

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made on the **xx of Month** 2012 between:

The City of Helsinki (the “City of Helsinki”), a self-governing municipal authority under the Finnish Local Government Act (Business ID 0201256-6)

Address: P.O.Box 1
FI-00099 CITY OF HELSINKI
Finland

AND

The Solomon R. Guggenheim Foundation (the “Guggenheim”), an education corporation chartered by the New York State Board of Regents

Address: 1071 Fifth Avenue
New York, NY 10128-0173
United States

(together also the “Contracting Parties”)

WHEREAS, the City of Helsinki commissioned the Guggenheim to undertake and execute a Concept and Development Study with the intent of exploring the possibility of establishing a Guggenheim Museum in Helsinki.

WHEREAS, the Guggenheim completed the Helsinki Concept and Development Study by 30 December 2011 and delivered the Study Report to the City of Helsinki on 10 January 2012 as requested by the City of Helsinki.

WHEREAS, the delivery of the Concept and Development Study concluded the first phase in the development of a Guggenheim Museum in Helsinki.

WHEREAS, the recommendations in the Concept and Development Study present the Guggenheim and the City of Helsinki with the option of moving onwards to the next phase in the development of a Guggenheim Museum in Helsinki.

WHEREAS, indicating the intent of the City of Helsinki and the Guggenheim to proceed with the project and to undertake the measures needed for its completion, including funding, the Contracting Parties have decided to enter into this Memorandum of Understanding.

NOW, THEREFORE, based upon the foregoing, and in consideration of the mutual understanding set forth in this Memorandum of Understanding, the Contracting Parties agree as follows:

1 PURPOSE OF THE MEMORANDUM OF UNDERSTANDING

[1] This Memorandum of Understanding indicates the commitment of the City of Helsinki and of the Guggenheim to proceed to the second phase in the Guggenheim Helsinki Project, consisting of the organization of an Architectural Competition for a new Guggenheim Helsinki Museum building on the site in the Katajanokka District along the South Harbor where the Kanava Terminal Building currently stands (the

“Site”), the announcement of the proposed building design and the establishment of a Guggenheim Helsinki Foundation as the entity to operate the Museum.

[2] This Memorandum of Understanding further indicates the intent of the City of Helsinki and of the Guggenheim, once the second phase is complete, to make the further decisions, enter into the further agreements, and undertake the further measures for proceeding to the third and fourth phases in the Guggenheim Helsinki Project.

2 DEFINITIONS

[3] The Contracting Parties note that the definitions used in this Memorandum of Understanding and in the further Agreements to be concluded between the Contracting Parties shall have the meaning and the interpretation given to them in the said documents.

[4] *Architectural Competition* means an open international architectural competition for the design of the Guggenheim Helsinki Museum building.

[5] *Architectural Competition Agreement* means an agreement to be entered into by the City of Helsinki and the Guggenheim that will set forth the parameters for the Architectural Competition and the respective roles and responsibilities of the parties during the second phase of the development of the Guggenheim Helsinki Museum.

[6] *Concept and Development Study* means the Study Report prepared by the Guggenheim at the request of the City of Helsinki pursuant to the Concept and Development Study Agreement, dated as of 18 January 2011.

[7] *Guggenheim Helsinki Foundation* means a foundation that will be formed to develop and operate the Guggenheim Helsinki Museum as described in Section 4 and elsewhere in this Memorandum of Understanding. For the sake of clarity, the Guggenheim Helsinki Foundation is the proposed name of the “Museum Entity” described in the Concept and Development Study.

[8] *Guggenheim Helsinki Museum Project* means the process from the beginning of the work towards the Concept and Development Study throughout the time that the Guggenheim Helsinki Museum is in operation. The Guggenheim Helsinki Museum Project is divided into four phases as follows:

- The *first phase* covered the period during which the Concept and Development Study was prepared. This phase ended on 10 January 2012, when the completed Study was presented to the City of Helsinki.
- The *second phase* shall cover the period beginning upon the signing of this Memorandum of Understanding and ending when the proposed building design is announced.
- The *third phase* shall cover the period of museum development. It shall begin upon the signing of the Museum Development Agreement and the Rights Agreement. The third phase shall end when the construction of the Museum building is complete and the Museum is opened.
- The *fourth phase* shall cover the period of operation of the Guggenheim Helsinki Museum. It shall begin when the Museum is opened.

[9] *Museum Development Agreement* means an agreement to be entered into by the City of Helsinki and the Guggenheim (and, when formed, the Guggenheim Helsinki Foundation) that will set forth the respective roles of the parties during the third phase of the Guggenheim Helsinki Museum Project.

[10] *Programming and Management Agreement* means an agreement to be entered into by the City of Helsinki, the Guggenheim and the Guggenheim Helsinki Foundation to govern the respective roles and responsibilities of the parties after the Museum opens and during the fourth phase of the Guggenheim Helsinki Museum Project.

[11] *Rights Agreement* means an agreement to be entered into by the Guggenheim and the Guggenheim Helsinki Foundation pursuant to which the Guggenheim would grant a license to the Guggenheim Helsinki Foundation (as described in paragraph 56) for the use of the Guggenheim Helsinki name during the third and fourth phases of the Guggenheim Helsinki Museum Project.

3 MEASURES TO BE UNDERTAKEN AND ESTIMATED SCHEDULE FOR THE PROJECT

[12] The Contracting Parties agree that, with the exception of the dates included in the binding provisions of this Memorandum of Understanding as set forth in paragraph 93, the schedule, dates and periods mentioned herein are estimated. The Contracting Parties agree that the schedule is of importance and that they will use their reasonable endeavors to keep to the estimated schedule.

3.1 ESTABLISHMENT OF THE GUGGENHEIM HELSINKI FOUNDATION

[13] The City of Helsinki shall start preparations for the establishment and registration of the Guggenheim Helsinki Foundation and for the filing of an application to the Finnish tax authorities for the status referred to in paragraph 18 below immediately after this Memorandum of Understanding is signed. The Contracting Parties note that the registration process will take approximately from one to six months from the date on which the requisite filings are made. The City of Helsinki shall use its reasonable endeavors to complete the establishment and registration process as expeditiously as possible. The Guggenheim shall use its reasonable endeavors to complete the tasks relating to its right to review and approve the relevant organizational documents before the filing and to nominate Board and Advisory Board members as expeditiously as possible.

3.2 AGREEMENTS BETWEEN THE PARTIES

[14] The Contracting Parties shall conclude the Architectural Competition Agreement before the commencement of the Architectural Competition.

[15] In the event that the Contracting Parties decide to proceed to the third and fourth phases in the Guggenheim Helsinki Museum Project, they shall use their reasonable endeavors to conclude the Museum Development Agreement and the Rights Agreement expeditiously, with the Programming and Management Agreement to follow within an appropriate time frame.

4 THE GUGGENHEIM HELSINKI FOUNDATION

[16] The City of Helsinki shall establish the Guggenheim Helsinki Foundation for the operation and management of, and to raise funds for, the Guggenheim Helsinki Museum in accordance with the parameters outlined in Section 3.1 of this Memorandum of Understanding.

[17] The City of Helsinki shall provide the Guggenheim with English translations of all organizational documents for the Guggenheim Helsinki Foundation and the Guggenheim shall have an opportunity to review, comment upon and approve in writing the documents and the governance structure of the Guggenheim Helsinki Foundation before the documents are finalized. The Contracting Parties agree that, until the end of the term of the license granted pursuant to the Rights Agreement including any renewals, no changes to the organizational documents or governance structure of the Guggenheim Helsinki Foundation may be made without the Guggenheim's prior written approval.

[18] The aim of the Contracting Parties is that the Guggenheim Helsinki Foundation will obtain the status of a nonprofit and tax-exempt foundation under Finnish law.

[19] The City of Helsinki shall be responsible for all payments necessary for the establishment of the Guggenheim Helsinki Foundation, including the deeding of the initial endowment of €500,000. In general terms, the purpose of the Guggenheim Helsinki Foundation shall be to raise funds for, develop and operate a museum to promote the advancement, understanding and appreciation of culture, art, design and architecture. The Contracting Parties shall agree on the specific wording of the statement of purpose of the Guggenheim Helsinki Foundation before the filing of the organizational documents.

[20] The Guggenheim Helsinki Foundation shall have a Board and an Advisory Board. Both the City of Helsinki and the Guggenheim shall designate its representatives on the Board and the Advisory Board of the Guggenheim Helsinki Foundation.

[21] The Board shall be the executive body of the Guggenheim Helsinki Foundation. It shall consist of a Chair and three other members to be designated by the City of Helsinki, and a Vice Chair and two other members to be designated by the Guggenheim. The Board shall, except for the exceptions mentioned below, take decisions by simple majority vote. At all meetings, a quorum must be present, which shall require participation by a majority of members, which majority must include at least one member designated by the City of Helsinki and at least one member designated by the Guggenheim.

[22] The following matters shall require a majority vote of the City of Helsinki members and a majority vote of the Guggenheim members of the Board:

- Recruitment, appointment and dismissal of the Museum Director, Deputy Director, Chief Operating Officer, Chief Curator and Director of Education, and of staff members in positions of similar responsibility
- Approval and termination by the Guggenheim Helsinki Foundation of the Rights Agreement, the Programming and Management Agreement and, to the extent it is to be a party to it, the Museum Development Agreement

[23] The Advisory Board shall be a consultative body. It shall consist of six to twenty members. The City of Helsinki shall designate the Chair and three other members of

the Advisory Board. The Guggenheim shall designate two members of the Advisory Board. In addition, the Board of the Guggenheim Helsinki Foundation shall have the right to appoint up to fourteen additional members of the Advisory Board.

[24] The Museum shall also have a Museum Director, senior staff and other staff.

5 ARCHITECTURAL COMPETITION AGREEMENT

5.1 GENERAL

[25] The Architectural Competition shall be organized by the Contracting Parties pursuant to the terms of the Architectural Competition Agreement, the fundamental terms of which are set forth in this Section 5.

[26] The Architectural Competition shall be organized in one stage. It shall be open to all qualified participants. The qualification criteria shall be based on the professional education and experience of the participants. The Competition for a fully realized design shall adhere to the requirements of a Competition Brief to be agreed upon by the Contracting Parties.

[27] The Competition Brief that sets out the specific space, technical, landscape and budgetary requirements of the Architectural Competition shall be based on the building program, principles of sustainability and financial conclusions in the Concept and Development Study.

[28] The Contracting Parties agree that the Guggenheim Helsinki building shall be a building of major architectural significance and shall be approximately 12,000 square meters (or 130,000 square feet), with approximately 4,000 square meters (or 42,000 square feet) devoted to galleries.

[29] The Contracting Parties agree that it shall be noted in the Competition Brief that, while the use of local and regional materials is encouraged, due to the technological advances in the use of wood as a modern building material, the competitors should explore both traditional and/or innovative uses of wood for significant (structural, interior, and/or exterior) applications in the new building design and surroundings.

[30] The Contracting Parties agree that it shall be a condition for eligibility for a prize that the design conforms to the project cost limit of approximately €130–140 million (in 2012 euros), as mentioned in the Concept and Development Study.

[31] The Contracting Parties agree that, as the City of Helsinki is responsible for the financing of the Architectural Competition, the City or, at its election, a subsidiary, shall be entitled to use the winning and/or redeemed designs so as to proceed with the development of an art museum in Helsinki in the event that the Contracting Parties do not proceed with the Guggenheim Helsinki Museum Project, subject to the rights of the architects and/or designers.

5.2 PRINCIPAL RESPONSIBILITIES OF THE CITY OF HELSINKI

[32] Administering and organizing, in consultation with the Guggenheim, the Architectural Competition.

[33] Financing the Architectural Competition, including arrangements for possible external financing. The financing liability covers the payment of all third-party

expenses the City incurs, and the reimbursement to the Guggenheim for the third-party expenses, such as architectural, public relations, and marketing consultant fees, that the Guggenheim incurs in connection with the Architectural Competition, it being agreed that such expenses must be agreed to by the City of Helsinki before they are incurred. The City and the Guggenheim agree that among the third parties to be engaged in connection with the Architectural Competition are Cooper Robertson and Davis Langdon (or another cost estimator mutually agreed upon by the City and the Guggenheim).

[34] Designating its representatives on the Jury.

[35] Awarding the prize money or remuneration (the amount of which shall be mutually agreed upon by the Contracting Parties) to the winners of the Architectural Competition and payment of any eventual redemptions of designs that are not among the prizewinners.

5.3 PRINCIPAL RESPONSIBILITIES OF THE GUGGENHEIM

[36] In consultation with the City of Helsinki, structuring the framework and operating terms of the Architectural Competition, including the competition brief, and reviewing and approving the technical requirements, standards, and evaluation conditions for the design of the new Guggenheim Helsinki Museum building.

[37] Designating its representatives on the Jury.

5.4 JURY

[38] The City of Helsinki and the Guggenheim shall designate an equal number of Jury members. The Contracting Parties shall also mutually select and designate one Jury member who has the qualification required in section 34(1) of the Finnish Public Procurement Act. In addition, two members of the Jury shall be designated by the Finnish Association of Architects SAFA.

[39] In the event that a Jury member becomes unable to participate in the decision-making of the Jury, the party which designated that Jury member shall designate a substitute, who will take the place of the original Jury member.

[40] The Jury shall have no more than nine members.

[41] The City of Helsinki shall designate the Chair and the Guggenheim the Vice Chair of the Jury.

[42] The travel expenses of the Jury members shall be reimbursed by the City of Helsinki.

[43] The Jury shall make its awards by majority decision in accordance with the procedures and by applying the criteria to be set forth in the Architectural Competition Agreement. Persons designated as Jury members shall give an undertaking not to abstain from the decision-making of the Jury.

5.5 SCHEDULE OF THE COMPETITION

[44] The Contracting Parties intend to enter into the Architectural Competition Agreement and launch the Architectural Competition as soon as is practicable following the execution of this Memorandum of Understanding. The Contracting

Parties shall set forth the schedule for the Architectural Competition in the Architectural Competition Agreement.

5.6 RULES GOVERNING THE ARCHITECTURAL COMPETITION

[45] The Contracting Parties shall mutually agree upon the rules for the Architectural Competition.

5.7 LIMITED LICENSE

[46] The Guggenheim shall grant to the City of Helsinki and, in so far as appropriate, the Guggenheim Helsinki Foundation (when formed) a limited license to use the Guggenheim Helsinki name solely in connection with the Architectural Competition. Until the signing of the Architectural Competition Agreement and the payment of the limited license consideration the City of Helsinki and the Guggenheim Helsinki Foundation shall make no use of the Guggenheim name except directly in connection with the announcement made on 10 January 2012 and the decision-making process relating to the adoption of this Memorandum of Understanding. The Guggenheim shall exercise quality control over the use of its name and marks by the City of Helsinki and the Guggenheim Helsinki Foundation.

[47] Between the signing of this Memorandum of Understanding and the end of the second phase or November 1, 2013, whichever is earlier, the Guggenheim shall not manage or operate a museum in the Nordic Countries, Northwest Russia, Poland, or elsewhere in the Baltic Sea Region (defined as any location within 350 kilometers from the Baltic Sea), bearing or including the name "Guggenheim" without receiving the prior written consent of the City of Helsinki. However, this provision shall not affect the management and operation of the Deutsche Guggenheim in Berlin while the Deutsche Guggenheim is still in operation.

[48] As consideration for the grant of the limited license described in paragraph 46 and of the exclusivity described in paragraph 47, the City of Helsinki shall pay to the Guggenheim U.S. \$2 million upon the signing of this Memorandum of Understanding. The amount shall be paid free and clear of taxes or, if withholding is required, the payment shall be grossed up so that the net amount actually received by the Guggenheim will equal the amount it would have received had no withholding been required.

[49] The Contracting Parties agree that, in the event that they decide to proceed to the third and fourth phases in the Guggenheim Helsinki Museum Project, the Guggenheim Helsinki Foundation shall be liable to reimburse the City of Helsinki for the full amount of the limited license consideration but only after the Licensing Fees payable by the Guggenheim Helsinki Foundation to the Guggenheim have been paid in full.

[50] The Contracting Parties note that, once the Architectural Competition has been concluded, they intend to negotiate on and mutually select the design to be realized from among the Architectural Competition prizewinners and/or redemptions.

6 MUSEUM DEVELOPMENT AGREEMENT

[51] Following this selection of the final building design, the Contracting Parties intend to enter into a Museum Development Agreement, based on the principles

outlined in the Concept and Development Study, to govern the respective roles and responsibilities of the Contracting Parties during the third phase of the Guggenheim Helsinki Museum Project.

[52] To the extent appropriate, the Guggenheim Helsinki Foundation may also become a party to the Museum Development Agreement.

[53] The Museum Development Agreement shall include, but not be limited to, the following:

- The agreement of the Contracting Parties to move forward with the selected final building design.
- Funding of the development of the Guggenheim Helsinki Museum (including possible state subsidies).
- Site ownership and ownership of the Guggenheim Helsinki Museum building: The City of Helsinki shall provide the Site in buildable condition for the construction and operation of the Museum, free of any commitments to third parties and any other obligations, liens, or encumbrances. The City of Helsinki shall provide and own the Site directly or through a subsidiary. The owner of the Site and/or the building and the Guggenheim Helsinki Foundation shall conclude a long-term agreement on the use of the Site/building.
- Construction and development of the Guggenheim Helsinki Museum
- Responsibility of the City of Helsinki, directly or through a subsidiary, for the funding and oversight of the development and construction of the Guggenheim Helsinki. The Guggenheim shall have no financial obligations with respect to the design, development or construction of the Guggenheim Helsinki.
- Defining the respective roles and responsibilities of the City of Helsinki, the Guggenheim and the Guggenheim Helsinki Foundation relating to the third phase in a manner consistent with the delineation of roles and responsibilities in the Concept and Development Study.
- The Director of the Guggenheim Helsinki Foundation reports jointly to the Board of the Guggenheim Helsinki Foundation and to the Director of the Solomon R. Guggenheim Museum and Foundation.

7 PROGRAMMING AND MANAGEMENT AGREEMENT

[54] The Contracting Parties note that, if they decide to proceed to the third and fourth phases in the Guggenheim Helsinki Museum Project, they, and the Guggenheim Helsinki Foundation, intend to enter into a Programming and Management Agreement, based on the principles outlined in the Concept and Development Study.

[55] The Programming and Management Agreement shall include, but not be limited to, the following:

- Funding of the Guggenheim Helsinki Foundation (including state subsidies), on the understanding that the City of Helsinki shall provide or secure the Museum's operational funding to the extent that the Museum's

operating expenses are not covered by its revenue after payment of the entire Licensing Fee to the Guggenheim. For the sake of clarity, the fees described in Section 9 shall be considered to be operating expenses of the Museum. The Guggenheim shall have no financial obligations with respect to the operation of the Guggenheim Helsinki.

- Site ownership and ownership of the Guggenheim Helsinki Museum building
- Control of, and responsibility for, the Site and physical facility of the Guggenheim Helsinki Museum
- Management, operation and programming of the Guggenheim Helsinki Museum
- Defining the respective roles and responsibilities of the City of Helsinki, the Guggenheim and the Guggenheim Helsinki Foundation relating to the fourth phase in a manner consistent with the delineation of roles and responsibilities in the Concept and Development Study
- The Director of the Guggenheim Helsinki Foundation shall report jointly to the Board of the Guggenheim Helsinki Foundation and to the Director of the Solomon R. Guggenheim Museum and Foundation.

8 RIGHTS AGREEMENT

[56] The Contracting Parties note that, if they decide to proceed to the third and fourth phases in the Guggenheim Helsinki Museum Project, the Guggenheim and the Guggenheim Helsinki Foundation are to conclude a Rights Agreement pursuant to which the Guggenheim would grant a license to the Guggenheim Helsinki Foundation to use the Guggenheim Helsinki name for a period of twenty (20) years solely in connection with the development and operation of the Guggenheim Helsinki Museum that is the subject of this Memorandum of Understanding. The Guggenheim shall exercise quality control over the use of its name and marks by the Guggenheim Helsinki Foundation.

[57] The Contracting Parties agree that, as consideration for granting the license, the Guggenheim shall be paid a fee of U.S. \$30 million less the amount paid to the Guggenheim under paragraph 48 (the "Licensing Fee"). The Licensing Fee shall be paid in equal installments over the first six years of the life of the Rights Agreement. The Licensing Fee shall be paid free and clear of taxes or, if withholding is required, the payments shall be grossed up so that the net amount actually received by the Guggenheim will equal the amount it would have received had no withholding been required.

[58] The Contracting Parties note that it is their intent that the Licensing Fee be covered by funds external from the City.

[59] The Contracting Parties note that it is their intent that the Guggenheim Helsinki Foundation has the option to renew the Rights Agreement at the expiration of its twenty-year term for an additional five-year term for a U.S. \$7.5 million (increased to reflect the CPI Adjustment) additional licensing fee, payable in its entirety upon the exercise of the option to renew.

9 ADVISORY AND PROGRAMMING AND MANAGEMENT FEES TO THE GUGGENHEIM

[60] The Contracting Parties agree that, for its work during the second phase of the Guggenheim Helsinki Museum Project, the Guggenheim shall be paid an advisory fee of U.S. \$1.12 million for each twelve-month period between (a) sixty (60) days prior to the signing of the Memorandum of Understanding, and (b) the earlier of (i) the end of the second phase, and (ii) six months after the announcement of the winners of the Architectural Competition. For incomplete twelve-month periods, the advisory fee shall be prorated to the duration of the period. In any event, this advisory fee for the second phase shall not be less than U.S. \$1.12 million.

[61] The Contracting Parties agree that, if they decide to proceed to the third and fourth phases in the Guggenheim Helsinki Museum Project, the Guggenheim shall be paid, for its programming and management expertise, a programming and management fee of U.S. \$1.12 million for the first three twelve-month periods after the signing of the Museum Development Agreement and a programming and management fee of U.S. \$2.6 million for each subsequent twelve-month period until the end of the term of the license granted pursuant to the Rights Agreement including any renewals (each such annual fee, a "Programming and Management Fee"). Notwithstanding the foregoing, the Programming and Management Fee shall be U.S. \$2.6 million for each twelve-month period (or portion thereof) within 30 months of the opening date of the Museum.

[62] The fees referred to in this Section 9 shall be adjusted on 1 January of each year, commencing on 1 January 2013, to reflect any increases, between the first of the month following the signing of the Memorandum of Understanding and the 1 October immediately preceding the adjustment year, in the Consumer Price Index (CPI-U) compiled by the United States Bureau of Labor Statistics, based upon a 1982-84 Base of 100 (the "CPI Adjustment").

[63] The Fee payable under paragraph 60 above shall be paid by the City of Helsinki. The first U.S. \$1.12 million of the Fee shall become due as follows: 50% on the fifth working day after the signing of this Memorandum of Understanding, 25% four months after the first due date, and 25% eight months after the first due date. The remainder of the Fee payable under paragraph 60 above, if any, shall be payable in monthly installments starting ten months after the signing of this Memorandum of Understanding.

[64] The Programming and Management Fees payable under paragraph 61 above are intended to be paid, or caused to be paid, by the City of Helsinki until the opening of the Guggenheim Helsinki Museum and by the Guggenheim Helsinki Foundation thereafter.

[65] The fees described in this Section 9 payable to the Guggenheim shall be paid free and clear of taxes or, if withholding is required, the payments shall be grossed up so that the net amount actually received by the Guggenheim will equal the amount it would have received had no withholding been required.

[66] The fees described in this Section 9 paid by the Guggenheim Helsinki Foundation shall be guaranteed by the City of Helsinki.

[67] The Guggenheim shall present a separate invoice for each installment of the fees referred to in this Section 9.

[68] The fees referred to in this Section 9 cover the development, programming and management work performed by the Guggenheim, including support during the design stage of the building and advice and direction provided with respect to general Museum affairs, including overall direction, Board work, budget, art and exhibition program, facility, visitor services, public relations, marketing, governance and executive travel, as well as planning and execution of a share of the exhibitions and public programs, including research and development, program development, loan negotiations and oversight, development of tour calendars, budget oversight, exhibition design and layout, shipping and transportation, publications/website/other exhibition didactics, and installation.

10 TERMINATION

[69] In the event that the City of Helsinki withdraws from the Guggenheim Helsinki Museum Project before the end of the second phase, for a reason other than a material breach by the Guggenheim of this Memorandum of Understanding or the Architectural Competition Agreement, the Guggenheim shall be entitled to terminate this Memorandum of Understanding and/or the Architectural Competition Agreement and retain all payments provided for under paragraphs 48 and 60.

[70] In the event that the Guggenheim withdraws from the Guggenheim Helsinki Museum Project before the end of the second phase, for a reason other than a material breach by the City of Helsinki of this Memorandum of Understanding or the Architectural Competition Agreement, the City of Helsinki shall be entitled to terminate this Memorandum of Understanding and the Guggenheim shall be required to return all payments provided for under paragraph 48 and under paragraph 60, in so far as paid.

[71] The Contracting Parties shall have no further liability to each other with respect to such termination or liability for damages under this Memorandum of Understanding and/or the Architectural Competition Agreement.

[72] The Contracting Parties note that they intend to incorporate termination provisions also in the further Agreements to be concluded.

11 FORCE MAJEURE

[73] If, by reason of any event of force majeure, any party shall be delayed in, or prevented from, performing any of the provisions of this Memorandum of Understanding or the Architectural Competition Agreement (such party, the "Affected Party"), then such delay or nonperformance shall not be deemed to be a breach by the Affected Party and no loss or damage shall be claimed by either of the parties to the Agreements by reason thereof, provided that the Affected Party shall notify the other party or parties of the force majeure event within five days of its occurrence. The term "force majeure" includes, but is not limited to, war, terrorism, fire, flood, or other casualty, labor disputes, the enactment of any law or regulation imposing a substantial material impediment to the performance of any of the obligations of the parties, or any other cause or event (whether of a similar or dissimilar nature) beyond the reasonable control of the Affected Party. In the event of a delay in performance in excess of ninety (90) days which is attributable to force majeure, either party may terminate the Memorandum of Understanding and/or the Architectural Competition Agreement.

[74] In the event of a termination attributable to force majeure, the Guggenheim shall (1) retain the fees paid under Section 9 (and be paid all amounts due) through the date on which the force majeure event occurred, (2) retain the U.S. \$2 million licensing fee paid under the Architectural Competition Agreement.

[75] The Contracting Parties note that they intend to incorporate force majeure provisions also in the further Agreements to be concluded.

12 GOVERNING LAW

[76] This Memorandum of Understanding (including the clause on jurisdiction) and the Architectural Competition Agreement and all questions relating to their validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions) shall be governed by and construed in accordance with English law.

[77] The Contracting Parties note that they intend to incorporate governing law provisions also in the further Agreements to be concluded, on the basis that the Rights Agreement will be governed by and construed in accordance with New York State law and the other agreements by and with English law.

13 RESOLUTION OF DISPUTES AND JURISDICTION

[78] The Contracting Parties shall attempt to settle amicably any controversy, dispute, claim or difference arising out of or in connection with this Memorandum of Understanding, or the Architectural Competition Agreement, including the breach, termination or invalidity of this Memorandum of Understanding (a "Dispute").

[79] Any Dispute that the Contracting Parties cannot resolve amicably within 45 days of written notice by either party of a Dispute shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said Rules. The legal seat of arbitration shall be London, England. The language of the arbitration shall be English. Each Contracting Party agrees that any award of the arbitrators shall be final, conclusive and binding and irrevocably waives its right to any form of appeal or review of such award, insofar as such waiver may be validly made. It is specifically understood and agreed that either Contracting Party may enforce any award rendered pursuant to the arbitration provisions of this Section by bringing suit in any court of competent jurisdiction, and the Contracting Parties hereby submit to the non-exclusive jurisdiction of the English courts for such purposes.

[80] All fees, costs and expenses (including attorneys' fees and expenses) incurred by each party in connection with an arbitration hereunder shall be borne by the party that incurred such fees, costs and expenses. All costs and expenses attributable to the arbitrators shall be shared equally by the parties to the arbitration.

[81] Notwithstanding the foregoing, it is hereby agreed that no arbitration panel shall have any power to add to, alter or modify the terms and conditions of this Memorandum of Understanding or to decide any issue which does not arise from the interpretation or application of the provisions of this Memorandum of Understanding.

[82] The Contracting Parties agree that the arbitration shall be kept confidential and that the existence of the arbitration and any element of it (including any pleadings,

briefs or other documents submitted or exchanged, any testimony or other oral submissions and any awards) shall not be disclosed beyond the arbitrators, the Contracting Parties, their counsel and any person participating in or necessary to the proceedings, except as may be required in a judicial procedure relating to the arbitration or otherwise by law.

[83] Each Contracting Party waives, to the fullest extent permitted by law, any right to immunity on the grounds of sovereignty or other similar grounds from suit, jurisdiction, attachment (whether before or after an arbitral award), enforcement or execution, to which such Contracting Party or its property might otherwise be entitled, and agree, to the fullest extent permitted by law, not to claim any such immunity. In addition to and without derogating from the foregoing, each Contracting Party irrevocably: (a) consents generally, in accordance with the State Immunity Act 1978 and any other applicable law, to relief being given against it in England or in any other jurisdiction by way of injunction or order for specific performance or for the recovery of any property whatsoever or other provisional or protective measures and to its property being subject to any process for the enforcement of any arbitral award or judgment or any process effected in the course or as a result of any action in rem; and (b) waives and agrees not to claim any immunity from suit and court or arbitral proceedings (including actions in rem), in England or any other jurisdiction, and from all forms of execution, enforcement or attachment, to which it or its property is now or may hereafter become entitled under the laws of any jurisdiction and declare that such waiver shall be effective to the fullest extent permitted by such laws, including (but not limited to) the United States Foreign Sovereign Immunities Act of 1976.

[84] The Contracting Parties note that they intend to incorporate dispute resolution and jurisdiction provisions also in the further Agreements to be concluded.

14 GOVERNING LANGUAGE

[85] This Memorandum of Understanding is drawn up in the English language. The City of Helsinki shall see to its translation into Finnish and Swedish. In case of difference between language versions, the English version shall prevail.

15 MISCELLANEOUS

[86] All notices, requests, demands and other communication required or permitted under this Memorandum of Understanding shall be in writing and shall be deemed to have been duly given, made and received only when delivered (personally, by courier service or by other messenger), or when sent by facsimile (with confirmation of successful transmission), addressed as set forth below:

[87] If to the City of Helsinki:

Postal address:

City of Helsinki
P.O.Box 1
FI-00099 CITY OF HELSINKI
FINLAND
Fax +358 9 655 783

Street address:

City of Helsinki
City Hall
Pohjoisesplanadi 11–13

Attention: Mayor Jussi Pajunen

with a copy, given in the manner prescribed above, to:

City of Helsinki Administration Centre
Legal Services
PO Box 1
FI-00099 CITY OF HELSINKI
FINLAND
Fax +358 9 310 36173

Attention: Sami Sarvilinna, General Counsel

[88] If to the Guggenheim:

Address:

The Solomon R. Guggenheim Foundation
1071 Fifth Avenue
New York, NY 10128-0173
Fax 917-368-1450

Attention: Richard Armstrong, Director of the Solomon R. Guggenheim Museum
and Foundation

with a copy, given in the manner prescribed above, to:

The Solomon R. Guggenheim Foundation
1071 Fifth Avenue
New York, NY 10128-0173
Fax: 917-386-1459

Attention: Sarah Austrian, Deputy Director, General Counsel and Assistant
Secretary

[89] The address for official correspondence of the Guggenheim Helsinki Foundation shall be determined at a later date.

[90] Any party may alter the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

[91] This Memorandum of Understanding shall be binding upon and inure to the benefit of the Contracting Parties to this Memorandum of Understanding and their respective subsidiaries, successors and assigns, including, to the extent appropriate, the Guggenheim Helsinki Foundation (once established). No party may assign or transfer any of that party's rights or obligations under this Memorandum of Understanding without the prior written consent of the other party.

[92] Except as provided in paragraph 93 below: (i) this Memorandum of Understanding is not intended to create any legally binding obligations on either of the Contracting Parties; and (ii) neither Contracting Party shall be liable for any damages, losses, costs or other expenses incurred by the other as a result of any

failure to comply with the terms hereof or any failure to agree upon the terms of, or enter into, any of the Agreements.

[93] This paragraph 93 and the Sections of this Memorandum of Understanding set out below are intended to create legally binding contractual obligations on the Contracting Parties and shall be binding on and inure to the benefit of the Contracting Parties and their respective subsidiaries, successors and assigns:

- (a) Section 3.1 - Establishment of the Guggenheim Helsinki Foundation;
- (b) Section 4 - Guggenheim Helsinki Foundation;
- (c) Section 5 - Architectural Competition Agreement;
- (d) Section 9 - Fees to the Guggenheim (excluding paragraphs 61 and 64);
- (e) Section 10 - Termination (excluding paragraph 72);
- (f) Section 11 - Force Majeure (excluding paragraph 75);
- (g) Section 12 - Governing Law (excluding paragraph 77);
- (h) Section 13 - Resolution of disputes and jurisdiction (excluding paragraph 84)
- (i) The following paragraphs in this Section 15 - Miscellaneous: 91 – No assignment; 94 – Entire agreement, 95 – Survival of Concept and Development Study Agreement, 96 – No waiver or amendment; 97 – Counterparts; 98 – Severability; and 99 – No third party rights.

[94] This Memorandum of Understanding contains the entire understanding among the Contracting Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, letters of intent, inducements or conditions, express or implied, oral or written, except as contained in this Memorandum of Understanding. This clause shall not exclude or limit any liability for, or remedy in respect of, fraudulent misrepresentation.

[95] The Contracting Parties agree, however, that the provisions of the Concept and Development Study Agreement, made between the parties on 18 January 2011, shall, to the extent appropriate, survive and continue in full effect.

[96] This Memorandum of Understanding may not be modified or amended, or binding rights or remedies of a party waived, other than by an agreement in writing.

[97] This Memorandum of Understanding shall be entered in two counterparts, both of which shall be an original, and such counterparts shall together form one and the same Memorandum of Understanding. Delivery of an executed counterpart of this Agreement by facsimile or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

[98] If any provision of this Memorandum of Understanding is held to be invalid or unenforceable, then the provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this Memorandum of Understanding without invalidating any of the remaining provisions of this Memorandum of Understanding. The Contracting Parties shall use all reasonable endeavours to replace invalid or unenforceable provisions by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

[99] A person who is not a party to this Memorandum of Understanding shall have no right to enforce any of its terms.

[100] The Contracting Parties note that the City Council of Helsinki has approved this Memorandum of Understanding in draft in its meeting of **XX Month 2012**. The parties acknowledge and agree that the terms and provisions of this Memorandum of Understanding shall not be effective unless and until the principal terms of this Memorandum of Understanding have also been approved by the Guggenheim's Board of Trustees or Executive Committee.

16 SIGNATURES