

CITY OF SNOQUALMIE DRAFT of July 26, 2023 FOR
DISCUSSION PURPOSES ONLY. SUBJECT TO CONTINUING
CLIENT REVIEW

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 the Museum (defined below) adjacent to tracks of the SVR, enabling real-time comparison between the actual and the model; and

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

H. 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 Tribal Nations and Indigenous People of the American West, specifically including those of the Pacific Northwest region; and

I. WHEREAS, with respect and humility, Tenant intends that a museum located in Snoqualmie would, ideally in close collaboration with the Snoqualmie Tribe, suitably convey for its visiting public the deleterious impact railroads had on the Tribal Nations and Indigenous People of the region, and pledges that its exhibitry will include candid, informative and respectful explanations, based on information available to the museum, 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

G.J. 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.K. 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.L. 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.M. 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.N. 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.

“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 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.

“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 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.

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

“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 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 Tenant.

“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 Six Hundred (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 the condition described in Section 3.2.2(a) of the Development Agreement. 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.

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) 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 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.

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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. 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.

In consideration of the prominent location of the Land, the Museum will be seen as an informal gateway to the City. As such, Tenant 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

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that also would be of interest to visitors. The contents of the display shall be provided by the City and approved by Tenant, in its reasonable discretion. Notwithstanding the foregoing, the display is not intended to include third-party-generated commercial advertising or promotional materials.

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. Tenant shall be responsible for obtaining permits necessary for any repairs, replacements, or Alterations. No change or alteration to the Premises or the Improvements shall be undertaken until Tenant 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.

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.

Section 7.1 Generally. 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.

Section 7.2 Major Destruction. Notwithstanding the foregoing, in the event the Improvements suffer a Major Destruction (defined below) and the Lease is terminated pursuant to Section 8.1, then Tenant shall, prior to surrendering the Premises to Landlord, 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) at Landlord's request, demolish the remaining Improvements and clear the 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 7.2.

ARTICLE 8. CASUALTY

Section 8.1 Effect of Damage or Destruction. ~~In the event of any material damage to or destruction of the Premises, 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, 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, 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 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, any Improvements, or Museum Property, Tenant shall, subject to the requirements of the holder of any Leasehold Mortgage, repair and restore the Premises, Improvements, or Museum Property, as applicable. 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 of any material damage to or destruction of the Premises, 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

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preceding such damage or destruction) (“Major Destruction”) from any causes whatever. Tenant shall promptly give written notice thereof to Landlord. 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 (“Casualty Termination Notice”), 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 the Casualty Termination Notice (“Casualty Termination Date”).

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 terminate the Lease under Section 8.1, Tenant’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 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 7.2 and the balance of such proceeds shall be paid to ~~Tenant~~Landlord. In all events, the proceeds available under the Exhibit Insurance 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 7.2.

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.

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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:

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

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~~(b)~~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:

~~(a)~~ 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.

~~(b)~~ 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 11.2~~ 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 11.3~~ 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 forgoing 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

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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 forgoing 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 settlor 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

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~~(f)~~**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

~~(g)~~**Section 12.9** any transfer resulting from a Taking.

~~Section 12.3~~**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.

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:

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

(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 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 Mortgage, 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.

Section 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

COUNTY OF KING

ss.

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

COUNTY OF KING

ss.

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 A

EXHIBIT B
PERMITTED EXCEPTIONS

[to be attached]

Exhibit B

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, Tenant 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, Tenant 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, 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 eight (8) hours, inclusive or 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.