



COMMUNITY DEVELOPMENT COMMITTEE & COMMITTEE OF THE WHOLE HYBRID MEETING

Monday, July 17, 2023, at 6:00 PM

Snoqualmie City Hall, 38624 SE River Street & Zoom

COMMITTEE MEMBERS

Chair: Jolyon Johnson

Councilmembers: Cara Christensen and James Mayhew

This meeting will be conducted in person and remotely using teleconferencing technology provided by Zoom.

Join by Telephone at 6:00 PM: To listen to the meeting via telephone, please call **253.215.8782** and enter Webinar ID **860 6728 7531** and Password **1730040121** if prompted.

Press *9 to raise your hand to speak. Raising your hand signals the meeting moderator that you have a comment.

Press *6 to mute and unmute.

Join by Internet at 6:00 PM: To watch the meeting over the internet via your computer, follow these steps:

- 1) Click this [link](#)
- 2) If the Zoom app is not installed on your computer, you will be prompted to download it.
- 3) If prompted for Webinar ID, enter **860 6728 7531**; Enter Password **1730040121**
- 4) Please confirm that your audio works prior to participating.

CALL TO ORDER & ROLL CALL

AGENDA APPROVAL

PUBLIC COMMENTS

MINUTES

1. Approval of the minutes dated June 20, 2023

AGENDA BILLS

2. AB23-097 Pacific West Rail Model Train Museum

DISCUSSION ITEMS

3. Multifamily Tax Exemption Update

ADJOURNMENT

UPCOMING ITEMS

(The following items reference either upcoming projects or issues pertaining to matters of the Community Development Council Committee. There will be no discussion of these items unless there is a change in status.)



COMMUNITY DEVELOPMENT COMMITTEE MINUTES REGULAR HYBRID MEETING

June 20, 2023

This meeting was conducted as a hybrid in-person and remote meeting; the in-person option was in the Council Chambers at Snoqualmie City Hall, and the remote participation option was using teleconferencing technology provided by Zoom.

CALL TO ORDER & ROLL CALL: Chair Johnson called the meeting to order at 6:00 PM

Committee Members:

Chair Jo Johnson and Councilmember Cara Christensen were present. Councilmember Mayhew was absent.

Mayor Ross was present as well.

City Staff:

Mike Chambless, Interim City Administrator; Emily Arteché, Community Development Director.

AGENDA APPROVAL

The agenda was approved without objection.

PUBLIC COMMENTS

No comments.

MINUTES

1. Committee approved the minutes for May 1, 2023.

AGENDA BILLS

2. Accessory Dwelling Unit Regulation Update

Staff identified areas where the municipal code is inconsistent with new state legislation, HB1337, regarding Accessory Dwelling Units (ADU). Staff emphasized the part of legislation that allows for two ADUs per lot and primary units no longer must be owner occupied. Council discussed definitions of alley and ADU. The impacts of the new legislation on the floodway and floodplain were elaborated on by staff.

Council requested that Planning Commission begin to consider updating the city's ADU regulations.

DISCUSSION ITEMS

3. None.

ADJOURNMENT

Chair Johnson adjourned the meeting at 6:19 PM

CITY OF SNOQUALMIE

Minutes prepared by Ashley Wragge, Planning Technician

Recorded meeting audio is available on the City website after the meeting.

Minutes approved at the _____ Community Development Meeting.



BUSINESS OF THE CITY COUNCIL CITY OF SNOQUALMIE

AB23-097
July 24, 2023
Discussion

Item 2.

AGENDA BILL INFORMATION

TITLE:	AB23-097: Model Train Presentation	<input checked="" type="checkbox"/> Discussion Only
PROPOSED ACTION:	Approval of Development Agreement and Ground Lease Agreement for Pacific West Rail Model Train Museum, a proposed "public use" parcel Gateway Park.	<input type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

REVIEW:	Department Director	Emily Arteche	7/13/2023
	Finance	Drew Bouta	7/13/2023
	Legal	David Linehan	Click or tap to enter a date.
	City Administrator	Mike Chambless	Click or tap to enter a date.

DEPARTMENT:	Administration		
	STAFF: Mike Chambless		
	COMMITTEE: Community Development		COMMITTEE DATE: July 17, 2023
	EXHIBITS: 1. Draft Development Agreement 2. Draft Ground Lease		

AMOUNT OF EXPENDITURE	\$ 0
AMOUNT BUDGETED	\$ 0
APPROPRIATION REQUESTED	\$ 0

SUMMARY

INTRODUCTION

The proposed Pacific West Rail Model Train Museum would be located on City owned property commonly known as Gateway Park at the intersection of Railroad Avenue SE and Snoqualmie Parkway (7001 Railroad Avenue SE, parcel no. 3024089017). The attached exhibits, Development Agreement, and Lease Agreement allow the project to move forward.

LEGISLATIVE HISTORY

In December 2022 under AB22-132 the Council authorized the Mayor to approve a Memorandum of Understanding (MOU), to develop a park/museum on City property which will showcase a model train. The MOU required the City and the proponents of the museum to prepare a development agreement and lease agreement.

BACKGROUND

On September 12, 2022, Peter Hambling presented his vision for an interpretive model train museum that will promote a cultural, historical, educational, and entertaining tourism experience for the City of Snoqualmie. The model train is a replica of Northwest Trunk Line. The project involves the construct a 20,000 square of building with parking to feature the model train along with community event space, a gift shop and other interactive features as well as outdoor recreational park with picnic benches and other improvements on City property.

ANALYSIS

The development agreement and lease agreement do not require the city or the proponent to exchange money. The term of the lease is set for 50-years with a stipulation that after the 50 years the improvements would revert to the city. No permit fees will be charged to the proponents. The land would be provided to the proponents, "as is". The proponent must raise adequate funds to construct the museum/ park within 5 years.

BUDGET IMPACTS

This agenda bill does not require the City to spend any funds.

NEXT STEPS

The agenda bill and exhibits will be presented to the Finance and Administration Committee on July 18, 2023, and the City Council on July 24, 2023.

PROPOSED ACTION

Discussion only.

PACIFICA LAW GROUP DRAFT of July 6, 2023 FOR
DISCUSSION PURPOSES ONLY. SUBJECT TO CONTINUING
CLIENT REVIEW
AND, EVENTUALLY, PWRF BOARD APPROVAL.

GROUND LEASE

by and between

CITY OF SNOQUALMIE,
a Washington municipal corporation
(as Landlord)

and

PACIFIC WEST RAIL FOUNDATION,
a Washington nonprofit corporation
(as Tenant)

_____, 2023

GROUND LEASE

THIS GROUND LEASE (this “Lease”) is made and entered into as of _____, 2023, by and between the **City of Snoqualmie**, a Washington municipal corporation (the “Landlord”) and **Pacific West Rail Foundation**, a Washington nonprofit corporation (the “Tenant”).

RECITALS

A. WHEREAS, Landlord is the owner of that certain unimproved parcel of real property located in the City of Snoqualmie, King County, Washington legally described on Exhibit A hereto, together with all appurtenances, rights and privileges now belonging or appertaining thereto (the “Land”); and

B. WHEREAS, the Pacific West Rail (“PWR”) is a model railroad layout that depicts fourteen different locations across the western United States within the timeframe of the early 1900’s to the late 1960s. Its layout was created by the country’s preeminent model rail designer and reflects actual locations accurately modeled with the highest degree of realism, with sound and lighting for different times of day and night and topography finished with materials from each of the locations. The collection includes 100 engines, 125 passenger cars and 550 freight cars running on one half-mile of tracks though miniature dioramas set in these recognizable locations throughout the West. Some [] major railroad lines are represented within the areas that they serve or served. The system is controlled by a command center using highly sophisticated software that runs the trains autonomously for hours with programming. Three full-time staff are employed to maintain and operate the model, and

C. WHEREAS, PWR’s founder and original owner, local resident and entrepreneur Peter Hambling (“Hambling”), always has intended to share the PWR with the public in a suitable venue in an appropriate location; and

D. WHEREAS, Hambling has formed Tenant to which he intends to donate the PWR in its entirety pursuant to the Gift Agreement (defined below); and

E. WHEREAS, the Landlord enjoys a rich railroad history and also is the home to the legacy Snoqualmie Valley Railroad (“SVR”); and

F. WHEREAS, the City has expressed a keen interest in providing land for the construction of PWRF’s museum adjacent to tracks of the SVR, enabling real-time comparison between the actual and the model; and

G. WHEREAS, Tenant is willing to construct a railroad museum, to be known as the Pacific West Rail Museum (“Museum”) pursuant to the Development Agreement (defined below) featuring the PWR and to operate the Museum on the Land pursuant to the terms and conditions set forth in this Lease on the express condition that Landlord enter into a long-term lease of the Land on the terms and conditions set forth herein; and

H. WHEREAS, Landlord believes it serves an important public function and provides a substantial public benefit to have a vibrant and successful Museum on the Land and is willing to enter into a long-term lease of the Land on the express condition that Tenant operates the Museum on the Land during the Term of this Lease on the terms and conditions set forth below; and

I. WHEREAS, Landlord and Tenant are parties to that certain Development Agreement dated of even date herewith (as hereafter amended, the “Development Agreement”), pursuant to which Tenant shall construct the Museum on the Land; and

J. WHEREAS, The Land and the Improvements (defined below), together with any and all buildings, structures, systems, facilities and fixtures currently located and to be located within the Land pursuant to this Lease, as well as all easements and other appurtenant rights, are referred to collectively as the “Premises”; and

K. WHEREAS, The parties have agreed that this Lease will facilitate the establishment and operation

of the Museum. Thus the parties are entering into this Lease for the Land on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

AGREEMENT

ARTICLE 1. EFFECTIVE DATE; INCORPORATION OF DOCUMENTS; DEFINED TERMS.

Section 1.1 Effective Date. This Lease is conditioned upon and will be effective upon the date when the following conditions are satisfied: (a) the City Council of Landlord ("City Council") has authorized this Lease; (b) this Lease is executed by authorized representatives of Landlord and Tenant, (c) the Development Agreement is executed by authorized representatives of Landlord and Tenant, and (d) the Gift Agreement (defined below) is executed by all parties thereto.

Section 1.2 Incorporation of Documents and Materials. The following documents and materials are attached as exhibits to this Lease and by this reference are incorporated into this Lease:

Exhibit A:	Land
Exhibit B:	Permitted Exceptions
Exhibit C:	Public Benefits

Section 1.3 Defined Terms. The above Recitals are hereby incorporated by this reference. In addition to the defined terms set forth above in the Recitals to this Lease, the following defined terms used herein shall have the meanings specified below:

"Additional Rent" has the meaning set forth in Section 3.2.

"Alterations" means any additional improvements, alterations, remodeling, or reconstruction of or to the Improvements by Tenant.

"Affiliate" means (a) the legal representative, successor or assignee of, or any trustee of a trust for the benefit of, Tenant; (b) any entity of which a majority of the voting or economic interest is owned, directly or indirectly, by Tenant or one or more of the persons referred to in the preceding clause; (c) any entity in which Tenant or a person referred to in the preceding clauses is a controlling stockholder, controlling partner or controlling member (directly or indirectly); (d) any person or entity which is an officer, director, trustee, controlling stockholder, controlling partner or controlling member (directly or indirectly) of Tenant or of any person or entity referred to in the preceding clauses; or (e) any person or entity directly or indirectly controlling, controlled by or under common control with, Tenant or any person or entity referred to in any of the preceding clauses. For purposes of this definition, "control" means owning directly or indirectly fifty percent (50%) or more of the beneficial interest in such entity or the direct or indirect power to control the management policies of such person or entity, whether through ownership, by contract or otherwise.

"Base Rent" has the meaning set forth in Section 3.2.

"City Council" has the meaning set forth in the Recitals

"City Events" has the meaning set forth in Exhibit C.

"Claims" has the meaning set forth in Section 4.1.

"Closing" has the meaning set forth in Section 14.20.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law.

“Commencement Date” means the date that construction of the Improvements commences after delivery of the Notice to Proceed (as defined in the Development Agreement) pursuant to the Development Agreement.

“Development Agreement” has the meaning set forth in the Recitals.

“Environmental Laws” means the Hazardous Materials Transportation Act, 49 U.S.C. § 1501 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 9601 et seq., and/or the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., and/or the Occupational Safety and Health Act, the Clean Air Act, the Clean Water Act, 33 U.S.C. § 1251, et seq., the Safe Drinking Water Control Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992, each as amended from time to time and any other federal, state, or local statute, code, ordinance, rule, regulation, permit, consent, approval, license, judgment, order, writ, judicial decision, common law rule, decree, agency interpretation, injunction or other authorization or requirement whenever promulgated, issued, or modified, including the requirement to register underground storage tanks, relating to:

- (i) emissions, discharges, spills, releases, or threatened release of pollutants, contaminants, Hazardous Substances (as hereinafter defined), materials containing Hazardous Substances, or hazardous or toxic materials or wastes into ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, wetlands, septic systems or onto land; or
- (ii) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment of Hazardous Substances, materials containing Hazardous Substances or hazardous and/or toxic wastes, material, products, or by-products (or of equipment or apparatus containing Hazardous Substances).

“Event of Default” has the meaning set forth in Section 13.1.

“Force Majeure” means any (i) strikes, lockouts, or labor disputes; (ii) failure of power or other utilities; (iii) inability to obtain labor or materials or reasonable substitutes therefor; (iv) war, governmental action, court order, condemnation, civil unrest, riot, fire or other casualty; (v) extreme or unusual weather conditions, acts of God or unforeseen soil conditions; (vi) governmental orders or actions in connection to public health emergencies including, without limitation, pandemics, or (vii) other conditions similar to those enumerated in this Section beyond the reasonable control of the party obligated to perform (except for financial inability).

“Gift Agreement” means that certain Contingent Gift Agreement by and among Tenant, Hambling, and Lori Hambling dated on or about the date hereof and pursuant to which Tenant will receive the PWR.

“Hazardous Substance” means (i) hazardous materials, hazardous wastes, and hazardous substances as those terms are defined under any applicable Environmental Laws, (ii) petroleum and petroleum products including crude oil and any fractions thereof, (iii) natural gas, synthetic gas, and any mixtures thereof, (iv) asbestos and/or any material which contains any hydrated mineral silicate, including but not limited to chrysotile, amosite, crocidolite, tremolite, anthophyllite, and/or actinolite, whether friable or non-friable, (v) polychlorinated biphenyls (“PCBs”), or PCB-containing materials or fluids, (vi) radon, (vii) lead-based paint, (viii) underground storage tanks; (ix) any other hazardous, radioactive, toxic, or noxious substance, materials, pollutant, or solid, liquid or gaseous waste, and (x) any substance with respect to which a federal, state or local agency requires environmental investigation, monitoring, or remediation.

“Improvements” means the Museum and all Alterations, together with any and all buildings, structures, systems, facilities and fixtures to be located within the Land pursuant to this Lease.

“Land” has the meaning set forth in the Recitals.

“Lease” has the meaning set forth in the introductory paragraph.

“Lease Payment” has the meaning set forth in Section 3.2.

“Lease Year” means, in the case of the first lease year, the period from the Commencement Date through December 31st of the year which includes the Commencement Date; thereafter, each successive twelve-calendar-month period following the expiration of the first lease year of the Term; except that in the event of the termination of this Lease on any day other than the last day of the last Lease Year then such Lease Year shall be the period commencing with the day following the end of the preceding Lease Year through and including the date of termination.

“Leasehold Interest” means the interest of Tenant as owner of the Improvements and as tenant in the Land granted by this Lease.

“Leasehold Mortgage” has the meaning set forth in Section 14.1.

“Legal Requirements” means all laws, statutes, ordinances, orders, rules, regulations and requirements of all federal, state and local governmental or quasi-governmental entities, subdivisions, agencies, authorities or instrumentalities and the appropriate officers, departments, and boards thereof applicable to the Premises.

“Major Destruction” has the meaning set forth in Section 8.1.

“Museum” has the meaning set forth in the Recitals.

“Museum Property” means the PWR and other any fixtures, display cases, exhibits, art, artifacts, or the Museum collections located in or used in connection with the Museum.

“New Lease” has the meaning set forth in Section 14.8.

“New Lease Notice” has the meaning set forth in Section 14.8.

“Operating Expenses” means all expenses for maintaining, operating and repairing the Premises, including, but not limited to, management fees and expenses; any applicable insurance premiums, covering hazards, casualties, liability, and potential losses; license, permit, inspection and occupancy fees; Tenant's accountant's fees and legal fees; materials and supplies, including charges for telephone, fax, computers, postage and supplies; repairs, maintenance and replacements respecting the Premises, including costs of materials, supplies, tools and equipment used in connection therewith; costs incurred in connection with the operation, maintenance, repair, replacing, inspection and servicing (including maintenance contracts) of electrical, plumbing, heating, air conditioning and mechanical equipment and the cost of materials, supplies, tools and equipment used in connection therewith; cost of services including heat, air conditioning, electricity, gas, water and sewer, common area expenses, and other utilities; and all other expenses and costs necessary or desirable to be incurred for the purpose of operating and maintaining the Premises, whether or not similar to the foregoing.

“Opening Date” has the meaning set forth in Section 3.3.

“Operating Hours” means at least [Wednesday – Monday, 10:00am- 6:00pm, excepting *[describe desired holiday closures]*].

“Permitted Exceptions” has the meaning set forth in Section 2.1.

“Permitted Transfer” has the meaning set forth in Section 12.2.

“Person” means an individual or entity, including, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, cooperative, or association and the

heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so requires.

“Premises” has the meaning set forth in the Recitals.

“Public Benefits” has the meanings set forth in Section 3.4.

“PWR” means has the meaning set forth in the Recitals.

“Taxes” has the meaning set forth in Section 3.8.

“Tax Exemption” has the meaning set forth in Section 3.8.

“Term” has the meaning set forth in Section 2.2.

“Transfer” has the meaning set forth in Section 12.1.

“Utility Charges” has the meaning set forth in Section 3.9.

ARTICLE 2. PREMISES, TERM AND DELIVERY

Section 2.1 Premises. For and in consideration of Tenant’s covenant to pay the rental and other sums for which provision is made in this Lease, and the performance of the other obligations of Tenant hereunder, Landlord leases to Tenant and Tenant leases from Landlord, the Land, together with all rights of Landlord, if any, appurtenant to the Land and all rights in and to the streets adjacent to the Land (excluding any reversionary rights in and to streets or rights-of-way which may subsequently be vacated or abandoned), and together with all existing rights of air, light and view, and all of Landlord’s interest in all intangible personal property now or hereafter owned by Landlord or in which Landlord otherwise has an interest and used in connection with or related to the Land or any part thereof, including, without limitation, claims (other than as related to occurrences prior to the date hereof), choses in action, licenses, permits, warranties, guaranties, approvals (governmental or otherwise), development rights, and certificates of occupancy, subject to the matters set forth on Exhibit B attached hereto and incorporated herein (“Permitted Exceptions”). Not included herein are any mineral rights, water rights or any other right to excavate or withdraw minerals, gas, oil or other material except as specifically granted herein.

Section 2.2 Term. This Lease shall commence upon the Commencement Date and expire on the date that is 600 full calendar months following the Commencement Date (the “Term”), unless sooner terminated as provided for herein.

Section 2.3 Termination of Development Agreement. The parties acknowledge and agree that the Development Agreement contains certain termination rights and that in the event the Development Agreement is terminated this Agreement shall terminate concurrently.

Section 2.4 Delivery. Landlord shall deliver possession of the Premises to Tenant on the Commencement Date, in its as-is condition. Except as specifically required in the Development Agreement or in this Lease, Landlord has no obligation to contribute to the cost of the Premises, nor shall Landlord be obligated to perform any construction or make any improvements in connection with the Premises, except as may be expressly provided in this Lease.

Section 2.5 Quiet Enjoyment. Landlord covenants and warrants that Tenant, upon payment of all sums herein provided and upon performance and observance of all of its covenants herein contained, shall peaceably and quietly have, hold, occupy, use and enjoy and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Premises during the Term, free from hindrance by Landlord or any person claiming by, through or under Landlord, and subject only to the provisions of all applicable Legal Requirements.

ARTICLE 3. CONSIDERATION; PUBLIC BENEFIT AND EXPENSE ALLOCATION

Section 3.1 Consideration. During the Term, as consideration for this Lease, Tenant shall at its expense (i) undertake construction of the Museum and the construction and installation of Museum Property, (ii) maintain and operate the Museum as open to the public and in a condition suitable for Museum purposes, and (iii) permit the City Events, all as further provided below. The parties agree that, other than the Base Rent, there is no monetary consideration or monetary rent that is owed by Tenant to Landlord hereunder. Rather, the consideration for this Lease consists of the construction, maintenance, and operation of the Premises at the expense of Tenant as provided herein and the duties and obligations to be undertaken by Tenant set forth in this Section 3.1 and as further detailed in Sections 3.2 through 3.10 below.

Section 3.2 Base Rent; Additional Rent. Commencing on the Commencement Date, Tenant shall pay an annual base rent (hereinafter referred to as “Base Rent”) to Landlord in the amount of One Dollar (\$1.00) per year, payable in advance on the first day of the Lease Year without any prior demand and without any deduction or offset whatsoever. During the Term, all charges, costs and expenses due and owing shall constitute additional rent hereunder (the “Additional Rent”), even though not necessarily payable to Landlord, and upon the failure of Tenant to pay any of such Additional Rent in accordance with the terms of this Lease, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to make any other Lease Payment (subject to Tenant's right to cure such failure upon receipt of written notice from Landlord as set forth in Section 13.1(a) of this Lease).

Base Rent and all Additional Rent and other amounts becoming due from Tenant to Landlord hereunder (hereinafter collectively referred to as the “Lease Payment”) shall be paid in lawful money of the United States to Landlord at the office of Landlord, or as otherwise designated from time to time by written notice from Landlord to Tenant. Lease Payments not paid within ten (10) calendar days from the date when due shall bear interest from the date due until paid at the annual rate of eight percent (8%) per annum.

Section 3.3 Construction; Repairs. Tenant shall construct the Museum as provided in the Development Agreement. From and after the date the Museum is placed in service, the relocation of the PWR to the Museum, and the opening of the Museum to the public (“Opening Date”), Tenant shall ensure that the Museum Property is maintained in good operating condition and state of repair and in a condition suitable for the Public Benefits to be provided, subject to the terms and conditions of this Lease. During the Term, except as otherwise provided in this Lease, Tenant shall, at its own cost and expense and without any cost or expense to Landlord, keep and maintain the Premises and all Improvements and appurtenant facilities, including without limitation the structural components, roof, fixtures, and building systems of the Improvements, grounds, groundwater, stormwater facilities, soil, parking and landscaped areas, in a first-class condition. Tenant shall promptly make all repairs, replacements and Alterations (whether structural or nonstructural, foreseen or unforeseen, or ordinary or extraordinary) necessary to maintain the Premises and the Improvements in a first-class condition and in compliance with all Legal Requirements and to avoid any structural damage or injury to the Premises, the Improvements, or any persons in or around the Premises. Tenant shall be responsible for obtaining permits necessary for any repairs, replacements, or Alterations, including the costs of any permit review by City consultants.

Section 3.4 Public Benefits. A central element of this Lease is the identification of and Tenant's commitment to the ongoing provision of certain public benefits as described herein. In fulfillment of Tenant's commitment, from and after the Opening Date, Tenant shall, subject to casualty, Force Majeure and any renovations, operate or cause to be operated the Museum and shall perform or ensure the provision of certain “Public Benefits” identified in Exhibit C during the Term of this Lease, all at no cost to Landlord.

Section 3.5 Museum Operations. As part of the Public Benefits, the Museum will be open to the public only during regular hours of operation as determined by Tenant but consistent with the requirements of Exhibit C. Tenant may restrict access to the Museum as necessary for security purposes. Tenant may close portions of the Museum to the public for offices, ancillary services, installation or repairs, as Tenant deems necessary or desirable from time to time. Tenant may use any portion of the Museum for its purposes when the Museum is not open to the general public. Nothing herein shall limit Tenant's ability to regulate use of the café (if any), restrooms, or other facilities consistent with Museum security needs or to address unruly or inappropriate behavior.

Section 3.6 Intentionally Deleted.

Section 3.7 Operating Expenses Generally. Throughout the Term, either pursuant to this Lease or separately, Tenant covenants and agrees to pay all Taxes (as defined below) (if any), Utility Charges, liens for work provided to or on behalf of Tenant, insurance, and all other Operating Expenses, if any, which are due and payable during the Term hereof. Tenant will furnish to Landlord, upon request, a proof of payment of all items referred to in this Section 3.7, including, without limitation, proof of payment of any Taxes and proof of payment of insurance premiums promptly after demand therefor.

Section 3.8 Taxes. Throughout the Term, Tenant shall pay or cause to be paid, directly to the authority charged with the collection thereof, any Taxes, personal property taxes, betterment assessments, and all other impositions, ordinary and extraordinary, general and special, of every kind and nature whatsoever, as well as any payments in lieu of taxes, which may be levied, assessed, charged or imposed during the Term of this Lease (prorated for any tax or installment period partially included in the Term) upon the Premises or any part thereof, or upon any improvements at any time situated thereon (such taxes, payments and installments of assessments being hereinafter together referred to as "Taxes"), all such payments to be made not less than five (5) calendar days prior to the last date on which the same may be paid without interest or penalty. Landlord agrees to send promptly to Tenant copies of any notices in respect of any such Taxes.

Notwithstanding the foregoing, Landlord acknowledges and agrees that Tenant intends to seek an exemption for the Premises (or as much thereof as possible) from all Taxes (the "Tax Exemption") and Landlord shall reasonably cooperate with Tenant's pursuit of the Tax Exemption.

Section 3.9 Utilities. Throughout the Term, Tenant shall pay or cause to be paid all charges for water, gas, sewer, electricity, light, heat or power, telephone or other service used, rendered or supplied to Tenant in connection with the Premises ("Utility Charges") and shall not contract for the same in Landlord's name without the written consent of Landlord.

Section 3.10 Other. Tenant covenants to pay and discharge, when the same shall become due, all other amounts, liabilities and obligations which Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added for nonpayment or late payment thereof and which payment Tenant has failed to make when due.

ARTICLE 4. INDEMNITY, INSURANCE AND LIMITATION OF LIABILITY

Section 4.1 Indemnification.

To the fullest extent permitted by law, Tenant agrees to defend, indemnify and hold harmless Landlord, its officers, agents, employees and elected officials from and against any and all liabilities, losses, damages, causes of action, suits, claims, demands, judgments, costs and expenses of any kind or any nature whatsoever (collectively, "Claims") (including, without limitation, remediation costs, environmental assessment costs, governmental compliance costs, and reasonable expert's and attorneys' fees and expenses), known or unknown, foreseen or unforeseen, which may at any time be imposed upon, incurred by, or asserted or awarded against Landlord, its employees, agents, officials, members, or other persons serving in an advisory capacity to any of them or against the Premises or any portion thereof, arising from: (i) any injury to or death of or claim of injury to or death of any person or any damage to or loss of or claim of damage to or loss of property on the Premises, in each case arising out of the use, possession, ownership, condition or occupation of the Premises or any part thereof (but not of any other property) from and after the Commencement Date by Tenant, its employees, agents, or members or invitees of any of them, or (ii) violation by Tenant, its employees, agents, or members, or invitees of any of them, of any Environmental Law affecting the Premises or any part thereof or the ownership, occupancy or use thereof from and after the Commencement Date; provided, however, that notwithstanding the foregoing, Tenant shall not have any liability to Landlord for any loss or damage arising out of acts of Landlord or persons under the control or direction of Landlord or out of any release or threat of release of Hazardous Substances for which Landlord is responsible under this Lease. Landlord shall give Tenant prompt and timely written notice of any claim made or suit instituted against it or any other party of which it has knowledge, relating to any matter which in any way may result in indemnification pursuant to this Section 4.1. The obligations of Tenant under this Section 4.1 shall survive the

Term. The foregoing indemnification shall not be construed as creating any rights in or conferring any rights to any third parties.

To the fullest extent permitted by law and subject to the waiver of recovery and subrogation in Section 4.5, Landlord shall indemnify, pay the defense costs of and hold harmless Tenant and its officers, directors, trustees, agents, employees, contractors and licensees from Claims for damages, costs, personal injury, death or for loss or damage to property that arise out of or relate to the negligence or willful misconduct of Landlord in connection with the Premises or this Lease. This indemnity does not apply: (i) to Claims to the extent they are caused by the acts or omissions or misconduct of Tenant, including its officers, directors, trustees, agents, employees, contractors, affiliates and licensees; or (ii) to damages, claims, suits, actions or liabilities waived under Section 4.6.

Landlord and Tenant agree that the foregoing indemnities specifically include, without limitation, Claims brought by either party's employees against the other party. THE FOREGOING INDEMNITIES ARE EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF EACH PARTY'S IMMUNITY UNDER WASHINGTON'S INDUSTRIAL INSURANCE ACT, RCW TITLE 51, TO THE EXTENT NECESSARY TO PROVIDE THE OTHER PARTY OR PARTIES WITH A FULL AND COMPLETE INDEMNITY FROM CLAIMS MADE BY EACH PARTY AND ITS EMPLOYEES, TO THE EXTENT OF THEIR NEGLIGENCE. LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

Section 4.2 Tenant's Liability Insurance. Tenant, at its expense, shall purchase and keep in force during the Term Commercial General Liability insurance with limits of not less than Five Million and 00/100 Dollars (\$5,000,000.00) combined single limit each occurrence, covering bodily injury to persons, including death, and damage to property. Such insurance shall provide coverage for Tenant's premises and operations and contractual liability assumed in Section 4.1. Tenant shall cause its Commercial General Liability insurer to name Landlord as an additional insured under such insurance and such policy shall contain a severability of interests provision, a provision that the insurance provided to Landlord as an additional insured shall be primary to and not contributory with insurance maintained by Landlord, and a provision that an act or omission of one of the insureds or additional insureds that would void or otherwise reduce coverage shall not reduce or void the coverage as to the other named and additional insureds.

Section 4.3 Premises Property Insurance. Throughout the Term of this Lease, Tenant shall maintain a standard form property insurance policy insuring the Premises against all risks of physical loss or damage (including earthquake and flood). The insurance required under this Section 4.3 shall provide coverage in an amount not less than one hundred percent (100%) of the replacement cost of the Improvements and Museum Property with a commercially reasonable deductible or self-insured retention.

Section 4.4 General Insurance Requirements. All of the insurance policies required to be maintained under Sections 4.2 – 4.3 shall: (i) be issued by insurance companies authorized to do business in the State of Washington and having an A.M. Best's rating of not less than A- VII, unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers); (ii) contain an endorsement requiring thirty (30) days' written notice from the insurance company to both parties before cancellation, non-renewal or change in the coverage, scope or amount of any policy; and (iii) be written as primary policies, not contributing with and not supplemental to the coverage that other party may carry. Certificates of insurance evidencing that the insurance required under this section is in effect shall be delivered to Landlord before any entry on the Premises by Tenant, and shall be kept current throughout the Term. Such certificate shall reflect the status of Landlord as additional insured (as to the insurance under Section 4.2), and shall provide for at least thirty (30) days advance notice to Landlord in the event of cancellation. Landlord and Tenant shall assist and cooperate with any insurance company in the adjustment or litigation of all insurance claims arising under the insurance required by this Article.

Section 4.5 Waiver of Recovery and Subrogation. Landlord and Tenant release and relieve the other from any liability they might otherwise have and waive their entire right of recovery for loss or damage to property located within or constituting a part or all of the Premises to the extent that the loss or damage either (i) is actually covered by the injured party's property insurance, or (ii) if the injured party failed to maintain insurance as required herein, would have been covered by the property insurance the injured party is required to carry under this

Article 4, whichever is greater. This waiver applies regardless of the cause or origin of the claim including without limitation loss due to the negligent acts or omissions of Landlord or Tenant, or their respective officers, directors, council members, employees, agents, contractors, invitees, Tenant's assignees or subtenants. The parties shall have their property insurers endorse the applicable insurance policies to reflect the foregoing waiver of claims, provided however, that the endorsement shall not be required if the applicable policy of insurance permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver shall be acceptable, and provided further, that the failure to obtain such endorsement, when required, shall not impair the effectiveness of this waiver and/or release between Landlord and Tenant.

Section 4.6 Limitation of Tenant's Liability. In no event shall Landlord, its successors or assigns, have any recourse whatsoever for any damages payable, obligations assumed or indemnifications proffered by Tenant under this Lease to (i) the Museum Property, any endowment, archives or other property of Tenant; (ii) funds and pledges of funds raised by Tenant for the Premises or operation of the Museum; (iii) proceeds, rents or other income derived, arising from or attributable to the Museum, excluding insurance or condemnation proceeds; or (iv) any claims for relief related to the Premises, including claims arising under the insurance policies required to be carried under this Lease or actually carried by Tenant. Under no circumstances shall Landlord have any recourse whatsoever to Tenant's officers, trustees, directors, agents, employees, contractors or licensees for any debt or obligation created by this Lease.

ARTICLE 5. USE

Section 5.1 Use. Tenant shall use the Premises for Museum purposes (including the display of Museum Property, and cultural, educational, and special events), ancillary purposes (including cafe and gift shop), functions and events hosted or sponsored by Tenant, and related office, educational, research, administrative, storage, and back-of-house uses only. Tenant shall provide space near an entrance or in another common area for a visitor center kiosk or similar feature for display of third-party brochures, maps, and other printed materials highlighting local tourist attractions that may be of interest to museum visitors. The use of the Premises shall comply with this Lease, any easements, covenants, restrictions, as well as all Legal Requirements. Tenant shall not use any Hazardous Substances, except to the extent reasonable or appropriate in connection with the lawful use of the Premises in the ordinary course of Tenant's or any subtenant's business, and Tenant shall comply with all Environmental Laws in connection with such use.

Section 5.2 Compliance with Law. Tenant shall be solely responsible, at its sole cost, for compliance with Legal Requirements affecting the design, construction and operation of the Improvements and those affecting use of the Premises throughout the Term. Landlord agrees that Tenant shall have the right to reasonably contest, at Tenant's sole cost, any asserted or alleged violation of any Legal Requirements in the name of Tenant, as Tenant deems appropriate.

Section 5.3 Compliance with Law. Tenant shall, at its expense, perform all its activities on the Premises in compliance, and shall use commercially reasonable efforts to cause all subtenants of any portion thereof to comply, with the Legal Requirements, as the same may be administered by authorized governmental officials, and, to the extent that it should fail to do so beyond any applicable grace or cure period, Landlord shall have the right, but not the obligation, to take such actions as are necessary to become or remain in compliance with Legal Requirements, and the amount expended or advanced on behalf of Tenant by Landlord on account thereof shall constitute Additional Rent payable to Landlord.

ARTICLE 6. ALTERATIONS; LIENS; OWNERSHIP OF IMPROVEMENTS

Section 6.1 Alterations. At any time and from time to time during the Term, Tenant may make, at its sole cost and expense and without the prior consent of Landlord, Alterations to the Improvements, provided that Landlord shall have the right to consent to any major re-development of the Improvements after construction of the Museum, provided further that such consent shall not be unreasonably withheld, conditioned or delayed. No change or alteration to the Premises or the Improvements shall be undertaken until Tenant shall have procured and paid for all required permits, licenses and authorizations for such alterations (including the cost of any consultants retained by the City to assist with review of Tenant's permit applications). All changes and Alterations shall be made in a good and workmanlike manner and in compliance with all Legal Requirements.

Section 6.2 Mechanic's Liens. Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature upon, or in any manner to bind, the interest of Landlord in the Land for any claims in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs to the Premises. Each such claim shall affect and each such lien shall attach to; if at all, only the Leasehold Interest granted to Tenant by this Lease. Tenant will pay or cause to be paid all sums payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises. Tenant will discharge, by bond or otherwise, any mechanic's or materialman's lien filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to, Tenant within thirty (30) days after filing. Tenant shall indemnify, defend and hold Landlord harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of Landlord in the Land or under the terms of this Lease.

Section 6.3 Ownership of Improvements. The Land shall continue to be owned by Landlord. All Improvements shall be owned by and be the property of Tenant during, and only during, the Term and no longer. During the Term, no Improvements shall be conveyed, transferred or assigned, except as permitted under Articles 12 and 14, and at all such times the holder of the Leasehold Interest of Tenant under this Lease shall be the owner of all Improvements. Any attempted conveyance, transfer or assignment of any of the Improvements, whether voluntarily or by operation of law or otherwise, to any person, corporation or other entity shall be void and of no effect whatever, except as permitted under Articles 12 and 14. Notwithstanding the foregoing, Tenant may from time to time replace the Improvements and make any Alterations, provided that the replacements for such items are of equivalent or better value and quality, and such items are free from any liens and encumbrances except for equipment leases and any other financings expressly permitted hereunder. Upon any termination of this Lease, whether by reason of the expiration of the Term hereof, or pursuant to any provision hereof, or by reason of any other cause whatsoever, all of Tenant's right, title and interest in the Improvements and any Alterations shall cease and terminate, and title to the Improvements shall immediately vest in Landlord. No further deed or other instrument shall be necessary to confirm the vesting in Landlord of title to the Improvements. However, upon any termination of this Lease, Tenant, upon request of Landlord, shall execute, acknowledge and deliver to Landlord a quitclaim deed confirming that all of Tenant's rights, title and interest in the Improvements has expired and that title thereto has vested in Landlord. Notwithstanding the foregoing, the ownership of the Museum Property and all personal property of Tenant shall remain with Tenant in all events.

ARTICLE 7. SURRENDER.

Subject to the terms of Section 8.1 relating to damage and destruction, upon expiration or earlier termination of the Term of this Lease, whether by lapse of time or otherwise (including any holdover period), Tenant at its expense shall: (a) remove all of Tenant's moveable, unaffixed personal property, goods and effects; (b) remove all Museum Property; and (c) promptly and peacefully surrender the Premises (including surrender of all Alterations and additions installed on the Premises) broom clean and in good condition, reasonable wear and tear and casualty excepted. Any property (other than Museum Property) left on the Premises more than thirty (30) days after the expiration or termination of the Term shall be deemed to have been abandoned and to have become the property of Landlord to dispose of as Landlord deems expedient and Tenant shall be liable for all costs associated with the disposal of such property. Tenant hereby waives all claims for damages that may be caused by Landlord re-entering and taking possession of the Premises or removing and storing Tenant's property as herein provided. No such reentry shall be considered or construed to be a forcible entry.

ARTICLE 8. CASUALTY

Section 8.1 Effect of Damage or Destruction. In the event of any material damage to or destruction of the Premises or any Improvements thereon (i.e. the cost of repairing or replacing the same equals or exceeds thirty percent (30%) of the fair market value of the Improvements immediately preceding such damage or destruction) ("Major Destruction") from any causes whatever, Tenant shall promptly give written notice thereof to Landlord. In the event of any damage or destruction to the Premises, Tenant, at its sole cost and expense, regardless of the availability of insurance proceeds, but subject to Force Majeure and any permitting requirements of governmental authorities, shall promptly take such action as is reasonably necessary to assure that neither the damaged Premises or the damaged Improvements, nor any part thereof, nor any debris or rubble resulting therefrom (i) impairs or impedes public access through and across the public streets and sidewalks adjacent to the Premises, or

(ii) constitutes a nuisance or otherwise presents a health or safety hazard. In the event of any damage or destruction to the Premises or any Improvements, Tenant shall, subject to the requirements of the holder of any Leasehold Mortgage, repair and restore the Premises or Improvements. All such repair and restoration shall be performed in accordance with the requirements of this Lease and there shall be no abatement or reduction in Base Rent as a result of such damage or destruction. Any insurance proceeds from Tenant's insurance payable by reason of damage or destruction shall, subject to the rights of the holder of any Leasehold Mortgage, be made available to pay the cost of such repair or restoration; provided, however, that Landlord shall have a lien on Tenant's share of such proceeds from Tenant's insurance to the extent Tenant has failed to pay any monies to Landlord under the terms of this Lease.

In the event (i) Major Destruction occurs within the last five (5) years of the term of this Lease, (ii) Major Destruction cannot be substantially repaired within eighteen (18) months, (iii) the Museum Property (or portion thereof) is damaged to the extent that continued display to the public as a Museum is no longer feasible, or (iv) the Improvements have been damaged or destroyed by a casualty that was not required to be (and in fact was not) insured against by Tenant and the cost of repair and restoration exceeds ten percent (10%) of the fair market value of Tenant's interest in the Premises immediately preceding such damage or destruction, Tenant may elect by written notice to Landlord, within ninety (90) days after the date of such damage or destruction, to terminate this Lease. In the event Tenant elects to terminate this Lease, the Term of this Lease shall terminate one hundred twenty (120) days after the date of such damage or destruction. Tenant's insurance proceeds payable by reason of such damage or destruction shall, subject to the rights of the holder of any Leasehold Mortgage, be made available to pay the cost of Tenant's obligation to surrender the Premises to Landlord in accordance with the terms and provisions of Article 7 and the balance of such proceeds shall be paid to Tenant.

Section 8.2 Insurance Proceeds. Any insurance proceeds payable from Tenant's insurance shall, subject to the requirements of the holder of any Leasehold Mortgage, be paid to Tenant, subject to Landlord's claim against Tenant's share of such proceeds from Tenant's insurance in an amount equal to sums due to Landlord from Tenant hereunder. In the event Tenant elects to restore the Premises, any insurance proceeds from Tenant's insurance payable by reason of such damage or destruction shall, subject to the requirements of the holder of any Leasehold Mortgage, be made available to Tenant to pay the costs of such repair or restoration and any funds remaining shall be paid to Tenant.

Section 8.3 Clearing of Property. If any improvements are damaged or destroyed and Tenant elects to terminate this Lease in accordance with Section 8.1, Tenant shall surrender the Premises to Landlord in accordance with the terms and provisions of Article 7.

ARTICLE 9. CONDEMNATION.

Section 9.1 Taking. "Taking" means a taking by condemnation or by the exercise of the power of eminent domain by a public or quasi-public authority or entity, whether or not there is a taking of title, or a conveyance in lieu thereof. If there is a Taking of the entire Premises, then this Lease shall terminate as of the earlier of the date title to the Premises is transferred or the date Tenant is dispossessed by the Taking authority. Landlord agrees not to exercise its eminent domain rights with respect to the Premises.

Section 9.2 Termination for Material Interference. If there is a Taking of part of the Premises that in Tenant's reasonable judgment materially interferes with Tenant's ability to use the Premises for the purposes set forth herein, which interference cannot be feasibly, economically, operationally or legally remediated, then Tenant shall have the right to terminate this Lease by giving Landlord notice of its election within sixty (60) days after the Taking. If this Lease is so terminated, then it shall terminate on the earlier of the date title is transferred, the date Tenant is dispossessed by the Taking authority or thirty (30) days following Tenant's notice; provided that such termination shall in no event extinguish or diminish Tenant's right under Section 9.3 to receive a portion of the award payable on account of the Taking.

If the Taking does not materially interfere with Tenant's ability to operate the Premises for the purposes set forth in this Lease, then this Lease shall continue in full force and effect as to the part not taken, except that Tenant need not operate a Museum or provide the Public Benefits in the space so taken.

Section 9.3 Taking Award. The parties are entitled to the following portions of any award or settlement in lieu thereof payable on account of a Taking:

Section 9.4 Landlord shall be entitled to all amounts attributable to the value of the Land; and

Section 9.5 Tenant shall be entitled to receive all amounts attributable (i) to the value of the Improvements, (ii) the Museum Property; and (iii) Tenant's relocation expenses.

ARTICLE 10. ACCESS TO PREMISES

Upon prior reasonable notice, Landlord's agents, employees, and representatives shall have the right to access, enter and inspect the Premises at any reasonable time during the Operating Hours or when Museum staff is on Premises to escort the inspector for the purpose of ascertaining the condition of the Premises, monitoring compliance with this Lease or for any other purpose permitted under the terms of this Lease. Landlord understands that Museum operating requirements prohibit unaccompanied, unsupervised access (including inspection), except as specifically provided herein. In exercising such rights, the parties shall cooperate and shall take all reasonable steps to avoid disruption or unnecessary interference with Tenant's use and operations of the Premises.

ARTICLE 11. ENVIRONMENTAL.

Section 11.1 Tenant Obligations. Tenant agrees that:

Section 11.2 Neither Tenant nor its employees, agents, contractors, assignees, subtenants, licensees or invitees will use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Premises, or transport to or from the Premises, any Hazardous Substances except in such quantities as are typically used in connection with the construction, rehabilitation, operation and use of property of a similar sort for the uses permitted under this Lease and the Development Agreement, and then only in compliance with all Environmental Laws.

Section 11.3 Tenant shall give prompt written notice to Landlord of (i) any proceeding or inquiry by any governmental authority known to Tenant with respect to the presence or release of any Hazardous Substance on, in, about or from the Premises or relating to any loss or injury resulting from any Hazardous Substance, all caused or alleged to be caused by Tenant or its employees, agents, contractors, assignees, subtenants or invitees, (ii) all claims made or threatened by any third party in writing against Tenant with respect to the Premises relating to any loss or injury resulting from any Hazardous Substance caused or alleged to be caused by Tenant, (iii) discovery after the date hereof by Tenant of any occurrence or condition on the Premises that could cause it to be subject to any restrictions on occupancy or use under any Environmental Law, and (iv) any release of a Hazardous Substance on or from the Premises by Tenant.

Section 11.4 Landlord Obligations. Landlord shall give prompt written notice to Tenant of (a) any proceeding or inquiry by any governmental authority known to Landlord with respect to the presence or release of any Hazardous Substance on, in, about or from the Premises, (b) all claims made or threatened by any third party in writing against Landlord with respect to the Premises relating to any loss or injury resulting from any Hazardous Substance, and (c) Landlord's discovery of any occurrence or condition on the Premises that could cause them to be subject to any restrictions on use under any Environmental Law.

Section 11.5 Environmental Indemnity. Tenant covenants and agrees to indemnify, protect, defend (by counsel reasonably satisfactory to Landlord), and save Landlord, its employees, agents, members and any successor thereof, harmless against and from any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, without limitation, remediation costs, environmental assessment costs, governmental compliance costs, and reasonable attorneys' and experts' fees and disbursements), known or unknown, foreseen or unforeseen, which may at any time be imposed upon, incurred by or asserted or awarded against Landlord, its employees, agents, managers and members, the Premises or any portion thereof and arising directly or indirectly, in whole or in part, from or out of any Hazardous Substances on, in, under or affecting all or any portion of the Premises, (i) from and after the Commencement Date,

or (ii) which migrate off of the Premises (or portion thereof) after the Commencement Date, except that the foregoing indemnity does not include any condition which pre-existed the Commencement Date or any increase in scope or exacerbation of any such release or threat of release covered in clauses (i) and (ii) above is excluded from the foregoing indemnity if said increase in scope or exacerbation arises out of Landlord's negligence or willful misconduct.

Landlord covenants and agrees to indemnify, protect, defend (by counsel reasonably satisfactory to Tenant), and save Tenant, its employees, agents, members and any successor thereof, harmless against and from any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, without limitation, remediation costs, environmental assessment costs, governmental compliance costs, and reasonable attorneys' and experts' fees and disbursements), known or unknown, foreseen or unforeseen, which may at any time be imposed upon, incurred by or asserted or awarded against Tenant, its employees, agents, managers and members or the Premises or any portion thereof and arising directly or indirectly, in whole or in part, from or out of any Hazardous Substances on, in, under or affecting all or any portion of the Property or the Premises, (i) which exist at any time prior to the Commencement Date, or (ii) which migrate onto the Premises hereafter from any other property owned by Landlord, except that any increase in scope or exacerbation of any such release or threat of release covered above is excluded from the foregoing indemnity if said increase in scope or exacerbation arises out of Tenant's gross negligence or willful misconduct.

ARTICLE 12. ASSIGNMENT AND SUBLETTING

Section 12.1 No Transfer Without Landlord's Consent. Except for Permitted Transfers, Tenant shall not directly or indirectly, in whole or in part, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate its interest in or rights with respect to the Premises or Tenant's leasehold estate therein or the Improvements (any of the foregoing being herein referred to as a "Transfer") without the prior express written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed and no Transfer (whether voluntary or involuntary, by operation of law or otherwise) shall be valid or effective without such prior written consent. Any attempted Transfer in violation of this Lease shall be null and void at Landlord's option. Should Landlord consent to a Transfer, (i) such consent shall not constitute a waiver of any of the restrictions or prohibitions of this Lease, including any then-existing Event of Default or breach, and such restrictions or prohibitions shall apply to each successive Transfer, and (ii) unless otherwise agreed by the parties, such Transfer shall relieve the transferring Tenant of its liability under this Lease and such transferring Tenant shall be released from performance of any of the terms, covenants and conditions of this Lease upon such Transfer, and thereafter the assignee Tenant shall be liable under this Lease.

Section 12.2 Permitted Transfers. Notwithstanding the provisions of Section 12.1, the following transactions ("Permitted Transfers") shall not require the consent of Landlord:

Section 12.3 the transfer of any ownership interests in Tenant to any Affiliate of Tenant or from one owner of ownership interests in Tenant to another owner of ownership interests in Tenant; or

Section 12.4 the assignment of this Lease, Tenant's interest in the leasehold estate or any sublease of the Property to any Affiliate of Tenant or any sublease to any retail or commercial tenant or licensee who is providing food or retail services to the Museum; or

Section 12.5 the merger, consolidation, restructuring or sale of substantially all of the assets of Tenant or any Affiliate of Tenant, provided that the resulting entity has a net worth, calculated in accordance with GAAP, equal to or greater than the net worth of Tenant immediately prior to such transaction; or

Section 12.6 the assignment to any trustee by way of a deed of trust in favor of any Leasehold Mortgagee, for the purpose of creating a Leasehold Mortgage, or to any such Leasehold Mortgagee or other purchaser in connection with a foreclosure of a Leasehold Mortgage; or

Section 12.7 a transfer of ownership interests in Tenant or in constituent entities of Tenant (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the

transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Tenant, to the settler or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer is described in this item, (iv) in connection with a pledge by any partner, shareholder or member of a constituent entity of Tenant to an affiliate of such partner, shareholder or member; or

Section 12.8 a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership interest of Tenant remains the same as that on the Commencement Date or as otherwise permitted in accordance with this Section 12.2 above; or

Section 12.9 any transfer resulting from a Taking.

Section 12.10 Assignment by Landlord. If Landlord sells or otherwise transfers the Land, or if Landlord assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be deemed to have assumed Landlord's obligations hereunder which arise on or after the date of sale or transfer, and Landlord shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer or assignment, but this Lease shall otherwise remain in full force and effect. Furthermore, and without any limitation, Landlord may assign its rights but not its obligations under this Lease for security purposes.

ARTICLE 13. DEFAULTS

Section 13.1 Default. The occurrence of any of the following events shall constitute an event of default ("Event of Default") hereunder:

(a) if Tenant fails to pay when due any Lease Payment, and any such default shall continue for ten (10) calendar days after the receipt of written notice thereof from Landlord;

(b) if Tenant fails in any material respect to observe or perform any covenant, condition, agreement or obligation hereunder not addressed by any other event described in this Section 13.1, and, to the extent such failure is susceptible to cure, Tenant shall fail to cure, correct or remedy such failure within thirty (30) calendar days after the receipt of written notice thereof; provided, however, if such failure is not monetary in nature such that it cannot be cured by the payment of a sum certain to Landlord (or other required payee), then, if such failure is susceptible to cure, but cannot with due diligence be cured within such thirty (30) day period, the time within which Tenant may cure such failure shall be extended so long as Tenant proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof within a reasonable period of time; or

(c) if Tenant abandons the Premises or any substantial portion thereof and such abandonment is not cured within thirty (30) calendar days following written notice from Landlord.

Section 13.2 Rights and Remedies.

(a) Upon the occurrence of any Event of Default herein (including the expiration of all applicable notice and cure periods) Landlord, subject in all respects to (i) the provisions of this Lease with respect to Landlord's rights to cure defaults by Tenant and (ii) the rights of the holder of any Leasehold Mortgage, shall have the right to pursue any and all remedies available at law or in equity including, without limitation, a preliminary or permanent injunction, specific performance or other equitable relief; actual (but not special, consequential or punitive) damages; and/or termination of this Lease.

(b) No default in the performance of the terms, covenants or conditions of this Lease on the part of Tenant or Landlord (other than in the payment of amounts due) shall be deemed to continue if and so long as Landlord or Tenant, as the case may be, shall be delayed in or prevented from remedying the same due to Force Majeure; but if and when the occurrence or condition which delayed or prevented the remedying of such default shall cease or be removed, it shall be the obligation of Landlord or Tenant, as the case may be, without further delay, to commence the correction of such default or to continue and complete the correction thereof.

(c) The defaulting party shall be liable for the reasonable legal expenses (including reasonable attorneys' fees) of the non-defaulting party in connection with any collection of funds owed under this Lease, the remedying of any Event of Default under this Lease or any termination of this Lease where such collection, remedying or termination results from an Event of Default, as finally determined by a court of competent jurisdiction. If a default is alleged and it shall be determined that no Event of Default exists the court may, in its discretion, determine that the alleging party shall be liable for the legal costs and expenses (including reasonable attorneys' fees) of the other party in defending such claim.

(d) Notwithstanding anything to the contrary set forth in this Lease, Landlord, for itself and for each and every succeeding owner of the Premises, agrees that it shall never be entitled to seek a personal judgment against Tenant's member(s), and that upon any Event of Default hereunder, the rights of Landlord to enforce the obligations of Tenant, its successors or assigns, or to collect any judgment, shall be limited to the termination of this Lease and/or to collection from the assets of Tenant and the enforcement of any other equitable rights and remedies specifically granted to Landlord hereunder.

Section 13.3 Termination of Lease for Tenant's Default. Upon a termination of this Lease pursuant to Section 13.2(a), Tenant shall promptly quit and surrender the Premises to Landlord, without cost to Landlord.

Section 13.4 Remedies Cumulative. Unless otherwise specifically provided in this Lease, no remedy herein shall be exclusive of any other remedy or remedies, and each such remedy shall be cumulative and in addition to every other remedy; and every power and remedy given by this Lease may be exercised from time to time and as often as may be deemed expedient by either party. No delay or omission by Landlord to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence thereto.

Section 13.5 Default by Landlord. Landlord shall be in default of this Lease if it fails to perform any provision of this Lease, and if the failure to perform is not cured within thirty (30) calendar days after written notice of the default has been given to Landlord. If the default cannot reasonably be cured within thirty (30) calendar days, Landlord shall not be in default of this Lease if Landlord commences to cure the default within such thirty-day period and diligently and in good faith continues to cure the default within a reasonable period of time, but in no event shall such period exceed ninety (90) calendar days.

ARTICLE 14. LEASEHOLD MORTGAGES

Section 14.1 Right to Encumber. Notwithstanding the provisions of Article 12 regarding Transfers of this Lease, but subject to the provisions of this Article 14, Tenant shall have the right at any time and from time to time to encumber the entire (but not less than the entire) leasehold estate created by this Lease and Tenant's interest in the Improvements by a mortgage, deed of trust or other security instrument (any such mortgage, deed of trust, or other security instrument that satisfies the requirements of this Article 14 being herein referred to as a "Leasehold Mortgage") to secure repayment of a loan (and associated obligations) made to Tenant by an Institutional Lender for the purpose of financing the construction of any Improvements made pursuant to the terms of this Lease or for the long-term financing of any such Improvements, provided that the loan secured by a Leasehold Mortgage shall be payable over not more than the remaining portion of the Term.

Section 14.2 No Subordination of Fee. In no event shall all or any portion of Landlord's interest, including without limitation, Landlord's fee interest in the Land or reversionary interest in the Improvements or interest under this Lease, be subject or subordinate to any lien or encumbrance of any mortgage, deed of trust or other security instrument.

Section 14.3 Institutional Lender. For purposes of this Article 14, "Institutional Lender" shall mean a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); a pension fund, an insurance company organized and existing under the laws of the United States or any state thereof or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code or other public or private investment entity (in each case

whether acting as principal or agent) which at the date hereof or in the future is involved in the business of investing in real estate assets; a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an employees' welfare, benefit, pension or retirement fund; an institutional leasing company; any governmental agency or entity insured by a governmental agency, or any combination of Institutional Lenders.

Section 14.4 Required Notice. Each time Tenant shall mortgage Tenant's leasehold estate to an Institutional Lender, Tenant shall require the holder of such Leasehold Mortgage to provide Landlord with notice of such Leasehold Mortgage, together with a true copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. Following receipt of such notice by Landlord, the provisions of this Section 14 shall apply in respect to such Leasehold Mortgage. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgagee, notice of the new name and address shall be provided to Landlord. Tenant shall thereafter with reasonable promptness also provide Landlord from time to time with a copy of each material amendment, modification or supplement to such instruments.

Section 14.5 Acknowledgement of Notice. If requested by the terms of such notice, Landlord shall promptly upon receipt of a communication purporting to constitute the notice provided for by Section 14.4 acknowledge in writing receipt of such communication as constituting the notice provided for by this Section, or in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of this Section and specify the basis of such rejection.

Section 14.6 Protection of Leasehold Mortgagees. If Tenant shall mortgage Tenant's Leasehold Interest under this Lease in compliance with the provisions of this Section 14, then so long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) **Consent.** No cancellation, surrender or modification of this Lease shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee, except that such consent shall not be required with respect to a termination of this Lease in accordance with this Section 14, or in accordance with Section 8 and 9 upon certain casualty events or condemnation.

(b) **Notice of Default.** Landlord, upon providing Tenant any notice of (a) any default under this Lease, (b) a termination of this Lease, or (c) a matter on which Landlord may predicate or claim a default, shall at the same time provide a copy of such notice to every Leasehold Mortgagee of which Landlord has been provided notice in accordance with Section 14.4 hereof. Landlord shall have no liability for the failure to give any such notice, except that no such notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Leasehold Mortgagee of which Landlord has been provided notice in accordance with Section 14.4 hereof. From and after such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or acts or omissions which are the subject matter of such notice, or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in Sections 14.6(c) and 14.7 hereof to remedy, commence remedying or cause to be remedied, the defaults or acts or omissions which are specified in such notice. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose.

(c) **Second Notice to Leasehold Mortgagee.** Anything contained in this Lease to the contrary notwithstanding, if any Event of Default shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such Event of Default or the act or omission which gave rise to such Event of Default, Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination if the nature of such Event of Default is the failure to pay a sum of money to Landlord and at least ninety (90) days in advance of the proposed effective date of such termination in the event of any other Event of Default. The provisions of Section 14.7 hereof shall apply only if, during such thirty (30) or ninety (90) day termination notice period, any Leasehold Mortgagee shall:

and (i) Notify Landlord of such Leasehold Mortgagee's desire to nullify such Notice;

(ii) Pay or cause to be paid all Rent and other payments (i) then due and in arrears as specified in the termination notice to such Leasehold Mortgagee and (ii) any of the same which become due during such thirty (30) or ninety (90) day period as and when they become due; and

(iii) Comply or in good faith, with reasonable diligence and continuity, commence to comply with all non-monetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee; provided, however, that such Leasehold Mortgagee shall not be required during such thirty (30) or ninety (90) day period to cure or commence to cure any Event of Default consisting of (i) Tenant's failure to satisfy and discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Premises junior in priority to the lien of the mortgage held by such Leasehold Mortgagee, or (ii) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee, such as, by way of example only, the bankruptcy of Tenant or a court-ordered stay or injunction. If such Leasehold Mortgagee has not completed the cure within three hundred sixty five (365) days after the later to occur of (A) the receipt of Landlord's termination notice or (B) three hundred sixty five (365) days after the date that any court with jurisdiction over Tenant or the Premises releases any stay, order or injunction, Landlord shall have the right to terminate this Lease upon written notice to Tenant and such Leasehold Mortgagee.

(iv) If more than one Leasehold Mortgagee notifies Landlord of such Leasehold Mortgagee's desire to nullify such notice, the Leasehold Mortgagee whose Leasehold Mortgage is prior in lien (as determined in accordance with Section 14.9) shall have the right to nullify such notice and Landlord without liability to Tenant or any Leasehold Mortgage with a subordinate lien shall accept the cure tendered by the Leasehold Mortgagee whose Leasehold Mortgage is prior in lien.

Section 14.7 Procedure on Default.

(a) Cure of Default. If Landlord shall elect to terminate this Lease by reason of any Event of Default, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 14.6(c), this Lease shall not be deemed terminated so long as such Leasehold Mortgagee shall:

(i) Pay or cause to be paid the Rent and other monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease excepting (A) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Leasehold Estate junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee, and (B) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee, such as, by way of example only, the bankruptcy of Tenant; and

(ii) If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same with due diligence within the time period described in Section 14.6(c)(iii). Nothing in this Section 14.7(a), however, shall be construed to extend this Lease beyond the original Term hereof, nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured. If the Event of Default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(b) Lease Remains in Effect. If a Leasehold Mortgagee is complying with Section 14.7(a), upon the acquisition of the Leasehold Estate herein by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise and the discharge of any lien, charge or encumbrance against Tenant's interest in this Lease or the Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) **Assumption of Lease.** The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of Tenant's interest under this Lease or the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of Tenant's interest under this Lease or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. Notwithstanding the foregoing, the purchaser at any sale of Tenant's interest under this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of the Tenant's rights under this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, including, without limitation, a Leasehold Mortgagee, shall be deemed to be an assignee or transferee within the meaning of this Section 14.7 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment only for as long as such purchaser or assignee is the holder of this leasehold estate.

Section 14.8 New Lease. In the event of the termination of this Lease as a result of an Event of Default that has not been cured by either Tenant or the Leasehold Mortgagee, Landlord shall promptly, within a reasonable time, provide each Leasehold Mortgagee with written notice that the Lease has been terminated (the "New Lease Notice"), together with a statement of all sums which would at that time be due under this Lease but for such termination and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease (the "New Lease") of the Premises with such Leasehold Mortgagee or its affiliated designee for the remainder of the Term of this Lease, effective as of the date of termination, at the same Rent and upon the terms, covenants and conditions of this Lease; provided:

(a) Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease within thirty (30) days after the date such Leasehold Mortgagee receives Landlord's New Lease Notice given pursuant to this Section 14.8.

(b) Such Leasehold Mortgagee or such affiliated designee shall agree to remedy any of Tenant's defaults of which such Leasehold Mortgagee was notified by Landlord's New Lease Notice and which are reasonably capable of being so cured by Leasehold Mortgagee or such designee.

(c) Any New Lease made pursuant to this Section 14.8 shall have the same priority with respect to any mortgage or other lien, charge or encumbrance on the Premises as this Lease, and the tenant under such New Lease shall have the same right, title and interest in and to the Premises and the Leasehold Improvements as Tenant had under this Lease as of the date of the New Lease.

Section 14.9 Conflicting Priorities. If more than one Leasehold Mortgagee shall seek to nullify a notice in accordance with Section 14.6(c)(iv) above or request a New Lease pursuant to Section 14.8, the Leasehold Mortgagee whose Leasehold Mortgage is prior in lien, or with the designee of such Leasehold Mortgagee, shall have the right to nullify such notice or obtain such New Lease. Landlord, without liability to Tenant or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business in the state where the Premises is located as the basis for determining the appropriate Leasehold Mortgagee who is entitled to nullify such notice or obtain the New Lease.

Section 14.10 Certain Defaults. Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of rights hereunder to cure any Event of Default which by its terms is not reasonably susceptible of being cured by such Leasehold Mortgagee or such designee in order to comply with the provisions of Sections 14.6 or 14.7. The financial condition of any Leasehold Mortgagee or successor to Tenant's interest under this Lease or a new lease entered into pursuant to Section 14.8 shall not be a consideration in the determination of the reasonable susceptibility of cure of such Event of Default. No Event of Default, the cure of which, and no obligation of Tenant, the performance of which, requires possession of the Premises shall be deemed reasonably susceptible of cure or performance by any Leasehold Mortgagee or successor to Tenant's interest under this Lease not in possession of the Premises, provided such holder is complying with the requirements described in Section 14.7(a)(ii) hereof and, upon obtaining possession, promptly proceeds to cure any such Event of Default then reasonably susceptible of cure by such Leasehold Mortgagee or successor. No Leasehold Mortgagee shall be required to cure the bankruptcy, insolvency or any related or similar condition of Tenant.

Section 14.11 Eminent Domain. Tenant's share, as provided in Section 9 of this Lease, of the proceeds arising from an exercise of the power of eminent domain shall, subject to the provisions of Section 9, be disposed of as provided for by any Leasehold Mortgage.

Section 14.12 Insurance. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder.

Section 14.13 Legal Proceedings. Landlord shall give each Leasehold Mortgagee of which Landlord has written notice prompt notice of any dispute resolution or legal proceedings between Landlord and Tenant involving obligations under this Lease. Each such Leasehold Mortgagee shall have the right to intervene, within sixty (60) days after receipt of such notice of dispute resolution or legal proceedings, in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. Any intervening Leasehold Mortgagee shall be bound by the outcome of such proceedings. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of Notice of such proceedings.

Section 14.14 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Premises and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise.

Section 14.15 Notices. Notices from Landlord to the Leasehold Mortgagee shall be mailed to the address furnished Landlord pursuant to Section 14.4 and those from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 16 hereof, as the same may be amended from time to time. All notices from any Leasehold Mortgagee or Landlord shall be given in the manner described in Section 32 and shall in all respects be governed by the provisions of that section.

Section 14.16 Erroneous Payments. No payment made to Landlord by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and any Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided the Leasehold Mortgagee shall have made demand therefor not later than twelve (12) months after the date of its payment.

Section 14.17 Bankruptcy. In the event of any proceeding by either Landlord or Tenant under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect:

(a) Rejection of Lease by Tenant. If this Lease is rejected in connection with a bankruptcy proceeding by Tenant or a trustee in bankruptcy for Tenant, such rejection shall be deemed an assignment by Tenant to the Leasehold Mortgagee (or if there is more than one Leasehold Mortgagee, to the one highest in priority) of the leasehold estate and all of Tenant's interest under this Lease, in the nature of an assignment in lieu of foreclosure, and this Lease shall not terminate, unless such Leasehold Mortgagee shall reject such deemed assignment by notice in writing to Landlord within thirty (30) days following the later of (i) rejection of the Lease by Tenant or Tenant's trustee in bankruptcy or (ii) approval of such rejection by the bankruptcy court. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Tenant or the trustee in connection with any such proceeding, the rights of any Leasehold Mortgagee to a new lease from Landlord pursuant to Section 14.8 hereof shall not be affected thereby.

(b) Termination of Lease by Landlord. If this Lease is rejected or otherwise terminated in connection with a bankruptcy proceeding by Landlord or by Landlord's trustee in bankruptcy:

(i) Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of all Leasehold Mortgagees and the right to treat this Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee, whether or not specifically set forth in any such

Leasehold Mortgage, so that the concurrence in writing of Tenant and each Leasehold Mortgagee shall be required as a condition to treating this Lease as terminated in connection with such proceeding.

(ii) Unless this Lease is treated as terminated in accordance with Section 14.17(a), this Lease shall continue in effect upon all the terms and conditions set forth herein, including Rent, but excluding requirements that are not then applicable or pertinent to the remainder of the Term. The lien of any Leasehold Mortgage then in effect shall extend to the continuing possessory rights of Tenant following such rejection or other termination with the same priority as it would have enjoyed had such rejection or other termination not taken place.

(c) If, in any bankruptcy or similar proceeding in which Landlord is the debtor, the Premises are sold or proposed to be sold free and clear of the interests of Tenant under this Lease, each of Tenant and any Leasehold Mortgagee shall be entitled to: (i) receive prior written notice of such proposed sale not less than ten (10) Business Days prior to the earliest date such sale or proposed sale is to or could occur; (ii) contest such sale or proposed sale; and (iii) petition for and receive adequate protection of their respective interests under this Lease, it being acknowledged and agreed that monetary damages are not, and will not be, adequate protection thereof.

Section 14.18 Rights Against Tenant. The rights of a Leasehold Mortgagee hereunder shall not diminish any right or claim of Landlord against Tenant for damages or other monetary relief under this Lease.

Section 14.19 Lease Amendments or Recognition Agreement Requested by Leasehold Mortgagee. In the event Tenant seeks to obtain or modify a Leasehold Mortgage, and the applicable Leasehold Mortgagee desires amendments to this Section 14 or desires to enter into a recognition agreement with Landlord, then Landlord agrees to negotiate in good faith any commercially reasonable amendment or recognition agreement; provided that the form and content of such amendment or recognition agreement is not unreasonable and that such proposed amendment or recognition agreement does not reduce the Rent hereunder or otherwise adversely affect the rights of Landlord hereunder or its interest in the Premises, as determined by Landlord in its reasonable discretion. All reasonable expenses incurred by Landlord in connection with any such amendment or recognition agreement shall be paid by Tenant.

14.20 Landlord Purchase Right. In the event a Leasehold Mortgagee desires to transfer the leasehold interest in the Premises by foreclosure sale, accept a deed in lieu of foreclosure, or acquire Tenant's interest in this Lease by other means, the Leasehold Mortgagee shall provide Landlord no less than thirty (30) days prior written notice of its intention to exercise such right and Landlord shall have the right exercisable within thirty (30) days after receipt of such written notice to elect to acquire the entire interest in the loan and the Leasehold Mortgage for a price equal to the sum of the outstanding unpaid balance of the loan secured by the Leasehold Mortgage, together with any other amounts due and unpaid under the Leasehold Mortgage. The closing of the acquisition of the loan (the "Closing") shall occur within thirty (30) days after the date of the election through escrow at a title company selected by Landlord and reasonably acceptable to Leasehold Mortgagee. At the Closing, Landlord shall deliver to the Leasehold Mortgagee through escrow the purchase price for the loan, and Leasehold Mortgagee shall assign to Landlord all of its right, title and interest in the loan and the Leasehold Mortgage pursuant to documentation reasonably satisfactory to Landlord and the Leasehold Mortgagee. If Landlord fails to deliver into escrow the required funds with said thirty (30) day period with instructions to deliver said funds to Leasehold Mortgagee conditioned only upon receipt of the documentation necessary to enable the title company to insure Landlord as the sole beneficiary of the Leasehold Mortgage, the Leasehold Mortgagee shall be entitled to pursue its rights to acquire or transfer the leasehold estate pursuant to this Lease and the Leasehold Mortgage. If Landlord delivers said funds as required herein, the Leasehold Mortgagee's rights under this Lease and the Leasehold Mortgage shall terminate and be of no further force and effect.

ARTICLE 15. ESTOPPEL CERTIFICATE

From time to time upon not less than twenty (20) calendar days' prior request, each of Tenant and Landlord agree to deliver to the other requesting party, or to the holder of any Leasehold Mortgage, a statement in writing signed by such Tenant or Landlord, as applicable, certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and identifying the modifications); (b) the date upon which Tenant began paying Base Rent and the dates to which the Base Rent and any other Lease Payment have been paid; (c) that the requesting party is not in default under any provision of this

Lease, or, if in default, the nature thereof in detail; and (d) such other matters as may be reasonably requested by the requesting party.

ARTICLE 16. NOTICES

Any and all notices, consents, approvals and other communications required or permitted under this Lease shall be deemed adequately given only if in writing delivered either in hand, by mail or by expedited commercial carrier which provides evidence of delivery or refusal, addressed to the recipient, postage prepaid and certified or registered with return receipt requested, if by mail, or with all freight charges prepaid, if by commercial carrier. All notices and other communications shall be deemed to have been given for all purposes of this Lease upon the date of receipt or refusal. All such notices and other communications shall be addressed to the parties at their respective addresses set forth below or at such other addresses as any of them may designate by notice to the other party:

If to Landlord: City of Snoqualmie
c/o City Administrator
P.O. Box 987
Snoqualmie, WA 98065

If to Tenant: _____

With a copy to: Pacifica Law Group LLP
1191 2nd Ave., Suite 2000
Seattle, WA 98101
Attn. B. Gerald Johnson

ARTICLE 17. MEMORANDUM OF AGREEMENT

This Lease shall not be recorded except as permitted in this Article 17. The parties shall promptly execute and record, at Tenant's cost, a short form memorandum of lease describing the Premises and stating the Term, Commencement Date, and any other information the parties reasonably agree to include and/or is necessary for any financing with respect to the Premises.

ARTICLE 18. MISCELLANEOUS

Section 18.1 Signage. Tenant shall have the right, at its sole cost, to install and display signage in and around the Premises. Any signage installed by Tenant shall be in compliance with Legal Requirements.

Section 18.2 No Partnership. Nothing contained in this Lease shall create any partnership, joint venture or other relationship between Tenant and Landlord. It is the intent of the parties that this Lease creates a leasehold estate in the Premises and that the relationship of the parties hereunder is that of landlord and tenant only

Section 18.3 Severability. This Lease shall bind and inure to the benefit of Landlord, its successors and assigns, Tenant, and its successors and assigns.

Section 18.4 Construction. Landlord and Tenant agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section thereof.

Section 18.5 Performance Under Protest. In the event of a dispute or difference between Landlord and Tenant as to any obligation which either may assert the other is obligated to perform or do, then the party against whom such obligation is asserted shall have the right and privilege to carry out and perform the obligation so asserted against it without being considered a volunteer or deemed to have admitted the correctness of the claim, and shall have the right to bring an appropriate action at law, equity or otherwise against the other for the recovery of any sums expended in the performance thereof and in any such action, the successful party shall be entitled to recover in addition to all other recoveries such reasonable attorneys' fees as may be awarded by the court.

Section 18.6 No Waiver. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on any subsequent occasion.

Section 18.7 Headings. The headings used for the various articles and sections of this Lease are used only as a matter of convenience for reference, and are not to be construed as part of this Lease or to be used in determining the intent of the parties of this Lease.

Section 18.8 Partial Invalidity. If any term, covenant, provision or condition of this Lease or the application thereof to any person or circumstance shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, the remaining terms, covenants, provisions and conditions of this Lease and their application to persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties, and in the place of such invalid or unenforceable provision there shall be substituted a like, but valid and enforceable, provision mutually agreeable to Landlord and Tenant which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the parties.

Section 18.9 Bind and Inure. Unless the context requires otherwise, the words "Landlord" and "Tenant" shall be construed to mean the original parties, their respective permitted successors and assigns and those claiming through or under them respectively. Subject to the provisions of Section 12.1, the agreements and conditions in this Lease contained on the part of Tenant to be performed and observed shall be binding upon Tenant and its permitted successors and assigns and shall inure to the benefit of Landlord and its permitted successors and assigns, and the agreements and conditions in this Lease contained on the part of Landlord to be performed and observed shall be binding upon Landlord and its permitted successors and assigns and shall inure to the benefit of Tenant and its successors and assigns. No holder of a Leasehold Mortgage shall be deemed to be the holder of said Leasehold Interest until such holder shall have acquired indefeasible title to said Leasehold Interest.

Section 18.10 Time of Essence. Time is of the essence of this Lease and of all provisions hereof.

Section 18.11 Entire Agreement. Together with the Development Agreement, this Lease contains the entire integrated agreement between the parties as to the matters covered herein and supersedes any oral statements or representations or prior written matter not contained in this instrument as to the matters set forth herein. This Lease may not be amended, changed, modified or altered, except by an instrument in writing duly executed by Landlord and Tenant (or their successors in title) upon approval by the City Council.

Section 18.12 Authority. Each party hereto warrants that it has the authority to enter into this Lease and to perform its obligations hereunder and that all necessary approvals, acts or resolutions to authorize this transaction have been taken, and the signatories, by executing this Lease, warrant that they have the authority to bind the respective parties.

Section 18.13 Consents and Approvals. In any instance when either party's consent or approval is required under this Lease, such consent or approval shall not be unreasonably withheld, conditioned or delayed. No permission, consent, or approval of Landlord contained herein or given pursuant to this Lease is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with Legal Requirements, nor shall any such consent or approval be construed to authorize any failure to comply with such Legal Requirements.

Section 18.14 Governing Law; Jurisdiction and Venue. This Lease, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Washington. Landlord and Tenant each hereby consent to personal jurisdiction in the state and federal courts located in the State of Washington. Except as otherwise required by applicable law, any action arising under this Lease shall be brought

and maintained in the Superior Court of the State of Washington in and for King County, Landlord and Tenant each consent and agree that venue is proper in such court, and Landlord and Tenant each waive any defense or right to seek dismissal or transfer on grounds of improper or inconvenient venue.

Section 18.15 Exhibits. Exhibits A through C attached hereto are hereby incorporated herein and made a part of this Lease.

Section 18.16 Dispute Resolution. In the event of a dispute arising out of this Lease, the parties agree to follow the procedures in this Section prior to filing or initiating a lawsuit. The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, the matter shall be referred to the City Manager of Landlord and the executive director or board chair of Tenant. If those officials are unable to resolve the dispute within a period of fifteen (15) days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. Landlord and Tenant agree to participate in mediation with the agreed upon mediator for a reasonable amount of time and in good faith. The cost of the mediation shall be shared equally by Landlord and Tenant.

Section 18.17 Limitation on Third Party Rights. Nothing in this Lease expressed or implied is intended or shall be construed to give to any person other than Landlord or Tenant any legal or equitable right, remedy or claim under or in respect of this Lease or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of Landlord and Tenant.

Section 18.18 Counterparts. This Lease may be executed in counterparts for the convenience of the parties, and such counterparts shall together constitute one Lease.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO GROUND LEASE

IN WITNESS WHEREOF, the parties have hereunto set their signatures to this Lease as of the date first written above.

LANDLORD:

CITY OF SNOQUALMIE,
a Washington municipal corporation

By: _____

Name: _____

Title: _____

TENANT:

PACIFIC WEST RAIL FOUNDATION,
a Washington nonprofit corporation

By: _____

Name: _____

Title: _____

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and he/she/they acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was authorized to execute the instrument and acknowledged it as the _____ of _____, a _____, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20__.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing at ____

My appointment expires _____

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and he/she/they acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was authorized to execute the instrument and acknowledged it as the _____ of _____, a _____, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20__.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing at ____

My appointment expires _____

EXHIBIT A
LEGAL DESCRIPTION

[to be attached]

EXHIBIT B
PERMITTED EXCEPTIONS

[to be attached]

EXHIBIT C
PUBLIC BENEFITS

- 1) Creation and operation of a new tourist destination and point of attraction for local residents and guests, which shall be open six days per week (Wednesday through Monday), eight hours per day (10:00 a.m. to 6:00 p.m.), excepting only designated holidays.
- 2) Driving additional economic activity to City businesses, including restaurants, hotels, and retail stores, thereby promoting the prosperity of the business community and increasing City tax revenues.
- 3) During the Term, Tenant agrees to make the Museum available to Landlord for Landlord-planned events up to two (2) times per calendar year ("City Events"). Landlord shall be responsible for the costs of the City Events, provided, however, there shall be no event fee, license fee, or other amount due to Tenant unless the parties mutually agree otherwise. The parties acknowledge and agree that each City Event shall not exceed 12 hours, inclusive of set-up and take-down time. Landlord and Tenant shall reasonably cooperate with each other to schedule the City Events, and Museum will be closed to the public during each City Event. Landlord shall comply with Tenant's reasonable rules and regulations during City Events.

PACIFICA LAW GROUP DRAFT of July 6, 2023 FOR
DISCUSSION PURPOSES ONLY. SUBJECT TO CONTINUING CLIENT REVIEW
AND, EVENTUALLY, PWRF BOARD APPROVAL.

DEVELOPMENT AGREEMENT

BY AND BETWEEN

**CITY OF SNOQUALMIE,
A WASHINGTON MUNICIPAL CORPORATION**

AND

**PACIFIC WEST RAIL FOUNDATION,
A WASHINGTON NONPROFIT CORPORATION**

DATED: _____, 2023

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is dated as of _____, 2023 and is by and between the CITY OF SNOQUALMIE (the “City”), a municipal corporation organized under the laws of the State of Washington, and the PACIFIC WEST RAIL FOUNDATION, a Washington nonprofit corporation (“PWRF”), collectively, the “Parties”.

RECITALS

The following facts and circumstances form the background of this Agreement:

WHEREAS, the Pacific West Rail (“PWR”) is a model railroad layout that depicts fourteen different locations across the western United States within the timeframe of the early 1900’s to the late 1960s. It was created by the country’s preeminent model rail designer and reflects actual locations, accurately modeled with the highest degree of realism, with sound and lighting for different times of day and night and topography finished with materials from each of the locations. The collection includes 100 engines, 125 passenger cars and 550 freight cars running on one half-mile of tracks though miniature dioramas set in these recognizable landmark locations throughout the West. Some _____ major railroad lines are represented within the areas that they serve or served. The system is controlled by a command center using highly sophisticated software that runs the trains autonomously for hours with programming. Three full-time staff are employed to maintain and operate the model; and

WHEREAS, it is one of the largest model railroads and one of, if not the finest in the United States in its faithful creation of real world railroads in their respective locations. Its multimillion dollar value has been determined by a highly-regarded, experienced professional and is indisputably a one-of-a-kind fully operational collection; and

WHEREAS, its founder and owner, local resident and entrepreneur Peter Hambling (“Hambling”), always has intended to share the PWR with the public in a suitable venue in an appropriate location; and

WHEREAS, Hambling has formed the nonprofit PWRF to which he intends to donate the model railroad in its entirety if and when a publicly accessible museum can be established to house it; and

WHEREAS, the City enjoys a rich railroad history and also is the home to the legacy Snoqualmie Valley Railroad (“SVR”); and

WHEREAS, the City has expressed a keen interest in providing land for the construction of PWRF’s museum adjacent to tracks of the SVR, enabling real-time comparison between the actual and the model; and

WHEREAS, the City also is located on the ancestral lands of the Snoqualmie Tribal People; and

WHEREAS, the westward transcontinental expansion of railroads, including those terminating in the Puget Sound region, materially facilitated and therefor substantially contributed to the degradation of the cultures of the indigenous peoples of the American West, specifically including those of the Pacific Northwest region; and

WHEREAS, with respect and humility, the PWRF intends that a museum located in Snoqualmie would, ideally in close consultation with the Snoqualmie Tribe, suitably convey for its visiting public the deleterious impact railroads had on the indigenous peoples of the American West, and pledges that its exhibitry will include candid, informative and respectful explanations of that impact such that public may begin to comprehend this dimension of the arrival of the transcontinental railroads in the Puget Sound region; and

WHEREAS, the City and PWRF have negotiated a mutually acceptable Ground Lease of certain City property for the proposed site of the museum and providing for its operation by PWRF once constructed; and

WHEREAS, Hambling has engaged the well-known Olson Kundig architectural firm to design the publicly accessible museum to be located on the proposed site; and

WHEREAS, the City and the PWRF also have negotiated this mutually acceptable Development Agreement under which PWRF will be responsible for raising the funding needed to construct the museum designed by the Olson Kundig firm. When funding has been secured, PWRF will build the museum as designed and approved by the City; and

WHEREAS, Hambling and his spouse have executed a Contingent Gift Agreement under which they will give the PWR model railroad to the PWRF upon completion of the Olson Kundig designed museum on the site proposed to be leased to the Foundation by the City,

NOW THEREFORE, in consideration of the foregoing, of the mutual promises of the Parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, and contingent upon concurrent execution of the Ground Lease between the Parties and the Contingent Gift Agreement between Peter and Lori Hambling and PWRF by all relevant Parties, the Parties hereby agree as follows:

AGREEMENT

ARTICLE 1

Effective Date; Incorporation of Documents and Materials; Definitions

Section 1.1 Effective Date. This Agreement will be effective upon the date when both of the following conditions are satisfied: (a) the City Council of the City ("City Council") has authorized this Agreement; and (b) this Agreement is executed by authorized representatives of the City and PWRF.

Section 1.2 Incorporation of Documents and Materials. The following documents and materials are attached as exhibits to this Agreement and by this reference are incorporated into this Agreement:

- Exhibit A: Preliminary Project Schedule
- Exhibit B: Site Plan
- Exhibit C: Preliminary Project Design
- Exhibit D: Preliminary Project Budget
- Exhibit E: Fundraising Plan

Section 1.3 Definitions. The following terms shall have the respective meanings set forth below for this Agreement.

(a) “Agreement” means this Development Agreement between the City of Snoqualmie and the Pacific West Rail Foundation.

(b) “City” means the City of Snoqualmie, a Washington municipal corporation.

(c) “City Indemnified Parties” is defined in Section 5.1.

(d) “Final Project Budget” means the all-inclusive budget that the City Manager of the City (“City Manager”) concurs is consistent with the cost of completing construction of the Final Project Design under Section 4.4.

(e) “Final Project Design” is the design reflected in the Project’s one hundred percent (100%) construction documents approved by the City Manager under Section 4.2.1.

(f) “Final Project Schedule” incorporates all pre-construction activities required under this Agreement and reflects the projected schedule for completion of construction of the Project following the issuance of PWRF’s Notice to Proceed, when authorized under Section 4.4.

(g) “Fundraising Plan” is the PWRF’s plan for securing the resources required to construct its Museum, as provided in Section 3.2.1.

(h) “Lease” means the Ground Lease for the Pacific West Rail Museum site by and between the City, as landlord and PWRF, as tenant, dated of even date herewith.

(i) “Museum” or “PWR Museum” means the Pacific West Rail Museum to be operated by PWRF or any subsequent museum or other operator of the PWR Museum.

(j) “Notice to Proceed” means the notice provided by PWRF to the Project general contractor to commence construction of the PWR Museum upon satisfaction of the requirements of Section 4.4.

(k) “Parties” means the City of Snoqualmie and the Pacific West Rail Foundation.

(l) “Preliminary Project Budget” means an all-inclusive budget reflecting the estimated cost of construction of the Project based on the Preliminary Project Design, including contingencies consistent with industry standards and soft costs such as professional services and applicable taxes.

(m) “Preliminary Project Design” is defined in Section 4.2.1.

(n) “Preliminary Project Schedule” is defined in Section 2.4 and shown in Exhibit A.

(o) “Project” means the development and construction of the Pacific West Rail Museum for public museum purposes.

(p) “Project Coordinator” is defined in Section 4.5(a).

(q) “Project Manager” is defined in Section 4.5(a).

(r) “PWRF” means the Pacific West Rail Foundation.

(s) “PWRF Indemnified Parties” is defined in Section 5.1(b).

(t) “Site” means the City land on which the Museum will be constructed by the PWRF, as shown in Exhibit B and as more specifically identified in the Lease.

ARTICLE 2

General Provisions

Section 2.1 Scope. PWRF will construct the PWR Museum on the Site substantially consistent with the Final Project Design as evolved from the Preliminary Project Design provided in Exhibit C, at a currently estimated total cost of approximately _____ Million Dollars (\$____,000,000).

Section 2.2 Development Agreement. The Parties’ rights, responsibilities and obligations during design, development and construction of the Project are delineated in this Agreement.

Section 2.3 Lease. The Parties’ long-term rights, responsibilities and obligations concerning operation of the PWR Museum are reflected in the Lease. Under the Lease, PWRF is obligated to provide enumerated Public Benefits (as required under the Lease) during its operation of the Museum.

Section 2.4 Schedule. PWRF shall use its best efforts to start construction of the Project within three (3) years from the effective date of this Agreement. The Parties, by mutual agreement, may extend the construction start date by a maximum of two (2) additional years, in up to two (2) one (1)-year increments. The current Preliminary Project Schedule for securing Project funding and the concurrent evolution of the Project's design and budget is attached hereto as Exhibit A. The Project schedule remains subject to change as the Project evolves.

ARTICLE 3

Preliminary Project Budget and Funding

Section 3.1 Preliminary Project Budget. The current Preliminary Project Budget to complete construction of the Project is attached hereto as Exhibit D. The Preliminary Project Budget reflects the preliminarily estimated cost of construction of the Project based on the Preliminary Project Design, as discussed in Section 4.2. The all-inclusive Final Project Budget shall continue to include all direct and indirect costs as well as contingencies consistent with industry standards.

Section 3.2 PWRF Funding and City Support.

3.2.1 PWRF Funds and Fundraising.

(a) As reflected in Exhibit D, the Preliminary Project Budget currently totals _____ Million Dollars (\$_____,000,000) to complete the development and construction of the Project, to be provided from all available sources. PWRF will be responsible for securing the funding needed to fully fund the eventual Final Project Budget, increased or decreased as appropriate resulting from scope, design and schedule changes and any cost overruns, all as provided herein. PWRF's fundraising commitment shall be increased to reflect the additional cost of any financing necessary to ensure the availability of funding as needed during construction of the Project (above the projected cost of any such financing reflected in the Final Project Budget). PWRF agrees to use its best efforts to secure commitments from private individuals, corporations and foundations, and governmental sources (other than the City) for such funds on a schedule consistent with its Fundraising Plan, attached hereto as Exhibit E. PWRF's success in achieving its fundraising objectives shall be evaluated by the City Manager when making their determinations under Section 4.4. Such evaluation shall include review of PWRF's private sector donor pledges, pledge payment experience and such other relevant information the City Manager may reasonably require. PWRF's private sector donor pledges will be reviewed by the City Manager under procedures to protect the confidentiality of donors and PWRF donor-related information to the extent possible. PWRF will submit to the City Manager a copy of the pledges in a form acceptable to the City Manager, with donor names verified by the City Manager but omitted from the copy submitted. The City Manager will approve a pledge if it is from a person or entity of substantial net worth in relation to the amount pledged and the City Manager knows of no reason the pledge will not be honored.

(b) The City will consider providing financing or credit enhancement for PWRF financing that may be needed to bring City-approved pledges forward to facilitate commencement of construction.

(c) If PWRF determines that, its best efforts notwithstanding, it is unlikely to be able to secure sufficient funding to complete the Project as presently conceived and as represented in the Preliminary Project Design, it shall so advise the City. The Parties shall confer and determine whether a mutually agreeable alternative project may be constructed and operated within projected reasonably available resources. In the event the Parties concur that such an alternative project would be mutually acceptable, the requirements of this Agreement may be modified to reflect such a modified project, including revising the Project design, budget and schedule for completing it, as appropriate. If the Parties cannot achieve concurrence on such an alternative project, particularly if the PWRF concludes, in its sole discretion, that its fundraising efforts are unlikely to yield sufficient resources to construct any project that would fulfill its vision and aspirations, this Agreement shall be terminated, as provided in Section 6.16.2.

3.2.2 City Support. The City shall provide the following in support of the development and construction of the PWR Museum:

(a) Site. The City shall provide the Site to PWRF for construction of its PWR Museum under this Agreement and its operation under the Lease. When provided to PWRF, the Site shall be in a construction ready condition. As such, the Site shall require no additional non-construction related site preparation at the cost of PWRF nor shall the property have been materially reduced in buildable size or require material ongoing site-related expense for PWRF under the Lease. Upon execution of this Agreement, the City shall undertake, at its sole expense and in close consultation with PWRF, a mutually agreeable, comprehensive evaluation of the Site to confirm its suitability for construction of the Museum consistent with the Preliminary Project Schedule contemplated in this Agreement. At its sole expense, the City shall fully remediate any environmental or address other physical conditions identified during the course of such evaluation that require such remediation or other measures before construction may proceed. The City also will respectfully address, at its sole expense, any archaeological, cultural or other physical impediments that may affect Project construction. If the City determines, in its sole discretion, that the cost of delivering a suitable construction ready site as required herein is beyond its means to fund, this Agreement shall terminate as provided in Section 6.16.2(b). If the PWRF, in its sole discretion, determines that the Site is no longer viable for the Project, this Agreement shall terminate as provided in Section 6.16.2(c).

To the extent that the Project is proceeding but has been delayed as a result of the City's efforts to provide a construction-ready site as required under this Agreement, consistent with the Preliminary Project Schedule provided in Section 2.4 for the start of construction shall be extended accordingly.

(b) Permitting and Other City Fees and Costs. The City shall waive or, as needed, bear, at its sole expense, any permitting fees or other project-related City costs, including without limitation, any internal or external project management or oversight expenses

the City may incur from the date of execution of this Agreement until completion of Project construction.

(c) Public Participation and Community Engagement. The City, at its expense and in close coordination with PWRF, shall engage the greater Snoqualmie community, specifically including, without limitation, the Snoqualmie Tribe, to solicit and respectfully inform public opinion regarding the Project. If either Party reasonably determines that prevailing community sentiment is such that the Project has become too controversial to warrant further City or PWRF support, the Parties shall confer and may concur that the Project should terminate as provided in Section 6.16.2(d).

ARTICLE 4

Project Design and Construction

Section 4.1 Project Management. Subject to the requirements of this Agreement, PWRF shall at its expense undertake and be responsible for the management of all aspects of the design and construction of the Project. PWRF shall engage and manage, without limitation, project managers, architects and other design professionals and a general contractor with the expertise and experience necessary to successfully complete the project. In conducting any construction work on the premises, PWRF shall cause all work to be done in a good and workmanlike manner and shall comply with or cause compliance with all laws. PWRF shall obtain or cause to be obtained and maintain in effect, as necessary, *all master use permits¹ (including State Environmental Policy Act (“SEPA” approvals), certificates of approvals, building permits, licenses and other governmental approvals that may be required in connection with such work,* subject to the City’s commitment provided in Section 3.2.2(b). PWRF shall complete construction of the Project substantially consistent with the Final Project Design, except as specifically provided herein. PWRF shall use its good faith best efforts to resolve issues that may arise during construction to avoid material or other changes to the Final Project Design that would require the approval of the City Manager by, among other measures, applying contingency funding available within the Preliminary Project Budget; adjusting the Project schedule; reducing costs through permissible changes to the Final Project Design and other means; and, as needed, committing additional funds to supplement the Preliminary Project Budget.

Section 4.2 Design Review and Approval; Consistent Preliminary Project Budget.

4.2.1 City Design Review and Approval. Sequential, major phase design documents (including schematic design, design development and permit documents) shall be reviewed and approved by the City Manager, which approval shall not be unreasonably denied, conditioned or delayed. The Project’s Preliminary Project Design is attached hereto as Exhibit C. Upon the City Manager’s approval of the Project’s one hundred percent (100%) construction documents, such documents shall constitute the Final Project Design for purposes of this Agreement. The Final Project Budget for construction of the PWR Museum consistent with the Final Project Design shall be determined by PWRF and is subject to the approval of the City as provided in Section 4.4.

¹ Placeholder for appropriate description of permits required by the City.

4.2.2 Material Change. Any material changes to the Final Project Design require the prior approval of the City Manager, which approval shall not be unreasonably withheld or delayed. A material change is any change estimated to cost Two Hundred Thousand Dollars (\$200,000) or more to complete and that affects the design, function or utility of the Project, including but not limited to elimination or addition of a significant element or feature; discernible or functional alteration in the quality or projected performance of any significant feature or system; or any significant change in the use or appearance of any major space or component. PWRF shall notify the City Manager of any proposed material changes. Any dispute between the Parties as to whether a proposed change is material shall be resolved in favor of requiring the City Manager's approval. Before PWRF gives its construction contractor its Notice to Proceed with construction, the Parties shall develop a process under which any proposed material changes shall be reviewed by the City Manager, including a timeline for such review designed to minimize potential delays in completing the Project consistent with the Final Project Schedule. Nothing in this paragraph shall be construed as limiting the authority of the City to approve or disapprove proposed changes to the Project when acting in its regulatory capacity.

4.2.3 Signage. The PWR Museum may be identified by signage affixed on the building and located elsewhere on its leased premises. Initial signage for the PWR Museum and leased premises shall be incorporated in the Project design and shall be subject to the review and approval of the City Manager in the context of review and approval of the design as provided in Section 4.2.1. The Project design may also include features or fixtures necessary for the display and support of temporary promotional or informational signage such as banners and flags.

Section 4.3 Requirements for Construction. In managing the Project, PWRF shall ensure that the Project and its general contractor and others as appropriate apply good faith best efforts to comply with the contracting requirements provided herein. PWRF shall comply with the following additional requirements:²

(a) *Upon completion of construction of the Project, PWRF shall apply for Leadership in Energy and Environmental Design (LEED) certification at the _____ level or higher, under the U.S. Green Building Council's Rating System.*

(b) *Staging? Will staging be entirely on site?*

Section 4.4 Notice to Proceed.

PWRF may issue its Notice to Proceed to its general contractor upon receipt of the following:

(a) concurrence by the City Manager that the Final Project Budget is consistent with the cost of completing construction of the Final Project Design, based on their review of the most recent construction cost estimates provided by PWRF;

² Placeholders for City requirements; also subject to client and client design team review.

(b) the determination of the City Manager, based on their review of the status of PWRF's fundraising efforts against its Fundraising Plan, that PWRF has timely access to sufficient funds from all available sources, including private individuals, corporations and foundations and public sources other than the City, to fully fund the cost of completing construction of the Project, as reflected in the Final Project Budget; and

(c) concurrence by the City Manager that (i) PWRF's general contractor has agreed to a guaranteed maximum price to construct the Project as represented in the Final Project Design and consistent with the Final Project Budget; and (ii) PWRF's contract with its general contractor provides for the requirements for construction under this Agreement.

Section 4.5 Project Management and Coordination.³

(a) *Project Manager and Coordinator. At least thirty (30) days prior to issuing its Notice to Proceed, PWRF shall notify the City Manager of the identity of the PWRF construction contractor's project manager ("Project Manager") by name and such person's business and home telephone numbers, and the City shall provide to PWRF comparable contact information for the City project coordinator ("Project Coordinator"). In the event either such person is replaced, the party changing personnel shall provide notice to the other no later than the effective date of such replacement, including such replacement's name and business and home telephone numbers.*

(b) *Project Construction Meetings. The Project Manager shall keep the Project Coordinator informed of the time and place of each regular and special project construction meeting to enable the Project Coordinator to attend, become informed about the status of the Project, participate in discussions and present the City's position regarding matters being discussed. The Project Manager shall also participate in such separate meetings with the Project Coordinator and, at the City Manager's option, with the City Manager's designee, as may be scheduled by the Project Coordinator with at least three (3) days' prior notice.*

(c) *Status Reports. Within seven (7) days after the receipt by PWRF of any project construction meeting minutes, PWRF shall deliver a copy of each of the same to the Project Coordinator.*

(d) *Minimization of Adverse Impacts. PWRF shall protect from damage or destruction all private and public property near the construction premises not scheduled for repair, replacement or removal. All Project-related demolition, construction, alteration, addition, improvement and other activity or work performed by or for PWRF on the construction premises shall be carried out in a manner that minimizes any adverse impact on nearby City property and the use thereof by the City or third parties, and on any private property near the Project. (For purposes of this requirement, the term "property" includes land, trees, shrubbery and landscaping, irrigation facilities, drainage, survey markers and monuments, buildings and structures, conduits and pipes, meters, fences, pavements, curbs, driveways, sidewalks, and other property of any description, excluding the premises subject to the Lease.) PWRF shall prepare for the City Manager's reasonable review and approval a plan for construction fencing, including*

³ Specifically reserved for Client and City discussion.

routes for temporary pedestrian access around the construction site, before mobilization work begins. PWRF shall work with the Project Coordinator to schedule construction activity to minimize construction impacts such as noise, dust and fumes. Nothing in this Section 4.5(d) limits the City's authority to impose SEPA mitigation measures on the Project when acting in its regulatory capacity.

(e) Waste Disposal. PWRF shall secure and provide within the construction premises, appropriately sized containers for the collection of all waste materials, debris and rubbish associated with the Project. PWRF shall keep the Site and all adjacent property free from the accumulation of waste materials, rubbish and windblown debris associated with the Project and, daily, shall dispose of all flammable, hazardous and toxic materials generated by or otherwise associated with, but not needed for construction of, the Project. Storage and disposal must be in accordance with applicable Federal, State and local laws, fire codes and regulations. All waste materials, debris and rubbish generated by or otherwise associated with the Project shall be disposed of legally at disposal areas away from the Site. Upon completing the Project, PWRF shall ensure that the Site and the roadways and walkways immediately surrounding the Site are cleaned to the reasonable satisfaction of the Project Coordinator, and that all tools, equipment and surplus materials, and waste materials, debris and rubbish associated with the Project have been removed from the Site.

(f) Staging and Fencing⁴. The Parties shall cooperate in the identification of sufficient space reasonably proximate to the Site for the exclusive use of PWRF's contractor and its subcontractors and their employees, agents or contractors for construction staging activities. Such activities include, without limitation, parking of construction, contractor and construction worker vehicles, temporary structures and storage of construction materials to be used in the Project. The space shall become available for staging when PWRF authorizes its contractor to proceed with construction of the Project and terminate upon Project completion. PWRF shall fully restore the staging space, as provided in Section 4.2. During Project construction, PWRF may install a temporary perimeter fence enclosing its staging area and the Site to secure both the Site and the staging area. Such fencing is subject to the City Manager's approval as provided in Section _____ and shall be removed upon Project completion.

(g) Construction Worker Parking. The City and PWRF have developed a plan for identifying locations for parking for Project contractors, suppliers and construction workers to minimize the impact of worker parking on the Site and the surrounding neighborhood.

Section 4.6 PWRF Cost Overruns Responsibility and Risk Management.

4.6.1 Cost Overruns.

(a) The Parties agree to apply good faith best efforts to complete the Project consistent with the Final Project Design. Funds required for any increases in the Preliminary Project Budget necessary to complete the Project substantially consistent with the Final Project Design (as potentially modified under this Agreement) shall be provided by PWRF from sources other than the City, except as specifically provided herein. PWRF's responsibility

⁴ Are we staging on-site or do we need staging elsewhere? Is there other City property nearby for staging?

for cost overruns includes responsibility for those due to unforeseen conditions that must be addressed for the Project to proceed, but only to the extent such conditions can be remedied with resources available within the Preliminary Project Budget. Upon discovery of an unforeseen condition that must be addressed for the Project to proceed, PWRF will notify the City Manager. PWRF will evaluate ways to resolve any such conditions for the Project to proceed and determine the cost of doing so. In addressing such additional cost, PWRF may, among other measures, apply contingency funds within the Preliminary Project Budget, make modifications to the Final Project Design, and apply such additional funds that PWRF, in its sole discretion, determines to provide to increase the Preliminary Project Budget. PWRF will keep the City Manager apprised of its work and advise them of its plans for addressing such conditions, specifically including any proposed changes in the Final Project Design requiring their approval under Section 4.2.2. If PWRF concludes that it lacks the resources to address any such unforeseen conditions and that it cannot complete the Project, it will so notify the City Manager. The Parties will cooperate in developing and implementing a plan to suspend or terminate the Project.

(b) PWRF's responsibility for cost overruns notwithstanding, the City shall bear financial responsibility for any direct or indirect cost increases associated with changes to the Project that the City requests after the City approves the Final Project Design (excluding permitting or other regulatory requirements).

4.6.2 Retainage and Bonding. PWRF shall establish retainage for purposes equivalent to those stated in Ch. 60.28 RCW at not less than five percent (5%) of its contractor's guaranteed maximum price and shall require bonding by its contractor to the extent warranted, in its judgment and discretion after consultation with the City Manager.

4.6.3 Liens. PWRF shall pay or cause to be paid all sums payable by it for any labor performed or materials furnished in connection with any work performed on the Project. PWRF will discharge, by bond or otherwise, any mechanic's or materialman's lien filed against the premises for work claimed to have been done for, or materials claimed to have been furnished to PWRF, within thirty (30) days after filing.

Section 4.7 Insurance Requirements⁵

4.7.1 *PWRF's Insurance Requirements. From and during the effective date of this Agreement, PWRF shall, at its sole cost and expense and as part of project costs, procure and maintain with insurers acceptable to the City, at a minimum, the following insurance against claims for injuries to persons or damages to property that may arise from, or in connection with the performance of work hereunder by PWRF, its agents, representatives, employees, consultants, subconsultants, contractors and/or subcontractors. Coverage shall be at least as broad as:*

4.7.1.1 Commercial General Liability. Insurance Services Office form number (CG 00 01) or equivalent covering Commercial General Liability Policy shall be written on form CG 00 01 07 98 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form and shall include coverage for:

⁵ Specifically reserved for Client and City review and discussion.

1. Premises/Operations;
2. Products/Completed Operations;
3. Advertising Injury;
4. Contractual Liability;
5. Independent Contractors;
6. "Additional Insured" status provided to relevant project entities;
7. Unintentional failure to disclose provision;
8. Per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per Project) or equivalent; and
9. A broadened knowledge of occurrence provision.

Such insurance must provide a minimum limit of not less than \$_____ general aggregate per location aggregate. Such insurance shall not contain exclusions related to explosion, collapse, underground, and blasting. PWRF shall maintain coverage for completed operations/product liability claims as part of such Commercial General Liability policy or provide evidence of completed operations/product liability for at least six (6) years after substantial completion of the Project. The policy will not exclude coverage losses resulting from perils and acts of terrorism so long as terrorism coverage is commercially available. If any such insurance policy excludes coverage for perils and acts of terrorism, PWRF will obtain a separate terrorism insurance policy in the coverage amount required by this paragraph in form and substance reasonably satisfactory to the City.

4.7.1.2 Automobile Liability. Insurance Services Office form number (CA 00 01) or equivalent covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with a limit of not less than \$_____ combined single limit per occurrence.

4.7.1.3 Workers' Compensation. Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits, and any other applicable State Workers' Compensation Law.

4.7.1.4 Employer's Liability or "Stop Gap". The protection provided by the Workers' Compensation Policy, Part 2 (Employer's Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability or Worker's Compensation Policy in the amount of at least \$_____.

4.7.1.5 Builder's Risk Insurance. During the period of construction, PWRF shall also procure and maintain Builder's Risk Insurance, which shall be written on an "all-risk" completed value policy form in the amount of the initial Contract Sum, plus value of subsequent contract modifications and cost of materials supplied or installed by PWRF, the City, or others, comprising total value for the entire Project at the site on a replacement cost basis, including cost to cover professional fees. Coverage shall be provided for (i) the perils of earth movement including earthquake and flood (an earthquake and flood sublimit may be allowed, as mutually agreed to by PWRF and the City and may be subject to probable maximum loss study); (ii) resultant damage from errors in design, plans, specifications, faulty workmanship, materials and construction; (iii) "extra expense"; (iv) temporary buildings, debris removal and all materials to be stored offsite and while in transit to the jobsite; (v) "cold testing" of all building

systems; (vi) PWRF's loss of use of the Project due to delays in Project completion caused by covered peril losses to the Project, including loss of income and rents and soft costs such as interest on any construction loan, real estate taxes and insurance premiums; (vii) the increased cost of construction, debris removal and demolition due to the operation of building laws and code upgrades; and (viii) direct physical damage to the Project and loss of use caused by an off premises services interruption. PWRF shall have the required Builder's Risk Policy in place no later than commencement of construction. The Builder's Risk Policy shall include PWRF, the general contractor and their respective subcontractors and other contractors as insureds in an amount equal to their interest with a loss payable clause in favor of any construction lender, as their interests may appear. PWRF shall keep the Builder's Risk Policy in place from commencement of construction until substantial completion. Upon substantial completion, the completed project broad-form all risk property insurance coverage will take effect immediately. The policy will not exclude coverage losses resulting from perils and acts of terrorism so long as terrorism coverage is commercially available. If any such insurance policy excludes coverage for perils and acts of terrorism, PWRF will obtain a separate terrorism insurance policy in the coverage amount required by this paragraph in form and substance reasonably satisfactory to the City.

4.7.1.6 Umbrella/Excess Liability. Coverage shall follow form of the General Liability, Employer's Liability, and Automobile Liability.

4.7.2 Contractors' Insurance Requirements. From and after the Effective Date of this Agreement, the contractor shall, at its sole cost and expense, procure and maintain or cause to be procured and maintained with insurers acceptable to the City, at a minimum, the following insurance against claims for injuries to persons or damages to property that may arise from, or in connection with the performance of work hereunder by contractor, its agents, representatives, employees, consultants, contractors and/or subcontractors. Coverage shall be at least as broad as follows. PWRF shall include a provision in each construction contract requiring each contractor to maintain the following minimum scope and limits of insurance.

4.7.2.1 Commercial General Liability. Insurance Services Office form number (CG00 01) or equivalent covering Commercial General Liability including coverage for:

1. Premises/Operations;
2. Products/Completed Operations;
3. Advertising Injury;
4. Contractual Liability;
5. Independent Contractors;
6. Explosion collapse underground hazards;
7. Personal injury with employment and contractual exclusions deleted;
8. Unintentional failure to disclose provision;
9. Per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per Project) or Equivalent;
10. Blasting (if explosives are used in the performance of the Work); and
11. A broadened knowledge of occurrence provision.

Such insurance must provide a minimum limit of liability general aggregate per project/location of \$_____ plus CGL umbrella policy with limit of \$_____.

The contractor's CGL insurance shall not exclude perils generally known as XCU (Explosion, Collapse and Underground Property Damage), Subsidence, Absolute Earth Movement (except as respects earthquake peril only) or any equivalent peril.

The contractor's CGL insurance shall include each of City and PWRF as an additional insured for Products and Completed Operations by providing additional insured status on the ISO CG 20 10 11 85 or CG 20 37 endorsement, or by an equivalent policy or endorsement provision. The Products and Completed Operations additional insured status for City shall remain in effect for not less than six (6) years following substantial completion.

4.8.2.2 Automobile Liability. Automobile Liability Insurance Services Office form number (CA 00 01) or equivalent for owned, non-owned, hired, and leased vehicles, as applicable, with a minimum limit of liability of \$_____. Combined Single Limit (CSL). If pollutants are to be transported, CA 99 48 endorsement is required on the Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy.

4.7.2.3 Workers' Compensation. The contractor shall comply with Workers' Compensation coverage as required by Title 51 RCW (Industrial Insurance) and any other applicable State Workers' Compensation laws.

4.7.2.4 Employer's Liability or "Stop Gap". The protection provided by the Workers' Compensation Policy, Part 2 (Employer's Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability or Workers' Compensation Policy in the amount of at least \$_____.

4.7.2.5 Contractor's Pollution Liability. Contractor shall provide contractor's Pollution Liability coverage in the amount of \$_____ per occurrence or claim 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. Insurance shall not exclude pollution arising out of asbestos, lead, mold and/or PCB operations. Evidence of insurance must specifically state that such coverage is included. Contractor shall be responsible for obtaining and maintaining evidence of Transportation coverage (including MCS-90 and CA 9948 Endorsements for Automobile Liability) and Disposal Site Operators Insurance from all subcontractors and site operators. If coverage is placed on a "Claims-Made" basis, then the Retrospective Date of the policy must match or precede the date these contracts are executed. Evidence of continuous coverage or an extended reporting period endorsement shall be required for a period of six (6) years after substantial completion.

4.7.2.6 Contractor's Professional Liability. In any construction contract that requires professional services as part of the work, contractor shall provide \$_____ per

claim/aggregate professional liability errors and omissions coverage. If coverage is placed on a "Claims-Made" basis, then the Retrospective Date of the policy must match or precede the date the first professional services are provided. Evidence of continuous coverage or an extended reporting period endorsement shall be required for a period of six (6) years after substantial completion.

4.7.3 Design and Engineering Consultants' Insurance Requirements. From and after the effective date of this Agreement, the professional consultant shall, at its sole cost and expense and as part of project costs, procure and maintain or cause to be procured and maintained with insurers acceptable to the City, at a minimum, the following insurance against claims for injuries to persons or damages to property that may arise from, or in connection with the performance of work hereunder by professional consultant, its agents, representatives, employees, consultants, contractors and/or subcontractors. PWRF shall require in each professional consultant contract that the consultant provide the following minimum scope and limits of insurance:

4.7.3.1 General Liability. Insurance Services Office form number (CG00 01) or equivalent covering Commercial General Liability, including coverage for completed operations/product liability, independent contractors, contractual liability, explosion collapse underground hazards, personal injury with employment and contractual exclusions deleted, unintentional failure to disclose provision, and a broadened knowledge of occurrence provision with a limit of not less than \$_____ combined single limit per occurrence, \$2,000,000 general aggregate per project/location. Professional consultant shall maintain coverage for completed operations/product liability claims as part of such Commercial General Liability policy or provide evidence of completed operations/product liability for at least six (6) years after substantial completion of the Project.

4.7.3.2 Automobile Liability. Insurance Services Office form number (CA 00 01) or equivalent covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with a limit of not less than \$_____ combined single limit per occurrence.

4.7.3.3 Workers' Compensation. Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington or any other applicable State Workers' Compensation Law, at statutory limits.

4.7.3.4 Employer's Liability or "Stop Gap". The protection provided by the Workers' Compensation Policy, Part 2 (Employer's Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability or Worker's Compensation Policy in the amount of at least \$_____.

4.7.3.5 Professional Liability Errors and Omissions. Consultant shall provide \$_____ per claim/aggregate professional liability errors and omissions coverage. Such coverage shall continue in force or be extended by professional "Tail" coverage for a period no less than six (6) years from Project completion.

4.7.4 Terms and Conditions. The policies required under this Section _____ shall meet all requirements below.

4.7.4.1 The City of Snoqualmie as Additional Insured. The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include the “City of Snoqualmie, its officers, officials, employees, agents and volunteers” as additional insureds. All insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term “insurance” in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.

4.7.4.2 Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited. PWRF’s insurance policy shall include a “separation of insureds” or “severability” clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer’s liability. PWRF’s insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City from coverage or asserting a claim under PWRF’s insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. PWRF’s failure to comply with any of the requisite insurance provisions shall, at the discretion of the City, serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by PWRF or reduced and/or offset against the Agreement.

4.7.4.3 Cancellation Notice. Such policies shall not be renewed, canceled, or materially modified without thirty (30) days’ prior written notice to the City or ten (10) days for non-payment of premiums. PWRF shall provide City with notification in the event of any reduction or restriction of insurance limits or coverage of any respective policies.

4.7.4.4 Minimum Security Requirements: Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A–:VII or higher in the then-current A. M. Best’s Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

4.7.4.5 Each insurance policy shall be written on an “occurrence” form, excepting that insurance for professional liability, errors and omissions, and Contractors Pollution Liability when required, may be acceptable on a “claims made” form.

4.7.4.6 If coverage is approved (if approval is required above) and purchased on a “claims made” basis, PWRF warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than six (6) years from the date of completion of the work that is subject to said insurance.

4.7.4.7 Any deductible must be disclosed to, and shall be subject to reasonable approval by, the City. The cost of any claim falling within a deductible shall be the responsibility of PWRF.

4.7.4.8 By requiring such minimum insurance as specified herein, neither party shall be deemed to, or construed to, have assessed the risks that may be applicable to the other party to this Agreement or any contractor. Each party and each contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage.

4.7.4.9 PWRF shall release the City from any and all claims or causes of action whatsoever in or from or in any way connected with any loss covered or which should have been covered by insurance required to be maintained by PWRF pursuant to this Agreement.

4.7.5 Waiver of Subrogation. City and PWRF release and relieve the other from any liability they might otherwise have and waive their entire right of recovery for loss or damage to property located within or constituting a part or all of the Premises or the PWR Museum to the extent that the loss or damage either (a) is actually covered by the injured party's property insurance, or (b) if the injured party failed to maintain insurance as required under this Agreement, would have been covered under the terms and conditions of the property insurance the injured party is required to carry under Section _____, whichever is greater. This waiver applies regardless of the cause or origin of the claim including without limitation loss due to the negligent acts or omissions of City or PWRF, or their respective officers, directors, council members, employees, agents, contractors, invitees, PWRF's assignees or subtenants. The parties shall have their property insurers endorse the applicable insurance policies to reflect the foregoing waiver of claims, provided however, that the endorsement shall not be required if the applicable policy of insurance permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver shall be acceptable; and provided further, that the failure to obtain such endorsement, when required, shall not impair the effectiveness of this waiver and/or release between City and PWRF.

4.7.6 Evidence of Insurance. On or before the effective date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by PWRF:

4.7.6.1 Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein.

4.7.6.2 A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;

4.7.6.3 A copy of the CGL insurance policy provision(s) and endorsements expressly including the City and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement; a full and complete copy of insurance policies must be provided to the City upon request.

4.7.6.4 Pending receipt of the documentation specified in this Section _____, PWRF may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Evidence of Insurance as set forth above, shall be issued to:

City of Snoqualmie

4.7.7 Assumption of Property Risk. Except to the extent of City's negligence or willful misconduct, but subject to Section _____ above, the placement and storage of PWRF's personal property in or about the Premises shall be the responsibility, and at the sole risk, of PWRF.

4.7.8 Adjustments of Claims. PWRF shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of PWRF under this Agreement.

4.7.9 PWRF's Responsibility. The procuring of the policies of insurance required by this Agreement shall not be construed to limit PWRF's liability hereunder. Notwithstanding said insurance, but subject to Section _____ above, PWRF shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of PWRF, or any of its agents, officers and employees or through use or occupancy of the Premises.

ARTICLE 5

Indemnification and Dispute Resolution

Section 5.1 Indemnification.

(a) PWRF Indemnification. To the fullest extent permitted by law, PWRF shall indemnify, defend (using counsel acceptable to the City) and hold the City, its officers, agents, employees and elected officials (collectively, the "City Indemnified Parties") harmless, and shall require its construction contractor to similarly indemnify, defend and hold the City Indemnified Parties harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) of any kind whatsoever arising out of the Project, including, but not limited to, claims resulting from, arising out of, or connected with the following: (i) the acts or omissions of PWRF, its employees, agents, officers, affiliates, contractors, guests or invitees throughout the course of the Project; (ii) PWRF's breach of this Agreement; or (iii) construction of the Project. PWRF's defense and indemnity obligations and those of its contractor shall extend to claims brought by their own employees and the foregoing obligations are specifically and expressly intended to act as a waiver of PWRF's and PWRF's contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City Indemnified Parties and to the extent necessary to provide the City Indemnified Parties with a full and complete defense and indemnity.

(b) City Indemnification. To the fullest extent permitted by law, the City shall indemnify, defend (using counsel acceptable to PWRF) and hold PWRF, its board members, employees, agents, officers, contractors, guests or invitees (collectively, “PWRF Indemnified Parties”) harmless throughout the course of the Project from and against all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including PWRF’s actual and reasonable personnel and overhead costs and attorneys’ fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) of any kind whatsoever resulting from, arising out of the Project, and which result from, arise out of, or are connected with the following: (i) the acts or omissions of the City, its employees, agents, officers, elected officials, affiliates, contractors, guests or invitees throughout the course of the Project; or (ii) the City’s breach of this Agreement, specifically including, without limitation, any such claims related to the condition of the Site as delivered to PWRF for which the City bears sole responsibility to provide a construction-ready site. The City’s defense and indemnity obligations extend to claims brought by its own employees and the City’s foregoing obligations are specifically and expressly intended to act as a waiver of the City’s immunity under Washington’s Industrial Insurance Act, RCW Title 51, but only as to PWRF Indemnified Parties and to the extent necessary to provide PWRF Indemnified Parties with a full and complete defense and indemnity.

Section 5.2 Limitation of PWRF’s Obligation. To the extent necessary to comply with RCW 4.24.115 as in effect on the effective date of this Agreement, PWRF’s and PWRF’s contractor’s obligation to indemnify the City for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Project (i) shall not apply to damages caused by or resulting from the sole negligence of the City Indemnified Parties; and (ii) to the extent caused by or resulting from the concurrent negligence of (A) the City Indemnified Parties and (B) PWRF, its board members, agents, contractors, officers, affiliates, employees, guests or invitees shall apply only to the extent of the negligence of PWRF, its board members, agents, contractors, officers, employees, guests or invitees; PROVIDED, HOWEVER, the limitations on indemnity set forth in this Section shall automatically and without further act by either the City or PWRF be deemed amended so as to remove any of the restrictions contained in this Section _____ no longer required by then applicable law.

Section 5.3 Waiver of Indemnity; Indemnities Negotiated. PWRF and the City agree that the foregoing indemnity specifically includes, without limitation, claims brought by either party’s employees against the other party. THE FOREGOING INDEMNITIES ARE EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF EACH PARTY’S IMMUNITY UNDER WASHINGTON’S INDUSTRIAL INSURANCE ACT, RCW TITLE 51, TO THE EXTENT NECESSARY TO PROVIDE THE OTHER PARTY OR PARTIES WITH A FULL AND COMPLETE INDEMNITY FROM CLAIMS MADE BY EACH PARTY AND ITS EMPLOYEES, TO THE EXTENT OF THEIR NEGLIGENCE. THE CITY AND PWRF ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

Section 5.4 Dispute Resolution. In the event of a dispute regarding this Agreement, the Parties agree to follow the procedures in this Section prior to filing or initiating a lawsuit. The

Parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, the matter shall be referred to the City Manager and the Executive Director or Board Chair of PWRF. If those officials are unable to resolve the dispute within a period of fifteen (15) days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. PWRF and the City agree to participate in mediation with the agreed upon mediator for a reasonable amount of time and in good faith. The cost of the mediation shall be shared equally between the City (one-half) and PWRF (one-half).

ARTICLE 6

Miscellaneous

Section 6.1 Amendments. This Agreement may not be amended, changed, modified or altered, except by an instrument in writing duly executed by the City and PWRF (or their successors in title) upon passage of an ordinance by the City Council.

Section 6.2 Authority. Each Party hereto warrants that it has the authority to enter into this Agreement and to perform its obligations hereunder and that all necessary approvals, acts or resolutions to authorize this transaction have been taken, and the signatories, by executing this Agreement, warrant that they have the authority to bind the respective parties.

Section 6.3 Binding Effect; No Assignment. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their successors. This Agreement may not be assigned without the written consent of the Parties.

Section 6.4 Consents and Approvals. In any instance when any Party's consent or approval is required under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Whenever the consent of City or the City Manager to any act to be performed under this Agreement is required, PWRF must obtain the consent or approval expressly for purposes of this Agreement, regardless of whether a consent or approval shall have been granted by the City in its regulatory, public utility, or other capacity. No permission, consent, or approval of the City or the City Manager contained herein or given pursuant to this Agreement is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with applicable laws, regulations, ordinances or codes, nor shall any such consent or approval be construed to authorize any failure to comply with any of the foregoing.

Section 6.5 Construction. The following rules shall apply to the construction of this Agreement unless the context otherwise requires:

(a) Words describing the singular number shall include the plural number and vice versa, except where otherwise indicated.

(b) All references herein to articles, sections or exhibits are references to articles, sections or exhibits of this Agreement, unless otherwise stated.

(c) The headings and table of contents herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(d) This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if all Parties had prepared it.

Section 6.6 Counterparts. This Agreement may be executed in counterparts for the convenience of the Parties, and such counterparts shall together constitute one Agreement.

Section 6.7 Cumulative Remedies. The rights and remedies that any Party may have under this Agreement or at law or in equity, upon any breach, are distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them shall be deemed to be exclusive of any other.

Section 6.8 Force Majeure. Except as otherwise provided in this Agreement, time periods for any Party's performance under any provision of this Agreement shall be extended for periods of time during which such performance is prevented due to circumstances beyond such party's reasonable control, including without limitation, strikes, embargoes, shortages of labor or materials, governmental regulations, acts of God, unforeseen site conditions, casualty, war or other strife.

Section 6.9 Governing Law; Jurisdiction and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of Washington and shall be liberally construed so as to carry out the purposes hereof. City and PWRF each hereby consent to personal jurisdiction in the state and federal courts located in the State of Washington. Except as otherwise required by applicable law, any action arising under this Agreement shall be brought and maintained in the Superior Court of the State of Washington in and for King County, City and PWRF each consent and agree that venue is proper in such court, and City and PWRF each waive any defense or right to seek dismissal or transfer on grounds of improper or inconvenient venue.

Section 6.10 Integration. Together with the Lease, this Agreement contains the entire integrated agreement between the parties as to the matters covered herein and supersedes any oral statements or representations or prior written matter not contained in this instrument as to the matters set forth herein.

Section 6.11 Limitation on Third Party Rights. Nothing in this Agreement expressed or implied is intended or shall be construed to give to any person other than the Parties any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Parties.

Section 6.12 No Partnership. Nothing in this Agreement shall create any partnership, joint venture or other relationship between PWRF and the City.

Section 6.13 No Waiver. Failure of any Party to complain of any act or omission by the other, no matter how long the failure may continue, shall not constitute a waiver of any rights under this Agreement. No waiver by any Party of any breach of any provisions of this Agreement shall be deemed a waiver of a breach of any other provision or consent to any subsequent breach of any other provision. If any action of any Party requires the consent or approval of another, consent or approval given on one occasion shall not be deemed a consent to or approval of that action on any other occasion. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

Section 6.14 Notices. All notices, demands or requests that may or must be given by any Party to another under this Agreement shall be given in writing and delivered personally, or sent by U.S. certified mail, postage prepaid, return receipt requested, or nationally recognized overnight air carrier, and addressed to City's address or PWRF's address, as follows:

If to the City:
 City of Snoqualmie
 Attn: City Administrator
 38624 SE River Street
 P.O. Box 987
 Snoqualmie, WA 98065
 Email: mchambless@snoqualmiewa.gov

And:

Copy to: **City Attorney**

If to PWRF:

Copy to: B. Gerald Johnson
 Pacifica Law Group LLP
 1191 2nd Avenue, Suite 2000
 Seattle, WA 98101-3404
 Phone: 206.245.1700
 Email: gerry.johnson@pacificallawgroup.com

Notices shall be deemed to have been given upon receipt or attempted delivery where delivery is not accepted. Any Party may change its address and/or those receiving copies of notices upon written notice given to the other.

Section 6.15 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, then that provision and the remainder of this Agreement shall continue in effect and be enforceable to the fullest extent permitted by law. It is the intention of the Parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

Section 6.16 Termination of Agreement.

6.16.1 Upon Project Completion. Unless otherwise stated herein, this Agreement and all obligations hereunder shall terminate when the Project receives its final certificate of occupancy, except that the provisions of Sections _____, _____, _____ and _____ survive the expiration or termination of this Agreement.

6.16.2 Failure of Assumptions. This Agreement may be terminated under the following circumstances:

- (a) As provided in Section 3.2.1(b), in PWRF's discretion, due to unsuccessful fundraising;
- (b) As provided in Section 3.2.2(a), in the City's discretion, due to unreasonably high Site preparation costs;
- (c) As provided in Section, 3.2.2(a), in PWRF's sole discretion, due to the viability of the Site;
- (d) As provided in Section 3.2.2(c), by mutual agreement between the Parties that the Project lacks adequate community support; or
- (e) By mutual agreement of the Parties for any other failure of a material shared assumption underlying the Project's purpose or prospects.

6.16.3 Disputes. Any disputes with regard to this section are expressly made subject to the terms of Section 5.4 of this Agreement regarding Dispute Resolution.

Section 6.17 Time of Essence. Time and all terms and conditions shall be of the essence of this Agreement.

[signatures on next page]

City:

CITY OF SNOQUALMIE, a Washington municipal corporation

By: _____

Name: Katherine Ross

Title: Mayor

PWRF:

PACIFIC WEST RAIL FOUNDATION, a Washington nonprofit corporation

By: _____

Name: Peter Hambling

Title:



Emily Arteche, Director
38624 SE River St. | P.O. Box 987
Snoqualmie, Washington 98065
(425) 888-5337 | earteche@snoqualmiewa.gov

MEMORANDUM

To: Community Development Committee
From: Emily Arteche, CD Director, AICP
Date: July 17, 2023
Subject: MFTE Update

BACKGROUND:

The Multifamily Housing Property Tax Exemption (MFTE) is a state law providing an 8 or 12-year property tax exemption on new, expanded, or updated multifamily housing. The exemption applies only to the residential portions of newly constructed improvements, not the value of the land, retail space, or existing improvements. Currently there are no exemptions identified in the SMC Chapter 3.10 MFTE. In 2021, the state legislature adopted significant amendments to RCW 84.14., i.e., the MFTE program.

The recently approved Mill Site development agreement requires that the residential area identified in the approved Planned Commercial/Industrial, PCI permit be eligible to apply for an MFTE. Staff scheduled draft Snoqualmie Municipal Code amendments addressing RCW 84.14, an implementing ordinance, and an adopting resolution for the committee to review at a forth coming meeting.

ANALYSIS:

The City's approved Housing Strategy Plan identifies MFTE as a promising way of "Incentivize New Rental Housing." Incentives for rental housing can include the Multi-Family Tax Exemption (MFTE), waiving or reducing impact fees, and density bonuses to incentivize affordable housing options. MFTE is described as a strategy that can be used citywide with a moderate to large scale of impact within a fairly near term timeline, i.e., 3 -years.

RCW 84.14 among other things, authorize local jurisdictions to designate target areas that would extend multifamily property tax exemptions for an additional 12 years if certain conditions are met, and provide for 20-year exemptions for qualifying housing. Although the city is not required to designate additional designated residential target areas for possible tax exemption the committee may wish to consider such areas to facilitate more affordable housing/work force housing.

Please see the link below for further information on the Housing Strategy Plan:

<https://www.snoqualmiewa.gov/DocumentCenter/View/36901/Snoqualmie-Final-Housing-Strategy-Plan-May-22-2023>

Next Steps

Discussion only.