

1 **SECOND AMENDMENT TO COLISEUM OPERATING AGREEMENT**

2 **THIS SECOND AMENDMENT TO COLISEUM OPERATING AGREEMENT**

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

10 **RECITALS**

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

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

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

25 **D.** Prior to the First Extension Notice Due Date, the City, PAM, and Portland Winter
26 Hawks, Inc., an Oregon corporation ("PWH"), executed that certain document titled Proposed
27 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 (the
5 “Renovation Project”). Section 3.6 of the Term Sheet contemplates that PAM will exercise the
6 first of the Extension 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 negotiations on the Final RDA, PWH requested a twenty (20) year license
15 agreement for the use of the VMC. To accommodate PWH’s request, the City and the Portland
16 Development Commission (“PDC”) agreed to enter into an operating agreement for the VMC
17 which would cover the period of July 1, 2023 through June 30, 2033 and take effect if PAM does
18 not exercise one or both of its Additional Extension Options, as defined in Recital I.
19 Additionally, PDC has agreed to enter into a license agreement with PWH for the use of the
20 VMC during such ten (10) year period if PAM does not exercise one or both of its Additional
21 Extension Options.

22 I. To avoid uncertainty as to whether PAM will exercise the second of the two
23 Extension Options, the City requested and PAM agreed to exercise both the first and second
24 Extension Options concurrently with the execution of the Final RDA thereby extending the
25 Operating Agreement through June 30, 2023. In consideration for such extension, the City has
26 agreed to grant to PAM two additional five (5) year extension rights (“Additional Extension
27 Options”) to allow the term of the Agreement to be extended from July 1, 2023 to June 30, 2033
28 (the “Extended Term”). As additional consideration, during the Extended Term, PAM and the

1 City will share equally each Fiscal Year any Net Income and PAM will be entitled to retain one
2 hundred percent (100%) of User Fees generated from Portland Trail Blazer Playoff Games (as
3 defined below) whether played in the Arena or the Coliseum (“Playoff User Fees”).

4 **J.** In connection with the RDA negotiations, the Parties determined that it would be
5 prudent, following completion of the Renovation Project, to assess future needs of, and the
6 Parties’ responsibilities for, the Coliseum regarding Repair, Maintenance, Capital Improvements,
7 Structural Repairs, deferred Capital Improvements, and Structural Repairs (collectively, the
8 “Future Needs”).

9 **K.** The Final RDA has been approved by the Portland City Council and is being
10 executed by the parties thereto concurrently with the execution of this Amendment.
11 Accordingly, PAM and the City desire to enter into this Amendment to evidence PAM’s election
12 to exercise the first and second Extension Options, to establish the Parties’ understanding with
13 respect to the post-closing assessment of the future needs of the Coliseum, and to grant to PAM
14 the Additional Extension Options, all on the terms and conditions of this Amendment.

15 **L.** The Original Operating Agreement as modified by this Amendment shall be referred
16 to herein as the “Agreement.”

17 **AGREEMENT**

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

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

26 “Additional Extension Option” and “Additional Extension Options” are defined in
27 Section 2.1.3 of this Agreement.

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

6 “Assessment” is defined in Section 3A.1 of this Agreement.

7 “Blazers” is defined in Section 5.5.3 of this Agreement.

8 “CPI” is defined in Section 3A.6 of this Agreement.

9 “Coliseum” means all portions of the existing Veterans Memorial Coliseum (as modified
10 by the Renovation Project), which is located at 300 North Winning Way at the Rose Quarter in
11 Portland, Oregon, with an attached modified underground Exhibit Hall of approximately 40,000
12 square feet, and the Coliseum Property, including all other improvements located on the
13 Coliseum Property as shown on the map attached as Exhibit A-3 attached hereto.
14 Notwithstanding the generality of the preceding sentence, the Scoreboard shall not be included in
15 the definition of the Coliseum.

16 “Coliseum Improvements” means the improvements to the Coliseum including, without
17 limitation, those designed and constructed pursuant to the Development Agreement and the
18 Renovation Project, but excluding the Scoreboard.

19 “Default Interest” is defined in Section 36.9 of the Development Agreement.

20 “Deferred CI/SR” is defined in Section 3A.3 of this Agreement.

21 “Escalator” is defined in Section 3A.6 of this Agreement.

22 “Excess NOL” is defined in Section 5.4.4 of this Agreement.

23 “Extended Term” is defined in Recital I of the Second Amendment to this Agreement.

24 “Final RDA” is defined in Recital G of the Second Amendment to this Agreement.

25 “PDC” is defined in Recital H of the Second Amendment to this Agreement.

26 “Playoff Games” is defined in Section 5.5.3 of this Agreement.

27 “PWH” is defined in Recital D of the Second Amendment to this Agreement.

1 “Renovation Project” is defined in Recital E of the Second Amendment to this
2 Agreement.

3 “R&M Budget Amount” is defined in Section 3A.5 of this Agreement.

4 “Scoreboard” means the center-hung scoreboard and video replay system installed as part
5 of the Renovation Project, including without limitation, the related scoreboard control room and
6 associated video equipment, but is not part of the Coliseum Improvements.

7 **2. Election to Exercise First and Second Extension Options.** Notwithstanding
8 anything to the contrary contained in the Original Operating Agreement, PAM hereby elects to
9 exercise the first and second of the two Extension Options, such that the Term of the Agreement
10 shall continue until the earlier to occur of an Early Termination Date or June 30, 2023. The City
11 hereby accepts the foregoing election by PAM.

12 **3. Additional Extension Options.** New Section 2.1.3 is hereby added to the
13 Existing Operating Agreement which will read as follows:

14 “2.1.3 PAM has the exclusive right to elect to extend the Term beyond the
15 Termination Date in two (2) additional increments of five (5) years each (collectively, the
16 “Additional Extension Options” and each an “Additional Extension Option”). If PAM
17 desires to extend the Term by the first Additional Extension Option, then PAM shall give
18 at least eighteen (18) months advance written notice to City, not later than January 1,
19 2022, electing to extend the Term. Upon the giving of such notice, the Term and the
20 Termination Date shall be extended to June 30, 2028. If PAM has previously exercised
21 the first Additional Extension Option, and if PAM elects to exercise the second
22 Additional Extension Option, then PAM shall give at least eighteen (18) months advance
23 written notice to City, not later than January 1, 2027, electing to extend the Term. Upon
24 giving of such notice the Term and Termination Date shall be extended to June 30, 2033.
25 Notwithstanding the foregoing, PAM may not exercise an Additional Extension Option,
26 if at the time of PAM’s attempted exercise of such extension there is an uncured PAM
27 Event of Default. PAM may not extend the Term beyond or after an Early Termination
28 Date.”

1 **4. Post-Completion Assessment.** A new Section 3A is hereby added to the
2 Original Operating Agreement which shall read as follows:

3 “3A.1 At a mutually acceptable time within one hundred eighty (180) days of the
4 Final Completion of the Project, the Parties shall meet to assess the future needs of the
5 Coliseum based on the final Base Scope (as modified by any approved Scope Change)
6 and the Work actually completed as part of the Renovation Project (the “Assessment”).
7 As used in this Section 3A, the terms “Base Scope,” “Final Completion,” “Scope
8 Change” and “Work” shall have the meaning ascribed to such terms in the Final RDA.

9 3A.2 The purpose of the Assessment is to establish the Parties’ respective future
10 obligations regarding Repair, Maintenance, Structural Repairs, and Capital
11 Improvements, without regard to any allegations by either Party of unperformed or
12 deferred Repairs, Maintenance, Structural Repairs, or Capital Improvements prior to the
13 date of Final Completion.

14 3A.3 As part of the Assessment, the Parties shall categorize all elements of the
15 Coliseum (including, without limitation, all systems and structures) as of the date of Final
16 Completion as being within one of the following categories for the next Fiscal Year: (a)
17 Repair; (b) Maintenance; (c) Capital Improvement; (d) Structural Repair; or (e) deferred
18 Capital Improvement or deferred Structural Repair. Any element categorized under
19 Section 3A.3(e) shall be referred to as a “Deferred CI/SR.” If the Parties disagree with
20 respect to the categorization of any element under this Section 3, such dispute shall be
21 resolved by the Consulting Engineer pursuant to Section 4.5.6 of the this Agreement. If
22 an element is categorized as a Deferred CI/SR, the City shall be responsible for the cost
23 of such additional Repairs or other increased Operating Expense out of the City’s own
24 funds, as provided in Section 4.5.11 of this Agreement and subject to Section 3A.5,
25 below. PAM’s obligations under the Operating Agreement, including, without limitation,
26 with respect to Maintenance and Repairs, remain intact, subject to the terms of this
27 Section 3A. Accordingly, for the 2012-2013 Fiscal Year, PAM’s adjusted Repair cap
28 shall equal Two Hundred Fifty Thousand Dollars (\$250,000.00), which amount shall be
29 subject to the Escalator defined in Section 3A.6 below.

1 3A.4 After the Assessment, and thereafter at such times as provided in Section
2 4.5.7 of this Agreement, PAM shall develop and submit to the City annual preventative
3 maintenance plans for the City's Approval subject to the provisions of such Section 4.5.7.

4 3A.5 After the Assessment and through the 2022-2023 Fiscal Year, the City will
5 carry a line item in the City's Spectator Facilities Fund budget applicable to the costs of
6 Repairs, Capital Improvements, or other increased Operating Expenses arising out of
7 Deferred CI/SR, which budgeted item will be in the amount of Two Hundred Fifty
8 Thousand and No/100 Dollars (\$250,000.00) per Fiscal Year (the "R&M Budget
9 Amount") and subject to the Escalator defined in Section 3A.6. The City will not be
10 obligated to spend more than the R&M Budget Amount on Repairs, Capital
11 Improvements, or other increased Operating Expenses arising out of Deferred CI/SR in
12 any applicable Fiscal Year. The R&M Budget Amount will be subordinate and subject,
13 at all times, to any existing debt (or refinancing which does not increase the City's total
14 debt obligations or the amount of debt service payments) and other non-discretionary,
15 fixed and existing contractual obligations imposed upon the City's Spectator Facilities
16 Fund, provided, however, the R&M Budget Amount shall not be subordinate to the Four
17 Million Four Hundred Thousand and No/100 Dollar (\$4,400,000.00) loan from PDC to
18 the City, which loan is contemplated in the IGA (as defined in Recital D of the Final
19 RDA).

20 3A.6 As used in this Section 3, "Escalator" means the Consumer Price Index,
21 Urban, All Consumers, in the Portland Metropolitan Area (the "CPI") as adjusted in
22 accordance with the methodology set forth in this Section 3A.6. PAM's adjusted Repair
23 cap and the R&M Budget Amount shall be increased annually based on the change in the
24 CPI between the second half of the prior calendar year compared to the second half of the
25 year immediately preceding the prior calendar year. For example, for fiscal year 2014-
26 2015 (July 1, 2014 – June 30, 2015), each of PAM's adjusted Repair cap and the R&M
27 Budget Amount will be multiplied by a fraction, the numerator of which is the CPI for
28 the second half of 2013 (July 1 – December 31, 2013) and the denominator of which is
29 the CPI for the second half of 2012 (July 1 – December 31, 2012).

1 3A.7 For purposes of clarifying Section 16.2.2 of the Agreement, upon a City
2 Event of Default (as defined in Section 16.2.1 of this Agreement) under Section 3A.5
3 above, termination of this Agreement shall be a remedy available to PAM.

4 3A.8 The City acknowledges that in the Sublicense (as defined in the Final
5 RDA), PAM has agreed to use Reasonable Efforts to enforce the City's obligations for
6 Structural Repairs under this Agreement. The City and PAM hereby agree that all
7 reasonable costs and expenses incurred by PAM to enforce the City's obligations for
8 Structural Repairs under this Agreement will constitute Operating Expenses."

9 **5. Changes to NOL Provisions.** Sections 5.4.3, 5.4.4 and 5.4.5 of the Original
10 Operating Agreement are hereby deleted in their entirety and replaced with the following new
11 Sections 5.4.3, 5.4.4, 5.4.5 and a new Sections 5.4.6 and 5.4.7 are hereby added, and each shall
12 read as follows:

13 "5.4.3 During the Operations Term, to the extent funds (including working
14 capital) in the Operating Account are insufficient to pay any due and payable Operating
15 Expenses, PAM shall be solely responsible for the initial payment of such deficiency and
16 shall pay the deficiency out of PAM Funds subject to fifty percent (50%) reimbursement
17 by the City as provided for in Section 5.4.4. PAM shall not accelerate or defer the
18 payment of Operating Expenses for the purpose of limiting or reducing its obligation to
19 satisfy any deficiency between Operating Revenues and Operating Expenses. Each
20 payment made by PAM pursuant to this Section 5.4.3 shall be an "NOL Payment." The
21 City and PAM shall each be responsible for fifty percent (50%) of all NOL Payments up
22 to an aggregate of Two Hundred Thousand Dollars (\$200,000) each. The City's fifty
23 percent (50%) share of such NOL Payments shall be reimbursed to PAM as provided for
24 in Section 5.4.4. All NOL Payments which exceed Four Hundred Thousand Dollars
25 (\$400,000) in the aggregate shall be the sole responsibility of PAM and payable out of
26 PAM Funds.

27 5.4.4 In providing the financial statement to the City under Section 6.2 of this
28 Agreement, PAM shall provide a statement of the total amount of NOL Payments made
29 by PAM and the City's fifty percent (50%) share of such NOL Payments up to a

1 maximum of Two Hundred Thousand Dollars (\$200,000). Within thirty (30) days after
2 receipt of such statement, the City shall pay to PAM the City's fifty percent (50%) share
3 of such NOL Payments. If PAM has made NOL Payments during a Fiscal Year, and the
4 annual reconciliation described in Section 5.6.3 determines that at the end of such Fiscal
5 Year there was Net Income for that Fiscal Year, then PAM shall be entitled to recover the
6 amount of its NOL Payments for that Fiscal Year to the extent of Net Income, without
7 interest, from that Fiscal Year's Net Income prior to any distribution of Net Income
8 pursuant to Section 5.6. The amount of any unrecovered NOL Payments for that Fiscal
9 Year shall be the "NOL," which shall be subject to fifty percent (50%) reimbursement by
10 the City as provided for in this Section 5.4.4.

11 5.4.5 For the Fiscal Years ending June 30 in 2011, 2012, 2013 to the extent that
12 PAM made NOL Payments during any of those Fiscal Years, PAM will be entitled to
13 recover its NOL for each of those Fiscal Years out of the Net Income from any of the
14 next consecutive three (3) Fiscal Years (which recoveries shall be Operating Expenses)
15 prior to any recovery from Net Income jointly by PAM and the City for the payment or
16 reimbursement, respectively, of any NOL for Fiscal Years commencing July 1, 2013 and
17 continuing through the end of the then remaining Operations Term. If PAM becomes
18 obligated to make NOL Payments in excess of Four Hundred Thousand Dollars
19 (\$400,000) ("Excess NOL") during the Fiscal Years 2013 through 2023, PAM shall be
20 entitled to recover such Excess NOL out of Net Income from any of the next consecutive
21 three (3) Fiscal Years (which recoveries shall be Operating Expenses) prior to any
22 recovery from Net Income jointly by PAM and the City for the payment of or
23 reimbursement, respectively, of any NOL for Fiscal Years commencing July 1, 2013,
24 through the end of the remaining Operations Term. Provided that PAM is not entitled to
25 recover its NOL or Excess NOL pursuant to the two previous sentences of this Section
26 5.4.5, then PAM and the City shall be entitled to recover an NOL from a Fiscal Year paid
27 or reimbursed, respectively, on a *pari passu* basis from any of the next consecutive three
28 (3) Fiscal Years, which recoveries shall be Operating Expenses. Such recoveries shall be
29 allocated to the NOL first incurred during such three (3) prior Fiscal Years. For
30 clarification, recovery of Excess NOL and NOL shall be paid in accordance with this
31 Section 5.4.5 in the following order of priority: (x) first, to PAM for the recovery of any

1 NOL Payments made during the Fiscal Years ending on June 30 of 2011, 2012 and 2013;
2 (y) second, to PAM for the recovery of any Excess NOL paid by PAM; and (z) then, to
3 the City and PAM, *pari passu*, for the recovery of NOL Payments made by the City and
4 PAM for Fiscal Years during the Operations Term or Extended Term, as applicable.
5 PAM shall not be entitled to recover an NOL or Excess NOL in whole or in part, with
6 respect to operations of the Coliseum following any termination of this Agreement.
7 Neither NOL nor Excess NOL shall bear interest. If the City does not reimburse PAM
8 for fifty percent (50%) of the NOL Payments made by PAM within thirty (30) days as
9 provided for in Section 5.4.3, any unpaid amounts shall bear Default Interest until paid
10 or, at its election, PAM shall have the right to set off any amounts owed by the City and
11 not paid within such thirty (30) day period against User Fees otherwise payable to the
12 City under Section 28 of the Development Agreement. The provisions of this Section 5.4
13 shall supersede any conflicting provisions under Section 32.2 of the Development
14 Agreement.

15 5.4.6 If PAM exercises one or both of the Additional Extension Options as
16 provided for in Section 2.1.3 the provisions of Sections 5.4.3, 5.4.4 and 5.4.5 shall be
17 applicable to the Extended Term, with the following modifications:

18 5.4.6.1 During the Extended Term, the amount of NOL subject to
19 being shared pursuant to Sections 5.4.6.2 and 5.4.6.3 shall be the lesser of (a) Four
20 Hundred Thousand Dollars (\$400,000) increased by the percentage change in the
21 Escalator from July 1, 2013 through June 30, 2023 or (b) Five Hundred Thousand Dollars
22 (\$500,000).

23 5.4.6.2 During the Extended Term, PAM and the City shall each be
24 responsible for fifty percent (50%) of the first Two Hundred and Fifty Thousand Dollars
25 of NOL Payments. By way of example, if the NOL calculated pursuant to Section 5.4.6.1
26 is Four Hundred Eighty Thousand Dollars (\$480,000) then PAM and the City would each
27 be responsible to make NOL Payments up to One Hundred Twenty-Five Thousand
28 Dollars (\$125,000).

1 5.4.6.3 During the Extended Term, the City and PWH shall each be
2 responsible for fifty percent (50%) of all NOL Payments in excess of Two Hundred Fifty
3 Thousand Dollars (\$250,000) but not to exceed Five Hundred Thousand Dollars
4 (\$500,000). Using the same example as in Section 5.4.6.2, if the NOL is calculated to be
5 Four Hundred Eighty Thousand Dollars (\$480,000), the City and PWH would each be
6 responsible to make NOL Payments up to One Hundred Fifteen Thousand Dollars
7 (\$115,000) but only after PAM and the City have made their NOL Payments of One
8 Hundred Twenty-Five Thousand Dollars (\$125,000) each as required by Section 5.4.6.2.
9 City and PAM acknowledge that under the terms of the Conditional PAM SLA (as
10 defined in the Final RDA), PWH shall be contractually responsible to make the NOL
11 Payments provided for by this Section 5.4.6.3. The provisions of Section 5.4.4 regarding
12 the City's payment to PAM of the City's share of NOL Payments shall be equally
13 applicable to PWH's payment to PAM of PWH's share of NOL Payments. The City
14 acknowledges and agrees that if PWH does not make the NOL Payments as required by
15 this Section, PAM shall have the right to offset such amounts on a going-forward basis
16 from any payments due from PAM to PWH (including, without limitation, ticket rebates,
17 user fees, and PAM box office proceeds) until PAM has been paid in full for such NOL
18 Payments.

19 5.4.6.4 The provisions of Section 5.4.5 regarding the recovery of
20 Excess NOL by PAM shall apply so that Excess NOL paid by PAM for Fiscal Years
21 ending June 30 of 2021, 2022 and 2023, will be recoverable for each of those Fiscal
22 Years out of the Net Income from any of the next consecutive three (3) Fiscal Years
23 (which recoveries shall be Operating Expenses). After recovery of the foregoing Excess
24 NOL as provided in the preceding sentence, any Excess NOL paid by PAM during the
25 Extended Term for any Fiscal Year will be recoverable out of Net Income from any of
26 the next consecutive three (3) Fiscal Years (which recoveries shall be Operating
27 Expenses) prior to any joint recovery by PAM and the City for the payment or
28 reimbursement, respectively, of any NOL for Fiscal Years during the Extended Term. In
29 other words, the order of recovery of Excess NOL and NOL during the Extended Period
30 shall be in the following order of priority (y) first, to PAM for recovery of any Excess
31 NOL paid by PAM and (z) then to the City and PAM, *pari passu*, for the recovery of

1 NOL Payments made by the City and PAM for any Fiscal Year during the Extended
2 Term. PWH will not be entitled to any recovery of NOL Payments made by PWH.

3 5.4.6.5 During the Extended Term, Excess NOL shall be those NOL
4 Payments made by PAM which are in excess of twice the amount of NOL determined
5 pursuant to the provisions of Section 5.4.6.1.

6 5.4.7 Under no circumstances shall the City be required to make contributions
7 to the Operating Account or be liable in any other manner for any cost, expense, loss,
8 damage or other obligation relating to the operation, management, administration, use,
9 scheduling, marketing, advertising, promotion, security, licensing, provision of
10 concessions, Maintenance, or Repair of or at the Coliseum, whether to contractors,
11 concessionaires, licensees, or any other Person, except to the extent expressly set forth in
12 this Agreement, including Section 3A, Sections 5.5.4 through 5.5.6 and Section 6.3 of
13 this Agreement.”

14 **6. Revision to OAC Fee.** Section 5.5.2 of the Original Operating Agreement is
15 hereby deleted in its entirety and in its place is inserted a new Section 5.5.2 and a new Section
16 5.5.3 is hereby added and each shall read as follows:

17 “5.5.2 Within sixty (60) days after the end of each Fiscal Year during the
18 Operations Term, PAM shall be paid from the Operating Account, as an Operating
19 Expense, a fee for its services under this Agreement equal to forty percent (40%) of the
20 Net Income for that Fiscal Year, provided, however, that during the Extended Term,
21 PAM’s fee for services under this Agreement shall be equal to fifty percent (50%) of the
22 Net Income for that Fiscal Year.

23 5.5.3 If PAM should elect to exercise one or both of the Additional Extension
24 Options as provided for in Section 2.1.3, the provisions of this Section 5.5.3 shall be
25 applicable to the Extended Term created by PAM’s exercise of one or both of the
26 Additional Extension Options. During the Extended Term, PAM shall be entitled to
27 retain and not pay to the City one hundred percent (100%) of the Playoff User Fees
28 collected by PAM under the terms and conditions of Section 28 of the Development

1 Agreement with respect to Playoff Games played by the Portland Trail Blazers National
2 Basketball Association franchise (“Blazers”) so long as PAM is an Affiliate of the
3 Blazers. In its reports to the City under Section 28 of the Development Agreement
4 regarding the collection of User Fees, PAM shall account for and report to the City the
5 amount of Playoff User Fees that PAM has retained and not paid over to the City. PAM
6 agrees to use the Playoff User Fees exclusively for capital expenditures in the Arena.
7 PAM shall not undertake any such capital expenditures to the Arena, unless PAM has
8 first obtained the City’s prior written Approval, which shall not be unreasonably
9 withheld. As used herein “Playoff Games” means those National Basketball Association
10 games played by the Blazers after the end of the regularly scheduled National Basketball
11 Association season for the purpose of determining the winner of each year’s National
12 Basketball Association championship.”

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

16 “6.3 **Report by Auditor.** Within thirty (30) days after the end of the Fiscal
17 Year, the City may, by written notice to PAM require an audit be conducted of the
18 financial results of operations of the Coliseum for that Fiscal Year. In that notice, the
19 City shall designate an Auditor who shall be an independent auditor. PAM shall
20 cooperate with the Auditor by providing the Auditor access to the books, records and
21 employees pertaining to the operations of the Coliseum. The charges for the services of
22 the Auditor described in the preceding sentence shall be an Operating Expense, provided
23 that PAM and the City shall each pay fifty percent (50%) of such charges promptly after
24 receipt of a written statement from the Auditor for such charges. The report issued by
25 any independent third party Auditor shall be binding on the parties.”

26 8. **Approval.** As of the Effective Date, the Chief Administrative Officer of the City
27 (the “CAO”) or his designee shall be authorized to issue any “Approval,” as defined in Section 1
28 of the Original Operating Agreement.

1 **9. Parking.** Consistent with PAM’s current obligations as evidenced by that certain
2 letter agreement dated June 8, 2000, PAM hereby confirms that it will continue to contract, on
3 behalf of the City, for parking garage management and operations of 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 1 to the Original Operating Agreement. PAM will
6 perform maintenance, repairs, and capital improvements relating to such garages on behalf of the
7 City and the cost of those items shall be separate from and in addition to the R&M Budget
8 Amount. PAM will submit monthly invoices to the City to allow for PAM to be reimbursed for
9 PAM’s out-of-pocket costs of such garage management, repairs, and capital improvements.
10 PAM shall continue to provide the parking garage management and operations in the manner
11 described above and shall not be paid a management fee or other compensation for said parking
12 garage management and operations. The City’s obligation to make the Benton Lot available for
13 parking and other uses, and PAM’s rights thereto are subject to the terms of that certain Option
14 Agreement (OMF-PDC) approved at the Second Council Meeting (as defined in the Final RDA)
15 by and among the City, by and through the Office of Management and Financing, the City, by
16 and through the Portland Development Commission, and PAM.

17 **10. Scoreboard.** As indicated in the definitions, the Scoreboard is expressly
18 excluded from the definition of “Coliseum” and “Coliseum Improvements.” The Scoreboard is
19 owned by the City. However, except as expressly provided in the Scoreboard Agreement (as
20 defined below), the City has no obligation to operate, repair, maintain, or replace the Scoreboard
21 nor does the City have any obligation to provide a scoreboard for the Coliseum. The City and
22 PAM acknowledge that the operation, maintenance, repair, and replacement of the Scoreboard
23 are the subject of a separate agreement among the City and PWH (the “Scoreboard Agreement”).
24 All rights, obligations, and duties relating to operation, management, administration, use,
25 scheduling, marketing, advertising, promotion, security, licensing, maintenance, repair,
26 replacement, capital improvement, and any other activity relating to the Scoreboard and any part
27 or component thereof, whether financial or otherwise, are beyond the scope of this Original
28 Operating Agreement or this Amendment. Notwithstanding the foregoing, PAM hereby agrees
29 to carry property insurance covering the Scoreboard, the cost of which shall be an Operating
30 Expense. Other than the insurance referenced in the preceding sentence, no costs or expenses

1 associated with, relating to, or otherwise arising out of any of the foregoing shall be deemed
2 Operating Expenses.

3 **11. User Fee during Extended Term.** During the Extended Term, the User Fee
4 applicable to Portland Winterhawks hockey pre-season, regular season, and post-season games
5 held at the VMC shall be seven percent (7%).

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

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

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

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

29 and to: Radler White Parks & Alexander LLP
30 111 SW Columbia Street, Suite 1100
31 Portland, Oregon 97201
32 Attn: Dina Alexander
33 E-Mail: dalexander@radlerwhite.com
34 Confirmation No.: 971-634-0203

1 If to PAM: Rip City Management LLC
2 One Center Court, Suite 200
3 Portland, Oregon 97227
4 Attn: Chris Oxley, General Manager
5 E-Mail: chris.oxley@rosequarter.com
6 Confirmation No.: 503-797-9851

7 with copies to: Lane Powell PC
8 601 SW Second Avenue, Suite 2100
9 Portland, Oregon 97204
10 Attn: Michael R. Silvey
11 E-Mail: silveym@lanepowell.com
12 Confirmation No.: 503-778-2195

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

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

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

28 “18.12 Amendment. This Agreement may not be modified or amended
29 except by the written agreement of the parties. The CAO or his designee may
30 negotiate, approve and execute amendments to this Agreement and agreements
31 contemplated hereby or ancillary hereto, in form and substance acceptable to the
32 CAO or his designee in his or her sole discretion, unless such amendment results
33 in a material adverse change in the financial terms and provisions of this
34 Agreement.”

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
24 **PAM:**

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

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 Gregg Olson, Executive Vice
37 President/Chief Financial
38 Officer
39

