

AFTER RECORDING, RETURN TO:

City of Snoqualmie
c/o City Administrator
P.O. Box 987
Snoqualmie, WA 98065

PUBLIC USE COVENANT

Reference numbers of related documents: N/A

Grantor: PACIFIC WEST RAIL FOUNDATION

Grantee: CITY OF SNOQUALMIE

Abbr. Legal Description: _____

Assessor's Property Tax Parcel/Account Number(s): _____

PUBLIC USE COVENANT

THIS PUBLIC USE COVENANT (this “Covenant”) is made and entered into as of _____, 202__, by and between the City of Snoqualmie, a municipal corporation organized under the laws of the State of Washington (the “City”) and Pacific West Rail Foundation, a Washington nonprofit corporation (the “PWRF”).

RECITALS

A. WHEREAS, PWRF owns certain parcels 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”);

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 ten (10) 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;

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;

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

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

F. WHEREAS, PWRF has indicated that it intends that its museum would, ideally in close and respectful collaboration with the Snoqualmie Tribe if it is located in Snoqualmie, suitably convey the deleterious impact the extension of the transcontinental railroads had on Tribal Nations and Indigenous People across the Western United States. Toward that end it expects that museum exhibitry will include candid, informative and respectful explanations, based on information available to the museum, of that impact in order that the public may begin to comprehend this dimension of the arrival of the railroads in the Puget Sound region;

G. WHEREAS, PWRF 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 Covenant on the express condition that City convey the City Conveyed Land (defined below) to PWRF;

H. WHEREAS, Hambling, in furtherance of the forgoing, has donated fee ownership of certain real property describe on Exhibit B-1 (“Hambling Conveyed Land”) to PWRF, which is part of the Land;

I. WHEREAS, City believes it serves an important public function and provides a substantial public benefit to have a vibrant and successful Museum on the Land and has transferred fee ownership of certain real property described on Exhibit B-2 (“City Conveyed Land”) to PWRF, which is a part of the Land, on the express condition that PWRF operates the Museum on the Land during the Term of this Covenant on the terms and conditions set forth below;

J. WHEREAS, City and PWRF are parties to that certain Development Agreement dated as of

[REDACTED] (as hereafter amended, the “Development Agreement”), pursuant to which PWRF shall construct the Museum on the Land;

K. WHEREAS, the City has determined that the public benefits represented by the corollary gift of the model railroad collection and the balance of site required for the development of the PWRF museum as well as PWRF’s commitments to construct and operate the public museum pursuant to this Covenant represent more than adequate consideration for the transfer of the City Parcels to PWRF; and

L. WHEREAS, The parties have agreed that this Covenant is a required condition of the City’s transfer of the City Conveyed Land to PWRF and that it will facilitate the establishment and operation of the Museum as indeed by the parties. Thus the parties are entering into this Covenant 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.

Effective Date. This Covenant is conditioned upon and will be effective upon the date when the following conditions are satisfied: (a) the City Council of City (“City Council”) has authorized this Covenant; (b) this Covenant is executed by authorized representatives of City and PWRF and recorded in the official records of King County, (c) the Development Agreement is executed by authorized representatives of City and PWRF and the Notice to Proceed has been issued thereunder, and (d) the Gift Agreement (defined below) has been executed by all parties thereto.

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

- Exhibit A: Land
- Exhibit B-1: Hambling Conveyed Land
- Exhibit B-2: City Conveyed Land
- Exhibit C: Public Benefits

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 Covenant, the following defined terms used herein shall have the meanings specified below:

“Affiliate” means (a) the legal representative, successor or assignee of, or any trustee of a trust for the benefit of, PWRF; (b) any entity of which a majority of the voting or economic interest is owned, directly or indirectly, by PWRF or one or more of the persons referred to in the preceding clause; (c) any entity in which PWRF 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 PWRF 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, PWRF 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.

“Casualty Termination Date” has the meaning set forth in Section 8.1.

“Casualty Termination Notice” has the meaning set forth in Section 8.1.

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

“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 14.17.

“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.

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

“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.

“Exhibit Insurance” has the meaning set forth in Section 4.3.

“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 PWRF, Hambling, and Lorrie Hambling dated on or about the date hereof and pursuant to which PWRF will receive the PWR.

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

“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 Covenant.

“Improvements Insurance” has the meaning set forth in Section 4.3.

“Viability Notice” has the meaning set forth in Section 7.1.

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

“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 Property.

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

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

“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.

“Offer” has the meaning set forth in Section 7.2.

“Offer Period” has the meaning set forth in Section 7.2.

“Opening Date” has the meaning set forth in Section 3.2.

“Operating Hours” means at least Wednesday – Monday, 10:00am- 6:00pm, excepting Christmas Day, New Year’s Day, Thanksgiving, Independence Day and up to three (3) other holidays (recognized at the state or federal level) as determined by PWRF.

“Permitted Transfers” 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.

“Property” means, collectively, the Land and the Improvements.

“Public Benefits” has the meanings set forth in Section 3.3.

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

“Right of Purchase” has the meaning set forth in Section 7.2

“Taxes” has the meaning set forth in Section 3.5.

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

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

ARTICLE 2. TERM AND TRANSFER OF CITY CONVEYED PROPERTY

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

2.2 **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 Covenant shall terminate concurrently, in which case the City Conveyed Land will be transferred to the City and the Hambling Conveyed Land will be transferred back to Hambling. The parties agree to execute and deliver such reasonable documentation necessary to effectuate such transfers.

2.3 **Transfer of City Conveyed Land.** City has transferred fee interest in the City Conveyed Land to PWRF as of or prior to the Commencement Date, in the condition described in Section 3.2.2(a) of the Development Agreement. Except as specifically required in the Development Agreement or in this Covenant, City has no obligation to contribute to the cost of the Improvements, nor shall City be obligated to perform any construction or make any improvements in connection with the Improvements, except as may be expressly provided in this Covenant.

2.4 **Quiet Enjoyment.** City covenants and warrants that PWRF, 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 Land during the Term, free from hindrance by City or any person claiming by, through or under City, and subject only to the provisions of all applicable Legal Requirements.

ARTICLE 3. CONSIDERATION; PUBLIC BENEFIT AND EXPENSE ALLOCATION

3.1 **Consideration.** During the Term, PWRF 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 there is no monetary consideration that is owed by PWRF to City for the City Conveyed Land. Rather, the consideration for the City Conveyed Land consists of the construction, maintenance, and operation of the Improvements at the expense of PWRF as provided herein and the duties and obligations to be undertaken by PWRF set forth in this Section 3.1 and as further detailed in Sections 3.2 through 3.5 below.

3.2 **Construction; Repairs.** PWRF 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”), PWRF 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 Covenant. During the Term, except as otherwise provided in this Covenant, PWRF shall, at its own cost and expense and without any cost or expense to City, keep and maintain the Property 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. PWRF shall promptly make all repairs, replacements and Alterations (whether structural or nonstructural, foreseen or unforeseen, or ordinary or extraordinary) necessary to maintain the Property in

a first-class condition and in compliance with all Legal Requirements and to avoid any structural damage or injury to the Property, or any persons in or around the Property.

3.3 **Public Benefits.** A central element of this Covenant is the identification of and PWRF's commitment to the ongoing provision of certain public benefits as described herein. In fulfillment of PWRF's commitment, from and after the Opening Date, PWRF 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 Covenant, all at no cost to City.

3.4 **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 PWRF but consistent with the requirements of Exhibit C. PWRF may restrict access to the Museum as necessary for security purposes. PWRF may close portions of the Museum to the public for offices, ancillary services, installation or repairs, as PWRF deems necessary or desirable from time to time. PWRF may use any portion of the Museum for its purposes when the Museum is not open to the general public. Nothing herein shall limit PWRF'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.

3.5 **Taxes.** Throughout the Term, PWRF 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 Covenant (prorated for any tax or installment period partially included in the Term) upon the Land 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.

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

ARTICLE 4. INDEMNITY, INSURANCE AND LIMITATION OF LIABILITY

4.1 Indemnification.

To the fullest extent permitted by law, PWRF agrees to defend, indemnify and hold harmless City, 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 City, its employees, agents, officials, members, or other persons serving in an advisory capacity to any of them or against the Land 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 Land, in each case arising out of the use, possession, ownership, condition or occupation of the Land or any part thereof (but not of any other property) from and after the Commencement Date by PWRF, its employees, agents, or members or invitees of any of them, or (ii) violation by PWRF, its employees, agents, or members, or invitees of any of them, of any Environmental Law affecting the Land or any part thereof or the ownership, occupancy or use thereof from and after the Commencement Date; provided, however, that notwithstanding the foregoing, PWRF shall not have any liability to City for any loss or damage arising out of acts of City or persons under the control or direction of City or out of any release or threat of release of Hazardous Substances for which City is responsible under this Covenant. City shall give PWRF 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 PWRF 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, City shall indemnify, pay the defense costs of and hold harmless PWRF 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 City in connection with the Land or this Covenant. This indemnity does not apply: (i) to Claims to the extent they are caused by the acts or omissions or misconduct of PWRF, 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.

City and PWRF 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. CITY AND PWRF ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

4.2 **PWRF's Liability Insurance.** PWRF, 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 PWRF's premises and operations and contractual liability assumed in Section 4.1.

4.3 **Property Insurance.** Throughout the Term of this Covenant, PWRF shall maintain (a) a standard form property insurance policy insuring the Improvements (excluding the Museum Property) against all risks of physical loss or damage (including earthquake and flood) ("Improvements Insurance") and (b) a standard form property insurance policy insuring the Museum Property against all risks of physical loss or damage (including earthquake and flood) ("Exhibit Insurance"). The Improvements 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 with a commercially reasonable deductible or self-insured retention, provided, however, the amounts of such Improvements Insurance coverages for earthquake, flood and other natural disaster coverages may be reduced to percentages of replacement cost that reflect PWRF's probable maximum loss assessment and the availability of such insurances on commercially reasonable terms consistent with PWRF's financial capacity as reasonably determined by PWRF to be appropriate within the constraints of a self-sustaining budget. Similarly, the amount of the Exhibit Insurance coverage required under this Section 4.3 also shall be determined by PWRF based on its reasonable determination of a practical replacement value of the Museum Property and the availability of any such insurance on commercially reasonable terms consistent with PWRF's financial capacity as reasonably determined by PWRF to be appropriate within the constraints of a self-sustaining budget.

4.4 **General Insurance Requirements.** All of the insurance policies required to be maintained under Sections 4.2 – 4.3 shall 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).

4.5 **Limitation of PWRF's Liability.** In no event shall City, its successors or assigns, have any recourse whatsoever for any damages payable, obligations assumed or indemnifications proffered by PWRF under this Covenant to (i) the Museum Property, any endowment, archives or other property of PWRF; (ii) funds and pledges of funds raised by PWRF for Property 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 Property, including claims arising under the insurance policies required to be carried under this Covenant or actually carried by PWRF. Under no circumstances shall City have any recourse whatsoever to PWRF's officers, trustees, directors, agents, employees, contractors or licensees for any debt or obligation created by this Covenant.

ARTICLE 5. USE

5.1 **Use.** PWRF shall use the Land 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 PWRF, and related office, educational, research, administrative, storage, and back-

of-house uses only. The use of the Land shall comply with this Covenant, any easements, covenants, restrictions, as well as all Legal Requirements. PWRF shall not use any Hazardous Substances, except to the extent reasonable or appropriate in connection with the lawful use of the Land in the ordinary course of PWRF's or any tenant's business, and PWRF shall comply with all Environmental Laws in connection with such use. In consideration of the prominent location of the Land, the Museum will be seen as an informal gateway to the City. As such, PWRF shall provide and maintain space at or near its main public entrance for a visitor information display showcasing other features in and information about the City and its environs that also would be of interest to visitors. The contents of the display shall be provided by the City and approved by PWRF, in its reasonable discretion. Notwithstanding the foregoing, the display is not intended to include third-party-generated commercial advertising or promotional materials.

5.2 **Compliance with Law.** PWRF 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 Land throughout the Term. City agrees that PWRF shall have the right to reasonably contest, at PWRF's sole cost, any asserted or alleged violation of any Legal Requirements in the name of PWRF, as PWRF deems appropriate. In addition, PWRF shall, at its expense, perform all its activities on the Land in compliance, and shall use commercially reasonable efforts to cause all tenants of any portion thereof to comply, with the Legal Requirements, as the same may be administered by authorized governmental officials.

ARTICLE 6. ALTERATIONS; LIENS

6.1 **Alterations.** PWRF 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 without the prior consent of City. Notwithstanding the foregoing, City 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. PWRF shall be responsible for obtaining permits necessary for any repairs, replacements, or Alterations. No change or alteration to the Property shall be undertaken until PWRF shall have procured all required permits, licenses and authorizations for such alterations. All changes and Alterations shall be made in a good and workmanlike manner and in compliance with all Legal Requirements.

6.2 **Mechanic's Liens.** PWRF 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 Land. PWRF will discharge, by bond or otherwise, any mechanic's or materialman's lien filed against the Land for work claimed to have been done for, or materials claimed to have been furnished to, PWRF within thirty (30) days after filing.

6.3 **Ownership of Improvements.** All Improvements shall be owned by and be the property of PWRF. During the Term, no Improvements shall be conveyed, transferred or assigned, except as permitted under Articles 12 and 14.

ARTICLE 7. ONGOING VIABILITY; CITY ROFR; SALE OF PROPERTY

7.1 **Ongoing Viability.** If during the Term PWRF determines, in its reasonable business judgement, that for whatever reason, such as unexpected expenses, lack of sufficient public demand, and/or inability to regularly earn adequate revenues, the continued operation of the Museum is no longer viable, then such event shall be referred to as an "Viability Event". If an Viability Event occurs, or is likely to occur, PWRF may elect to terminate this Covenant by providing written notice of the same to City ("Viability Notice"). Within thirty (30) days of the City's receipt of an Viability Notice, the parties shall meet and confer in order to determine what practical measures, if any, may be taken in order to ensure sustainable financial operation of the Museum in the long term. If the parties are unable to mutually agree on a viable plan for future operations within [] days of their initial meeting (which timeline may be extended by mutual agreement of the parties), then PWRF will, subject to Section 7.2, be permitted to sell the Land and Improvements. PWRF will work with the City, each acting in good faith, to determine the current fair market value of both the Hambling Conveyed Land and the City Conveyed Land.

7.2 **City ROFR.** If PWRF, pursuant to Section 7.1, receives a bona fide written offer from a third party to purchase the Land and Improvements which PWRF desires to accept ("Offer"), City may elect to purchase the Land and Improvements at the price and on the terms and conditions (except for the time within which to close the transaction, if such time is shorter than that set forth below) as are contained in the Offer ("Right of Purchase") minus the current fair market value of the City Conveyed Land, as determined by the parties. PWRF shall give notice to the City, including delivery to the City of a true and exact copy of the Offer, and allow the City thirty

(30) days subsequent to City's receipt of such notice ("Offer Period") within which the City may elect to purchase the Land and Improvements from PWRF; and in the event the City so elects to purchase the Land and Improvements, by giving notice of such election to PWRF within the Offer Period, PWRF shall sell the Land and Improvements, to City at the price (minus the current fair market value of the City Conveyed Land) and on the same terms and conditions as are contained in the Offer, except that City shall not be required to close the transaction prior to ninety (90) days following the expiration of the above 30-day period. If City timely elects to acquire the Land and the Improvements, then (a) City shall deposit 5% of the purchase price as earnest money within three (3) business days of the City's election to acquire the Land and Improvements, and (b) closing shall occur within ninety (90) days following City's written election to acquire the Land and Improvements. Notwithstanding the foregoing, unless explicitly agreed by PWRF to the contrary, the ownership of the Museum Property and all personal property of PWRF shall not be included in any sale contemplated herein and shall remain with PWRF in all events.

7.3 **Sale of Property.** In the event the City informs PWRF that it does not desire to exercise its Right or Purchase or fails to exercise its Right of Purchase within the Offer Period, then PWRF shall be permitted to sell the Land and Improvements to a third party on terms substantially similar to those contained in the Offer. The proceeds of such sale shall be allocated between the City and PWRF as follows [*NTD: PARTIES TO DISCUSS ALLOCATION MECHANICS*]. In addition, as part of such sale, the parties shall enter into a mutually acceptable termination agreement to terminate this Covenant as of the closing date of such sale.

ARTICLE 8. CASUALTY

8.1 The parties agree that:

(a) Effect of Damage or Destruction. In the event of any damage or destruction to the Improvements or Land, PWRF, 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 none of the damaged Land, the damaged Improvements, or damaged Museum Property, 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 Land, or (ii) constitutes a nuisance or otherwise presents a health or safety hazard. In the event of any damage or destruction to the Land, any Improvements, or Museum Property, PWRF shall, subject to the requirements of the holder of any Mortgage, repair and restore the Land, Improvements, or Museum Property, as applicable. All such repair and restoration shall be performed in accordance with the requirements of this Covenant. Any insurance proceeds from PWRF's insurance payable by reason of damage or destruction shall, subject to the rights of the holder of any Mortgage, be made available to pay the cost of such repair or restoration. In the event of any material damage to or destruction of the Land, any Improvements thereon, or Museum Property (i.e. the cost of repairing or replacing the same equals or exceeds thirty percent (30%) of the fair market value of the Improvements or Museum Property, as applicable, immediately preceding such damage or destruction) ("Major Destruction") from any causes whatever, PWRF shall promptly give written notice thereof to City. In the event (i) Major Destruction occurs within the last five (5) years of the term of this Covenant, (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 PWRF and the cost of repair and restoration exceeds ten percent (10%) of the fair market value of PWRF's interest in the Property immediately preceding such damage or destruction, PWRF may elect by written notice to City ("Casualty Termination Notice"), within ninety (90) days after the date of such damage or destruction, to terminate this Covenant. In the event PWRF elects to terminate this Covenant, the Term of this Covenant shall terminate one hundred twenty (120) days after the date of the Casualty Termination Notice ("Casualty Termination Date").

(b) Disposition of Land. As of the Casualty Termination Date the City Conveyed Land shall be transferred to the City and the Hambling Conveyed Land shall be transferred to Hambling. To effectuate the foregoing, PWRF shall execute, acknowledge and deliver to (i) City a quitclaim deed confirming that all of PWRF's rights, title and interest in the City Conveyed Land, has vested in City and (ii) Hambling a quitclaim deed confirming that all of PWRF's rights, title and interest in the Hambling Conveyed Land, has vested in Hambling.

(c) City Purchase Option. Following such transfers, the City may then elect to purchase (“Purchase Option”) the Hambling Parcels for a purchase price equal to the greater of (i) the then fair market value of the Hambling Parcels or (ii) the purchase price paid by Hambling (or his affiliate) paid when purchasing the Hambling Parcels from Seventy-Nine Forty, LLC (such amount in (ii) referred to as the “Purchase Price Floor”). In order to exercise its Purchase Right, the City must provide written notice (“Purchase Notice”) to PWRF of such election within thirty (30) days of the occurrence of the Project Failure.

Within [] days of receipt of the Purchase Notice, PWRF shall inform the City of its reasonable determination of the FMV and the purchase price. If the City objects to PWRF’s determination, then the Parties shall meet and confer for up to thirty (30) days (“Negotiation Period”) in order to determine a mutually agreeable purchase price. In the event the Parties are unable to agree within the Negotiation Period, then the purchase price shall be determined as follows (but in no event shall be less than the Purchase Price Floor):

(i) Within ten (10) business days of the end of the Negotiation Period, each of the Parties shall select one MAI real estate appraiser with at least ten (10) years’ full-time commercial appraisal experience in the greater Snoqualmie, WA area for comparable projects and who is neutral and has not rendered services to either PWRF or City or their respective affiliates within the preceding ten (10) year period (each, an “Appraiser”).

(ii) Within ten (10) days after each of the Appraisers have been selected, each Appraiser shall make its respective determination of the FMV, provided, however, that if either Appraiser requests additional information or documentation needed to make its determination of the FMV, such ten (10) day period shall be extended by up to an additional twenty (20) days, and each Party shall cooperate to provide any such requested information and documentation to the applicable Appraiser. The determination of each Appraiser shall be limited solely to the FMV. Neither Appraiser shall have the power to add to, modify, or change any of the provisions of this Agreement.

(iii) Upon a Party’s selected Appraiser’s determination of the purchase price, such Party shall cause its selected Appraiser to notify the Parties thereof. Upon each Appraiser having made its determination of FMV, the purchase price shall be equal the greater of (A) the mean of the two Appraisers’ respective determinations of the FMV (i.e., the average of the two Appraisers’ respective determinations of the FMV) or (B) the Purchase Price Floor. Such determination of the purchase price shall be final.

The cost of each Appraiser shall be paid by the Party that selected such Appraiser. Upon determination of the purchase price, the Parties agree to execute and deliver such reasonable documentation necessary to effectuate such transfer.

(d) Museum Property. Notwithstanding the foregoing, the ownership of the Museum Property and all personal property of PWRF shall remain with PWRF in all events.

8.2 **Insurance Proceeds**. Any insurance proceeds payable from PWRF’s insurance shall, subject to the requirements of the holder of any Mortgage, be paid to PWRF. In the event PWRF elects to terminate the Covenant under Section 8.1, PWRF’s insurance proceeds under the Improvements Insurance payable by reason of such damage or destruction shall, subject to the rights of the holder of any Mortgage, be made available to pay the cost of PWRF’s obligation to surrender the City Conveyed Land to City in accordance with the terms and provisions of Article 8.2 and the balance of such proceeds shall be paid to PWRF. In all events, the proceeds available under the Exhibit Insurance shall be paid to PWRF.

8.3 **Clearing of Property**. In of a Major Destruction and this Covenant is terminated pursuant to Section 8.1, then PWRF shall, prior to surrendering the City Conveyed Land to Land, either (a) make such repairs to the Improvements as are necessary so that the Improvements are structurally sound and in compliance with all Legal Requirements or (b) in the event the keeping the remaining Improvements in place would prevent transfer of the City Conveyed Land, demolish the remaining Improvements and clear the City Conveyed Land of all debris and related hazards. The Casualty Termination Date shall be extended as needed in order for Tenant to satisfy its obligations under this Section 8.3.

ARTICLE 9. CONDEMNATION

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 Land, then this Covenant shall terminate as of the earlier of the date title to the Land is transferred or the date PWRF is dispossessed by the Taking authority. City agrees not to exercise its eminent domain rights with respect to the Land.

9.2 **Termination for Material Interference.** If there is a Taking of part of the Land that in PWRF’s reasonable judgment materially interferes with PWRF’s ability to use the Land for the purposes set forth herein, which interference cannot be feasibly, economically, operationally or legally remediated, then PWRF shall have the right to terminate this Covenant by giving City notice of its election within sixty (60) days after the Taking. If this Covenant is so terminated, then it shall terminate on the earlier of the date title is transferred, the date PWRF is dispossessed by the Taking authority or thirty (30) days following PWRF’s notice; provided that such termination shall in no event extinguish or diminish PWRF’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 PWRF’s ability to operate the Land for the purposes set forth in this Covenant, then this Covenant shall continue in full force and effect as to the part not taken, except that PWRF need not operate a Museum or provide the Public Benefits in the space so taken.

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:

- (a) City shall be entitled to all amounts attributable to the value of the City Conveyed Land; and
- (b) PWRF shall be entitled to receive all amounts attributable (i) to the value of the Improvements, (ii) the Museum Property; (iii) the Hambling Conveyed Land, and (iv) PWRF’s relocation expenses.

ARTICLE 10. ACCESS TO LAND

UPON PRIOR REASONABLE NOTICE, CITY’S AGENTS, EMPLOYEES, AND REPRESENTATIVES SHALL HAVE THE RIGHT TO ACCESS, ENTER AND INSPECT THE LAND AT ANY REASONABLE TIME DURING THE OPERATING HOURS OR WHEN MUSEUM STAFF IS PRESENT ON THE LAND TO ESCORT THE INSPECTOR FOR THE PURPOSE MONITORING COMPLIANCE WITH THIS COVENANT OR FOR ANY OTHER PURPOSE PERMITTED UNDER THE TERMS OF THIS COVENANT. CITY 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 PWRF’S USE AND OPERATIONS OF THE MUSEUM.

ARTICLE 11. ENVIRONMENTAL

11.1 **PWRF Obligations.** PWRF agrees that:

(a) Neither PWRF nor its employees, agents, contractors, assignees, tenants, licensees or invitees will use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Land, or transport to or from the Land, 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 Covenant and the Development Agreement, and then only in compliance with all Environmental Laws.

(b) PWRF shall give prompt written notice to City of (i) any proceeding or inquiry by any governmental authority known to PWRF with respect to the presence or release of any Hazardous Substance on, in, about or from the Land or relating to any loss or injury resulting from any Hazardous Substance, all caused or alleged to be caused by PWRF or its employees, agents, contractors, assignees, tenants or invitees, (ii) all claims made or threatened by any third party in writing against PWRF with respect to the Land relating to any loss or injury resulting from any Hazardous Substance caused or alleged to be caused by PWRF, (iii) discovery after the date hereof by PWRF of any occurrence or condition on the Land 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 Land by PWRF.

11.2 Intentionally Omitted.

11.3 Environmental Indemnity. PWRF covenants and agrees to indemnify, protect, defend (by counsel reasonably satisfactory to City), and save City, 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 City, its employees, agents, managers and members, 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 Land, (i) from and after the Commencement Date, or (ii) which migrate off of the Land (or portion thereof) after the Commencement Date, except that the foregoing indemnity does not include any condition on the City Conveyed Land 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 City's negligence or willful misconduct.

City covenants and agrees to indemnify, protect, defend (by counsel reasonably satisfactory to PWRF), and save PWRF, 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 PWRF, its employees, agents, managers and members or the Land 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 Land (i) which existed on the City Conveyed Land at any time prior to the Commencement Date, or (ii) which migrate onto the Land hereafter from any other property owned by City, 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 PWRF's gross negligence or willful misconduct.

ARTICLE 12. ASSIGNMENT AND SUBLETTING

12.1 No Transfer Without City's Consent. Except for Permitted Transfers, PWRF 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 Land or the Improvements (any of the foregoing being herein referred to as a "Transfer") without the prior express written consent of City, 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 Covenant shall be null and void at City's option. Should City consent to a Transfer, (i) such consent shall not constitute a waiver of any of the restrictions or prohibitions of this Covenant, 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 PWRF of its liability under this Covenant and such transferring PWRF shall be released from performance of any of the terms, covenants and conditions of this Covenant upon such Transfer, and thereafter the assignee PWRF shall be liable under this Covenant.

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

(a) the transfer of any ownership interests in PWRF to any Affiliate of PWRF or from one owner of ownership interests in PWRF to another owner of ownership interests in PWRF; or

(b) the assignment of this Covenant, PWRF's interest in the Land or any lease of the Land (or portion thereof) to any Affiliate of PWRF or any lease to any retail or commercial tenant or licensee who is providing food or retail services to the Museum; or

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

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

(e) intentionally omitted; or

(f) 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 PWRF remains the same as that on the Commencement Date or as otherwise permitted in accordance with this Section 12.2 above; or

(g) any transfer resulting from a Taking.

ARTICLE 13. DEFAULTS

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

(a) if PWRF 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, PWRF shall fail to cure, correct or remedy such failure within sixty (60) calendar days after the receipt of written notice thereof; provided, however, if such failure cannot be cured by the payment of a sum certain to City (or other required payee), then, if such failure is susceptible to cure, but cannot with due diligence be cured within such sixty (60) day period, the time within which PWRF may cure such failure shall be extended so long as PWRF proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof within a reasonable period of time; or

(b) if PWRF abandons the Land or any substantial portion thereof and such abandonment is not cured within sixty (60) calendar days following written notice from City.

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) City, subject in all respects to (i) the provisions of this Covenant with respect to City's rights to cure defaults by PWRF and (ii) the rights of the holder of any 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 Covenant.

(b) No default in the performance of the terms, covenants or conditions of this Covenant on the part of PWRF shall be deemed to continue if and so long as PWRF 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 PWRF 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 the remedying of any Event of Default under this Covenant or any termination of this Covenant 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 Covenant, City, for itself and for

each and every succeeding owner of the Land or Improvements, agrees that it shall never be entitled to seek a personal judgment against PWRF's member(s), and that upon any Event of Default hereunder, the rights of City to enforce the obligations of PWRF, its successors or assigns, or to collect any judgment, shall be limited to specific performance, the termination of this Covenant and/or to collection from the assets of PWRF and the enforcement of any other equitable rights and remedies specifically granted to City hereunder.

13.3 Termination of Covenant for PWRF's Default. Upon a termination of this Covenant pursuant to Section 13.2(a), all of PWRF's right, title and interest in the Land, Improvements, and any Alterations shall cease and terminate, and title to the Improvements shall immediately vest in City. No further deed or other instrument shall be necessary to confirm the vesting in City of title to the Land, Improvements, and any Alterations. However, upon any such termination of this Covenant, PWRF, upon request of City, shall execute, acknowledge and deliver to City a quitclaim deed confirming that all of PWRF's rights, title and interest in the Land, Improvements, and any Alterations has expired and that title thereto has vested in City. Notwithstanding the foregoing, the ownership of the Museum Property and all personal property of PWRF shall remain with PWRF in all events.

13.4 Remedies Cumulative. Unless otherwise specifically provided in this Covenant, 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 Covenant may be exercised from time to time and as often as may be deemed expedient by either party. No delay or omission by City 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.

ARTICLE 14. MORTGAGES

14.1 Right to Encumber. Notwithstanding the provisions of Article 12 regarding Transfers of this Covenant, but subject to the provisions of this Article 14, PWRF shall have the right at any time and from time to time to encumber the Land and 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 "Mortgage") to secure repayment of a loan (and associated obligations) made to PWRF for the purpose of financing the construction of any Improvements or for the long-term financing of any such Improvements.

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

14.3 Acknowledgement of Notice. If requested by the terms of such notice, City 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 PWRF and the Mortgagee of the rejection of such communication as not conforming with the provisions of this Section and specify the basis of such rejection.

14.4 Protection of Mortgagees. If PWRF shall mortgage PWRF the Land in compliance with the provisions of this Section 14, then so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

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

(b) **Notice of Default.** City, upon providing PWRF any notice of (a) any default under this Covenant, (b) a termination of this Covenant, or (c) a matter on which City may predicate or claim a default, shall at the same time provide a copy of such notice to every Mortgagee of which City has been provided notice in accordance with Section 14.4 hereof. City shall have no liability for the failure to give any such notice, except that no such notice

by City to PWRF shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Mortgagee of which City has been provided notice in accordance with Section 14.4 hereof. From and after such notice has been given to a Mortgagee, such 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 PWRF after the giving of such notice to PWRF, 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. City shall accept such performance by or at the instigation of such Mortgagee as if the same had been done by PWRF. PWRF authorizes each Mortgagee to take any such action at such Mortgagee's option and does hereby authorize entry upon the Land by the Mortgagee for such purpose.

(c) Second Notice to Mortgagee. Anything contained in this Covenant to the contrary notwithstanding, if any Event of Default shall occur which entitles City to terminate this Covenant, City shall have no right to terminate this Covenant unless, following the expiration of the period of time given PWRF to cure such Event of Default or the act or omission which gave rise to such Event of Default, City shall notify every Mortgagee of City'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 City 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 Mortgagee shall:

- (i) Notify City of such Mortgagee's desire to nullify such Notice; and
- (ii) Pay or cause to be paid all amounts (i) then due and in arrears as specified in the termination notice to such 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 Covenant then in default and reasonably susceptible of being complied with by such Mortgagee; provided, however, that such 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) PWRF's failure to satisfy and discharge any lien, charge or encumbrance against PWRF's interest in the Land junior in priority to the lien of the mortgage held by such Mortgagee, or (ii) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Mortgagee, such as, by way of example only, the bankruptcy of PWRF or a court-ordered stay or injunction. If such Mortgagee has not completed the cure within three hundred sixty five (365) days after the later to occur of (A) the receipt of City's termination notice or (B) three hundred sixty five (365) days after the date that any court with jurisdiction over PWRF or the Land releases any stay, order or injunction, City shall have the right to terminate this Covenant upon written notice to PWRF and such Mortgagee.
- (iv) If more than one Mortgagee notifies City of such Mortgagee's desire to nullify such notice, the Mortgagee whose Mortgage is prior in lien (as determined in accordance with Section 14.9) shall have the right to nullify such notice and City without liability to PWRF or any Mortgage with a subordinate lien shall accept the cure tendered by the Mortgagee whose Mortgage is prior in lien.

14.5 **Procedure on Default.**

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

- (i) Continue its good faith efforts to perform all of PWRF's other obligations under this Covenant excepting (A) obligations of PWRF to satisfy or otherwise discharge any lien, charge or encumbrance against PWRF's interest in the Land junior in priority to the lien of the Mortgage held by such Mortgagee, and (B) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Mortgagee; and
- (ii) If not enjoined or stayed, take steps to acquire or sell PWRF's interest in the Land by foreclosure of the 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 Covenant beyond the original Term hereof, nor to require a Mortgagee to continue such foreclosure proceedings after

the Event of Default has been cured. If the Event of Default shall be cured and the Mortgagee shall discontinue such foreclosure proceedings, this Covenant shall continue in full force and effect as if PWRF had not defaulted under this Covenant.

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

(c) **Assumption of Covenant.** The making of a Mortgage shall not be deemed to constitute an assignment or transfer of PWRF's interest under this Covenant or the Land, nor shall any Mortgagee, as such, be deemed to be an assignee or transferee of PWRF's interest under this Covenant or of the Land so as to require such Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of PWRF to be performed hereunder. Notwithstanding the foregoing, the purchaser at any sale of PWRF's interest in the Land in any proceedings for the foreclosure of any Mortgage, or the assignee or transferee of the Land under any instrument of assignment or transfer in lieu of the foreclosure of any Mortgage, including, without limitation, a 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 PWRF 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 owner of the Land.

14.6 Intentionally Omitted.

14.7 Conflicting Priorities. If more than one Mortgagee shall seek to nullify a notice in accordance with Section 14.6(c)(iv) above, the Mortgagee whose Mortgage is prior in lien, or with the designee of such Mortgagee, shall have the right to nullify such notice. City, without liability to PWRF or any 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 Land is located as the basis for determining the appropriate Mortgagee who is entitled to nullify such notice.

14.8 Certain Defaults. Nothing herein contained shall require any 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 Mortgagee or such designee in order to comply with the provisions of Sections 14.6 or 14.7. The financial condition of any Mortgagee or successor to PWRF's interest under this Covenant 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 PWRF, the performance of which, requires possession of the Land shall be deemed reasonably susceptible of cure or performance by any Mortgagee or successor to PWRF's interest under this Covenant not in possession of the Land, 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 Mortgagee or successor. No Mortgagee shall be required to cure the bankruptcy, insolvency or any related or similar condition of PWRF.

14.9 Eminent Domain. PWRF's share, as provided in Section 9 of this Covenant, 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 Mortgage.

14.10 Insurance. A standard mortgagee clause naming each Mortgagee may be added to any and all insurance policies required to be carried by PWRF hereunder.

14.11 Legal Proceedings. City shall give each Mortgagee of which City has written notice prompt notice of any dispute resolution or legal proceedings between City and PWRF involving obligations under this Covenant. Each such 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 Mortgagee shall be bound by the outcome of such proceedings. In the event that any Mortgagee shall not elect to intervene or become a party to any such proceedings, City shall give the Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Mortgagees not intervening after receipt of Notice of such proceedings.

14.12 Intentionally Omitted.

14.13 Notices. Notices from City to the Mortgagee shall be mailed to the address furnished City pursuant to Section 14.4 and those from the Mortgagee to City 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 Mortgagee or City shall be given in the manner described in Section 32 and shall in all respects be governed by the provisions of that section.

14.14 Covenant Amendments or Recognition Agreement Requested by Mortgagee. In the event PWRP seeks to obtain or modify a Mortgage, and the applicable Mortgagee desires amendments to this Section 14 or desires to enter into a recognition agreement with City, then City 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 adversely affect the rights of City hereunder or its interest in the Land, as determined by City in its reasonable discretion. All reasonable expenses incurred by City in connection with any such amendment or recognition agreement shall be paid by PWRP.

14.15 City Purchase Right. In the event a Mortgagee desires to transfer the Land and Improvements by foreclosure sale, accept a deed in lieu of foreclosure, or acquire PWRP's interest in this Covenant by other means, the Mortgagee shall provide City no less than thirty (30) days prior written notice of its intention to exercise such right and City 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 Mortgage for a price equal to the sum of the outstanding unpaid balance of the loan secured by the Mortgage, together with any other amounts due and unpaid under the 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 City and reasonably acceptable to Mortgagee. At the Closing, City shall deliver to the Mortgagee through escrow the purchase price for the loan, and Mortgagee shall assign to City all of its right, title and interest in the loan and the Mortgage pursuant to documentation reasonably satisfactory to City and the Mortgagee. If City fails to deliver into escrow the required funds with said thirty (30) day period with instructions to deliver said funds to Mortgagee conditioned only upon receipt of the documentation necessary to enable the title company to insure City as the sole beneficiary of the Mortgage, the Mortgagee shall be entitled to pursue its rights to acquire or transfer the Land pursuant the Mortgage. If City delivers said funds as required herein, the Mortgagee's rights under this Covenant and the Mortgage shall terminate and be of no further force and effect.

ARTICLE 15. INTENTIONALLY OMITTED

ARTICLE 16. NOTICES

Any and all notices, consents, approvals and other communications required or permitted under this Covenant 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 Covenant 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 City: City of Snoqualmie
c/o City Administrator
P.O. Box 987
Snoqualmie, WA 98065

If to PWRF: _____

With a copy to: Pacifica Law Group LLP
1191 2nd Ave., Suite 2000

Seattle, WA 98101
Attn. B. Gerald Johnson

ARTICLE 17. MISCELLANEOUS

17.1 **No Partnership.** Nothing contained in this Covenant shall create any partnership, joint venture or other relationship between PWRF and City. It is the intent of the parties that this Covenant creates a restriction on the use of the Land and the relationship between the parties if one of grantor and grantee only.

17.2 **Severability.** This Covenant shall bind and inure to the benefit of City, its successors and assigns, PWRF, and its successors and assigns.

17.3 **Construction.** City and PWRF 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.

17.4 **Performance Under Protest.** In the event of a dispute or difference between City and PWRF 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.

17.5 **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 Covenant shall be deemed a waiver of a breach of any other provision of this Covenant 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.

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

17.7 **Partial Invalidity.** If any term, covenant, provision or condition of this Covenant 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 Covenant 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 City and PWRF which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the parties.

17.8 **Bind and Inure.** Unless the context requires otherwise, the words "City" and "PWRF" 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 Covenant contained on the part of PWRF to be performed and observed shall be binding upon PWRF and its permitted successors and assigns and shall inure to the benefit of City and its permitted successors and assigns, and the agreements and conditions in this Covenant contained on the part of City to be performed and observed shall be binding upon City and its permitted successors and assigns and shall inure to the benefit of PWRF and its successors and assigns. No holder of a Mortgage shall be deemed to be the holder of said Interest until such holder shall have acquired indefeasible title to said Interest.

17.9 **Time of Essence.** Time is of the essence of this Covenant and of all provisions hereof.

17.10 **Entire Agreement.** Together with the Development Agreement, this Covenant 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 Covenant may not be amended, changed, modified or altered, except by an instrument in writing duly executed by City and PWRP (or their successors in title) upon approval by the City Council.

17.11 **Authority.** Each party hereto warrants that it has the authority to enter into this Covenant 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 Covenant, warrant that they have the authority to bind the respective parties.

17.12 **Consents and Approvals.** In any instance when either party's consent or approval is required under this Covenant, such consent or approval shall not be unreasonably withheld, conditioned or delayed. No permission, consent, or approval of City contained herein or given pursuant to this Covenant 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.

17.13 **Governing Law; Jurisdiction and Venue.** This Covenant, 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. City and PWRP 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 Covenant shall be brought and maintained in the Superior Court of the State of Washington in and for King County, City and PWRP each consent and agree that venue is proper in such court, and City and PWRP each waive any defense or right to seek dismissal or transfer on grounds of improper or inconvenient venue.

17.14 **Exhibits.** Exhibits A through C attached hereto are hereby incorporated herein and made a part of this Covenant.

17.15 **Dispute Resolution.** In the event of a dispute arising out of this Covenant, 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 City and the executive director or board chair of PWRP. 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. City and PWRP 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 City and PWRP.

17.16 **Limitation on Third Party Rights.** Nothing in this Covenant expressed or implied is intended or shall be construed to give to any person other than City or PWRP any legal or equitable right, remedy or claim under or in respect of this Covenant 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 City and PWRP.

17.17 **Counterparts.** This Covenant may be executed in counterparts for the convenience of the parties, and such counterparts shall together constitute one Covenant.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO COVENANT

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

CITY:

CITY OF SNOQUALMIE,
a municipal corporation organized under the laws of the State of Washington

By: _____

Name: _____

Title: _____

PWRF:

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-1
CITY CONVEYED LAND

[to be attached]

EXHIBIT B-2
CITY CONVEYED LAND

[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 during the Operating Hours, provided, however, PWRF may, in its reasonable discretion, offer limited hours in which it is open to the public on holiday adjacent days (e.g. New Year's Eve, Christmas Eve, Friday following Thanksgiving).
- 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. Provided, however, for the purposes of clarity and the avoidance of doubt, PWRF makes no representations related to any level of additional economic activity and shall have no obligation regarding the same (other than operating the Museum as contemplated herein).
- 3) During the Term, PWRF agrees to make the Museum available to City for City-planned events up to two (2) times per calendar year ("City Events"). City 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 PWRF unless the parties mutually agree otherwise. The parties acknowledge and agree that each City Event shall not exceed eight (8) hours, inclusive of set-up and take-down time. City and PWRF shall reasonably cooperate with each other to schedule the City Events, and Museum will be closed to the public during each City Event. City shall comply with PWRF's reasonable rules and regulations during City Events.