

SECOND AMENDMENT TO COLISEUM OPERATING AGREEMENT

186038

THIS SECOND AMENDMENT TO COLISEUM OPERATING AGREEMENT

(this "Amendment") is effective as of _____, 2013 (the "Effective Date") and is made by the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon (the "City"), and **RIP CITY MANAGEMENT LLC**, a Delaware limited liability company, doing business as **PORTLAND ARENA MANAGEMENT** (formerly known as Portland Arena Management, LLC), successor-in-interest to Oregon Arena Corporation ("PAM"). The City and PAM are sometimes individually referred to in this Amendment as a "Party" and collectively as the "Parties."

RECITALS

A. PAM and the City are parties to that certain Memorial Coliseum Operating Agreement dated April 23, 1993, as amended by that certain First Amendment to Coliseum Operating Agreement having an effective date of June 23, 1993 (collectively, the "Original Operating Agreement"). Capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Original Operating Agreement.

B. The Term of the Original Operating Agreement will expire on the earlier to occur of an Early Termination Date or June 30, 2013. The Original Operating Agreement provides PAM with the right to extend the Term beyond the Termination Date for two (2) increments of five (5) years each (each, an "Extension Option"). PAM's written notice to exercise the first of the two Extension Options was due not later than January 1, 2012 (the "First Extension Notice Due Date").

C. Among other things, the Original Operating Agreement establishes the Parties' responsibilities with respect to Repair, Maintenance, Structural Repairs, and Capital Improvements.

D. Prior to the First Extension Notice Due Date, the City, PAM, and Portland Winter Hawks, Inc., an Oregon corporation ("PWH"), executed that certain document titled Proposed Transaction Terms (Renovation of Veterans Memorial Coliseum) dated November 17, 2011 (the

1 "Term Sheet"), which Term Sheet was approved by the Portland City Council on November 17,
2 2011, as Resolution 36887.

3 E. The Term Sheet authorized the City to negotiate a redevelopment agreement (the
4 "RDA") with PAM and PWH regarding potential renovations and upgrades to the Coliseum.
5 Section 3.6 of the Term Sheet contemplated that PAM would exercise the first of the Extension
6 Options to extend the Term until June 30, 2018.

7 F. As of the First Extension Notice Due Date, the City, PAM, and PWH were
8 negotiating the terms of the RDA, with a stated goal to finalize the RDA by the end of February
9 2012.

10 G. On account of PAM's continued good faith negotiations of the RDA as of the First
11 Extension Notice Due Date, the City and PAM agreed that PAM could postpone exercising the
12 first of the Extension Options until the RDA had been approved by the Portland City Council and
13 executed by the City, PAM, and PWH (the "Final RDA").

14 H. During the City Council consideration of the Final RDA, PWH withdrew as a
15 signatory to the Final RDA and the related agreements and as a result the Final RDA and related
16 agreements were not executed and delivered.

17 I. In order to keep the Coliseum in operation and continue negotiations for renovation
18 of the Coliseum, the City has proposed a multi-part approach over the next 12-18 months to
19 come to resolution on the future of the Coliseum.

20 J. The multi-part approach includes an extension of the Original Operating Agreement
21 with PAM and an assessment and possible implementation of public and/or private investment in
22 potential renovations and upgrades to the Coliseum (the "Renovation Project").

23 K. On account of PAM's continued good faith negotiations of the RDA up to the
24 consideration of the Final RDA by the City Council and PAM's continued good faith
25 negotiations with the City regarding the maintenance and operation of the Coliseum, the City and
26 PAM agreed that PAM could postpone exercising the first of the Extension Options until this

Second Amendment to the Operating Agreement could be negotiated and executed by the Parties.

L. The Original Operating Agreement as modified by this Amendment shall be referred to herein as the "Agreement."

AGREEMENT

In consideration of the mutual covenants and agreements contained in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Modification to Definitions.** Section 1 of the Original Operating Agreement provides for the Definitions used therein. For purposes of this Amendment and the Original Operating Agreement all references to "OAC" shall be deemed to refer to "PAM" and "PAM" shall be used in this Amendment instead of "OAC." In addition, the following terms are hereby modified in or added to the Definitions in the Original Operating Agreement.

"Affiliate" means an individual, or a corporation or other entity controlling, controlled by, or under common control with, the Person specified. For purposes of this definition, the term "control" means ownership, directly or indirectly, of more than fifty percent (50%) of the shares or other ownership interests in the Person specified or having management power over the affairs of such specified Person.

"ADA" means Americans with Disabilities Act, 42 USC § 12183 and its implementing regulations, 28 CFR, Part 36.

"CAO" is defined in Section 2 of this Amendment.

"City/PDC IGA" means the Intergovernmental Agreement between the Portland Development Commission and the City, approved on January 25, 2012 by City Ordinance #185121 as amended, and executed on February 24, 2012.

"City Funds" means amounts to be paid by the City which are not recoverable by the City as an Operating Expense.

1 "Coliseum" means all portions of the existing Veterans Memorial Coliseum, which is
2 located at 300 North Winning Way at the Rose Quarter in Portland, Oregon, with an attached
3 modified underground Exhibit Hall of approximately 40,000 square feet, and the Coliseum
4 Property, including all other improvements located on the Coliseum Property as shown on the
5 map attached as Exhibit A-3 attached hereto.

6 "CPI" is defined in Section 3A.3 of the Agreement.

7 "Default Interest" is defined in Section 36.9 of the Development Agreement.

8 "Escalator" is defined in Section 3A.3 of the Agreement.

9 "Excess NOL" is defined in Section 5.4.5 of the Agreement.

10 "Final RDA" is defined in Recital G of this Amendment.

11 "Ice Floor Surcharge" is defined in Section 17 of this Amendment.

12 "Non-Event Parking" is defined in Section 14.2 of this Amendment.

13 "PAM Migration" is defined in Section 8.1.3 of the Agreement.

14 "PAM Related Persons" is defined in Section 8.2 of the Agreement.

15 "PDC" is defined in Recital I of this Amendment.

16 "PWH" is defined in Recital D of this Amendment.

17 "PWH Agreement" means the agreement between PAM and the PWH pursuant to which
18 PWH has the right to use the Coliseum for its games, practices and related uses.

19 "Renovation Project" is defined in Recital J of this Amendment.

20 "R&M Budget Amount" is defined in Section 3A.2 of the Agreement.

21 "Video Screens" means the existing video screens, which are center hung in the
22 Coliseum, and the associated equipment used to operate and control the video screens. The

1 Video Screens do not include the existing timing and scoring equipment used for events in the
2 Coliseum.

3 **2. Approval.** As of the Effective Date, the Chief Administrative Officer of the City
4 (the "CAO") or his designee shall be authorized to issue any "Approval," as defined in Section 1
5 of the Original Operating Agreement.

6 **3. Extension Options.** Section 2.1.2 of the Original Operating Agreement is hereby
7 deleted in its entirety and in its place is inserted a new Section 2.1.2 and new Sections 2.1.3,
8 2.1.4 and 2.1.5 are hereby added, and each shall read as follows:

9 "2.1.2 PAM has the exclusive right to extend the Term beyond the Termination
10 Date in one (1) increment of two years, and up to eight (8) increments of one year each.
11 In the event PAM desires to extend the Term, then PAM shall give written notice to City
12 at least 10 months in advance (not later than September 1st), electing to extend the Term.
13 The City may reject the election in written notice delivered to PAM on or before
14 September 30th. As a result of such rejection, the Term shall expire on the Termination
15 Date, and from and after the Termination Date. for a period of 36 months, the City will
16 either close the Coliseum or operate the Coliseum as a Non-Spectator Facility as defined
17 in Section 2.2.3 of this Agreement. If a written rejection is not timely delivered to PAM
18 by the City, the Termination Date shall be extended to June 30, 2016, for the first of the
19 extension options and June 30th of each subsequent calendar year for each of the one (1)
20 year increments. PAM may not elect to extend the Term if at the time of PAM's
21 attempted extension there is an uncured PAM Event of Default. PAM may not extend the
22 Term beyond or after an Early Termination Date.

23 2.1.3 If PAM and the City enter into an agreement for a Renovation Project by
24 June 30, 2014, PAM's extension options following the first extension of two years will be
25 replaced by an additional extension option for three (3) years, and a further option for
26 five (5) years. In the event PAM desires to extend the Term, then PAM shall exercise the
27 first additional extension concurrently with the execution of the agreement for the
28 Renovation Project but not later than June 30, 2014, electing to extend the Term and
29 upon such election the Term and the Termination Date shall be extended to June 30,

2018. In the event PAM desires to extend the Term further, PAM shall give at least eighteen (18) months advance written notice to City, not later than January 1, 2017, electing to extend the Term and upon giving of such notice the Term and the Termination Date shall be extended to June 30, 2023. PAM may not elect to extend the Term if at the time of PAM's attempted extension there is an uncured PAM Event of Default. PAM may not extend the Term beyond or after an Early Termination Date.

2.1.4 If PAM and the City enter into an agreement for a Renovation Project by June 30, 2014, the Parties agree that as a part of any such agreement, the Parties will negotiate, in good faith, appropriate changes to this Agreement to take into account the effects of the Renovation Project on the provisions of this Agreement as modified by the Second Amendment including but not limited to, Repair, R&M Budget Amounts, Allocated Labor percentage, Ice Floor Surcharge, NOL Payments and each Party's indemnification obligations.

2.1.5 Notwithstanding any other provision of Section 2.2.2, the Parties agree:

2.1.5.1 If at any time prior to June 30, 2023, the City implements a Temporary Closure pursuant to Section 2.2.2, PAM shall have the right to reinstate this Agreement through June 30, 2023, at its sole discretion except as provided in 2.1.5.2. PAM may not reinstate this Agreement if at the time of the Temporary Closure there is an uncured PAM Event of Default. The City shall not implement a Temporary Closure pursuant to Section 2.2.2 without first giving PAM written notice of the existence of any asserted PAM Event of Default and giving PAM time to cure within the applicable cure period for such asserted PAM Event of Default pursuant to Section 16.1 of this Agreement.

2.1.5.2 If the City, prior to re-opening the Coliseum as a Spectator Facility, moves forward with a Renovation Project, PAM, provided there is no uncured PAM Event of Default, shall have the exclusive right, through June 30, 2023, to extend the Operations Term subject to negotiating, in good faith, appropriate changes to this Agreement to take into account the effects of the Renovation Project on the provisions of this Agreement.

2.1.5.3 PAM's rights under this Section 2.1.5 shall survive any Early Termination by the City under Sections 2.2.2 or 2.2.3 of this Agreement."

4. **Election to Exercise First Extension Option.** Notwithstanding anything to the contrary contained in the Original Operating Agreement or this Amendment, PAM hereby elects to exercise the first of the extension options as amended per Section 2.1.2, such that the Term of the Agreement shall continue until the earlier to occur of an Early Termination Date or June 30, 2015. The City hereby accepts the foregoing election by PAM.

5. **Early Termination.** Section 2.2 of the Original Operating Agreement is amended by adding a new Section 2.2.7 which shall read as follows:

"2.2.7 If at any time during the Operations Term, the Sublicense Agreement between PAM and PWH for the Coliseum should terminate for any reason, other than as a result of a default by PAM, PAM shall have the right to terminate this Agreement upon sixty (60) days prior written notice to the City."

6. **Repair and R&M Budget Amounts.** A new Section 3A entitled "Repair and R&M Budget Amounts" is hereby added to the Original Operating Agreement which shall read as follows:

"3A.1 PAM's obligations under this Agreement, including, without limitation, with respect to Maintenance and Repairs, remain intact, subject to the terms of this Section 3A. Accordingly, the Parties agree, notwithstanding anything in the Original Operating Agreement to the contrary, PAM's adjusted Repair cap for the 2013-2014 Fiscal Year shall be Two Hundred Fifty Thousand Dollars (\$250,000.00), which amount shall be subject to the Escalator defined in Section 3A.3 below.

3A.2 The City will carry a line item in the City's Spectator Facilities Fund budget applicable to the costs of Repairs, Capital Improvements, and/or increased Operating Expenses, which budgeted item will be in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) per Fiscal Year (the "**R&M Budget Amount**") and subject to the Escalator defined in Section 3A.3. The City will not be obligated to spend more than the R&M Budget Amount on Repairs, Capital

Improvements, and/or increased Operating Expenses in any applicable Fiscal Year. The R&M Budget Amount will be subordinate and subject, at all times, to any existing debt (or refinancing which does not increase the City's total debt obligations or the amount of debt service payments) and other non-discretionary, fixed and existing contractual obligations imposed upon the City's Spectator Facilities Fund, provided, however, the R&M Budget Amount shall not be subordinate to repayment of Pre-RDA work by the City to PDC (as Pre-RDA work is defined in Section IIIB of the City/PDC IGA).

3A.3 As used in this Section 3A, "Escalator" means the Consumer Price Index, Urban, All Consumers, in the Portland Metropolitan Area (the "CPI") as adjusted in accordance with the methodology set forth in this Section 3A.3. PAM's adjusted Repair cap and the R&M Budget Amount shall be increased annually based on the change in the CPI between the second half of the prior calendar year compared to the second half of the year immediately preceding the prior calendar year. For example, for fiscal year 2014-2015 (July 1, 2014 – June 30, 2015), each of PAM's adjusted Repair cap and the R&M Budget Amount will be multiplied by a fraction, the numerator of which is the CPI for the second half of 2013 (July 1 – December 31, 2013) and the denominator of which is the CPI for the second half of 2012 (July 1 – December 31, 2012).

3A.4 Upon a City Event of Default (as defined in Section 16.2.1 of this Agreement) under Section 3A.2 above, termination of this Agreement shall be a remedy available to PAM in addition to any other remedies available to PAM under Section 16.2.2 of this Agreement.

3A.5 Any government or court mandated ADA improvements or modifications to the Coliseum on or after July 1, 2013 will be a City responsibility and if the City elects to comply, the costs will be covered by the R&M Budget Amount. The City may choose to spend more than the R&M Budget Amount on required compliance actions and compliance work may require more than one year to complete. PAM Funds will not be required for such improvements or modifications, or for responding to or defending against ADA related complaints or claims."

7. **Revision to OAC Management Allocation.** Section 4.9.1 at page 57, commencing in line 9 of the Original Operating Agreement is hereby amended to read as follows:

“4.9.1 ... ~~and thereafter for the period July 1 1995 to June 30, 2013, 8% of~~ Allocated Labor shall be charged to the Coliseum Operating Account; and thereafter, 10% of Allocated Labor shall be charged to the Coliseum Operating Account.”

8. **Changes to NOL Provisions.** Sections 5.4.3, 5.4.4 and 5.4.5 of the Original Operating Agreement are hereby deleted in their entirety and replaced with the following new Sections 5.4.3, 5.4.4, 5.4.5 and a new Section 5.4.7 is hereby added, and each shall read as follows:

“5.4.3 During the Operations Term, to the extent funds (including working capital) in the Operating Account are insufficient to pay any due and payable Operating Expenses, PAM shall be solely responsible for the initial payment of such deficiency and shall pay the deficiency out of PAM Funds subject to fifty percent (50%) reimbursement by the City as provided for in Section 5.4.4. PAM shall not accelerate or defer the payment of Operating Expenses for the purpose of limiting or reducing its obligation to satisfy any deficiency between Operating Revenues and Operating Expenses. Each payment made by PAM pursuant to this Section 5.4.3 shall be an “NOL Payment.” The City and PAM shall each be responsible for fifty percent (50%) of all NOL Payments up to an aggregate of Two Hundred Fifty Thousand Dollars (\$250,000) each per Fiscal Year. The City’s fifty percent (50%) share of such NOL Payments shall be reimbursed to PAM as provided for in Section 5.4.4. All NOL Payments which exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate shall be the sole responsibility of PAM and payable out of PAM Funds.

5.4.4 In providing the financial statement to the City under Section 6.2 of this Agreement, PAM shall provide a statement of the total amount of NOL Payments made by PAM and the City’s fifty percent (50%) share of such NOL Payments up to a maximum of Two Hundred Fifty Thousand Dollars (\$250,000). Within thirty (30) days after receipt of such statement, the City shall pay to PAM the City’s fifty percent (50%)

share of such NOL Payments. If PAM has made NOL Payments during a Fiscal Year, and the annual reconciliation described in Section 5.6.3 determines that at the end of such Fiscal Year there was Net Income for that Fiscal Year, then PAM shall be entitled to recover the amount of its NOL Payments for that Fiscal Year to the extent of Net Income, without interest, from that Fiscal Year's Net Income prior to any distribution of Net Income pursuant to Section 5.6. The amount of any unrecovered NOL Payments for that Fiscal Year shall be the "NOL," which shall be subject to fifty percent (50%) reimbursement by the City as provided for in this Section 5.4.4.

5.4.5 For the Fiscal Years ending June 30 in 2011, 2012 and 2013, to the extent that PAM made NOL Payments during any of those Fiscal Years, PAM will be entitled to recover its NOL for each of those Fiscal Years out of the Net Income from any of the next consecutive three (3) Fiscal Years (which recoveries shall be Operating Expenses) prior to any recovery from Net Income jointly by PAM and the City for the payment or reimbursement, respectively, of any NOL for Fiscal Years commencing July 1, 2013 and continuing through the end of the then remaining Operations Term. If PAM becomes obligated to make NOL Payments in excess of Five Hundred Thousand Dollars (\$500,000) ("Excess NOL") during the Operations Term, PAM shall be entitled to recover such Excess NOL out of Net Income from any of the next consecutive three (3) Fiscal Years (which recoveries shall be Operating Expenses) prior to any recovery from Net Income jointly by PAM and the City for the payment of or reimbursement, respectively, of any NOL for Fiscal Years commencing July 1, 2013, through the end of the remaining Operations Term. Provided that PAM is not entitled to recover its NOL or Excess NOL pursuant to the two previous sentences of this Section 5.4.5, then PAM and the City shall be entitled to recover an NOL from a Fiscal Year paid or reimbursed, respectively, on a *pari passu* basis from any of the next consecutive three (3) Fiscal Years, which recoveries shall be Operating Expenses. Such recoveries shall be allocated to the NOL first incurred during such three (3) prior Fiscal Years. For clarification, recovery of Excess NOL and NOL shall be paid in accordance with this Section 5.4.5 in the following order of priority: (x) first, to PAM for the recovery of any NOL Payments made during the Fiscal Years ending on June 30 of 2011, 2012 and 2013; (y) second, to PAM for the recovery of any Excess NOL paid by PAM; and (z) then, to the City and

PAM, *pari passu*, for the recovery of NOL Payments made by the City and PAM for Fiscal Years during the Operations Term. PAM shall not be entitled to recover an NOL or Excess NOL in whole or in part, with respect to operations of the Coliseum following any termination of this Agreement. Neither NOL nor Excess NOL shall bear interest. If the City does not reimburse PAM for fifty percent (50%) of the NOL Payments made by PAM within thirty (30) days as provided for in Section 5.4.3, any unpaid amounts shall bear Default Interest until paid or, at its election, PAM shall have the right to set off any amounts owed by the City and not paid within such thirty (30) day period against User Fees otherwise payable to the City under Section 28 of the Development Agreement. The provisions of this Section 5.4 shall supersede any conflicting provisions under Section 32.2 of the Development Agreement.

5.4.7 Under no circumstances shall the City be required to make contributions to the Operating Account or be liable in any other manner for any cost, expense, loss, damage or other obligation relating to the operation, management, administration, use, scheduling, marketing, advertising, promotion, security, licensing, provision of concessions, Maintenance, or Repair of or at the Coliseum, whether to contractors, concessionaires, licensees, or any other Person, except to the extent expressly set forth in this Agreement, including Section 3A, Sections 5.4.3 and 5.4.4 and Section 6.3 of this Agreement.”

9. **Changes to Audit Provisions.** Section 6.3 of the Original Operating Agreement is hereby deleted in its entirety and in its place and stead is inserted a new Section 6.3 which shall read as follows:

“6.3 **Report by Auditor.** Within thirty (30) days after the end of the Fiscal Year, the City may, by written notice to PAM require an audit be conducted of the financial results of operations of the Coliseum for that Fiscal Year. In that notice, the City shall designate an Auditor who shall be an independent auditor. PAM shall cooperate with the Auditor by providing the Auditor access to the books, records and employees pertaining to the operations of the Coliseum. PAM, from PAM Funds, and the City, from City Funds, shall each pay fifty percent (50%) of the charges for the

services of the Auditor promptly after receipt of a written statement from the Auditor for such charges. The report issued by any independent third party Auditor shall be binding on the parties."

10. Indemnifications. For all claims or causes of action which accrued prior to July 1, 2013, Section 8 of the Original Operating Agreement shall continue to apply and shall survive the amendments to Section 8 below. For all claims or causes of action which accrue on or after July 1, 2013, Section 8 of the Original Operating Agreement is hereby restated and amended to read as follows:

"SECTION 8 INDEMNIFICATIONS

8.1 Scope of PAM Indemnification

PAM shall defend, indemnify and hold harmless the City and the City's elected officials, officers, employees, and agents (the "City Related Persons") from and against any and all liabilities, obligations, penalties, fines, damages, claims, suits, costs, remediation costs, and expenses (including, without limitation, attorneys' fees) (collectively, "Damages") (except to the extent such Damages are directly attributable to the negligence or willful misconduct of the City or any of the City Related Persons) which may be imposed upon, incurred by, or asserted against the City or any of the City Related Persons arising from any of the matters set forth in Sections 8.1.1 through 8.1.3.

8.1.1 Any accident, injury, death, or damage caused to any Person or to the property of any Person occurring during the Operations Term on or about the Coliseum caused by the conduct, act or omission of PAM, a PAM contractor (including all Persons with whom PAM has entered into a Coliseum Agreement), subcontractor, licensee or invitee at the Coliseum, or any of the PAM Related Persons (as hereinafter defined).

8.1.2 Any PAM Event of Default of any obligations of PAM under this Agreement, or a PAM default under any agreement affecting any part of the

Coliseum not cured within any applicable cure period provided in such agreement.

8.1.3 The actual or alleged presence, use, treatment, storage, generation, manufacture, transport, release, leak, spill, disposal, or other handling of Hazardous Substances at, upon, under, from or within the Coliseum arising during the Operations Term caused by the conduct, acts, or omissions of PAM, a PAM contractor (including all Persons with whom PAM has entered into a Coliseum Agreement), subcontractor, or any of the PAM Related Persons, or due to PAM Migration. As used herein "PAM Migration" shall mean migration of Hazardous Substances (i) from the Kosei Property or (ii) from real property leased pursuant to the Arena Lease or the Entertainment Complex Lease unless such Hazardous Substance migration originated from real property of a third party and later passed through the Kosei Property or any such leased property. Notwithstanding anything to the contrary in Section 8.1.1, PAM shall not be obligated to defend, indemnify or hold harmless the City for the conduct, acts, or omissions of PAM's licensees or invitees at the Coliseum, under this Section 8.1.3.

8.2 Scope of City Indemnification

Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, the City shall defend, indemnify and hold harmless, PAM and PAM's officers, employees and agents ("PAM Related Persons") from and against any and all Damages (except to the extent such Damages are directly attributable to the negligence or willful misconduct of PAM or any of the PAM Related Persons) which may be imposed upon, incurred by, or asserted against PAM or any of the PAM Related Persons arising from any of the matters set forth in Sections 8.2.1 through 8.2.3.

8.2.1 Any accident, injury, death or damage caused to any Person occurring during the Operations Term on or about the Coliseum caused by the negligent act, conduct or omission of the City or any of the City Related Persons.

1 8.2.2 The presence of Hazardous Substances at, upon, under, from or
2 within the Coliseum caused by the conduct, acts, or omissions of the City or any
3 City Related Persons prior to or during the Operations Term.

4 8.2.3 Any City Event of Default of any obligations of the City under this
5 Agreement.

6 8.3 Insurance

7 Except as specifically provided for in this Section 8, the obligations of
8 PAM and the City under this Section 8 shall not in any way be affected or limited
9 by the absence in any case of insurance coverage or by the failure or refusal of
10 any insurance carrier to perform any obligation on its part to be performed under
11 insurance policies affecting the Coliseum.

12 8.4 Effect of Approval

13 The obligations of either Party set forth in Sections 8.1 and 8.2 shall not be
14 diminished, altered, or affected by the Approval (prior to or after the fact),
15 whether explicit or implied, by the other Party, either exercising its rights under
16 this Agreement or in the exercise of the City's regulatory authority, of any plan,
17 action, or activity for which the Party obtained the other Party's Approval either
18 as required by the Agreement or as required by any ordinance of the City, even if
19 such plan, action, or activity Approved by the other Party is a factual basis, in
20 whole or in part, for a claim for which the Party is entitled to indemnification
21 pursuant to Sections 8.1 and 8.2.

22 8.5 Defense of Claims

23 8.5.1 If any claim, action, or proceeding is made or brought against the
24 City or any of the City Related Persons by reason of any event or condition
25 described in Section 8.1, then, upon demand by the City or the affected City
26 Related Person(s), PAM at PAM's cost and expense shall resist and defend such
27 claim action, or proceeding in the name of the City or such City Related Person(s)

1 by the attorneys for PAM's insurance carrier (if such claim, action, or proceeding
2 is covered by insurance), or by such attorneys as PAM shall select subject to the
3 Approval of the City. Notwithstanding the foregoing, after notice to PAM, the
4 City or such City Related Person(s) shall have the right to appear, defend, or
5 otherwise take part in such claim, action, or proceeding, at the election of the City
6 or such City Related Person(s), by counsel of its or their own choosing, at their
7 own expense, except as otherwise provided herein.

8 8.5.2 If any claim, action, or proceeding is made or brought against
9 PAM or any of the PAM Related Persons by reason of any event or condition
10 described in Section 8.2, then, upon demand by PAM or the affected PAM
11 Related Person(s), the City at the City's cost and expense shall resist and defend
12 such claim action, or proceeding in the name of PAM or such PAM Related
13 Person(s) by the attorneys for the City's insurance carrier (if such claim, action, or
14 proceeding is covered by insurance), or by such attorneys as the City shall select
15 subject to approval by PAM, which approval will not be unreasonably withheld or
16 delayed. Notwithstanding the foregoing, after notice to the City, PAM or such
17 PAM Related Person(s) shall have the right to appear, defend, or otherwise take
18 part in such claim, action, or proceeding, at the election of PAM or such PAM
19 Related Person(s), by counsel of its or their own choosing, at their own expense,
20 except as otherwise provided herein.

21 8.6 Hazardous Substances

22 8.6.1 PAM will notify the City promptly if it encounters or suspects
23 Hazardous Substances have been, or may be released at, upon, under, from or
24 within the Coliseum regardless of whether the Hazardous Substances existed
25 before or during the Operations Term.

26 8.6.2 The City will notify PAM promptly if it encounters or suspects
27 Hazardous Substances have been released at, upon, under, from or within the
28 Coliseum that may affect Coliseum operations regardless of whether the
29 Hazardous Substances existed before or during the Operations Term.

1 8.6.3 The City agrees to be responsible for any remediation of
2 Hazardous Substances existing at, upon, under, from or within the Coliseum
3 caused by the City's conduct, acts, or omissions prior to or during the Operations
4 Term excepting therefrom PAM's remediation obligations under 8.6.4.

5 8.6.4 PAM agrees to be responsible for any remediation of Hazardous
6 Substances at, upon, under from or within the Coliseum arising during the
7 Operations Term excepting therefrom the City's remediation obligations under
8 Section 8.6.3. PAM shall perform such remediation in accordance with
9 applicable procedures and standards set forth in Section 6 of the Development
10 Agreement, except to the extent the City reasonably directs otherwise.

11 8.7 Responsibility for Indemnification Costs.

12 The Parties intend that insurance shall cover the Parties' indemnification
13 obligations under this Agreement. To the extent insurance does not cover all of the
14 Parties' indemnification obligations, the Parties agree as follows:

15 8.7.1 PAM shall be responsible for, and shall pay out of PAM Funds, the
16 indemnification costs not covered by insurance for any PAM
17 indemnification obligation pursuant to Section 8.1.

18 8.7.2 City shall be responsible for, and shall pay out of City Funds, the
19 indemnification costs not covered by insurance for any City
20 indemnification obligation pursuant to Section 8.2."

21 11. **Insurance.** Section 14.1.5 of the Original Operating Agreement is hereby deleted
22 in its entirety and replaced with a new section 14.1.5 which shall read as follows:

23 "14.1.5 Insurance. Each Coliseum Agreement shall require the contracting party
24 to provide insurance sufficient, in the reasonable judgment of PAM, for the services to be
25 performed or the materials to be furnished under that Agreement. PAM shall require the
26 contracting party to name the City as an additional insured on the contracting party's
27 insurance and to indemnify the City on the same terms as the contracting party agrees to

1 indemnify PAM. PAM shall furnish the City with evidence of said insurance, upon
2 request."

3 **12. Notices.** Section 18.3 of the Original Operating Agreement is hereby deleted in
4 its entirety and replaced with a new Section 18.3 which shall read as follows:

5 "18.3 Notices. A notice or communication under this Agreement by a
6 party to another party shall be sufficiently given or delivered if sent with all
7 applicable postage or delivery charges prepaid by: (a) personal delivery;
8 (b) sending a confirmed e-mail copy (either by automatic electronic confirmation
9 or by affidavit of the sender) directed to the e-mail address of the party set forth
10 below; (c) registered or certified U.S. mail, return receipt requested; or
11 (d) delivery service or "overnight delivery" service that provides a written
12 confirmation of delivery, each addressed to a party as follows:

13 If to the City: City of Portland
14 1120 S.W. Fifth Avenue, 12th Floor
15 Portland, Oregon 97204
16 Attn: Chief Administrative Officer
17 E-Mail: VMC.OA@portlandoregon.gov
18 Confirmation No.: 503-823-5288

19 with copies to: Office of the City Attorney
20 City of Portland, Oregon
21 1221 S.W. Fourth Avenue, 4th Floor
22 Portland, Oregon 97204
23 Attn: City Attorney
24 E-Mail: Mark.Moline@portlandoregon.gov
25 Confirmation No.: 503-823-4047

26 If to PAM: Rip City Management LLC
27 One Center Court, Suite 200
28 Portland, Oregon 97227
29 Attn: Chris Oxley, Senior Vice President/General
30 Manager, Rose Quarter Operations
31 E-Mail: chris.oxley@rosequarter.com
32 Confirmation No.: 503-797-9851

with copies to: Lane Powell PC
601 SW Second Avenue, Suite 2100
Portland, Oregon 97204
Attn: Michael R. Silvey
E-Mail: silvey@lanepowell.com
Confirmation No.: 503-778-2195

and to: Rip City Management LLC
One Center Court, Suite 200
Portland, Oregon 97227
Attn: Benjamin R. Lauritsen, General Counsel
E-Mail: ben.lauritsen@trailblazers.com
Confirmation No.: 503-234-9291

Each party may, by notice to the other party, specify a different address or confirmation number for subsequent notice purposes. Notices may be sent by counsel for a party. Notice shall be deemed effective on the earlier of actual delivery or refusal of a party to accept delivery; provided that notices delivered by e-mail shall not be deemed effective unless simultaneously transmitted by another means allowed under this Section 18.3. For a notice to be effective, the copied persons must also be given notice."

13. Amendments. Section 18.12 of the Original Operating Agreement is hereby deleted in its entirety and replaced with a new Section 18.12 which shall read as follows:

"18.12 Amendment. This Agreement may not be modified or amended except by the written agreement of the parties. The CAO or his designee may negotiate, approve and execute amendments to this Agreement and agreements contemplated hereby or ancillary hereto, in form and substance acceptable to the CAO or his designee in his or her sole discretion, unless such amendment results in a material adverse change in the financial terms and provisions of this Agreement."

14. Parking.

14.1 Public Parking Facilities Management Agreement. Consistent with PAM's current obligations as evidenced by that certain letter agreement dated June 8, 2000 extending that certain Public Parking Facilities Management Agreement dated June 23, 1993,

1 PAM hereby confirms that it will continue to perform its obligations, including but not limited
2 to, 1) contracting, on behalf of the City, for parking garage management and operations of the
3 Public Parking Facilities (the "Parking Facilities") which include the "Surface Parking"
4 (generally referred to as the "Benton Lot"), the "East Parking Garage," and the "West Parking
5 Garage," as the same are described on Exhibit A3 of this Amendment; 2) performing
6 maintenance, repairs, and capital improvements relating to such Parking Facilities on behalf of
7 the City, including an affirmative duty of inspection of the Parking Facilities, and the cost of
8 those items shall be separate from and in addition to the R&M Budget Amount; 3) maintaining
9 insurance and indemnification provisions; 4) providing reasonable public safety, security and
10 traffic control related to operation of the Parking Facilities; and 5) collecting and distributing
11 funds, and submitting monthly invoices to the City to allow for PAM to be reimbursed for
12 PAM's out-of-pocket costs of such Parking Facilities management, operations, maintenance,
13 repair, and capital improvements. PAM shall continue to provide the parking garage
14 management and operations in the manner described above and shall not be paid a management
15 fee or other compensation for said parking garage management and operations except as
16 provided in 14.2. The City hereby confirms that it will continue to perform its obligations,
17 including but not limited to, 1) providing license to PAM and its contractors to come upon and
18 have access to the Parking Facilities; 2) granting exclusive authority and responsibility for the
19 management, administration, operation, use, scheduling, marketing, promotion, security,
20 maintenance and repair of or at the Parking Facilities; and 3) reimbursing PAM for PAM's out-
21 of-pocket costs, including an advance of \$60,000 for parking management expenses.

22 14.2 Non-Event Parking. Notwithstanding anything to the contrary in Section
23 14.1 above, PAM shall be entitled to keep as its compensation for the administration of "Non-
24 Event Parking" twenty-five percent (25%) of any amounts invoiced and collected for Non-Event
25 Parking in the Public Parking Facilities. Non-Event Parking includes, but is not limited to,
26 monthly day parking passes and spots for events held at other nearby facilities that are unrelated
27 to Rose Quarter events and that use parking in the Public Parking Facilities arranged through
28 PAM. Non-Event Parking does not include parking fees paid by customers who drive up to the
29 Public Parking Facilities and pay for parking directly. PAM shall provide an accounting to the
30 City of Non-Event Parking revenue amounts on a monthly basis. The Parties agree that Non-

1 Event Parking will be arranged by PAM so as to not interfere with the availability of the Public
2 Parking Facilities during Rose Quarter events.

3 **15. Benton Lot.** So long as PAM has the contractual right to manage and operate the
4 Benton Lot, the City shall not enter into any agreement or contract concerning the development
5 of the Benton Lot without prior consultation with PAM about the impacts of the development on
6 Coliseum operations. The City shall not develop nor allow any other Person to develop the
7 Benton Lot that will materially impair use of the Benton Lot for Coliseum parking or staging of
8 Coliseum events without the prior written approval of PAM, which PAM agrees not to
9 unreasonably withhold so long as reasonable accommodations are made for parking and staging
10 of Coliseum events.

11 **16. Scoreboard and Video Screens.** PAM will maintain and operate the timing and
12 scoring equipment as needed for Coliseum events. Neither Party shall be required to operate,
13 maintain, or replace the Video Screens.

14 **17. Ice Floor Surcharge Fee.** Commencing as of the Effective Date, the City
15 requires that PAM charge an annual "Ice Floor Surcharge", to be paid to the City through the
16 PWH Agreement. The Ice Floor Surcharge shall not be considered Operating Revenue.
17 Payment shall be required from PWH on or before August 1 of each fiscal year. For the first two
18 year Extension Option, the Ice Floor Surcharge Fee shall be Fifty Thousand Dollars (\$50,000)
19 payable by PWH to the City on or before August 1, 2013 and Fifty Thousand Dollars (\$50,000)
20 payable by PWH to the City on or before August 1, 2014. For any additional extensions of this
21 Agreement under Section 2.2.1, the City shall notify PAM at least eleven months in advance of
22 the Termination Date (not later than August 1) of the amount of the Ice Floor Surcharge for such
23 extended term.

24 **18. PWH Rebates.** At the end of each PWH season, PAM shall cause a rebate to be
25 paid into the Operating Account, which is based on the attendance at PWH games for each
26 season, and such payment shall be considered Operating Revenues for that Fiscal Year. Each
27 rebate payment will be computed as an \$0.80 rebate for each attendee at PWH games held at the
28 Coliseum and Rose Garden Arena combined (i) in excess of 96,045 in the aggregate that attend
29 PWH regular season games, and (ii) in excess of 2,000 attendees for each playoff game;

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1 provided, in each case the count excludes suite attendance and that the number of tickets sold
2 (for at least that season's minimum standard ticket price) is at least 70% of total tickets issued
3 (the total of paid plus complimentary tickets, excluding suites). If the total number of tickets
4 sold is less than 70% but greater than or equal to 65% of total tickets issued, then the rebate paid
5 by PAM will be at \$0.60 for each attendee instead of \$0.80. If the total number of tickets sold is
6 less than 65% but greater than or equal to 60% of total tickets issued, then the rebate paid by
7 PAM will be at \$0.40 for each attendee instead of \$0.80. If tickets sold are less than 60% of
8 tickets issued then no rebate will be paid. PAM agrees to make any rebate payment within thirty
9 (30) days of the end of the PWH season (including any playoff games). Rebate amounts paid
10 into the Operating Account shall be pro rated based on the cumulative number of attendees at
11 PWH games at the Coliseum and Rose Garden Arena respectively.

12 **19. Recitals.** The "Recitals" set forth above are hereby incorporated into this
13 Amendment by this reference as if set forth in their entirety herein

14 **20. Effect on Original Operating Agreement.** Except as expressly modified herein,
15 the Original Operating Agreement is hereby ratified and confirmed and shall remain in full force
16 and effect. In the event of a conflict between the terms of this Amendment and the terms of the
17 Original Operating Agreement, the terms of this Amendment shall prevail.

18 **21. Binding Nature.** This Amendment shall be binding upon and inure to the benefit
19 of the Parties, their respective heirs, executors, administrators, legal representatives, successors,
20 and assigns, subject to the provisions of Section 13 of the Original Operating Agreement (titled
21 "Assignment and Transfer").

22 **22. Sophisticated Parties.** The Parties acknowledge that the City and PAM are both
23 sophisticated parties and that each party and its counsel have reviewed and revised this
24 Amendment. Therefore, the normal rule of construction to the effect that any ambiguities are to
25 be resolved against the drafting party shall not be employed in the interpretation of this
26 Amendment or exhibits hereto.

4 [Signature page follows]

1 IN WITNESS WHEREOF, the Parties have executed this Amendment, which shall be
2 effective as of the Effective Date.

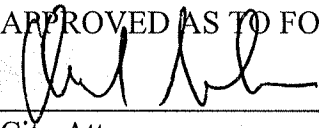
3 **CITY:**

4
5 **CITY OF PORTLAND**, a municipal corporation
6 of the State of Oregon

7
8
9 By: _____
10 Its: Mayor

11
12
13 By: _____
14 City Auditor

15
16
17 APPROVED AS TO FORM:

18 
19 _____
20 City Attorney

21
22
23 **PAM:**

24
25 **RIP CITY MANAGEMENT LLC**, d/b/a
26 **Portland Arena Management**, a Delaware limited
27 liability company

28
29 By: Arena Acquisition LLC, an Oregon limited
30 liability company, Sole Member

31 By: Aegean Corporation, an Oregon
32 corporation, Manager

33
34
35 By: _____
36 Name: _____
37 Its: _____
38

