

36826

**FIFTH AMENDMENT  
TO  
DEVELOPMENT AGREEMENT**

**PARTIES:**           **RIP CITY MANAGEMENT LLC,**  
a Delaware limited liability company  
doing business as Portland Arena Management ("PAM"),  
(fka Portland Arena Management LLC), successor  
in interest to Oregon Arena Corporation

**CITY OF PORTLAND, OREGON** (the "City")  
a municipal corporation of the State of Oregon

**EFFECTIVE DATE:** \_\_\_\_\_

**RECITALS**

A. This Fifth Amendment to Development Agreement ("Fifth Amendment") amends that certain Development Agreement dated November 4, 1992 and executed by Oregon Arena Company, predecessor-in-interest to PAM, and the City. The Development Agreement was subsequently amended by the following agreements:

First Amendment to Development Agreement dated April 15, 1993;  
Second Amendment to Development Agreement dated April 23, 1993;  
Third Amendment to Development Agreement dated June 23, 1993; and  
Fourth Amendment to Development Agreement dated June 23, 1993  
(collectively the "Development Agreement").

B. Under the terms of Section 29 of the Development Agreement, the City granted to PAM the right to develop certain areas on or near the Project Site. Specifically, the City granted PAM an exclusive option to develop improvements on and over the Public Garage Development Areas (the "Development Rights"). The Public Garage Development Areas are depicted on Exhibit A. In addition, the Development Agreement provides PAM with certain rights to develop the Coliseum Development Area and the PDOT Development Area, which are depicted on Exhibit B and Exhibit C, respectively. The Public Garage Development Areas, the Coliseum Development Area and the PDOT Development Area are collectively referred to herein as the "Development Areas".

C. The term of PAM's exclusive option to exercise the Development Rights terminates on November 24, 2010. The Parties desire to extend the option term and to modify certain terms and conditions with respect to the Development Rights as set forth in this Fifth Amendment.

D. Unless otherwise defined in this Fifth Amendment, capitalized terms shall have the meanings as provided for in the Development Agreement.

E. Exhibits A, B and C are attached to and incorporated by reference into this Fifth Amendment.

### AMENDMENT

1. Section 29.1.1 of the Development Agreement is deleted in its entirety, and in its place and stead is inserted the following:

“29.1.1 The term of this exclusive option (“Option Term”) commenced on November 24, 1995 and will expire on May 24, 2011.”

2. The following new subsection is hereby added to the Development Agreement:

“29.1.1.1 During the Option Term, PAM agrees to make Reasonable Efforts to accomplish each of the following tasks:

(a) Develop a specific development proposal for one of the Public Garage Development Areas, or, if approved by the City in its sole and absolute discretion, for the Coliseum Development Area or the PDOT Development Area (the “Phase 1 Project”) that can be discussed publicly and that supports the City’s Economic Development Strategy.

(b) Coordinate with the Rose Quarter Stakeholder Advisory Committee (“SAC”), and other stakeholders including the City (including Planning and Sustainability Commission and Design Commission), and the Portland Development Commission in developing the Phase 1 Project development proposal and participating in the community process to develop the Rose Quarter District Plan (the “District Plan”).

(c) Participate in the community process to develop the District Plan, and support the final District Plan, which the City anticipates completing by the end of the Option Term.

(d) Obtain a written commitment from one or more major building tenants that supports the City’s Economic Development Strategy for the Phase 1 Project and from a ground floor tenant,

(e) Assemble a development team with developers and other professionals who are capable of executing the Phase 1 Project.

(f) Participate in the Lloyd EcoDistrict.

(g) Negotiate with the Portland Winterhawks, the City and PDC regarding opportunities for private investment in the renovation of Memorial Coliseum and negotiate toward a private investment plan that provides support to the existing and potential tenants of Memorial Coliseum and/or potential sources of private equity.

(h) If and when the District Plan and Phase 1 Project are approved or accepted, as applicable, commence negotiations, in good faith, of a

development agreement for the Phase 1 Project (the “Phase 1 Development Agreement”), which Phase 1 Development Agreement will contain performance requirements for the Phase 1 Project. Prior to and concurrently with the negotiation of the Phase 1 Development Agreement, PAM will use Reasonable Efforts to complete the following tasks:

(1) Negotiate with designated community representatives on a Community Benefits Agreement (“CBA”) that is appropriate for the scale, investment and impact of the Phase 1 Project with the goal of reaching agreement on the CBA prior to the execution of the Phase 1 Development Agreement, which CBA will be referenced therein.

(2) Negotiate with designated Eliot neighborhood representatives on a Good Neighbor Agreement (“GNA”) with the goal of reaching agreement on a GNA prior to execution of the Phase 1 Development Agreement, which GNA will be referenced therein.

(i) Initiate efforts to achieve sufficient pre-lease commitments to obtain financing for the Phase 1 Project.

(j) Begin developing a viable funding plan for the Phase 1 Project (the “Funding Plan”) that specifically identifies sources of public and private funding, provides reasonable evidence of the economic feasibility of the Phase 1 Project, and provides letters of interest from lenders and investors interested in funding the Phase 1 Project.

The Parties acknowledge that items (h), (i) and (j) of this Section 29.1.1.1 will likely take longer than six (6) months to accomplish and that PAM will begin the bulk of the work needed to accomplish these items only after completion of the District Plan and approval or acceptance of the Phase 1 Project. The City, in good faith, will consider a further extension of PAM’s Development Rights for an additional period of six (6) months upon a showing by PAM of substantial progress on items (a) – (g) of this Section 29.1.1.1, which extension will be subject to City Council approval.”

3. Section 29.1.4 of the Development Agreement is hereby deleted in its entirety and replaced with the following:

“29.1.4 As a condition precedent to OAC exercising its option to develop any Parking Garage Development Area, OAC shall not then be in default under this Agreement.”

4. Section 29.2.3 of the Development Agreement is hereby deleted in its entirety and replaced with the following:

“29.2.3 As a condition precedent to OAC exercising its option to develop the Coliseum Development Area, the PDOT Development Area or any portion thereof, OAC shall not then be in default under this Agreement.”

5. Wherever the terms "Oregon Arena Corporation" or "OAC" are used in the Development Agreement shall be deemed to read "Rip City Management LLC, dba Portland Arena Management" and "PAM" respectively.

6. Except as amended by this Fifth Amendment, the Development Agreement remains in full force and effect.

7. The Recitals are incorporated into the body of this Fifth Amendment as if fully set forth herein.

8. This Fifth Amendment may be executed in counterparts, each of which shall be deemed an original and when taken together shall constitute one and same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Fifth Amendment on the date first set forth above.

**PAM:**

RIP CITY MANAGEMENT LLC,  
a Delaware limited liability company,  
dba Portland Arena Management, successor in interest to  
Oregon Arena Corporation

By:

\_\_\_\_\_  
J.E. Isaac  
Sr. Vice President

**CITY:**

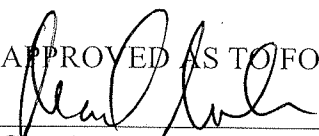
CITY OF PORTLAND, OREGON

By:

Name: \_\_\_\_\_

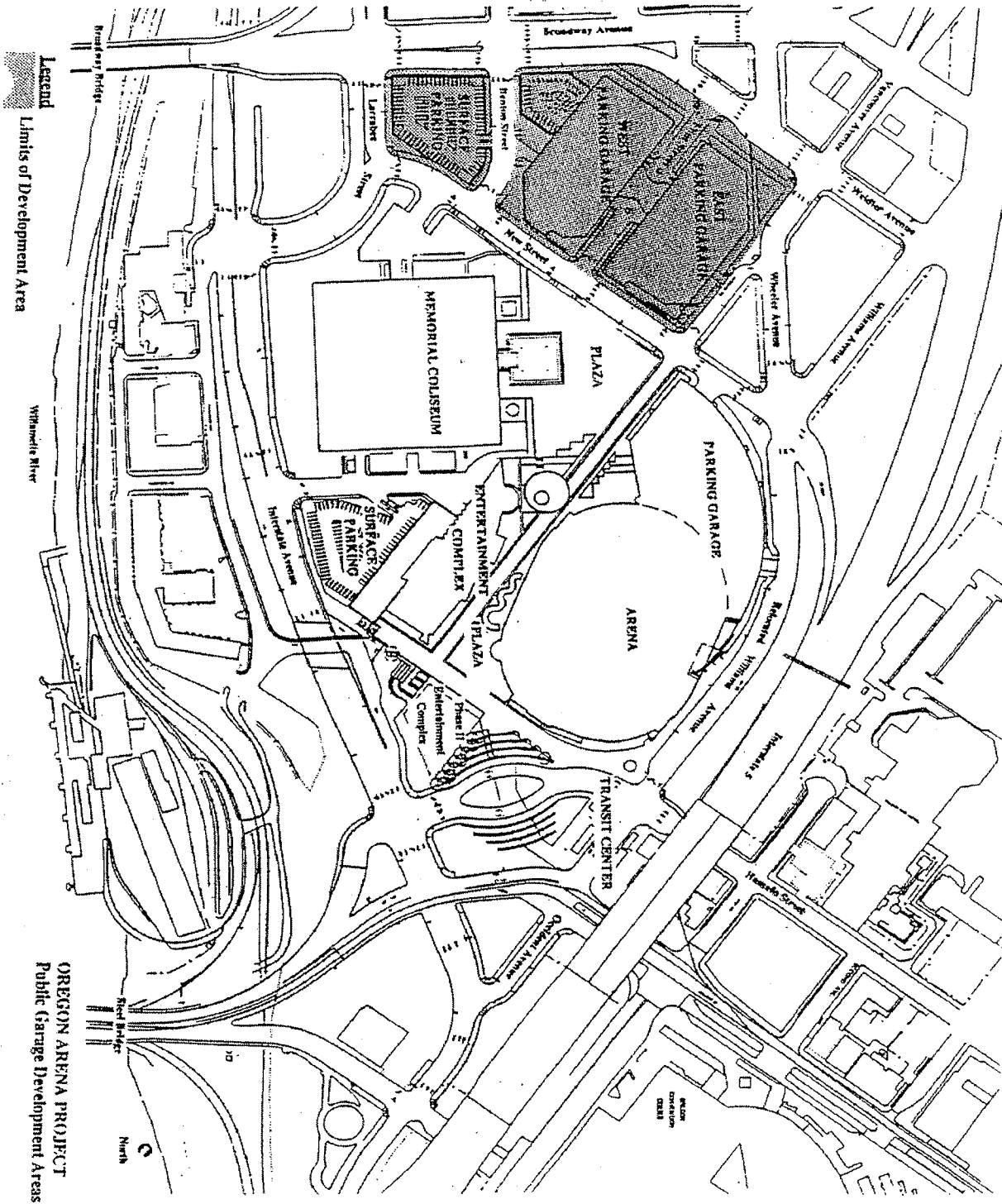
Its: \_\_\_\_\_

APPROVED AS TO FORM:

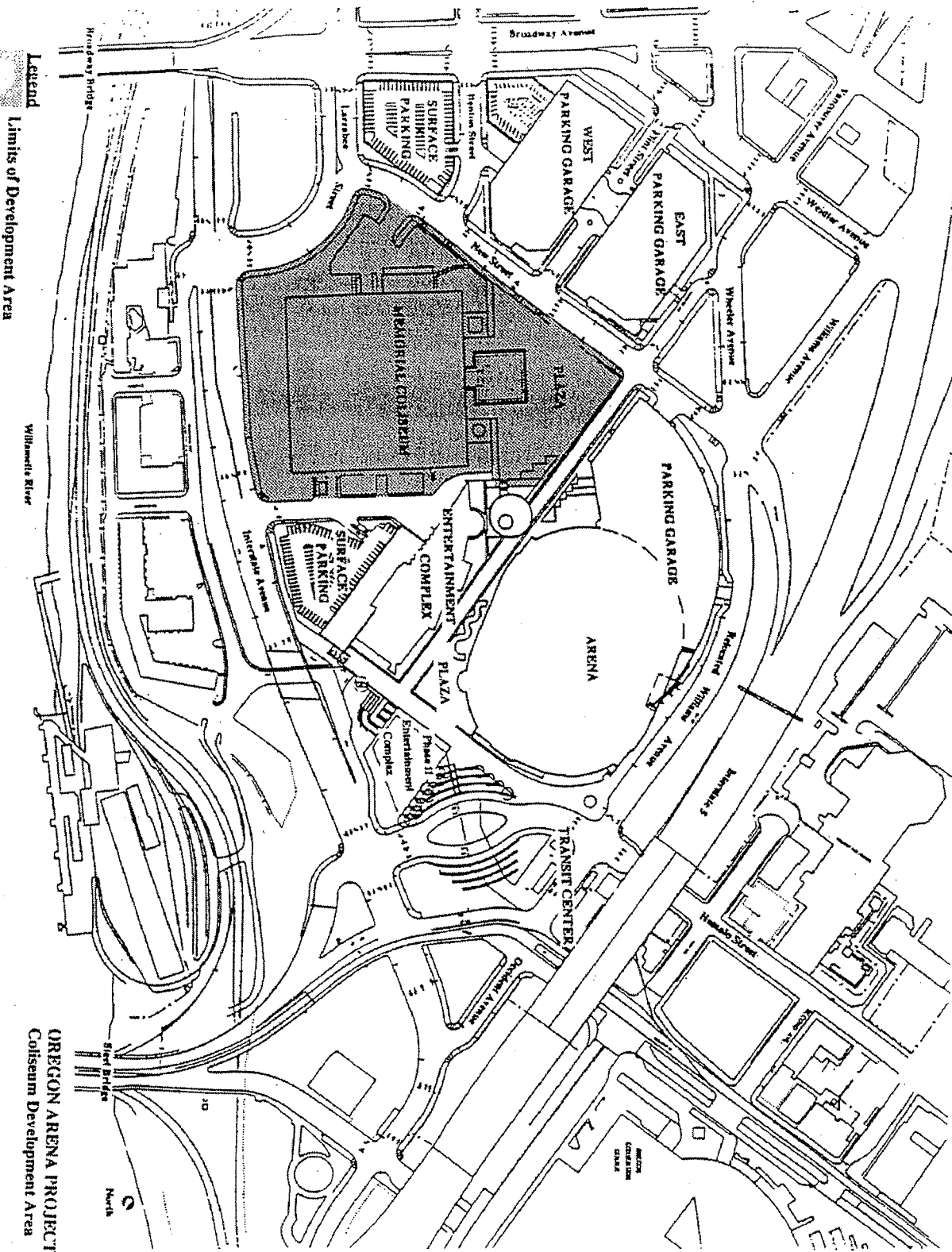


\_\_\_\_\_  
City Attorney

### Exhibit A Depiction of Public Garage Development Areas

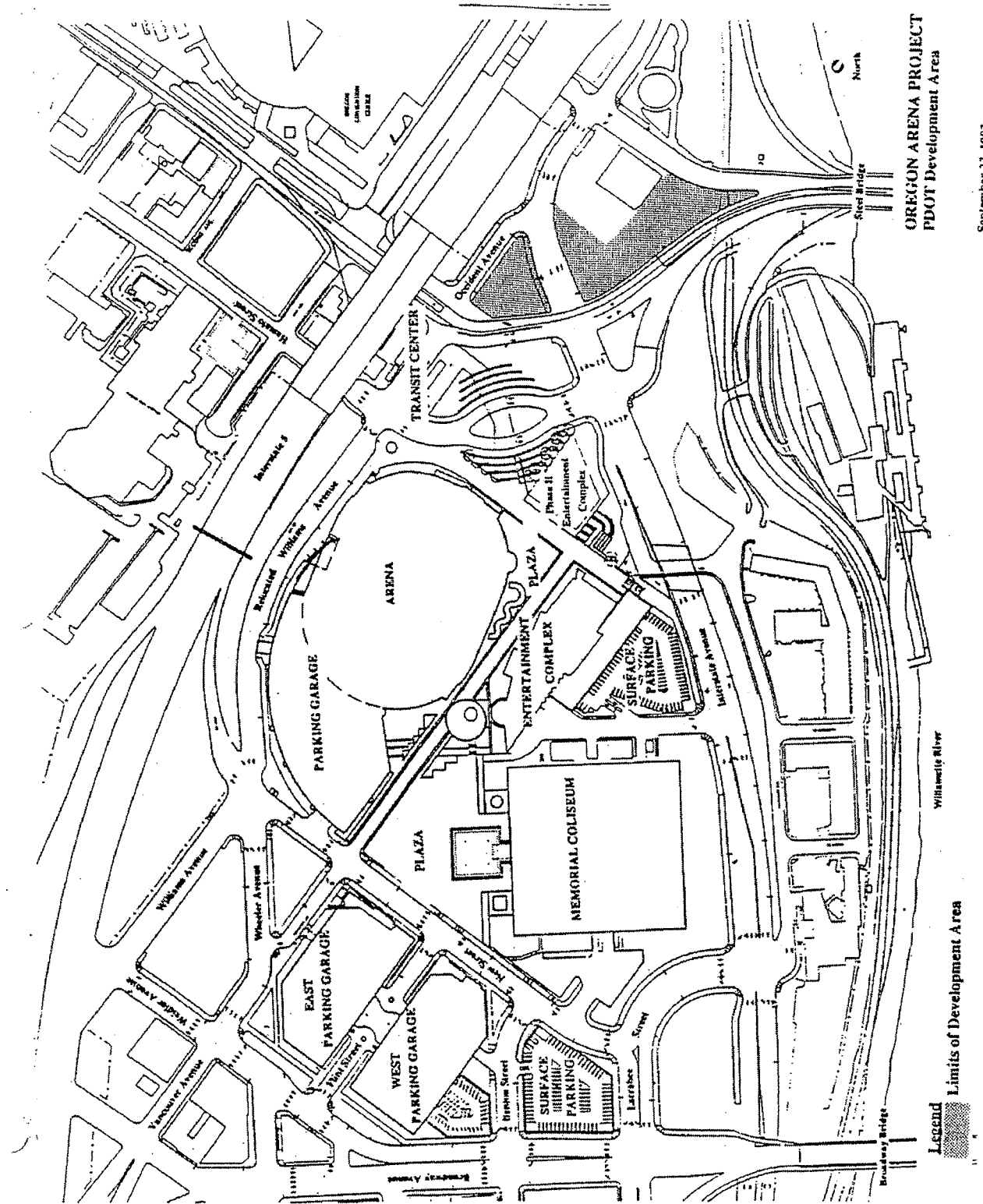


### Exhibit B Depiction of Coliseum Development Area



OREGON ARENA PROJECT  
Coliseum Development Area  
September 22,

Exhibit C  
Depiction of PDOT Development Area



OREGON ARENA PROJECT  
PDOT Development Area

September 21, 1991

AMENDMENT NO. 2 TO ENTERTAINMENT COMPLEX GROUND LEASE

PARTIES: CITY OF PORTLAND, OREGON, ("Landlord") a municipal corporation of the State of Oregon

RIP CITY MANAGEMENT LLC, ("Tenant") a Delaware limited liability company doing business as Portland Arena Management (fka Portland Arena Management LLC), successor in interest to Oregon Arena Corporation

EFFECTIVE DATE: \_\_\_\_\_

RECITALS

A. Landlord and Tenant entered into that certain Entertainment Complex Ground Lease with an effective date of June 23, 1993, as amended by that certain Amendment No. 1 to Entertainment Complex Ground Lease dated June 17, 2008 (collectively the "Lease").

B. Landlord and Tenant entered into that certain Development Agreement with an effective date of November 4, 1992 (as amended, the "Development Agreement"). Concurrently herewith, Tenant and Landlord are entering into a fifth amendment to the Development Agreement for the purpose, among other things, of extending the term of Tenant's exclusive option to develop improvements on and over the Public Garage Development Areas (as defined in the Development Agreement).

C. Pursuant to the Lease, Landlord leased to Tenant two parcels of property known as the Phase 1 and Phase 2 parcels, respectively. The Phase 1 and Phase 2 parcels are depicted on Exhibit A attached to this Amendment.

D. The Lease for the Phase 2 parcel expires on November 24, 2010 unless Tenant commences construction of the Phase 2 Improvements prior to such date. To allow time to plan for the development of the Development Areas (as defined in the Development Agreement), including the Phase 2 parcel, Tenant and Landlord desire to amend the Lease to extend the time period for Tenant to commence construction of the Phase 2 Improvements.

E. Unless otherwise defined in this Amendment No. 2 to Entertainment Complex Ground Lease (this "Amendment"), capitalized terms shall have the meanings as provided for in the Lease.



## AMENDMENT

1. The first sentence of Section 15.2 of the Lease is hereby deleted in its entirety and replaced with the following:

“This Lease shall terminate as to the Phase 2 parcel on November 24, 2011.”

2. The City, in good faith, will consider a further extension of the Lease as to the Phase 2 parcel for an additional period of six (6) months upon a showing by PAM of substantial progress on items (a) – (g) of Section 29.1.1.1 of the Development Agreement (as amended by the fifth amendment thereto), which extension will be subject to City Council approval.”

3. Except as modified by this Amendment, the Lease remains unchanged and is in full force and effect.

4. The Recitals are incorporated into the body of this Amendment as if fully set forth herein.

5. This Amendment may be executed in counterparts, each of which shall be deemed an original and when taken together shall constitute one and the same instrument.

**LANDLORD:**

CITY OF PORTLAND,  
a municipal corporation of the State of Oregon

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**TENANT:**

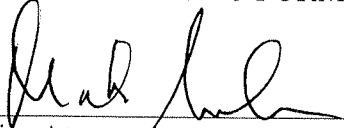
RIP CITY MANAGEMENT LLC,  
a Delaware limited liability company

By: ARENA ACQUISITION LLC,  
an Oregon limited liability company,  
its sole member

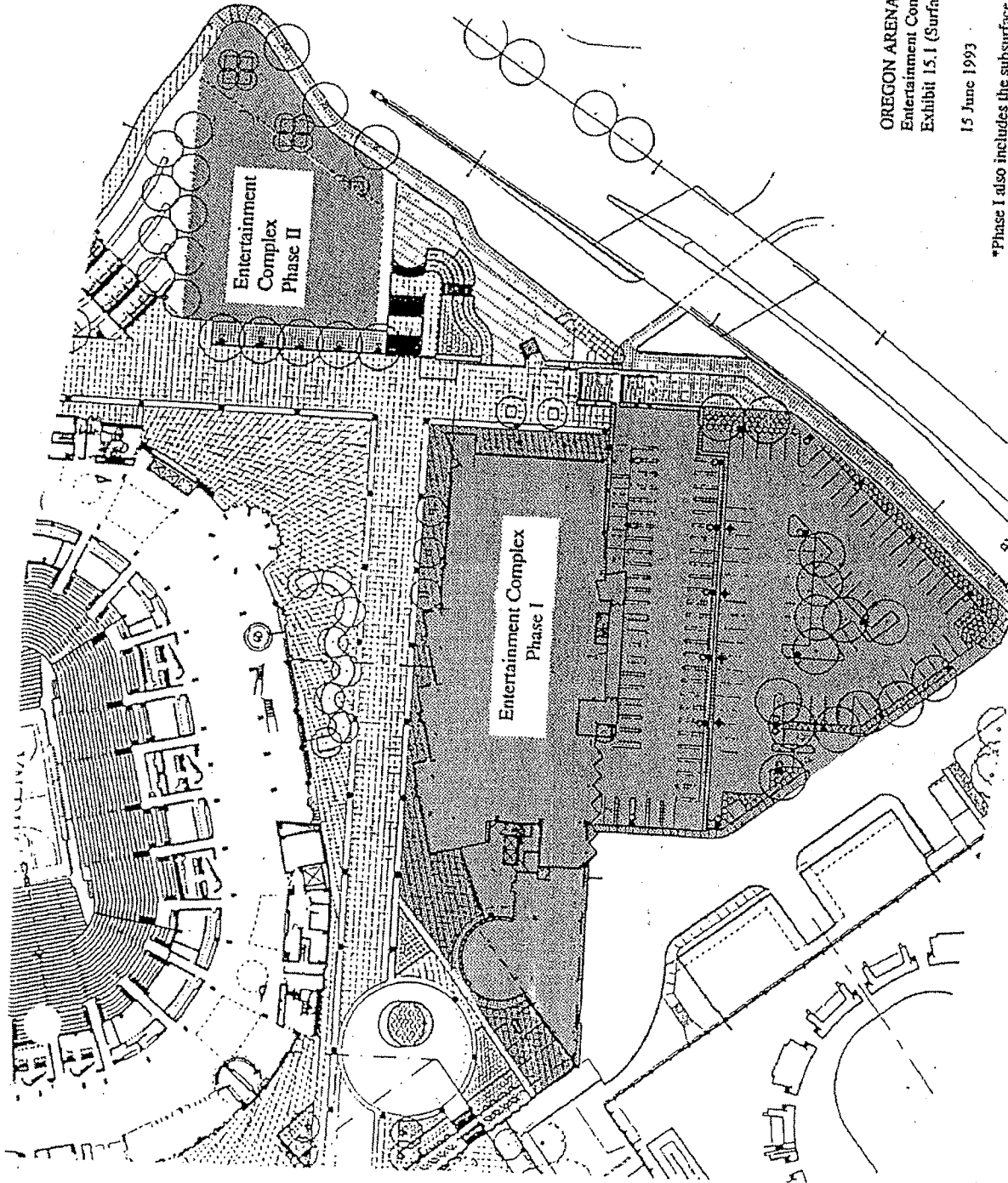
By: AEGEAN CORPORATION,  
an Oregon corporation, its manager

By: \_\_\_\_\_  
Name: J. E. Isaac  
Its: Sr. Vice President

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

**Exhibit A**  
**Depiction of Phase 1 and Phase 2 Parcels**



OREGON ARENA PROJECT  
Entertainment Complex Phase I & II  
Exhibit 15.1 (Surface Area only)

15 June 1993

\*Phase I also includes the subsurface  
Parcel described in Exhibit 1.1 (C)