation which can be cured with the payment of money.

**16. ASSIGNMENT AND SUBLETTING.** The TENANT shall not assign this Lease, nor sublet any portion of the Leased Premises, without the prior written consent of the LANDLORD, which consent shall be in the sole discretion of LANDLORD. No assignment or subleasing shall release the TENANT from any of its obligations hereunder. Notwithstanding any provision in this Lease to the contrary, TENANT may assign this Lease without LANDLORD'S consent (a) to any entity resulting from a consolidation, merger or reorganization by or with TENANT; (b) to any parent, subsidiary or affiliate of TENANT or any subsidiary or affiliate of the parent of TENANT; (c) to any purchaser of all or substantially all of the assets of TENANT; or (d) to any purchaser of all or substantially all of the outstanding voting capital stock of TENANT.

**17. REMEDIES.** All of the agreements of the TENANT contained herein shall be construed as conditions, and upon failure of the TENANT to pay any installment of rent promptly when the same becomes due and payable, or if any one or more of the following events of default continues for a period of thirty (30) days after written notice of such default given by the LANDLORD to the TENANT:

- (a) The making by TENANT of an assignment for the benefit of its creditors;
- (b) The operation or supervision of the business conducted in the Leased Premises by a creditors' committee, or by any one other than the TENANT;
- (c) The failure of TENANT to pay a judgment against it, resulting in the levying of a writ of execution or attachment on or against the Leased Premises;
- (d) If proceedings are instituted in a court of competent jurisdiction for the reorganization, liquidation or involuntary dissolution of TENANT, or for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the property of TENANT, and said proceedings are not dismissed and any receiver, trustee or liquidator appointed therein discharged within thirty (30) days after the institution of said proceedings;
- (e) The failure of TENANT to perform any other of its covenants under this Lease; Upon the occurrence of an event of default by TENANT under this Lease, LANDLORD, at its option, without further notice or demand to TENANT, may, in addition to all other rights and remedies provided in this Lease, or available to LANDLORD at law or in equity:
  - 1. Terminate this Lease and TENANT's right to possession of the Leased Premises and recover all damages to which LANDLORD is entitled under law, and in such event, LANDLORD shall take reasonable measures to mitigate damages recoverable against TENANT.
  - 2. Terminate TENANT's right to possession of the Leased Premises without terminating this Lease, in which event LANDLORD shall, if and to the extent required by law, take reasonable measures to mitigate the damages recoverable against TENANT.

TENANT will, at the expiration or termination of this Lease, yield up possession to LANDLORD, and failing so to do, at LANDLORD'S option, will pay liquidated damages for each day possession is withheld an amount equal to double the amount of the daily minimum rent, computed on a thirty-day month basis; provided, however, that LANDLORD'S right to recover such liquidated damages shall not preclude LANDLORD from recovering any greater amount of damages sustained by it or as otherwise allowed by Law.

No receipt of money by LANDLORD from TENANT after the termination of this Lease, or after the service of any notice or after the commencement of any suit, or after final judgment for possession of the Leased Premises, shall reinstate, continue or extend the Term of this Lease.

All rights and remedies of the LANDLORD herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law or equity, and such rights and

remedies may be exercised and enforced concurrently and whenever and as often as the occasion therefor arises. The failure or forbearance on the part of the LANDLORD to enforce any of its rights or remedies in connection with any default shall not be deemed a waiver of such default, nor a consent to any continuation thereof, nor a waiver of the same default at any subsequent date. Any action taken by the LANDLORD under the provisions of this Lease, or to enforce the provisions of this Lease, or to declare a termination of the TENANT'S interest under this Lease, or to repossess itself of the Leased Premises (whether through the medium of legal proceedings instituted for that purpose or otherwise), shall not, in any event, release or relieve the TENANT from its continuing obligations hereunder, including, without limitation, its continuing obligation to make all payments herein provided.

**18. DISPUTES; ENFORCEMENT COSTS.**

(a) Any controversy or claim arising out of or relating to this Lease, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration proceedings shall take place in Evansville, Indiana, or any other location agreed to by the parties.

(b) In the event that either party hereto enforces its rights hereunder through arbitration, the prevailing party shall be entitled to recover, in addition to whatever other relief is granted, its reasonable attorneys' fees incurred in connection with either the prosecution or defense of arbitration proceedings.

**19. HOLDING OVER BY TENANT.** If the TENANT holds over or remains in possession or occupancy of the Leased Premises at the expiration of this Lease, such holding over or continued possession or occupancy, if rent is paid by the TENANT and accepted by the LANDLORD for or during the period of time it so holds over or remains in possession or occupancy, shall create only a tenancy from month-to-month at the last monthly Rental and upon the same terms and conditions herein contained (other than the length of term), which may at any time be terminated by either the LANDLORD or the TENANT giving to the other thirty (30) days' written notice.

**20. SURRENDER AT TERMINATION.** At the termination of this Lease, for any reason, the TENANT shall quietly and peaceably surrender possession of the Leased Premises and any improvements located thereon to the LANDLORD, maintained as herein provided and free of any and all claims thereto.

**21. PAYMENTS TO BE ADDITIONAL RENT.** All payments to be made by the TENANT hereunder, whether or not designated as rent, shall be deemed rent, so that in default of payment when due, the LANDLORD shall be entitled to all of the remedies available at law or equity, or under this Lease, for the non-payment of rent. In the event of a breach of the obligations of TENANT hereunder, with the exception of the payment of base rent, LANDLORD shall also have the right to cure such breach for the account and at the expense of TENANT. Any money expended or costs or expenses incurred in curing the breach or default for the account of TENANT, together with fifteen percent (15%) additional overhead





requiring consent or approval shall not be deemed to waive or render unnecessary consent or approval to or of any subsequent similar act by the other party. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one TENANT and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. The laws of the state of Indiana shall govern the validity, performance and enforcement of this Lease. The headings of the several articles contained herein are for convenience only and do not define, limit or construe the contents of such articles.

**25. SUCCESSORS AND ASSIGNS.** Except as otherwise herein provided, this Lease shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

**26. TENANT'S AUTHORITY.** The undersigned persons executing this Lease for and on behalf of the TENANT represent and certify that they are the duly elected officers of the TENANT and have been fully empowered by proper resolution of the Board of Directors of TENANT to make, execute and deliver this Lease; that the TENANT has full corporate capacity to acquire leaseholds and enter into lease agreements; and that all necessary action for the making of this Lease has been taken and done.

**27. SUBJECT TO MASTER LEASE.** Notwithstanding anything else herein contained, the TENANT and LANDLORD understand that this is a sublease of the Leased Premises. LANDLORD represents and warrants that no rights are granted the TENANT hereunder which are not available for subletting by the LANDLORD pursuant to the terms and provisions of the Master Lease. All terms, conditions and provisions of the Master Lease are hereby incorporated into this Lease by reference, except as the same may expressly be modified in accordance with this Lease. TENANT agrees that, as a condition of this Lease, TENANT shall be responsible to fulfill all of the obligations and duties of LANDLORD under the Master Lease with respect to the Leased Premises, and Landlord shall remain responsible to the County under the Master Lease for all such obligations and duties for the remainder of the Real Estate.

[Remainder of Page Intentionally Left Blank]

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

**“LANDLORD”**

**ARDAGH GLASS INC.**

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

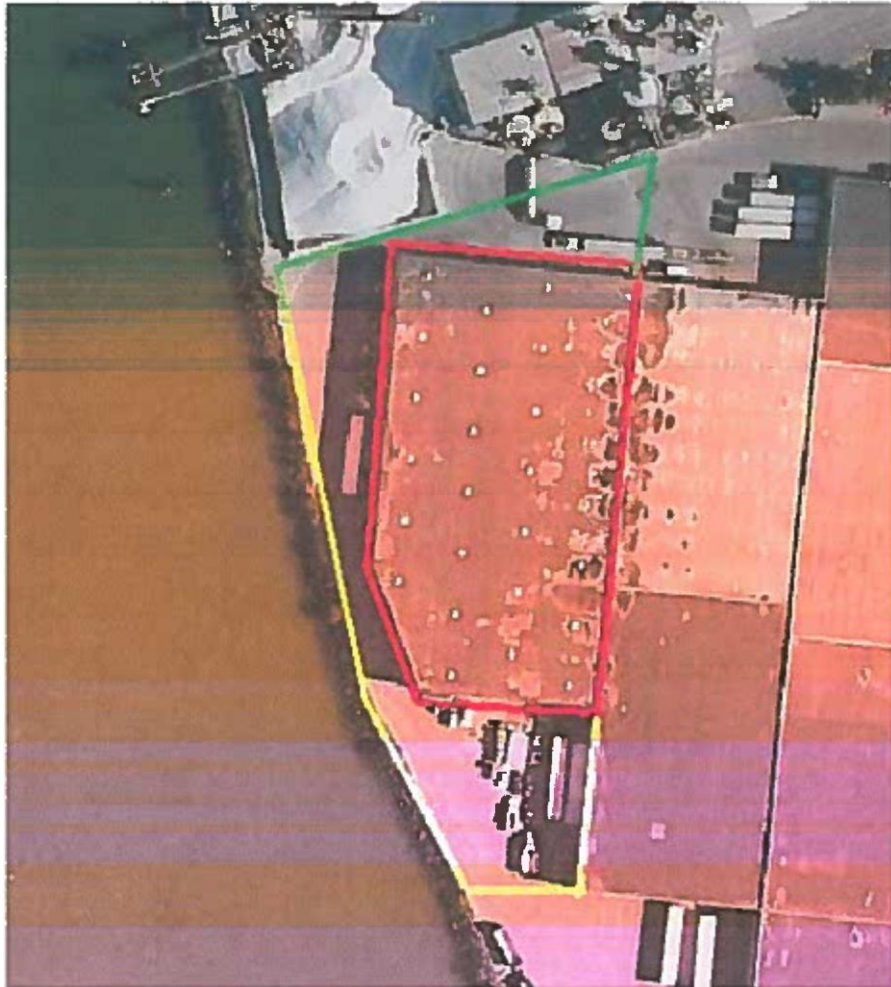
**“TENANT”**

**STRATEGIC MATERIALS, INC.**

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

## Exhibit A

Warehouse 14 is designated by the red outline below, shared space is designated by the green outline below.



**SUBLEASE  
AGREEMENT**

THIS SUBLEASE AGREEMENT (this "Sublease" or this "Lease") is made, executed and entered to be effective as of [\_\_\_\_\_] (the "Effective Date") by and between ARDAGH GLASS INC., hereinafter called "LANDLORD", and J.A. Jacks & Sons, Inc., hereinafter called "TENANT".

**WITNESSETH:**

WHEREAS, LANDLORD is the owner of a leasehold interest in certain real property and improvements located at its Seattle, Washington facility, located at 5801 East Marginal Way, Seattle, Washington, fee simple title to a portion of which is owned by King County, Washington (the "County"); and

WHEREAS, LANDLORD (under its former name, Saint-Gobain Containers, Inc.) and TENANT are parties to (i) a certain Sublease dated as of August 8, 1966 (as amended and extended, the "Initial Sublease") and (ii) a certain Sublease Agreement dated as of March 1, 2011, as amended by a certain First Amendment of Sublease Agreement dated December 18, 2017 (as amended, the "Prior Sublease"), pursuant to which TENANT has subleased a portion of such real property for the purpose of conducting TENANT's business of providing crushed and processed limestone to LANDLORD; and

WHEREAS, LANDLORD and TENANT desire to enter into this new Sublease Agreement by the terms of which TENANT is to continue to sublease from LANDLORD the real property subleased pursuant to the Prior Sublease for the purpose of conducting TENANT's business of providing crushed and processed limestone to LANDLORD.

NOW, THEREFORE, for and in consideration of the premises, the parties hereto have agreed and do hereby mutually covenant, stipulate and agree as follows:

1. **INTERPRETATION AND GENERAL.** Unless otherwise specified herein to the contrary, the following terms shall have the following meanings in and for the purposes of this Lease:
  - (a) **"Real Estate"** means all that part of the real estate described and delineated in attached Exhibit "A", together with all improvements thereon.
  - (b) **"Leased Premises"** means the Real Estate and the existing buildings and other improvements shown upon Exhibit "A" as being leased to the TENANT hereunder, and all fixtures of the existing Building now or hereafter located upon or within the Real Estate.
  - (c) **"Buildings"** means the buildings (as existing and to be renovated) being leased to the TENANT hereunder.
  - (d) **"Rental"** means not only the rent reserved to the LANDLORD, as hereinafter provided, but also all other sums which the TENANT is obligated to pay as a condition of this Lease.
  - (e) **"Lease"** means this Sublease Agreement.
  - (f) **"Hereof", "herein", "agreement"** and words of similar import have reference to this Lease as a whole and not to any particular section, sub-section or clause hereof.
  - (g) **"Master Lease"** means that certain Lease Agreement between Landlord and the County

for a tract of real estate which includes the Leased Premises.

- (h) **"Prior Sublease"** has the meaning ascribed to it in the recitals above.
- (i) **"Hazardous Substances"** means, without limitation, flammables explosives, radioactive materials, asbestos containing materials (ACMs), polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, petroleum and petroleum products' chlorofluorocarbons (CFCs) and substances declared to be hazardous or toxic under any present or future federal, state or local law, ordinance or regulation.

2. **TERM.** This Lease shall commence as of the Effective Date and, unless earlier terminated pursuant to the terms hereof, shall continue in full force and effect until (i) **[August 31, 2031]**, (ii) the termination or expiration of the Master Lease, whichever occurs first (the "Term"). Notwithstanding the foregoing, upon any event of material default under this Sublease by TENANT and after failure to cure such event of default after applicable notice and at least a thirty-day cure period, LANDLORD, in addition to any other remedies available at law or in equity, may immediately terminate this Lease and thereafter, except for those obligations which expressly survive the expiration or earlier termination of this Lease, this Lease shall be of no further force or effect and TENANT shall have no further rights to the Leased Premises hereunder.

3. **RENTAL.** During the Term of this Lease, TENANT shall pay to LANDLORD base rent for the Leased Premises. The base rent (including leasehold excise tax) for first five years of the Term shall be Sixty-Seven Thousand Eighty-Three Dollars and 38 Cents (\$67,083.38) monthly, due by the first day of each calendar month. During the subsequent five (5) years of the Term, the base rent shall be adjusted to reflect any increase or decreases in Landlord's rent under the Master Lease (i.e. the base rent hereunder shall increase or decrease on the same percentage basis as Landlord's rent is increased or decreased under the Master Lease).

4. **ACCEPTANCE OF PREMISES.** The TENANT has continuously occupied a portion of the Leased Premises since the effective date of the Initial Sublease, has continuously occupied the remainder of the Leased Premises since the effective date of the Prior Sublease and has accepted the Leased Premises in its AS IS, WHERE IS condition, and acknowledges and agrees that LANDLORD has not made, nor is making any representations or warranties, express or implied, as to the condition of the Leased Premises.

5. **TENANT'S OBLIGATIONS.** In addition to the other obligations set forth herein, TENANT shall be responsible for and pay the following:

- (a) All utility costs, including electric, water and other charges incurred in connection with TENANT's use and occupancy of the Leased Premises. TENANT shall hold LANDLORD harmless for all costs or expenses LANDLORD may incur from TENANT's failure to pay utility bills or to perform any of its obligations with respect to the purchase of any utilities.
- (b) All maintenance, repairs and replacements to the Leased Premises and its equipment.
- (c) Any and all personal property ad valorem taxes assessed with respect to its property and shall indemnify the LANDLORD and hold it harmless from any liability whatsoever in connection with the taxes set forth in this paragraph. **Additionally, to the extent**

**LANDLORD is responsible for any real estate taxes on the Leased Premises, TENANT shall reimburse LANDLORD for any such taxes within thirty (30) days of LANDLORD's notice to TENANT of the amount of any such taxes.**

MAINTENANCE AND REPAIRS. Except as hereinafter provided in connection with a taking by or a sale under the threat of eminent domain, the TENANT shall, at all times during the term of this Lease, keep the Leased Premises in constant good condition and in a proper state of maintenance and repair.

6. **USE, CONDUCT OF BUSINESS AND COMPLIANCE WITH LAW.** The Leased Premises shall be used and occupied exclusively by the TENANT for the purpose of rock, stone, and mineral crushing, milling and processing plant, for loading, unloading, storage, milling and processing of various industrial and commercial materials, and for general office and commercial use, together with such other uses as may be reasonably related thereto, but for no other purpose whatsoever without the prior written consent of the LANDLORD. Such use and occupancy of the Leased Premises shall be in full and continuing compliance with all local, state and federal laws, including all environmental and/or OSHA requirements as the same may be promulgated from time to time. TENANT shall also be responsible for obtaining all necessary building, environmental and other permits necessary for operating its business upon the Leased Premises and agrees to observe and obey during the term of this Lease all laws, ordinances, rules and regulations promulgated by the proper governmental authorities, including all applicable laws, ordinances and environmental rules and regulations of all of TENANT's operations, and any subsequent rules, regulations or statutes which may be imposed or promulgated by any governmental agency having jurisdiction over the Leased Premises.

7. **ENVIRONMENTAL PROTECTION.**

(a) TENANT shall not cause or permit to occur:

1. any violation of any present or future federal, state or local law, ordinance or regulation related to environmental conditions in or about the Leased Premises including, but not limited to, improvements or alterations made to the Leased Premises at any time by TENANT, its agents or contractors, or

2. the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Leased Premises, or the transportation to or from the Leased Premises of any Hazardous Substances, except as necessary and appropriate for TENANT's permitted use of the Leased Premises under this Lease in which case the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the applicable Environmental Laws (as hereinafter defined) and the current standards prevailing in the industry.

TENANT, at its sole cost and expense, shall comply with each present and future federal, state and local law, ordinance and regulation (including but not limited to, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Federal Resource Conservation and Recovery Act; the Federal Toxic Substance Control Act; the Clean Air Act; the Clean Water Act; the rules and regulations of the Environmental Protection Agency; or any other federal, state or municipal agency or governmental board or entity having jurisdiction over the Leased Premises; each individually and collectively referred to as the "Environmental Laws") related to environmental and ecological conditions in or about the Leased Premises or TENANT's use of the Leased Premises including, without limitation, all reporting requirements and the performance of any cleanups required by any governmental authorities. Without affecting the breadth or generality of the foregoing sentence, TENANT, at its sole cost and expense, shall implement best management practices applicable to its operations, including maintaining records and making reports, specified in the Stormwater Pollution Prevention Plan adopted under the stormwater discharge permit applicable to the Leased Premises. TENANT shall promptly comply with any

notice from any source issued pursuant to the environmental laws referenced in the immediately preceding sentence or with any notice from any insurance company pertaining to TENANT's use, occupancy, maintenance or alteration of the Leased Premises.

(b) TENANT shall immediately notify LANDLORD of any violation by TENANT, its employees, agents, representatives, customers, invitees or contractors of the Environmental Laws on, under or about the Leased Premises and shall immediately deliver to LANDLORD any notice thereof received by TENANT relating thereto from any source.

(c) LANDLORD and its agent, upon 24 hour notice and in coordination with the plant manager, shall have the right, but not the duty, (except in the case of emergency when no notice shall be required) to inspect the Leased Premises and conduct tests thereon at any time to determine whether or the extent to which there has been a violation of Environmental Laws by TENANT or whether there are Hazardous Substances on, under or about the Leased Premises. In exercising its rights herein, LANDLORD shall not interfere with the daily operations of TENANT's business, and shall use all reasonable efforts to minimize interference with TENANT's business. Such entry shall not constitute an eviction of TENANT, in whole or in part, and LANDLORD shall not be liable for any interference, loss, or damage to TENANT's property or business caused thereby.

If LANDLORD, any lender or governmental agency shall ever require testing to ascertain whether there has been a release of Hazardous Substances on, under or about the Leased Premises or a violation of the Environmental Laws, and such requirement arose in whole or in part because of any act or omission on the part of TENANT, then the reasonable costs thereof shall be reimbursed by TENANT to LANDLORD upon demand as Rental.

(d) TENANT shall indemnify, defend and hold harmless LANDLORD and its agents, contractors and employees from and against all fines, suits, claims, actions, damages, liabilities, costs and expenses (including attorney's, consultants' fees and costs of remediation) asserted against or sustained by any such person or entity arising out of or in any way connected with any environmental condition caused by TENANT at any time since its original occupation of the Leased Premises and/or TENANT's failure to comply with its obligations under this Section 7, which obligations shall survive the expiration or termination of this Lease.

8. **UTILITY CHARGES.** TENANT shall pay, in addition to all other sums required to be paid by it under the provisions of this Lease, all utility charges of whatsoever kind or nature, including sewage charges, water charges, electrical charges, gas charges, utility surcharges, fire protection charges, security charges and all similar expenses assessed or levied against the Leased Premises relating to the period of TENANT's occupancy hereunder. TENANT shall be solely responsible for obtaining and installing all separate metering equipment required for the Leased Premises.

TENANT understands, acknowledges and agrees that: (i) any one or more of the utilities or other services which are to be provided to the Leased Premises may be interrupted by reason of accident, emergency, or other causes beyond LANDLORD's control, or may be discontinued or diminished temporarily by LANDLORD or other persons until certain repairs, alterations, or improvements can be made; (ii) LANDLORD does not represent or warrant the uninterrupted availability of such utilities or services; and (iii) any such interruption shall not be deemed a constructive eviction or disturbance of TENANT's right to possession, occupancy and use of the Leased Premises or any part thereof, or render LANDLORD liable to TENANT for damages by abatement of rent or otherwise or relieve TENANT from the obligation to pay Rental and otherwise perform its covenants under this Lease.

9. **INDEMNIFICATION.** Except to the extent the same are caused solely by LANDLORD'S

gross negligence or intentional, or willful misconduct, TENANT agrees to absolutely defend, protect and save the LANDLORD and its agents, employees, and invitees harmless and indemnified against and from any penalty, damage, charge imposed for any loss, claim, fee or expense, including attorney's fees, occasioned by TENANT's occupancy or use of the Leased Premises, or any activity by TENANT or any guest or invitee of TENANT upon the Leased Premises. This obligation shall require TENANT to defend, protect, indemnify and save LANDLORD and its agents, employees, and invitees harmless from and against any and all claims and against any and all loss, damage, expense, liabilities, demands and causes of action, and any reasonable expenses (including attorneys' fees) incidental to the defense thereof by the LANDLORD, arising out of any failure of the TENANT in any respect to comply with and perform all of the requirements and provisions of this Lease, and against any and all loss, damage, expense, liabilities, demands and causes of action, and reasonable expenses (including attorneys' fees) incidental to the defense thereof by the LANDLORD resulting from any such breach.

10. **NON-LIABILITY; INDEMNIFICATION; INSURANCE.**

A. **Exculpation of LANDLORD; Waiver of Claims by TENANT.** Unless the cause of such damage is due solely to the gross negligence or intentional misconduct of LANDLORD, LANDLORD nor its agents and employees shall have any liability to TENANT or its agents, employees, or invitees for any damage to TENANT's property, including any consequential damages arising therefrom, and whether or not caused, or alleged to be caused, in whole or part by the joint or several negligence, breach of contract, breach of warranty, or other breach of duty on the part of LANDLORD, or its agents or employees, or in any manner connected to the use, operation or management of the Real Estate. No such occurrence shall be deemed to be an actual or constructive eviction of TENANT from the Leased Premises. TENANT agrees to carry property insurance protecting against risk of loss or damage in amounts not less than full replacement costs, covering all of TENANT's trade fixtures, leasehold improvements and other personal property of TENANT located within or on the Leased Premises, and all such insurance shall contain or be endorsed with a clause permitting waiver of rights of recovery prior to a loss and waiving all rights of subrogation against LANDLORD. TENANT hereby waives all claims for recovery from LANDLORD and its agents, employees or invitees, for any loss or damage to the property of TENANT to the extent that such loss is or could have been insured by valid and collectible fire and extended coverage insurance policies in standard form containing a waiver of subrogation endorsement; it being the intent of the parties hereto to assign the entire risk of loss arising out of damage to TENANT's property to such insurance to be procured by TENANT at its own expense.

Additionally, TENANT shall procure and keep in effect at all times during the Term of this Lease, fire and extended coverage insurance, in an amount equal to full replacement of the Building, naming LANDLORD as additional insured under such policy. All such fire and extended coverage insurance which may be carried by TENANT with respect to the Building or the property of LANDLORD located therein shall contain or be endorsed with a clause permitting waiver of rights of recovery prior to a loss and waiving all rights of subrogation against LANDLORD. TENANT shall be liable to LANDLORD for the cost of repairing any damage to the Leased Premises, the Building, the Property or the other property of LANDLORD which is caused or contributed to by the act or omission of TENANT, or its agents, employees or invitees, to the extent that such damage is not insured by TENANT under its fire and extended coverage insurance policies.

B. **LANDLORD's Non-Liability.** Unless caused in whole or in part by the gross negligence, or intentional act of LANDLORD, LANDLORD shall not be liable to TENANT, or any other person in the Leased Premises by TENANT's consent, invitation or license, express or implied, for any damage either to person or property sustained by reason of the condition of the Leased Premises, or any part thereof, of arising from the bursting or leaking of any water, gas, sewer or steam pipes, or due to any act or neglect of



any other lessee or other occupant of the Building or other person therein, or due to any casualty or accident in or about the Building.

C. TENANT's Public Liability Insurance For Premises. TENANT will procure and maintain during the Term of this Lease, a policy or policies of insurance, written by a responsible insurance company or companies satisfactory to LANDLORD, insuring both LANDLORD and TENANT against any and all losses, claims, demands or actions whatsoever for injury to or death of any one or more persons in any one occurrence to the limit of not less than Three Million Dollars (\$3,000,000) and for damage to property in an amount not less than One Million Dollars (\$1,000,000) arising from TENANT's conduct and operation of TENANT's business in the Leased Premises, and to furnish LANDLORD certificates evidencing the existence thereof.

D. General Indemnity of LANDLORD. TENANT agrees to indemnify and save harmless LANDLORD from and against any and all claims made by or on behalf of any person, firm, or entity arising from any breach or default on behalf of TENANT in the performance of any covenant or agreement on its part to be kept, observed, or performed under this Lease, unless said damages, claims and/or liabilities are caused by the gross negligence, and/or intentional acts of LANDLORD. TENANT shall also indemnify, defend and hold harmless LANDLORD from and against all damages, claims, and/or liabilities whatsoever arising from any accident or injury occurring within the Leased Premises, unless said accident or injury is caused by the gross negligence, or intentional conduct of LANDLORD. The indemnification herein provided shall include all reasonable legal fees, expenses, and damages incurred in connection with any such claim, action, or proceeding brought thereon.

E. General Indemnity of TENANT. LANDLORD agrees to indemnify and save harmless TENANT from and against any claims made by or on behalf of any person, firm or entity arising from any breach or default by or on behalf of LANDLORD in the performance of any covenant or agreement on its part to be kept, observed or performed under this Lease. The indemnification herein provided shall include all reasonable legal fees, expenses and damages incurred in connection with any such claim, action or proceeding brought thereon.

F. Policies. TENANT shall furnish to LANDLORD certificates of insurance evidencing the coverages required herein, and such insurance shall provide thirty (30) days' written notice to LANDLORD prior to cancellation or change therein. TENANT shall also maintain at all times additional insurance in such amounts and with such terms of coverage as is required by all applicable laws. Where policies of insurance provided hereunder are both applicable to a single occurrence, such policies shall be treated as co-insurance, except that where one party owes the other a duty of indemnity under this section, the policy provided by the indemnitor shall be deemed primary coverage and the policy provided by the indemnitee shall be deemed excess coverage.

11. **ADDITIONS, CHANGES, ALTERATIONS AND DEMOLITION.** The TENANT shall not construct or demolish improvements upon the Real Estate and/or make additions to, or structural changes or alterations in, upon or with respect to any or all of the improvements to the Real Estate, without the written consent of the LANDLORD, which consent shall not be unreasonably withheld. As a condition to granting its consent to any alteration, LANDLORD may impose reasonable requirements, including, without limitation, requirements as to the manner and time for the performance of such alteration and the type and amount of insurance TENANT must acquire and maintain during the course of performance of such alteration. In addition, LANDLORD shall have the right for any improvements to: approve the contractors or mechanics performing the alteration, approve all plans and specifications for the alteration; review the work of TENANT's architects, engineers, contractors or mechanics and control any construction or other activities being undertaken within the Building, with LANDLORD to be reimbursed by TENANT for any costs incurred in connection with such review and/or control; and order reasonable changes in such

alteration in instances in which materials or workmanship is defective or not in accordance with plans or specifications previously approved by LANDLORD. Such work shall be performed in a good and workmanlike manner at the sole expense of the TENANT. Any improvements or additions upon the Real Estate at the expiration of this Lease shall be deemed a part of the Leased Premises and shall be surrendered to the LANDLORD in good condition and repair, reasonable wear and tear and damage by fire or other casualty excepted: provided, however, that LANDLORD may, by written notice to TENANT, require TENANT, at its expense, to remove any or all alterations and repair any damage to the Leased Premises or the Building caused by such removal, prior to the expiration or termination of this Lease. The provisions of this paragraph shall not apply to such items as are ordinarily designated as trade fixtures, temporary partitions or similar installations which may, from time to time, be installed in the Leased Premises under the provisions of paragraph 12 hereof.

12. **TRADE FIXTURES AND SIGNS.**

- (a) The TENANT may, during the Term of this Lease, install such fixtures, equipment and appliances as may be reasonably necessary for the conduct of its business upon the Leased Premises. The TENANT may install, inscribe, paint or affix such signs, notices, pictures or advertisements with prior reasonable consent of LANDLORD, which consent shall not be unreasonably withheld or delayed.
- (b) Fixtures, equipment and appliances may be affixed to the Leased Premises, and the TENANT may remove the same at will, and shall remove the same at the termination of this Lease if so requested by the LANDLORD. All damages incurred to the Leased Premises as a result of any affixation or removal hereunder shall be promptly repaired by and at the sole cost and expense of the TENANT. Any fixtures, equipment or appliances referred to herein not removed as herein permitted or required shall, at the option of the LANDLORD, be deemed abandoned by the TENANT, to be disposed of by the LANDLORD as its sole property.

13. **MECHANIC OR CONSTRUCTION LIENS.** The TENANT shall not permit, create, incur or impose, or cause or suffer others to permit, create, incur or impose, any lien or other obligation against the Leased Premises or the LANDLORD by reason of any work performed or materials furnished by, to or for the account of the TENANT; and the TENANT agrees to hold the LANDLORD harmless of and from any and all claims or demands by any contractor, subcontractor, materialman, laborer or any other third person against the Leased Premises or the LANDLORD relating to or arising because of such work or materials. The TENANT may contest any lien or other obligation referred to herein by making the deposits or taking the action permitted for the contesting of taxes under the provisions of this Lease, or taking such other action permitted by law; provided that in any event, the LANDLORD is reasonably satisfied that the Leased Premises and the LANDLORD is secure from loss or damage.

14. **LANDLORD'S ENTRY FOR INSPECTION.** The LANDLORD, or its representatives, shall have the right upon 24 hours' prior notice to TENANT, and in coordination with the plant manager, at reasonable times during the business hours of the TENANT (except in the case of emergencies, in which case LANDLORD shall only be required to provide as much notice as is practicable under the circumstances), to enter upon the Leased Premises for the purpose of examining and inspecting the same and of showing the Real Estate to prospective TENANT's or purchasers; said inspection, however, shall not unreasonably interfere with the business of the TENANT.

15. **DAMAGE BY FIRE OR OTHER CASUALTY; FORCE MAJEURE.**

- (a) In the event the Leased Premises are damaged by fire or other casualty, TENANT shall

give prompt notice thereof to LANDLORD. The same shall be repaired as soon as reasonably possible by the TENANT at its sole cost and expense.

- (b) In the event that either party is unable to perform any of its obligations under this Lease, to enjoy any of its benefits, because of natural disaster or decrees of governmental bodies not the fault of the affected party (a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Lease shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Lease. Notwithstanding anything to the contrary set forth above, in no event shall a Force Majeure Event suspend or otherwise delay any obligation which can be cured with the payment of money.

16. **ASSIGNMENT AND SUBLETTING.** The TENANT shall not assign this Lease, nor sublet any portion of the Leased Premises, without the prior written consent of the LANDLORD, which consent shall be in the sole discretion of LANDLORD. No assignment or subleasing shall release the TENANT from any of its obligations hereunder. Notwithstanding any provision in this Lease to the contrary, TENANT may assign this Lease without LANDLORD'S consent (a) to any entity resulting from a consolidation, merger or reorganization by or with TENANT; (b) to any parent, subsidiary or affiliate of TENANT or any subsidiary or affiliate of the parent of TENANT; (c) to any purchaser of all or substantially all of the assets of TENANT; or (d) to any purchaser of all or substantially all of the outstanding voting capital stock of TENANT.

17. **REMEDIES.** All of the agreements of the TENANT contained herein shall be construed as conditions, and upon failure of the TENANT to pay any installment of rent promptly when the same becomes due and payable, or if any one or more of the following events of default continues for a period of thirty (30) days after written notice of such default given by the LANDLORD to the TENANT:

- (a) The making by TENANT of an assignment for the benefit of its creditors;
- (b) The operation or supervision of the business conducted in the Leased Premises by a creditors' committee, or by any one other than the TENANT;
- (c) The failure of TENANT to pay a judgment against it, resulting in the levying of a writ of execution or attachment on or against the Leased Premises;
- (d) If proceedings are instituted in a court of competent jurisdiction for the reorganization, liquidation or involuntary dissolution of TENANT, or for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the property of TENANT, and said proceedings are not dismissed and any receiver, trustee or liquidator appointed therein discharged within thirty (30) days after the institution of said proceedings;
- (e) The failure of TENANT to perform any other of its covenants under this Lease;

Upon the occurrence of an event of default by TENANT under this Lease, LANDLORD, at its option, without further notice or demand to TENANT, may, in addition to all other rights and remedies provided in this Lease, or available to LANDLORD at law or in equity:

1. Terminate this Lease and TENANT's right to possession of the Leased Premises and recover all damages to which LANDLORD is entitled under law, and in such event,

LANDLORD shall take reasonable measures to mitigate damages recoverable against TENANT.

2. Terminate TENANT's right to possession of the Leased Premises without terminating this Lease, in which event LANDLORD shall, if and to the extent required by law, take reasonable measures to mitigate the damages recoverable against TENANT.

TENANT will, at the expiration or termination of this Lease, yield up possession to LANDLORD, and failing so to do, at LANDLORD'S option, will pay liquidated damages for each day possession is withheld an amount equal to double the amount of the daily minimum rent, computed on a thirty-day month basis; provided, however, that LANDLORD'S right to recover such liquidated damages shall not preclude LANDLORD from recovering any greater amount of damages sustained by it or as otherwise allowed by law.

No receipt of money by LANDLORD from TENANT after the termination of this Lease, or after the service of any notice or after the commencement of any suit, or after final judgment for possession of the Leased Premises, shall reinstate, continue or extend the Term of this Lease.

All rights and remedies of the LANDLORD herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law or equity, and such rights and remedies may be exercised and enforced concurrently and whenever and as often as the occasion therefor arises. The failure or forbearance on the part of the LANDLORD to enforce any of its rights or remedies in connection with any default shall not be deemed a waiver of such default, nor a consent to any continuation thereof, nor a waiver of the same default at any subsequent date. Any action taken by the LANDLORD under the provisions of this Lease, or to enforce the provisions of this Lease, or to declare a termination of the TENANT'S interest under this Lease, or to repossess itself of the Leased Premises (whether through the medium of legal proceedings instituted for that purpose or otherwise), shall not, in any event, release or relieve the TENANT from its continuing obligations hereunder, including, without limitation, its continuing obligation to make all payments herein provided.

18. **DISPUTES; ENFORCEMENT COSTS.**

- (a) Any controversy or claim arising out of or relating to this Lease, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration proceedings shall take place in Evansville, Indiana, or any other location agreed to by the parties.
- (b) In the event that either party hereto enforces its rights hereunder through arbitration, the prevailing party shall be entitled to recover, in addition to whatever other relief is granted, its reasonable attorneys' fees incurred in connection with either the prosecution or defense of arbitration proceedings.

19. **HOLDING OVER BY TENANT.** If the TENANT holds over or remains in possession or occupancy of the Leased Premises at the expiration of this Lease, such holding over or continued possession or occupancy, if rent is paid by the TENANT and accepted by the LANDLORD for or during the period of time it so holds over or remains in possession or occupancy, shall create only a tenancy from month-to-month at the last monthly Rental and upon the same terms and conditions herein contained (other than the length of term), which may at any time be terminated by either the LANDLORD or the TENANT giving to the other thirty (30) days' written notice.

20. **SURRENDER AT TERMINATION.** At the termination of this Lease, for any reason, the TENANT shall quietly and peaceably surrender possession of the Leased Premises and any improvements located thereon to the LANDLORD, maintained as herein provided and free of any and all claims thereto.

21. **PAYMENTS TO BE ADDITIONAL RENT.** All payments to be made by the TENANT hereunder, whether or not designated as rent, shall be deemed rent, so that in default of payment when due, the LANDLORD shall be entitled to all of the remedies available at law or equity, or under this Lease, for the non-payment of rent. In the event of a breach of the obligations of TENANT hereunder, with the exception of the payment of base rent, LANDLORD shall also have the right to cure such breach for the account and at the expense of TENANT. Any money expended or costs or expenses incurred in curing the breach or default for the account of TENANT, together with fifteen percent (15%) additional overhead charge, shall be reimbursed to LANDLORD within ten (10) days of rendition of a bill or statement to TENANT for such costs, and LANDLORD shall have the same remedies for nonpayment thereof as for the nonpayment of Rental.

22. **SUBORDINATION.** The LANDLORD reserves the right in it, its successors and assigns, to make, execute and deliver, from time to time, mortgages covering the Leased Premises; provided, however, anything to the contrary herein notwithstanding, every such mortgagee shall, upon request, deliver to the TENANT a document in form and content reasonably satisfactory to TENANT, recognizing the validity of this Lease in the event of a foreclosure. The TENANT shall make, execute and deliver whatever instruments may be required to effect the subordination of its interests to any existing mortgages and security interests covering the Leased Premises, including furnishings and other personal property, or any extensions or renewals thereof, or to any new mortgages and security interests which may be executed or placed thereon from time to time. In the event any mortgagee shall elect to have this Lease superior to the lien of its mortgage, then, upon notice to the TENANT of such election, this Lease shall thereupon be deemed prior to and superior to the lien of any such mortgage.

23. **NOTICES.** Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by registered or certified mail to the respective addresses set forth below:

TO LANDLORD:           ARDAGH GLASS INC.  
                                  Attn: Vice President, Purchasing and Distribution  
                                  1509 South Macedonia Avenue  
                                  Muncie, IN 47302-3664

TO TENANT:             J.A. Jack & Sons, Inc  
                                  Attn: Sharon Jack, President  
                                  5427 Ohio Ave South, P.O. Box 80786  
                                  Seattle, WA 98108

Either party may, by like notice at any time, and from time to time, designate a different address to which notices shall be sent. Notices given in accordance with these provisions shall be deemed received when mailed.

24. **GENERAL.** No waiver of any default of either party hereunder shall be implied from any omission by the other party to take any action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers of any covenant, term or

condition of this Lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by either party to or of any act by the other party requiring consent or approval shall not be deemed to waive or render unnecessary consent or approval to or of any subsequent similar act by the other party. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one TENANT and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. The laws of the state of Indiana shall govern the validity, performance and enforcement of this Lease. The headings of the several articles contained herein are for convenience only and do not define, limit or construe the contents of such articles.

25. **SUCCESSORS AND ASSIGNS.** Except as otherwise herein provided, this Lease shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

26. **TENANT'S AUTHORITY.** The undersigned persons executing this Lease for and on behalf of the TENANT represent and certify that they are the duly elected officers of the TENANT and have been fully empowered by proper resolution of the Board of Directors of TENANT to make, execute and deliver this Lease; that the TENANT has full corporate capacity to acquire leaseholds and enter into lease agreements; and that all necessary action for the making of this Lease has been taken and done.

27. **SUBJECT TO MASTER LEASE.** Notwithstanding anything else herein contained, the TENANT and LANDLORD understand that this is a sublease of the Leased Premises. LANDLORD represents and warrants that no rights are granted the TENANT hereunder which are not available for subletting by the LANDLORD pursuant to the terms and provisions of the Master Lease. All terms, conditions and provisions of the Master Lease are hereby incorporated into this Lease by reference, except as the same may expressly be modified in accordance with this Lease. TENANT agrees that, as a condition of this Lease, TENANT shall be responsible to fulfill all of the obligations and duties of LANDLORD under the Master Lease with respect to the Leased Premises, and Landlord shall remain responsible to the County under the Master Lease for all such obligations and duties for the remainder of the Real Estate.

[Remainder of Page Intentionally Left Blank]

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

"LANDLORD"

SAINT-GOBAIN CONTAINERS, INC.

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

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

"TENANT"

J. A. JACK & SONS, Inc.

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

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

Exhibit A-the following described real estate situated in King County, Washington:

Beginning on the East-West Centerline of Section 19, Township 24 North, Range 4 East W.M., King County, Washington, at its intersection with the West margin of Ohio Street as established by condemnation ordinance No. 46352; said point being 931.32 feet S. 89 degrees, 40' 8" West from East one-quarter (1/4) corner of said section 19, thence S. 5 degrees 40' 9" West along said margin of difference of 48.28 feet to the true point of beginning; thence continuing S. 5 degrees 40' 9" West a distance of 204.00 feet; thence N. 79 degrees 35' 39" West a distance of 21.13 feet; thence S. 70 degrees 23' 37" West a distance of 354.60 feet; to the Easterly margin of Duwamish Waterway; thence N. 19 degrees 36' 23" West along said margin a distance of 439.61feet; thence S. 79 degrees 35' 39" East a distance of 729.23 feet to the true point of beginning, containing 4.00 acres more or less by this reference incorporated herein, including all buildings and improvements located thereon and including full and exclusive access to and use of the waterway adjacent thereto, hereinafter referred to as the "premises".