

**AMENDED & RESTATED
JOINT USE AGREEMENT FOR
GARAGE, MUSEUM CAMPUS
AND PUBLIC ACCESS COMPONENTS**

THIS AGREEMENT is entered into this _____ day of _____, 2025, by and between the CITY OF TACOMA, a Washington municipal corporation and first-class charter city of Washington ("Tacoma"), and the MUSEUM OF GLASS, a Washington not-for-profit corporation ("the Museum") (collectively, the "parties").

RECITALS

WHEREAS, pursuant to the November 6, 1997, Agreement for the Sale and Purchase of Real Property and the June 9, 2001, First Amendment to Agreement for Sale and Purchase of Real Property, the Museum purchased from Tacoma the real property described in Exhibit "A" hereto (hereafter, the "Property"); and

WHEREAS, pursuant to the June 9, 2001, Development and Sale-Back Agreement ("Development Agreement") and pursuant to the Amendment to Development and Sale-Back Agreement dated December 17, 2001 (the "Amendment"), the Museum owns the Museum Building and the plazas and pools on the Property surrounding the Museum Building and Tacoma owns the garage substructure located beneath the Museum Building, the esplanade, the pedestrian bridge extension, various other public access components on the Property, and the Chihuly Bridge of Glass providing pedestrian access to the Property; and

WHEREAS the parties ~~desire to satisfy their obligation under section 8.4(c) of the Development Agreement and under paragraph 12 of the Amendment to execute a joint operations agreement for the garage substructure entered into a Joint Use Agreement for Garage, Museum Campus, and Public Access Components dated November 12, 2004 ("Joint Use Agreement") for management of the garage, museum campus, and public access components;~~ and

WHEREAS the parties ~~desire to satisfy their obligation under section 12 of the Amendment to execute a joint use agreement regarding the Property according to the Joint Use Principles of Agreement described in Exhibit 4 to the Amendment;~~ and

WHEREAS ~~this Agreement is intended to regulate use of the Garage, use of the stairs, plazas, and pools on the Property surrounding the Museum Building, and use of the Joint Use Components at the Project site~~ now wish to enter into this Amended & Restated Joint Use Agreement to address necessary changes related to the Museum's renovation project and memorialize other operational adjustments.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

ARTICLE I: DEFINITIONS AND TERM

1.1 Definitions. For purposes of this Agreement and any agreements supplemental hereto, the terms defined in this article, unless otherwise expressly provided, shall have the following meanings:

(a) Garage shall mean the parking garage facility Substructure as that term is defined in the Development Agreement and described in Exhibit "B" to the Development Agreement. "Garage" shall include property owned by Tacoma over which the Museum has an easement.

(b) Joint Use Components shall mean the pedestrian bridge extension, grand stairs, main plaza and other public property owned by Tacoma on the Property, except the Garage or any part of the Museum Building. "Joint Use Components" shall include property owned by Tacoma over which the Museum has an easement, but shall not include the Garage or any part of the Museum Building. (Joint Use Components are more particularly described in the legal description attached hereto as Exhibit "A").

(c) Museum Building shall mean the habitable structure on the Property owned by the Museum, including the Museum store and the Museum restaurant. (The Museum Building is more particularly described in Exhibit "A," attached hereto).

(d) Museum Campus shall mean the stairs, ramps, pools, and plazas owned by the Museum appurtenant to the Museum Building, but shall not mean easements granted to the Museum over property owned by Tacoma. (The Museum Campus is more particularly described in Exhibit "A," attached hereto).

(e) Governmental Authorities shall mean any board, bureau, commission, department, or body of any municipal, county, state, or federal governmental or quasi-governmental unit, or any subdivision thereof, having, asserting, or acquiring jurisdiction over the Property, over the Museum Building, over the Museum Campus, over other property of the Museum, or over the operation, use, or improvement thereof.

(f) Impositions shall mean all taxes, special assessments, water and sewer rents, rates and charges, and all other charges of any Governmental Authority and assessments levied or assessed with respect to the Property.

(g) Law(s) and Ordinance(s) shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, permits, authorizations, orders, and requirements of all federal, state, county, and municipal governments, the departments, bureaus, or commissions thereof, authorities, boards, or officers, any national or local board of fire underwriters, or any other body or bodies

exercising similar functions having or acquiring jurisdiction over all or any part of the Property, including Tacoma acting in its governmental capacity.

1.2 Term and Renewal. The term of this agreement shall be from the date this Agreement is executed until the Museum no longer operates a museum of contemporary art in the Museum Building, or until earlier terminated pursuant to this Agreement.

ARTICLE II: STATUS OF THE PARTIES

2.1. No Agency. This Agreement does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association between Tacoma and the Museum. This Agreement shall not effect the easements granted to the parties pursuant to the Record of Survey concerning the Property that shall be filed by them.

2.2. Museum Status. The Museum will maintain its status as a Washington Nonprofit Corporation and will not at any time make any disbursement of income to its members, directors, or officers.

2.3. Museum Building. The Museum will operate a first-class museum of contemporary art in the Museum Building. The Museum will maintain regular hours of operation during which times the Museum Building will be open to the public upon payment of a fee or without fee, at the Museum's sole discretion. The Museum will provide security, maintenance, and refuse removal at the Museum Building to ~~insure~~ensure that it will continue to be operated as a first-class museum of contemporary art.

2.4. Non-interference. Tacoma shall retain its normal police and regulatory powers, subject to its obligations under this Agreement. The Museum shall at all times remain a private and independent person. Tacoma and its various officials and employees, during the term of this Agreement, shall not seek to influence Governmental Authorities in a manner (a) that would deny the Museum the benefits of Tacoma's covenants and obligations under this Agreement, or (b) that would deny the Museum the benefits of any Laws or Ordinances or governmental policies in order to accomplish a result that would not be permitted under the terms and conditions of this Agreement, or (c) that would, except as expressly allowed under this Agreement, limit or restrict the Museum's artistic or other decisions regarding use of the Museum Building, use of the Museum Campus, or use of other property owned by the Museum.

2.5. Mandated Requirements. Notwithstanding anything to the contrary in this Agreement, nothing shall be deemed to preclude or excuse the Museum or Tacoma from complying with mandated requirements of federal, state, or local law in the operation and maintenance of the Museum Building, the Museum Campus, the Garage or the Joint Use Components. Mandated requirements shall include measures uniformly applicable to all similar properties which, if not implemented, would subject

Tacoma or the Museum to penalties, sanctions, loss of funds or other restrictions, or findings of noncompliance.

2.6 Washington Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with the laws of the state of Washington. Any suit filed between the parties concerning this Agreement shall be commenced in the Superior Court for the State of Washington in Pierce County.

ARTICLE III: OPERATION OF THE GARAGE

3.1 The Garage. The Garage shall be operated by Tacoma or by its contractor as a transient parking facility in a secure, first-class manner by professional, courteous staff. Tacoma shall maintain approximately ~~175-139~~ transient parking stalls available to the general public and 5 reserved parking stalls available exclusively to the Museum during hours of operation of the Museum Building. Tacoma may designate up to 15 parking spaces for monthly parking. All stalls, lanes, directions, and signage in the Garage shall be clearly marked and consistent with the Museum's operation of a first-class museum of contemporary art, and all graffiti and trash shall be promptly removed from the Garage.

3.2 Museum Parking Stalls. Pursuant to the Development Agreement and the Amendment, the Museum shall continue to own the license to use at any time five reserved parking stalls and 45 unreserved parking stall permits in the Garage.

3.3 Hours. The Garage shall be operated for public parking, at a minimum, starting one-half hour before the Museum Building (including any part thereof) is open to the public, and shall remain in operation for public parking until one-half hour after the Museum Building (or any part thereof) has closed to the public. Upon reasonable notification by the Museum, Tacoma shall operate the Garage for public parking starting one-half hour before special events and shall keep the Garage open until one-half hour following special events held at the Museum Building and/or at the Museum Campus during hours the Museum Building is not otherwise open to the public.

3.4 Security Program. Tacoma and the Museum shall create and implement a program for the security of the Garage that may include cameras and other electronic devices, as well as security personnel conducting on site surveillance. Tacoma and the Museum shall meet on a regular basis to review the adequacy of the security program and to make changes as required to insureensure the safety of the public and the agents and employees of the parties hereto, and to prevent property damage at the Garage and at the Museum Building.

3.5 Tacoma Regulation. Tacoma will regulate, maintain, remove refuse from, illuminate and provide security in the Garage so as to insureensure that it will operate as a first-class transient parking facility. Tacoma shall regulate the Garage so that activities not compatible with the operation of a first-class museum of contemporary art

do not occur in or around the Garage. Tacoma shall not allow activities in or around the Garage that may interfere with programs at the Museum Building or at the Museum Campus, activities that may interfere with the peace, safety, and security of museum patrons, or activities that may interfere with the security of the Museum Building and/or the Museum Campus.

3.6 Garbage and Ventilation. Tacoma will supply adequate garbage receptacles and will regularly empty such receptacles so as to prevent the accumulation of refuse in the Garage, unless the parties otherwise mutually agree to remove those receptacles. Tacoma will make sure that the ventilation system, to the extent it exists, in the Garage is properly working in order to assure adequate air quality in the Garage. The Museum will assure that its renovations to the garage ventilation system will not impair air quality.

3.7 Public Use Restrictions. The parties agree that it is in their mutual interests to regulate public use of the Garage so as to prohibit uses incompatible with operation of a museum of contemporary art in the Museum Building. Tacoma, therefore, shall restrict public use of the Garage as follows:

(a) Riding unlicensed vehicles with wheels such as skateboards, roller blades, or roller skates shall be prohibited; provided, however, that bicycles shall be allowed and that wheelchairs, walkers, baby strollers, or wagons used by disabled persons or infants shall be allowed.

(b) Fires not authorized in writing by the parties hereto and use of flammable liquids for any purpose other than to operate a motor vehicle shall be prohibited.

(c) Spitting or discharge of human waste shall be prohibited.

(d) All animals must be kept on a leash at all times. All animal wastes shall be picked up immediately and disposed of properly.

(e) Loitering, protesting, public profanity, nudity, and disturbing the peace shall be prohibited.

(f) Smoking shall be prohibited.

(g) Consumption of alcohol or use of controlled substances shall be prohibited.

(h) Littering shall be prohibited. All garbage shall be properly disposed of in garbage receptacles.

(i) Soliciting and commercial activities of all kinds shall be prohibited, unless authorized by mutual agreement of the parties hereto.

(j) Proselytizing, amplification of sound (whether voice or music) in violation of Tacoma ordinances, and causing excessive noise shall be prohibited.

(k) Organized gatherings without the prior written approval of the Museum or Tacoma shall be prohibited.

Nothing herein shall prohibit or restrict the parties hereto from uses of the Garage that are otherwise compatible with this Agreement; provided, however, that the Museum shall peaceably and quietly have, hold, and enjoy the Museum Building and the Museum Campus during the term of this Agreement without interruption, disturbance, hindrance, or molestation by Tacoma or by anyone claiming, by, through, or under Tacoma, subject to Tacoma's use of the Garage and the Joint Use Components pursuant to the parties' agreements and respective property rights.

3.8 2026 Garage Improvements. The Museum will be undergoing various renovations and improvements which will include and involve the Garage. The cost of these renovations and improvements shall solely be borne by the Museum. The improvements to the Garage shall be considered to be the property of the Museum to the extent they are severable and should the Property be sold back to the Museum at any time in the future in the fair value of any non-severable improvements shall be factored into the purchase price by good faith negotiation between the City and Museum. The anticipated Garage renovations shall include the following:

- (a) Increase the height of the cement wall on the east side of the garage to protect it from King Tides.
- (b) Elimination of a portion of the cement island on the parking ramp to facilitate entry and exit from the garage.
- (c) Improvements to garage lighting to increase security.
- (d) Add wood and metal shops with sinks, heating, ventilation, and security.
- (e) Add storage space with associated heating and security.
- (f) Reinforce two piles to increase Museum building support.
- (g) Grant any additional easements necessary to ensure the City's continued access through the renovated areas.
- (h) In entering into this Amended and Restated Joint Use Agreement the City is acting in its proprietary capacity to allow for commencement of the permitting process, but does not promise any particular outcomes in permitting. In the permitting process the City will act in its in its land

use regulatory capacity and will thoroughly review the the Museum's plans for compliance with the City code and all other applicable regulations including any remaining environmental requirements derived from the 1994 Consent Decree and subsequent cleanup of Foss Waterway parcels 7 and 8 on which the garage and MOG are situated.

As consideration to the City for the reduction in public parking stalls and the Museum's future operation and control of the renovated areas, the Museum and the City will develop a comparative valuation considering the value of the renovations to the City against the reduction in parking and City control. Based on this valuation the parties will administratively address any differences in value. In addition, the Museum will provide the comprehensive Environmental Contamination Indemnification in Section 10.4 for any issues arising from its renovation.

ARTICLE IV: OPERATION OF THE MUSEUM CAMPUS AND JOINT USE COMPONENTS

4.1 Security Program. Tacoma and the Museum shall develop a program for the security of the Joint Use Components and the Museum Campus that may include cameras and other electronic devices, as well as security personnel conducting onsite surveillance. Tacoma and the Museum shall meet on a regular basis to review the adequacy of the security program and to make changes as required to ~~insure~~ensure the safety of the public and the agents and employees of the parties hereto, and to prevent property damage to the Joint Use Components, at the Museum Building, and to the Museum Campus.

4.2 Garbage. The Museum will supply adequate garbage receptacles on the Museum Campus and will regularly empty such receptacles so as to prevent the accumulation of refuse on the Museum Campus. Tacoma will supply adequate garbage receptacles on the Joint Use Components and will regularly empty such receptacles so as to prevent the accumulation of refuse on the Joint Use Components.

4.3 First Class Pedestrian Causeways. Tacoma will maintain, remove refuse from, illuminate, and provide security on or in the Joint Use Components so as to ~~insure~~ensure that they will provide first class pedestrian causeways during hours the Museum Building and the Museum Campus are open to the public. Tacoma shall regulate its property so that activities not compatible with the operation of a first-class museum of contemporary art in the Museum Building do not occur on or in the Joint Use Components. Tacoma shall not allow on or in the Joint Use Components activities that may interfere with programs at the Museum Building or at the Museum Campus, the peace, safety, and security of museum patrons, or the security of the Museum Building and the Museum Campus. The Museum will regulate, maintain, remove refuse from, illuminate, and provide security for the Museum Campus so as to ~~insure~~ensure that it will provide first class pedestrian causeways for Museum patrons during hours the

Museum Campus is open to the public. The Museum shall determine, in its sole discretion, the hours the Museum Campus shall be open to the public.

4.4 Public Use Restrictions. The parties agree that it is in their mutual interest to regulate public and/or patron use of the Joint Use Components and the Museum Campus so as to prohibit uses incompatible with display of contemporary art on the Museum Campus and operation of a museum of contemporary art in the Museum Building. The parties, therefore, agree to exercise control of each's respective property such that public and/or patron use of the Museum Campus and the Joint Use Components is restricted as follows:

- (a) Riding unlicensed vehicles with wheels such as skateboards, roller blades, or roller skates shall be prohibited; provided, however, that bicycles shall be allowed and that wheel chairs, walkers, baby strollers, or wagons used by disabled persons or infants shall be allowed.
- (b) Use of motorized vehicles of all kinds shall be prohibited; provided, however, that motorized wheel chairs used by disabled persons shall be allowed.
- (c) Touching the art or structure supporting the art or causing the art to be touched shall be prohibited.
- (d) Fires not authorized in writing by the parties hereto and use of flammable liquids of any kind shall be prohibited.
- (e) Bathing, wading, or swimming in the pools shall be prohibited.
- (f) Floating objects, releasing animals, disposing of waste, or watering animals in the pools shall be prohibited.
- (g) Spitting or discharging human waste of any kind shall be prohibited.
- (h) Animals must be kept on a leash at all times and shall not be allowed into a pool. All animal waste shall immediately be picked up and disposed of properly.
- (i) Loitering, protesting, public profanity, nudity, and disturbing the peace shall be prohibited.
- (j) Consumption of alcohol or use of controlled substances shall be prohibited, unless permitted by the City through a special event permitting process.
- (k) All garbage must be properly disposed of in garbage receptacles.

(l) Soliciting and commercial activities of third parties shall be prohibited, unless authorized by mutual agreement of the parties.

(m) Proselytizing, amplification of sound (whether voice or music) in violation of Tacoma ordinances, and causing excessive noise (e.g., blowing horns or whistles) shall be prohibited, unless authorized by mutual agreement of the parties hereto.

(n) Organized gatherings without the prior written permission of the Museum of Glass shall be prohibited.

Nothing herein shall prohibit or restrict the parties from use of the Museum Campus or Joint Use Components otherwise compatible with this Agreement.

4.5 Museum Special Events. Upon reasonable notification to Tacoma, and subject to permitting through a City special event permitting process, the Museum shall be allowed to use the Joint Use Components for exhibit openings, gatherings, and other special events; provided, however, that the Museum shall be responsible to Tacoma for security, refuse collection, and any other special impacts occurring as a consequence of such special events.

4.6 Tacoma Special Events. Upon reasonable notification to the Museum, and subject to approval of the Museum, which approval shall not unreasonably be denied, Tacoma shall be allowed to use Joint Use Components it owns for gatherings and other special events pursuant to the agreements of the parties hereto; provided, however, that Tacoma shall be responsible to the Museum for any special impacts or costs occurring as a consequence of such special events.

ARTICLE V: IMPOSITIONS, UTILITIES, AND OTHER OBLIGATIONS

5.1 Utilities. Utilities on or for property owned by the Museum and utilities on or for property owned by Tacoma, to the extent reasonably possible, shall be separately metered, and the Museum and Tacoma shall each pay its respective utility bills. If any utility cannot be separately metered, then such bills shall be allocated pro rata between the parties based on the best estimate of the annual use made of such utilities by the Museum Building or the Museum Campus, on the one hand (with the Museum paying such utility bills), or by the Garage and the Joint Use Components, on the other hand (with Tacoma paying such utility bills).

5.2 Impositions. The Museum shall pay Impositions on or for property owned by the Museum or Impositions on or for activities undertaken by the Museum, and Tacoma shall pay Impositions on or for property owned by Tacoma or Impositions on or for activities undertaken by Tacoma. If any Imposition is imposed on activities undertaken by both parties, such Imposition shall be allocated pro rata between the parties based on the best estimate of the actions undertaken by the parties that caused the Imposition.

5.3 No Liens. The Museum and Tacoma shall each pay or cause to be paid all Impositions and charges for utility service which may, from time to time, become a lien on the property of the other; provided, however that a party may contest an Imposition or charge for utility service for which that party is claimed to be liable by appropriate proceedings conducted in good faith, so long as the property of the other is not thereby jeopardized by forfeiture or loss.

ARTICLE VI: MAINTENANCE, REPAIRS AND IMPROVEMENTS

6.1 Maintenance of Museum Campus. Throughout the term of this Agreement, the Museum shall keep and maintain all portions of the Museum Campus in a first-class, clean and orderly condition, free of dirt, rubbish, unsafe conditions, and unlawful obstructions. The Museum shall maintain all landscaping, sidewalks, and other amenities and improvements in the Museum Campus in good condition suitable for public use.

6.2 Maintenance of Garage and Joint Use Components. Throughout the term of this Agreement, Tacoma shall keep and maintain all portions of the Garage, the Dock Street elevator, the Plaza elevator and the Joint Use Components in a first-class, clean and orderly condition, free of dirt, rubbish, unsafe conditions, and unlawful obstructions. Tacoma shall maintain all landscaping, sidewalks, and other amenities and improvements in the Garage and the Joint Use Components in good condition suitable for public use.

6.3 Repair of Garage and Joint Use Components. Throughout the term of this Agreement, Tacoma, at its sole expense, shall keep the Garage, the Dock Street elevator, the Plaza elevator and the Joint Use Components in good order and condition and shall make all necessary repairs thereto, including internal and external, structural and nonstructural, and ordinary and extraordinary repairs. The term "repairs" shall include all replacements, renewals, alterations, additions, and betterment deemed necessary by Tacoma. All repairs made by Tacoma shall be at least similar or equal in quality and class to the original work.

6.4 Repair of Museum Campus. Throughout the term of this Agreement, the Museum, at its sole expense, shall keep the Museum Campus in good order and condition and shall make all necessary repairs thereto, including internal and external, structural and nonstructural, and ordinary and extraordinary repairs. The term "repairs" shall include all replacements, renewals, alterations, additions, and betterment deemed necessary by the Museum. All repairs made by the Museum shall be at least similar or equal in quality and class to the original work.

6.5 Construction Plan Approval. Before beginning any repairs or improvements to the Garage or the Joint Use Components, or letting any contracts in connection therewith, which could adversely affect the Museum or any access to the Museum Building or the Museum Campus, Tacoma shall submit to the Museum for its

approval, which shall not be unreasonably withheld, the construction plans for such repairs or improvements.

ARTICLE VII: TOTAL OR SUBSTANTIAL DESTRUCTION OF MUSEUM BUILDING

7.1 Application of Article. In the event of partial damage to or total or substantial destruction of the Museum Building or the Museum Campus, the following provisions of this Article VII shall apply. As used in this article, "Insurance Proceeds" mean the greater of (i) the proceeds from the insurance policies actually maintained with respect to the damaged improvements or (ii) the proceeds that would have been available had the parties maintained the insurance policies required to be maintained by them under this Agreement.

7.2 Partial Damage. In the event the Museum Building or the Museum Campus are partially damaged and the Insurance Proceeds are sufficient to repair such damage or the uninsured cost of repairing the damage is One Hundred Thousand Dollars (\$100,000) or less, the Museum shall repair such damage as soon as practicable, and this Agreement shall continue in full force and effect.

7.3 Partial Damage and Insufficient Insurance. In the event the Museum Building or the Museum Campus are partially damaged and the Insurance Proceeds are insufficient to repair such damage or the uninsured cost of repairing the damage is more than One Hundred Thousand Dollars (\$100,000), the Museum may elect to either repair such damage or terminate this Agreement.

7.4 Destruction of Museum Building or Museum Campus. If at any time during the term of this Agreement the Museum Building or the Museum Campus is totally destroyed or substantially destroyed from any cause, whether or not covered by the insurance required to be maintained under this Agreement, the Museum may elect to either reconstruct or restore the Museum Building or the Museum Campus or terminate this Agreement.

7.5 Destruction of Garage. In the event of partial or total destruction of the Garage that precludes or materially interferes with the operations and use of the Museum Building, Tacoma shall use the insurance proceeds collected for such destruction, together with its own funds if the insurance proceeds are inadequate, to rebuild or restore the Garage within a reasonable time, as nearly as practicable to its condition immediately prior to the destruction; provided, however, that Tacoma shall not be obligated to rebuild or restore the Garage if the Museum Building was also damaged and the Museum elects to terminate this Agreement as provided in paragraph 7.4, above.

7.6 Partial Damage to Garage. In the event the Garage is damaged in a way that does not materially interfere with the operations and use of the Museum Building,

Tacoma shall repair such damage as soon as practicable, and this Agreement shall continue in full force and effect.

7.7 Insurance Proceeds Upon Termination. In the event this Agreement is terminated pursuant to paragraph 7.4, any insurance proceeds collected for damage to the Museum Building, the Museum Campus or other property of the Museum shall be retained by the Museum, and any insurance proceeds collected for damage to the Garage or to the Joint Use Components shall be retained by Tacoma.

ARTICLE VIII: INSURANCE

8.1 Property and Liability Insurance. The Museum and Tacoma shall each carry Owners All Risk Comprehensive Coverage on the structures and improvements it owns at the Property in an amount not less than 100 percent (100%) of the full "Replacement Cost" of such structures and improvements

8.2. Garage Liability Insurance. Tacoma shall require the operator of the Garage to carry Commercial General Liability insurance providing coverage against claims for bodily injury, death, or property damage on the Garage with broad form liability and property damage endorsement, naming Tacoma as Primary Named Additional Insured, with an endorsement providing that the insurance shall be noncontributory (*i.e.*, primary until exhausted). Such insurance shall afford combined single limits of liability of no less than five million dollars (\$5,000,000), per occurrence, with said amount to be adjusted upward from time to time with coverage deemed customary under like conditions, and shall meet the requirements of paragraph 8.3, below. The operator of the garage shall provide Tacoma with certificates of insurance and insurance policies clearly indicating the insurance and the type, amount and classification required for strict compliance with the provisions of this Article VIII.

8.3 Insurance policies required pursuant to this Article VIII:

(a) Shall be issued by companies authorized to do business in the state of Washington with the following qualifications:

(1) The companies must be rated no less than "A-" as to general policy holders rating and no less than "IX" as to financial category in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Incorporated.

(2) The policies shall be issued as primary policies.

(b) Each such policy or certificate of insurance mentioned and required in this Article VIII shall have attached thereto an endorsement that such policy shall not be canceled without at least 45 days' prior written notice to the Museum and Tacoma.

8.4 The types of insurance policies, risks insured, coverage amounts, deductibles, and endorsements may be adjusted from time to time as the Museum and Tacoma may mutually determine.

ARTICLE IX: INDEMNITY

9.1 Tacoma Indemnification. To the maximum extent permitted by law, the Museum agrees to and shall indemnify and hold Tacoma harmless from and against all liability, loss, damage, cost, or expenses (including reasonable attorneys' fees and court costs, amounts paid in settlements, and judgment) arising from or as a result of the death of any person or of any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or in the Museum Building and/or the Museum Campus and which shall be directly or indirectly caused by the acts, errors, or omissions of the Museum or its officials, servants, employees or officers. The Museum shall not be responsible for (and such indemnity shall not apply to) losses arising from the sole negligence of Tacoma or its respective officials, servants, employees, or officers.

9.2 Museum Indemnification. To the maximum extent permitted by law, Tacoma agrees to and shall indemnify and hold the Museum harmless from and against all liability, loss, damage, costs, or expense (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or within the Garage and/or the Joint Use Components, and which shall be directly or indirectly caused by the acts, errors or omissions of Tacoma or its officials, servants, employees, or officers. Tacoma shall not be responsible for (and such indemnity shall not apply to) losses arising from the sole negligence of the Museum, or its respective officials, servants, employees, or officers.

9.3 Industrial Insurance. With respect to matters that are within the scope of RCW 4.24.115 and relating to construction project indemnity, Tacoma and the Museum shall be entitled to indemnification for damages arising out of bodily injury to persons or damage to Property by reason of or caused by the concurrent negligence of Tacoma or the Museum, their agents, or employees to the extent of the indemnitee's concurrent negligence, and the parties specifically waive immunity under Title 51 RCW to such extent. This provision is mutually negotiated by the parties.

ARTICLE X: ENVIRONMENTAL INDEMNIFICATION AND HOLD HARMLESS

10.1 Environmental Contamination Indemnification. Subject to the limitations of paragraphs 8.2 and 8.3 above, Tacoma shall indemnify and hold the Museum harmless from and against any and all liability, loss, damage, cost, or expenses (including reasonable attorneys' fees and court costs, amounts paid in settlements, and judgments) arising from or as a result of preexisting environmental contaminants on or beneath the Property, including any such liability, loss, damage, cost, or expenses

resulting from past or future migration of such environmental contaminants from the Property to any other property. As used in this section, "preexisting" means those environmental contaminants that were present on or beneath the Property prior to the date of execution of this Agreement. "Environmental contaminants" shall include without limitation:

(a) Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 *et seq.*) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub.L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*, and in the regulations promulgated pursuant to said laws, all, as amended;

(b) Those substances listed in the United States Department of Transportation Table (49 C.F.R. 172. 101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto);

(c) Any material, waste, or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317), (v) flammable explosives, or (vi) radioactive materials;

(d) Those substances defined as "dangerous wastes," "hazardous wastes," or as "hazardous substances" under the Toxic Substance Control Act, 15 U.S.C., Section 2601 *et seq.*, the Water Pollution Control Act, RCW 90.48.010 *et seq.*, the Hazardous Waste Management Statute, RCW 70.105.010 *et seq.*, the Toxic Substance Control Act, RCW 70.10513.010 *et seq.*, the Model Toxics Control Act, RCW 70.105D.010 *et seq.*, and in the regulations promulgated pursuant to said laws, all as amended;

(e) Storm water discharge regulated under any federal, state or local law, ordinance or regulation relating to storm water drains, including, but not limited to, Section 402(p) of the Clean Water Act, 33 U.S.C., Section 1342, and the regulations promulgated thereunder, all as amended; and

(f) Such other substances, materials, and wastes which are regulated as dangerous, hazardous, or toxic under applicable local, state or federal law, or the United States government, or which are classified as dangerous, hazardous or toxic under federal, state, or local laws or regulations.

10.2 Third Party Claims. This agreement by Tacoma to indemnify and hold the Museum harmless applies to claims brought by any third party based upon state or

federal statutory or common law, resulting from the release, threatened release, or migration of preexisting environmental contaminants and any property damage or damages for personal injury related thereto. As used in this section, "release" shall mean releasing, spilling, leaking, pumping, pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

10.3 Preexisting Contamination Limitation. This agreement to indemnify and hold harmless applies only to claims resulting from those environmental contaminants that were present on or beneath the Property prior to the date of execution of this Agreement. In addition:

(a) This agreement to indemnify and hold harmless does not apply to any release, threatened release, or migration of environmental contaminants resulting from any action or direction of the Museum in direct violation of the terms of Tacoma's Consent Decree with the Washington State Department of Ecology under the Model Toxics Control Act, Pierce County Superior Court, Cause No. 94-2-10917-7, filed October 19, 1994. The Museum acknowledges receiving a copy of such Consent Decree.

(b) This agreement to indemnify and hold harmless does not apply to any release, threatened release, or migration of environmental contaminants resulting from the actions of the Museum, its officers, agents, or employees, where Tacoma has not given actual written consent to such actions.

10.4 Garage Improvement Indemnification of City of Tacoma

The City's agreement to indemnify and hold the Museum harmless does not apply to any or alleged or proven violations of environmental covenants arising in any way from the Museum's Garage Improvements described in Section 3.8 herein. Neither this Agreement, nor the City's permitting of the project, shall not be claimed by the Museum as City consent for such a release, threatened release, or migration of environmental contaminants or alleged or proven violations of environmental covenants. For the Garage Improvements, the Museum hereby provides to the City the same Environmental Condition Indemnification as the City provides to the Museum in Sections 10.1, 10.2, and 10.3 herein. The Museum further covenants not to sue or otherwise make or assign any claim against the City for any release, threatened release, or migration of environmental contaminants or alleged or proven violations of environmental covenants arising in any manner from the Museum's Garage Improvements.

ARTICLE XI: DISPUTE RESOLUTION

11.1 Dispute Resolution. Whenever any dispute arises between the parties under this Agreement, including any controversy or claim arising out of relating to this Agreement or any breach thereof, and including any dispute regarding an issue on

which the parties are to reach further agreement, and such dispute is not resolved by routine meetings or communications, either party shall have the right to commence a resolution process by issuing written request to the other party under the terms of this Article XI, excepting only those disputes subject to equitable proceedings under paragraph 11.5, below.

11.2 Meeting of Executives. The Parties shall seek in good faith to resolve any such dispute by meeting as soon as feasible after the notice issued under paragraph 11.1 is received and reviewing the dispute in detail. The meeting shall include the authorized representatives and the chief executive officer or a board member from the Museum and the mayor or a council member from Tacoma.

11.3 Mediation. If the parties do not come to an agreement on the dispute, then either party may demand mediation through a process to be mutually agreed to in good faith between the parties within twenty (20) days, which may include binding or non-binding decisions or recommendations. The mediator(s) shall be individuals skilled in the legal and business aspects of the subject matter of this Agreement. The parties shall equally share the costs of the mediation and assume their own costs.

11.4 Arbitration. If the mediation process cannot be agreed upon within twenty (20) days, or if both parties concur within twenty (20) days in proceeding immediately to arbitration, then the dispute or concern shall be settled by arbitration before one arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The location of this arbitration shall be Tacoma, Washington, and its proceedings will be governed by the laws of Washington. The arbitrator shall be an individual skilled in the legal and business aspects of the subject matter or matters being disputed. The arbitrator may award costs, including attorney fees, to the prevailing party. Judgment upon award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

11.5 Equitable Relief. In the event a party desires to seek interim relief, whether affirmative or prohibitive, in the form of a temporary restraining order, preliminary injunction, or other interim equitable relief with respect to a dispute or coordination concern either before or after the initiation of a dispute resolution proceeding, that party may initiate the proceeding necessary to obtain such relief ("Equitable Proceeding"). Nothing in this paragraph 11.5 shall be construed to suspend or terminate the obligation of the parties to comply with the procedures set forth in this Article XI with respect to the dispute that is the subject of such Equitable Proceeding while such Equitable Proceeding is pending, including any appeal or review. Notwithstanding the determination of an arbitrator, any interim relief granted by such Equitable Proceeding shall not be reversed or modified by the arbitrator's determination, and any factual or legal determination made in such Equitable Proceeding shall be binding upon the parties in the dispute before the arbitrator.

11.6 Settlement or Decision Disputes. The parties agree that any disputes which arise during the implementation of any settlement or arbitrator's determination shall be resolved exclusively by the procedures set forth in this Article XI.

ARTICLE XII: MISCELLANEOUS PROVISIONS

12.1 Headings. The headings and captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement nor in any way affect this Agreement.

12.2 Recording. A memorandum of this Agreement in form mutually agreed to by the parties may be recorded in the public records of Pierce County, Washington.

12.3 Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement.

12.4 Successors and Assigns. The terms herein contained shall bind and inure to the benefit of Tacoma, its successors and assigns, and the Museum, its successors and assigns, except as may be otherwise provided herein.

12.5 Notices. All notices which may be or are requested to be given pursuant to this Agreement shall be deemed given when hand delivered or when deposited in the United States Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the Parties at the following addresses unless otherwise provided for herein:

To City: City of Tacoma
747 Market Street, Room 220
Tacoma, WA 98402
Attn: City Clerk

To Museum: Museum of Glass
1801 East Dock Street
Tacoma, WA 98402-3217
Attn: ~~Josi Callan~~ Deborah Lenk, Director

12.6 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which

when so executed shall be deemed to be an original and all of which taken together shall constitutes one and the same agreement.

12.7 Entire Agreement. This Agreement and any collateral instruments referenced herein contain the entire agreement between the parties hereto and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto. Previous drafts of this Agreement or any portions thereof shall not be utilized in any manner by either party should any dispute arise as to the intent of this Agreement.

12.8 No Waiver. The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies unless they are expressly excluded.

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

IN WITNESS WHEREOF the parties hereto have executed this Joint Use Agreement for Garage, Museum Campus and Joint Use Components as of the day and year first written above.

CITY OF TACOMA

MUSEUM OF GLASS

Ray E. Corpuz, Jr., City Manager
Callan Deborah Lenk, Director

Josi I.

Steven A. Marcotte, Director

Finance Department
MD, Chair

Dr. Philip Phibbs Kenneth Farmer, Jr.,

~~William L. Pugh~~_____, Director
Public Works Department

Attest:

~~Doris Serum~~_____
City Clerk

Approved as to form and legality:

Steve Victor
Assistant City Attorney

~~Debbie Dahlstrom~~_____
Risk Manager