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VETERANS MEMORIAL COLISEUM OPERATING AGREEMENT

Between

THE PORTLAND DEVELOPMENT COMMISSION,  
the duly designated urban renewal agency of the City of Portland

And

CITY OF PORTLAND,  
a municipal corporation

Reference Date: \_\_\_\_\_, 2013

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1 VETERANS MEMORIAL COLISEUM OPERATING AGREEMENT

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4 PARTIES: **THE PORTLAND DEVELOPMENT COMMISSION,**  
5 the duly designated urban renewal agency of the City of Portland (“PDC”)  
6  
7 **CITY OF PORTLAND,**  
8 a municipal corporation (the “City”)  
9

10 REFERENCE

11 DATE: \_\_\_\_\_, 2013

12  
13 RECITALS

14  
15 A. The City is the owner of the Veterans Memorial Coliseum (the “**Coliseum**”), which  
16 is located at 300 North Winning Street at the Rose Quarter in Portland, Oregon.

17 B. The City and Rip City Management LLC, a Delaware limited liability company,  
18 doing business as Portland Arena Management (formerly known as Portland Arena Management,  
19 LLC), successor-in-interest to Oregon Arena Corporation (“**PAM**”) are parties to that certain  
20 Memorial Coliseum Operating Agreement dated April 23, 1993 (the “**Original OA**”), as amended  
21 by that certain First Amendment to Coliseum Operating Agreement having an effective date of  
22 June 23, 1993 (the “**First OA Amendment**”), and that certain Second Amendment to Coliseum  
23 Operating Agreement having an effective date of \_\_\_\_\_, 2013 (the “**Second OA**  
24 **Amendment**,” and together with the Original OA and the First OA Amendment, the “**Original**  
25 **Operating Agreement**”), which relate to the operation of the Coliseum.

26 C. Prior to the Reference Date, the City, PAM, and Portland Winter Hawks, Inc., an  
27 Oregon corporation (“**PWH**”), executed that certain document titled Proposed Transaction Terms  
28 (Renovation of Veterans Memorial Coliseum) dated November 17, 2011 (the “**Term Sheet**”),  
29 which Term Sheet was approved by the Portland City Council (“**Council**”) on November 17,  
30 2011, as Resolution 36887.

31 D. The Term Sheet authorized the City to negotiate a redevelopment agreement with  
32 PAM, and PWH regarding potential renovations and upgrades to the Coliseum (the “**Renovation**  
33 **Project**”).

34 E. Such redevelopment agreement, as the same may be approved by the Portland City  
35 Council and executed by the City, PAM, and PWH (the “**Final RDA**”), will, among other things,



1 acknowledge PAM’s election to extend operating the Coliseum under the Original Operating  
2 Agreement through June 30, 2023 (the “**PAM Termination Date**”). Additionally, the Final RDA,  
3 the Second OA Amendment, or both, will grant to PAM two (2) additional options to extend the  
4 term of the Original Operating Agreement from July 1, 2023 through June 30, 2028 (the “**First**  
5 **Additional PAM Option**”), and July 1, 2028 through June 30, 2033 (the “**Second Additional**  
6 **PAM Option**” and together with the First Additional PAM Option, the “**Additional PAM**  
7 **Options**”), provided, however, that Additional PAM Options shall be subject to the terms of the  
8 Original Operating Agreement.

9 F. In furtherance of the agreements relating to the Final RDA, PDC has agreed to  
10 assume operational control of the Coliseum, solely if PAM does not elect to continue as the  
11 operator of the Coliseum.

12 G. Accordingly, the City and PDC desire to enter into this Memorial Coliseum  
13 Operating Agreement (this “**Agreement**”) to evidence PDC’s election to assume operational  
14 responsibilities relating to the Coliseum if PAM does not elect to continue as the operator of the  
15 Coliseum, subject to the terms of this Agreement.

16 H. This Agreement will govern the operations of the Coliseum, if ever, commencing  
17 on the Effective Date (as defined below).

18  
19 AGREEMENT

20  
21 In consideration of the mutual covenants and agreements contained in this Agreement and  
22 for other good and valuable consideration, the receipt and sufficiency of which are hereby  
23 acknowledged, the City and PDC agree as follows:

24  
25 SECTION 1 **DEFINITIONS**

26 Capitalized words, which are not the first word of a sentence, are defined terms.

27 “**Additional PAM Options**” is defined in Recital E of this Agreement.

28 “**Advertising**” is defined in Section 4.11.4.1 of this Agreement.

29 “**Affiliate**” shall mean an individual, corporation, or other entity controlling, controlled by,  
30 or under common control with a Party. For purposes of this Agreement, in no way shall PDC be  
31 deemed an Affiliate of the City.

1           **“Agreement”** is defined in Recital G, above.

2           **“Allowed Variance”** is defined in Section 6.1.2 of this Agreement.

3           **“Alteration”** means any change, alteration, addition or improvement to the Coliseum  
4 Property, including, without limitation the Coliseum.

5           **“Annual Budget”** is defined in Section 6.1.1 of this Agreement.

6           **“Approval”** or **“Approved”** means the written approval of the Portland City Council, the  
7 Mayor of the City, the CAO, or a Person designated in writing by the City Council, the Mayor, or  
8 the CAO to have the right to approve the document or action at issue. The exercise of such  
9 approval shall not be unreasonably delayed and shall be reasonable (except as otherwise provided  
10 in this Agreement), taking into account commercial reasonableness and all then adopted City rules,  
11 regulations, policies, ordinances, and laws.

12           **“Arbitrator”** is defined in Section 18.2.

13           **“Arena”** means the multipurpose arena built and located on the Arena Property and  
14 commonly known as the “Rose Garden” or “Rose Garden Arena.”

15           **“Arena Property”** means the property described on Exhibit A-1 attached hereto.

16           **“ASP”** means the Arbitration Services of Portland, Inc.

17           **“Assessment”** means the assessment by the City and PAM that established the Future  
18 Needs pursuant to the Second OA Amendment

19           **“Auditor”** is defined in Section 6.3.

20           **“Authorized Agreement”** is defined in Section 4.8.1.

21           **“Box Office Statement”** means the number of Non-Exempt Tickets sold at each Ticket  
22 Price.

23           **“Budget Amount”** is defined in Section 4.5.7.

24           **“Business Day”** shall mean all days in which City offices are scheduled to be open to the  
25 public for business.

26           **“CAO”** means the Chief Administrative Officer of the City, or his or her designee.

27           **“Capital Improvement”** is defined in Section 4.5.5 of this Agreement.

28           **“Capital Improvements Account”** is defined in Section 5.7 of the Original Operating  
29 Agreement. Pursuant to Section 5.7 of this Agreement, no such account exists with respect to the  
30 obligations of PDC and the City. To the extent of any references in the Development Agreement,

1 or any document or agreement referred to therein relate to obligations contained in this Agreement,  
2 then such reference shall be deemed a reference to the Budget Amount.

3 “**CC&Rs**” is defined in Section 11.10.

4 “**Change of Control**” is defined in Section 14.1.3 of this Agreement.

5 “**City**” is defined in the introductory paragraph of this Agreement, and includes its  
6 successors and assigns to the Coliseum Property. References to the “City” shall not be deemed to  
7 include references to PDC.

8 “**City Employee**” means an employee or other agent of the City designated by the City to  
9 be a City Employee pursuant to Section 4.2.2.2 of this Agreement. Solely for purposes of this  
10 Agreement, employees of PDC shall not be deemed a “City Employee.”

11 “**City Event of Default**” is defined in Section 17.2.1 of this Agreement.

12 “**City NOL Reimbursement**” is defined in Section 5.4.3.

13 “**City Related Persons**” is defined in Section 9.1 of this Agreement.

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

21 “**Coliseum Agreement**” is defined in Section 15.1 of this Agreement.

22 “**Coliseum Arena**” means the seating bowl and related floor area of the Coliseum.

23 “**Coliseum Improvements**” means the improvements to the Coliseum including, without  
24 limitation, those designed and constructed pursuant to the Development Agreement and the  
25 Renovation Project, but excluding the Scoreboard.

26 “**Coliseum Property**” means the real property described on Exhibit A-2 attached hereto.

27 “**Community Event**” means any event designated as a ‘Community Event’ by the City for  
28 such primary purposes as: (i) a public or community activity, function or event; (ii) an activity,  
29 function or event of a non-profit organization; or (iii) an event, function or activity to raise funds  
30 for a. public, community or charitable organization. “Community Events” include those events  
31 described in Section 4.2.3.2.

1           “**Condemnation**” is defined in Section 12.1 of this Agreement.

2           “**Consulting Engineer**” means the Person selected pursuant to Section 4.5.6.

3           “**Control**” is defined in Section 14.1.2 of this Agreement.

4           “**Cooperative Events**” is defined in Section 4.2.3.3.

5           “**Council**” has the meaning set forth in Recital C.

6           “**CPI**” means the Consumer Price Index, Urban, All Consumers, in the Portland  
7 Metropolitan Area. If the CPI is converted to a different standard reference base or otherwise  
8 revised, the determination of the applicable percentage increase shall be made with the use of a  
9 conversion factor, formula or table to arrive at the different reference base. If the CPI is  
10 discontinued or a conversion table to the new standard is unavailable, the Parties shall agree to the  
11 substitutions of a different standard. If the Parties are unable to agree before the ninetieth (90<sup>th</sup>)  
12 day prior to the date the CPI is to be used to adjust a dollar amount under this Agreement, the new  
13 CPI shall be determined by Dispute Resolution.

14           “**Damage Estimate**” is defined in Section 11.3.1 of this Agreement.

15           “**Damages**” is defined in Section 9.1 of this Agreement.

16           “**Deferred CI/SR**” is defined in Section 4.5.7 of this Agreement.

17           “**Development Agreement**” means the Development Agreement dated November 4, 1992  
18 between the City and PAM, as the same has been or may be further amended from time to time.

19           “**Direct Expenses**” means the actual marginal, incremental, or variable expenses directly  
20 incurred by the Coliseum in allowing an Event to be held at the Coliseum.

21           “**Dispute**” is defined in Section 18 of this Agreement.

22           “**Dispute Resolution**” is the procedure for Dispute resolution described in Section 18.

23           “**Early Termination Date**” means any date of early termination of this Agreement  
24 pursuant to Sections 2.2.

25           “**Effective Date**” shall have the meaning set forth in Section 2.1.

26           “**Equitable Proceeding**” is defined in Section 18.7 of this Agreement.

27           “**Escalator**” means the CPI, as adjusted in accordance with the methodology set forth in  
28 Section 19.1 of this Agreement.

29           “**Event**” means any event held in the Coliseum (including events in the Exhibit Hall)  
30 whether or not an admission fee is charged for such event, Events shall include, without limitation,  
31 trade shows, consumer shows, conventions, and meetings.



1           **“Exempt Tickets”** include all tickets given or granted for no price or specific monetary  
2 consideration, commonly or customarily called “complimentary tickets” or “comps”, without  
3 regard to number, and include without limitation: (i) tickets granted to the Independent Operator  
4 or its employees or their respective Affiliates, as a prerequisite; (ii) tickets granted to advertisers or  
5 sponsors as part of their advertising or promotion packages; (iii) tickets requested or required by  
6 the Western Hockey League; (iv) tickets granted to any media or press personnel for which no  
7 price is paid; (v) tickets granted to visiting teams for which no price is paid; (vi) tickets granted to  
8 employees, agents, contractors, artists, producers, managers, or staff of any Event sponsor or  
9 promoter; (vii) tickets granted to any persons in connection with services performed or to be  
10 performed at the Coliseum during or in connection with the production of any Event, including  
11 without limitation vendors; (viii) tickets granted to any charitable organization which qualifies  
12 under IRC § 501(c)(3) or any amended or successor provision; (ix) tickets given free in connection  
13 with the purchase or other tickets (as distinguished from discounted tickets).

14           **“Exhibit Hall”** means the subterranean hall of approximately 40,000 square feet that is  
15 attached to the Coliseum and generally used for exhibit, consumer-show, meetings and special  
16 events.

17           **“Existing Agreements”** is defined in Section 4.8.1 of this Agreement.

18           **“Final RDA”** is defined in Recital E of this Agreement.

19           **“First Additional PAM Option”** is defined in Recital E of this Agreement.

20           **“First OA Amendment”** is defined in Recital B of this Agreement.

21           **“Fiscal Quarter”** means the three-month period commencing July 1, October 1, January 1,  
22 and April 1 of each calendar year.

23           **“Fiscal Year”** means the twelve-month period beginning July 1 of a calendar year and  
24 ending June 30 of the immediately following calendar year.

25           **“Force Majeure”** shall mean an act, event, or occurrence due to natural causes, riot,  
26 insurrection, war or industry-wide labor trouble involving more than the Coliseum and/or the  
27 Coliseum Property and outside of the control of the Parties.

28           **“Future Needs”** means the responsibilities of the City and the operator of the Coliseum  
29 (i.e., PDC, as of the Effective Date) for, and the future needs of, the Coliseum with respect to  
30 Repair, Maintenance, Capital Improvements, Structural Repairs, deferred Capital Improvement

1 and Structural Repairs, as established following Final Completion (as defined in the Final RDA) of  
2 the Renovation Project.

3 “**GAAP**” shall mean generally accepted accounting principles as set forth in the opinions  
4 and pronouncements of the Accounting Principles Board of the American Institute of Certified  
5 Public Accountants and the statements and pronouncements of the Financial Accounting  
6 Standards Board.

7 “**Governmental Authority**” shall mean any federal, state, regional, local, or municipal  
8 governmental department, agency, authority, court, tribunal, or other instrumentality having  
9 jurisdiction over the matter(s) in question.

10 “**Governmental Regulations**” means all actions required to be taken, and all actions and  
11 omissions which are prohibited under, applicable Laws.

12 “**Hazardous Substances**” shall mean any environmentally hazardous or toxic substances,  
13 materials, wastes, pollutants, oils, or contaminants, as defined in or otherwise covered by Laws.

14 “**Impositions**” shall mean any and all taxes, assessments, charges, excises, levies, license  
15 fees, permit fees, inspection fees, and other charges, in each case whether general or special,  
16 ordinary or extraordinary, foreseen or unforeseen, of every character (including interest and  
17 penalties thereon) which occur throughout the Term and at any time may be assessed, levied or  
18 imposed on or be a lien upon the Coliseum, the Coliseum Improvements, or any personal property  
19 or fixtures thereon, or any occupancy, use or possession of or activities conducted at, on, from, or  
20 with respect thereto.

21 “**Independent Operator**” is defined in Section 14.2.

22 “**Independent Operator Agreement**” is defined in Section 14.2.

23 “**Insurance Exhibit**” is defined in Section 10.1.

24 “**Laws**” shall mean all applicable statutes, ordinances, rules, regulations, directives, orders,  
25 decrees, laws, injunctions, and requirements now or hereafter enacted, issued or promulgated by  
26 any Governmental Authority, as well as common law and constitutional law.

27 “**Little Miller Act Claim**” means any claim, notice of claim, or action against a bond or  
28 check, pursuant to ORS 279.526 through 279.542 or any successor Law of similar effect.

29 “**Maintain**” and “**Maintaining**” mean all necessary and appropriate acts of general and  
30 preventative Maintenance, including, without limitation, any Maintenance reasonably requested  
31 by the City.

1           **“Maintenance”** is defined in Section 4.5.3 of this Agreement.

2           **“Managerial Employee”** means a person: (a) having authority, in the interest of the  
3 employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline  
4 other employees, or responsibility to direct them or to adjust their grievances, or effectively to  
5 recommend such action, if in connection with the foregoing the exercise of such authority is not  
6 merely of a routine or clerical nature, but requires the use of independent judgment; or (b) who is a  
7 “bona fide administrative, professional or executive employee,” except that such person shall not  
8 be required to be paid on a “salaried basis,” as those terms are defined under the Fair Labor  
9 Standards Act and federal regulations; or(c) who participates significantly in the development and  
10 implementation of management goals or policies.

11           **“Metro”** means the Metropolitan Service District.

12           **“Minimum Rent”** means the sum of three thousand dollars (\$3,000.00) per Event,  
13 increased from time to time pursuant to Section 19.1.

14           **“Naming Rights”** is defined in Section 4.11.1.

15           **“Naming Rights Agreement”** is defined in Section 4.11.1.

16           **“Net Income”** means, for any given fiscal period, Operating Revenues of the Coliseum  
17 less Operating Expenses for the same period. Net Income shall be determined on a cash basis in  
18 accordance with GAAP.

19           **“NOL”** is defined in Section 5.4.3 of this Agreement.

20           **“NOL Payment”** is defined in Section 5.4.3 of this Agreement.

21           **“Non-Exempt Tickets”** means all tickets sold for any Event other than Exempt Tickets.

22           **“Non-Spectator Facility”** is defined in Section 2.2.3 of this Agreement.

23           **“Obligations”** means any existing debt and other non-discretionary, fixed and existing  
24 contractual obligations imposed upon the Coliseum, the City’s Spectator Facilities Fund, or both,  
25 including the PDC Loan.

26           **“OMF”** means the City of Portland Office of Management and Finance.

27           **“Operating Account”** means an interest bearing demand account established and  
28 maintained by PDC pursuant to Section 5.3.1 of this Agreement. All interest accruing from the  
29 Operating Account shall be included in Operating Revenues.

30           **“Operating Expenses”** means all costs and expenses of operating the Coliseum during a  
31 given Fiscal Year within the Term, consistent with the standards and goals of this Agreement or in

1 accordance with an Annual Budget, on a cash basis, unless responsibility for payment of such cost  
2 or expense otherwise is specifically allocated to either Party under this Agreement. Operating  
3 Expenses include, without limitation, the payments of indebtedness or other obligations specified  
4 in this Agreement respecting operation, Repair and Maintenance of the Coliseum, such as  
5 repayments of any operating line of credit which the Parties agree to maintain for Coliseum  
6 operations. Operating Expenses expressly exclude: (a) costs and expenses of obtaining or  
7 otherwise securing Scoreboard Advertising; (b) costs and expenses of maintaining or repairing the  
8 Scoreboard, or any capital improvement work or replacement relating thereto; and (c) rebates,  
9 revenue sharing, and other similar expenses pursuant to the terms of the PWH Sublicense as in  
10 effect on the Reference Date. To the extent that PDC, after consultation with the City, can  
11 provide to the City good faith evidence that rebates or revenue sharing, including in connection  
12 with concessions, provided by PDC to users of the Coliseum will likely generate increased Net  
13 Income, such rebates and revenue sharing shall be included in Operating Expenses. Except as  
14 provided in Section 15.4.8, PDC shall not negotiate any such rebates or revenue sharing with any  
15 sublicensee or user of the Coliseum prior to January 2, 2022.

16 **“Operating Revenues”** shall mean, for any given fiscal period within the Term, the gross  
17 cash receipts received by the Coliseum with respect to operations of the Coliseum (including,  
18 without limitation receipts from any sale of Coliseum non-capital assets purchased for the  
19 Coliseum by PDC during the Term, and receipts from concessions, rental income, non-Scoreboard  
20 Advertising, and the sale of any Naming Rights). Notwithstanding the foregoing, if either Party  
21 made a payment regarding Coliseum operations (which such Party did not receive or recover from  
22 a third party), and such payment was not paid as an Operating Expense (a **“Party Payment”**), and  
23 any portion of such Party Payment is later recovered by either Party under an insurance policy  
24 covering the Coliseum, such insurance payment shall be paid to the party that made the Party  
25 Payment, up to the amount of the Party Payment. In no event shall the following be included in  
26 the calculation of Operating Revenues: (a) User Fees or proceeds payable to PDC under the  
27 Revenue Sharing Agreement be included in the calculation of Operating Revenues; (b) receipts  
28 from Scoreboard Advertising; (c) receipts from the sale of any Scoreboard Naming Rights; or (d)  
29 receipts from any sale of capital assets not owned by the City.

30 **“Original OA”** is defined in Recital B of this Agreement.

31 **“Original Operating Agreement”** is defined in Recital B of this Agreement.



1           **“PAM”** is defined in Recital B of this Agreement.

2           **“PAM Termination Date”** is defined in Recital E of this Agreement.

3           **“Part”** means any component of any equipment, apparatus, or fixture attached to or used in  
4 connection with Coliseum operations, whether such component would be considered personal  
5 property or a fixture under relevant Laws. Parts shall include both items integrated within items  
6 used in connection with the Coliseum (such as light bulbs), as well as the items themselves (such  
7 as light fixtures).

8           **“Party”** means either the City or PDC.

9           **“PDC”** is defined in the introductory paragraph of this Agreement. For purposes of this  
10 Agreement references to PDC shall not be deemed references to the City.

11           **“PDC Event of Default”** is defined in Section 17.1.1 of this Agreement.

12           **“PDC Fee”** shall mean the fee payable to PDC pursuant to Section 5.5.2 of this Agreement.

13           **“PDC Funds”** means amounts to be paid by PDC which are not recoverable by PDC as an  
14 Operating Expense.

15           **“PDC Loan”** means a loan of up to \$4,700,000 from PDC to the City pursuant to that  
16 certain Amended and Restated Intergovernmental Agreement dated  
17 \_\_\_\_\_, 2013, as the same may be re-financed or otherwise modified.

18           **“PDC Negligence”** means the negligence or willful misconduct of PDC’s Managerial  
19 Employees or of PDC Affiliate’s Managerial Employees, and the gross negligence or willful  
20 misconduct of PDC’s non-Managerial Employees or of an Affiliate’s non-Managerial Employees.  
21 Non-Managerial Employees are employees who are not Managerial Employees.  
22 Notwithstanding anything in this agreement to the contrary, PDC shall remain responsible for  
23 (through payment of PDC Funds) any breach of PDC’s fiduciary obligations in the handling of  
24 funds, as set forth in Sections 3.4.1.4 and 5.3.4, regardless of whether or not such breach  
25 constituted PDC Negligence.

26           **“PDC Official”** is defined in Section 5.11.1.5.

27           **“PDC Related Persons”** is defined in Section 9.8.

28           **“Performance Review”** is defined in Section 6.7 of this Agreement.

29           **“Person”** means an individual, corporation, partnership, joint venture, limited liability  
30 company, municipal government, association or any other entity that has the power to contract.

1           **“Personal Property”** is defined in Section 4.7.2 and includes items of personal property  
2 located within the Coliseum or dedicated for use within the Coliseum, other than consumable  
3 inventory such as cleaning supplies (i) which are not fixtures under relevant Laws or (ii) which is  
4 integral to the operation of the Coliseum but attached to the Coliseum in a manner which would  
5 not qualify for characterization as a fixture under relevant Laws. By way of example, the existing  
6 public address system within the Coliseum, together with its wiring and related components, is not  
7 Personal Property, notwithstanding the manner of attachment of such public address system to the  
8 structure of the Coliseum.

9           **“Portland Metropolitan Region”** shall mean CMSA Portland, comprising Multnomah,  
10 Clackamas, Washington, Clark and northern Yamhill Counties.

11           **“Pricing Policy”** shall mean the summary of rental and usage rates described in Section  
12 4.2.2.2.

13           **“Pricing Policy Exception”** is defined in Section 4.2.2.2.

14           **“Prime Rate”** shall mean the prime rate of interest as published from time to time by the  
15 *Wall Street Journal*, provided that if the *Wall Street Journal* is no longer published or no longer  
16 publishes a prime rate, such rate shall be the average of the prime rates publicly announced by the  
17 three (3) largest commercial banks (measured by asset size) in the United States.

18           **“Public Goals”** is defined in Section 3.4.2 of this Agreement.

19           **“PWH”** is defined in Recital C of this Agreement.

20           **“PWH Events”** is defined in Section 4.2.3.

21           **“PWH NOL Reimbursement”** is defined in Section 5.4.4.

22           **“PWH Sublicense”** means the sublicense agreement between PDC, as sublicensor, and  
23 PWH, as sublicensee, relating to PWH’s use of the Coliseum during the Term.

24           **“Reasonable Efforts”** means the taking, in good faith, of commercially reasonable actions  
25 under the circumstances presented, whether or not the objective sought is accomplished. With  
26 respect to the City, the notation of commercially reasonable actions allows the City to take into  
27 account adopted ordinances, policies and goals, to the extent reasonably applicable and  
28 consistently applied.

29           **“Reference Date”** has the meaning set forth in the introductory paragraph of this  
30 Agreement.

31           **“Renovation Project”** is defined in Recital D of this Agreement.

1           **“Repair”** is defined in Section 4.5.4 of this Agreement.

2           **“Repairing”** means all necessary and appropriate acts of Repair, including, without  
3 limitation, any Repair reasonably requested by the City.

4           **“Restart Cost”** means the following direct costs reasonably incurred by PDC in  
5 connection with resumption of operations under this Agreement after any period of Temporary  
6 Closure: (i) actual costs involved in rehiring staff for Coliseum Operations, and (ii) Direct  
7 Expenses of laborers performing services necessary to ready the Coliseum for resumption of  
8 operations, in either case which would not have been incurred had operations been continuous.  
9 PDC shall use Reasonable Efforts to ensure that Restart Costs are kept to a minimum.

10          **“Restoration”** is defined in Section 11.2.1 of this Agreement.

11          **“Restore”** is defined in Section 11.2.1 of this Agreement.

12          **“Revenue Sharing Agreement”** means that certain Revenue Sharing Agreement between  
13 the City and PWH dated on or about the date of the Final RDA. A true and complete copy of the  
14 Revenue Sharing Agreement is attached hereto as Exhibit A-4.

15          **“Revenue Sharing Effective Date”** is defined in Section 5.11.

16          **“Scoreboard”** means the center-hung scoreboard and video replay system installed as part  
17 of the Renovation Project, including without limitation, the related scoreboard control room and  
18 associated audio and video equipment.

19          **“Scoreboard Advertising”** means Advertising on, through, or by the Scoreboard.

20          **“Scoreboard Agreement”** means that certain agreement between PWH and the City  
21 executed in connection with the Final RDA.

22          **“Scoreboard Naming Rights”** is defined in Section 4.11.1.

23          **“Second Additional PAM Option”** is defined in Recital E of this Agreement.

24          **“Second OA Amendment”** is defined in Recital B of this Agreement.

25          **“Secondary Facility”** shall mean the operation of the Coliseum to present only the  
26 following types of Events: (i) Events which may be held at a Non-Spectator Facility; and/or (ii)  
27 any Event, when held substantially concurrently with an event held at the Arena.

28          **“Settlement Report”** means an accounting given after an Event, or after  
29 multiple-performance shows, as provided for in Section 5.3.2.1(a) (iii), which sets forth the ticket  
30 sales revenue received and expenses incurred on behalf of the Event or the promoter of the Event,  
31 by PDC, and/or the Coliseum.

1           **“Special Events”** is defined in Section 4.2.3.3.

2           **“Spectator Facilities Fund”** means the Spectator Facilities Fund currently maintained by  
3 OMF.

4           **“Spectator Facility”** means a facility within which events are viewed by an audience in a  
5 seated or standing position, including, without limitation, concerts, sporting events, and family  
6 shows such as circuses and ice skating shows. Use of a facility for trade shows, flat shows  
7 (including, without limitation, consumer shows), conventions, meetings and up to ten (10)  
8 Community Events per year does not constitute use of the facility as a “Spectator Facility.”

9           **“Standard”** is defined in Section 4.5.2 of this Agreement.

10          **“Structural Repairs”** is defined in Section 4.5.10 of this Agreement.

11          **“Substantial Portion”** is defined in Section 12.1 of this Agreement.

12          **“Tax Assessor”** shall mean the Multnomah County Tax Assessor.

13          **“Temporary Closure”** shall mean a closure of the Coliseum followed by the reopening of  
14 the Coliseum as a Spectator Facility, prior to the calendar date of the Termination Date.

15          **“Term”** is defined in Section 2.1.1 of this Agreement.

16          **“Term Sheet”** is defined in Recital C of this Agreement.

17          **“Termination Date”** has the meaning set forth in Section 2.1.

18          **“Ticket Price”** means the face price of a ticket.

19          **“Ticket Revenue Account”** is defined in Section 5.3.2.1(a).

20          **“Traffic Management Plan”** means the Transportation Management and Site Operations  
21 Implementation Plan dated October 15, 1992, as updated by that certain Updated Traffic  
22 Management Plan dated June 23, 2009, as the same may be modified and/or overridden from time  
23 to time pursuant to Sections 34.2 and 34.3 of the Development Agreement.

24          **“Transfer”** is defined in Section 14.1.1 of this Agreement.

25          **“Transition Period”** is defined in Section 2.3.1 of this Agreement.

26          **“Transition Plan”** is defined in Section 2.3.4 of this Agreement.

27          **“User Fee Collection Policy”** is defined in Section 5.3.2.1(a).

28          **“User Fees”** means the fee equal to seven percent (7%) of the Ticket Price of each  
29 Non-Exempt Ticket sold for each Event that is held in the Coliseum. By way of illustration and  
30 not limitation, if the Ticket Price for an Event is Ten Dollars (\$10.00), the User Fee would be \$0.70  
31 (actual ticket price multiplied by 0.07).



1           **“Wind-Down Cost”** means the reasonable costs incurred by PDC in connection with  
2 termination of operations under this Agreement after the date of Temporary Closure, for a  
3 reasonable period, to the extent that such costs would not have been incurred by PDC had  
4 operations been continuous.. PDC will exercise its Reasonable Efforts to minimize Wind-Down  
5 Costs. Wind-Down Costs payable by the City pursuant to Section 2.2.2 of this Agreement will be  
6 reimbursed concurrently with Restart Costs, upon final determination of the amount of Restart  
7 Costs.

8

9    SECTION 2   **TERM**

10           2.1    Term

11                   This Agreement shall become effective if, and only if, (a) PAM does not elect to  
12 continue as the operator of the Coliseum and (b) this Agreement has not been terminated in  
13 accordance with the terms of the Final RDA or the agreement governing the funding for the  
14 Renovation Project. Accordingly, the term of this Agreement shall commence, if at all, on the  
15 earlier to occur of (the **“Effective Date”**):

16                   (a) July 1, 2023, if PAM elects not to exercise the First Additional PAM Option  
17 under the terms of the Original Operating Agreement; and

18                   (b) July 1, 2028, if PAM elects not to exercise the Second Additional PAM Option  
19 under the terms of the Original Operating Agreement.

20           In either case of subsections (a) and (b), above, the term of this Agreement (the **“Term”**) shall  
21 continue following the Effective Date until the earlier of an Early Termination Date (defined  
22 below), or June 30, 2033 (the **“Termination Date”**). This Agreement shall remain in full force  
23 and effect until the Termination Date or an Early Termination Date.

24           2.2    Early Termination

25                   Each of the following shall constitute an event causing the termination of this  
26 Agreement before the Termination Date, on the following terms and conditions and with the  
27 following Early Termination Dates:

1           2.2.1 At PDC's option, in the event PWH discontinues operations at the Coliseum  
2 pursuant to the PWH Sublicense. If PDC so elects, PDC shall give written notice of such election  
3 to the City and the notice shall set forth the Early Termination Date. Such notice shall be given at  
4 least twelve (12) months in advance of the Early Termination Date set forth in the notice.

5           2.2.2 The City may elect at any time and for any reason to demolish the Coliseum  
6 or cease operating the Coliseum and temporarily or permanently close the Coliseum. If the City  
7 so elects, the City shall give written notice of such election to PDC and the notice shall set forth the  
8 Early Termination Date. Such notice shall be given at least twelve (12) months in advance of the  
9 Early Termination Date set forth in the notice, unless the reason for the early termination is based  
10 on the City's determination that the structural condition of the Coliseum may pose an imminent  
11 threat to health or safety which is an unreasonable risk and in that event the City will give notice of  
12 the Early Termination Date a reasonable period of time in advance of the Early Termination Date.  
13 If the closure is a Temporary Closure, when the City subsequently re-opens the Coliseum for use  
14 as a Spectator Facility, this Agreement may, at PDC's election, be reinstated for the remainder of  
15 the Term (that is until the calendar date of the Termination Date). The City will give PDC written  
16 notice of its intent to resume operating the Coliseum as a Spectator Facility and PDC will have  
17 ninety (90) days after such notice to elect in writing whether to reinstate this Agreement. If the  
18 City closed the Coliseum pursuant to this Section 2.2.2 on less than one-year advance notice, the  
19 City shall pay one-half (1/2) of PDC's Wind-Down Costs and, if the closure was a Temporary  
20 Closure for a period of two (2) years or less, one-half of PDC's Restart Costs. PDC agrees that all  
21 agreements between PDC and promoters and persons holding Events at the Coliseum, and all  
22 Coliseum Agreements, shall contain a provision acknowledging the City's rights to terminate  
23 under this Section 2.2.2 and providing for cancellation or termination of such agreement on the  
24 Early Termination Date, without premium or penalty, if the City exercises such right.

25           2.2.3 The City may also elect to terminate this Agreement at any time and for any  
26 reason, upon not less than eighteen (18) months advance written notice to PDC and if the City so  
27 elects, the City will only operate the Coliseum as a Non-Spectator Facility. Operating the  
28 Coliseum as a "**Non-Spectator Facility**" means using the Coliseum for only: non-arena  
29 activities, Community Events, trade shows, consumer shows (and other forms of "flat" shows),  
30 and convention related activities, but not for sporting events, concerts and performances.

1           2.2.4 If at any time PDC is unable to obtain the insurance referred to in Section  
2 10.6.1, and, as permitted in Section 10.6.2, the City does not provide the insurance referred to in  
3 Section 10.6.1, then this Agreement shall terminate upon written notice from PDC with the  
4 effective date of termination being the date the policy of insurance then in effect and conforming to  
5 the requirements of Section 10.6.1 expires, or, if later, the effective date of the above notice, and  
6 such date shall be the Early Termination Date. In the event of a termination pursuant to this  
7 Section 2.2.4, the City may thereafter operate the Coliseum as a Non-Spectator Facility or as a  
8 Secondary Facility.

9           2.2.5 If, at any time during the Term, PDC does not have legally available funds  
10 and appropriations to cover NOL, the City may elect, in addition to any other remedies available at  
11 law or in equity, to terminate this Agreement upon thirty (30) days advance written notice to PDC,  
12 and the date that is specified in such notice shall be the Early Termination Date.

13           2.2.6 If, at any time during the Term, PDC does not have legal authority to operate  
14 or otherwise manage (or cause to be managed or otherwise operated) the Coliseum as provided for  
15 in this Agreement, the City may elect, in addition to any other remedies available at law or in  
16 equity, to terminate this Agreement upon thirty (30) days advance written notice to PDC, and the  
17 date that is specified in such notice shall be the Early Termination Date.

18           2.2.7 As provided in Section 17.1.2.1 of this Agreement.

19           2.2.8 The Parties, by mutual agreement entered into in their respective sole  
20 discretion, may terminate this Agreement upon completion of the Performance Review described  
21 in Section 6.7 or at any other time during the Term, and the date of termination so agreed upon  
22 shall be the Early Termination Date.

23 The Parties' respective rights and obligations upon the Termination Date or an Early Termination  
24 Date are as set forth in Section 15 of this Agreement.

## 25           2.3 **Transition Period**

26           2.3.1 The "**Transition Period**" shall be that period of time from January 2, 2022  
27 (in the event of a July 1, 2023 Effective Date) or January 2, 2027 (in the event of a July 1, 2028

1 Effective Date), and continuing through the applicable Effective Date. During the Transition  
2 Period, PDC shall use its Reasonable Efforts to effect an orderly and efficient transition from  
3 management of the Coliseum by PAM to management of the Coliseum by PDC or a third party  
4 operator hired by PDC. PDC's costs in effecting such transition shall be paid solely from PDC  
5 Funds. During the Transition Period, the City shall use its Reasonable Efforts to coordinate an  
6 orderly and efficient transition from operations of the Coliseum by PAM to operations by PDC.

7           2.3.2 As soon as possible after January 2, 2022, or January 2, 2027, as applicable,  
8 PDC shall designate a reasonable number of PDC employees or PDC subcontractors, but at least  
9 two (2), with substantial experience in the scheduling of public events and the management of  
10 public facilities who shall devote a significant portion of such employees' or subcontractors' time  
11 and efforts to accomplishing the transition described in Section 2.3.1. These employees shall  
12 observe, participate in and review all aspects of the operations of the Coliseum. All  
13 compensation, benefits, and other costs and expenses relating to such employees during the  
14 Transition Period shall be the sole responsibility of PDC, payable from PDC Funds.

15           2.3.3 Subject to any limitations contained in the Original Operating Agreement,  
16 during the Transition Period, the City shall use Reasonable Efforts to provide PDC employees and  
17 subcontractors referred to in Section 2.3.2 access to the Coliseum during normal hours of  
18 operations so as to observe, participate in and review all aspects of the operations of the Coliseum  
19 and all decision-making processes with respect to the operations of the Coliseum and so as to  
20 interact with PAM employees during these operations and processes. The City shall respond to  
21 inquiries by PDC, provide reasonable access to the City's books and records relating to operation  
22 of the Coliseum, which books and records have been provided by PAM, and take such other  
23 actions as may be reasonably required during the Transition Period to assist PDC with the  
24 assumption of the operational responsibility for the Coliseum upon commencement of the Term,  
25 so long as PDC's requests do not unreasonably interfere with the management or operations of the  
26 Coliseum, and provided that the provision of any books and records is without representation or  
27 warranty from the City. Notwithstanding anything to the contrary contained in this Section 2 or  
28 otherwise in this Agreement, the Parties expressly acknowledge that operations of the Coliseum  
29 during the Transition Period remain subject to any rights and remedies of PAM under the Original  
30 Operating Agreement.



1                   2.3.4 During the Transition Period but not later than March 1, 2023, or March 1,  
2 2028, as applicable, PDC shall prepare at its cost (from PDC Funds) and submit to the City, for its  
3 review and Approval, a “**Transition Plan**” that will outline how PDC proposes to effect a  
4 transition from PAM management of the Coliseum to PDC management of the Coliseum. The  
5 Transition Plan shall address the topics set forth on attached Exhibit 2.3.4. The Transition Plan  
6 shall be subject to the mutual Approval of PDC and the City, and the terms of the Original  
7 Operating Agreement (including, without limitation, PAM’s rights and obligations thereunder),  
8 and any Dispute involving the Approval of the Transition Plan shall be subject to Dispute  
9 Resolution.

10                   2.3.5 During the Transition Period, the City and PDC shall meet to discuss  
11 then-existing guidelines relating to the availability of the Coliseum for Community Events and  
12 Special Events.

13                   2.3.6 During the Transition Period, the City and PDC shall meet to update, in good  
14 faith, the scope, limits, and continued applicability of the insurance policies referenced in Section  
15 10 of this Agreement, and to ensure consistency with the City’s then-existing insurance  
16 requirements.

17                   2.3.7 From the commencement of the Transition Period until the commencement  
18 of the Term, the City will use its Reasonable Efforts to cause PAM to continue to operate the  
19 Coliseum in the normal manner (i.e. in accordance with practices prior to such Effective Date),  
20 including performing normal Repair and Maintenance. If prior to the Term, the Coliseum is  
21 subject to a casualty loss which cannot be repaired using normal repair and reconstruction  
22 techniques within sixty (60) days, then the City may elect to either: terminate this Agreement and  
23 such an election shall be a deemed termination pursuant to Section 2.2.2 or elect to repair the  
24 Coliseum to its condition prior to the casualty, in which event the commencement of the Term  
25 shall be delayed, if necessary, until the actual completion of such repair of the Coliseum.

26                   2.4     **Reporting Prior to Effective Date**

27                   Prior to the Effective Date, and during the term of the Original Operating  
28 Agreement, the City shall provide to PDC copies of such quarterly and annual financial statements

1 relating to the Coliseum as are provided by PAM to the City. The City shall deliver such copies to  
2 PDC within thirty (30) days following the City's receipt thereof from PAM; provided, that the  
3 provision of any and all such statements is without representation or warranty from the City and is  
4 provided as an accommodation only.

5           2.5    **Responsibilities During Term**

6                   PDC shall be responsible for all aspects of the management and operations of the  
7 Coliseum, subject to the terms of this Agreement, throughout the Term.

8    **SECTION 3   ENGAGEMENT OF PDC**

9           3.1    **Engagement, Access**

10                   3.1.1 As of the Effective Date, the City engages PDC as an independent contractor  
11 (and not as an agent of the City) on the terms and conditions contained in this Agreement, and PDC  
12 hereby accepts such engagement on those terms and conditions.

13                   3.1.2 Throughout the Term, PDC shall have a license to come upon and have  
14 access to the Coliseum to the extent necessary or convenient to PDC's performance of its  
15 obligations under this Agreement. Subject to Section 16.5.5, PDC shall have the right to give  
16 access to or deny access to the Coliseum to other Persons; except the City shall have the right to  
17 have access to and to come upon the Coliseum at any time. The City will use Reasonable Efforts  
18 to avoid interfering with PDC's performance of its obligations under this Agreement, whenever  
19 City personnel are at the Coliseum. PDC shall have no property interest in or to the Coliseum and  
20 no estate in or to the Coliseum, other than the limited license set forth above, and as may be  
21 otherwise expressly provided for by separate agreement with respect to certain development rights  
22 for the Rose Quarter District in the City of Portland, Oregon.

23           3.2    **Authorities and Responsibilities**

24                   PDC, during the Term, shall have the exclusive authority and responsibility for the  
25 management, administration, operation, use, scheduling, advertising, marketing, promotion,  
26 security, licensing, provision of concessions, Maintenance, Repair, and Capital Improvement of or

1 at the Coliseum in accordance with the terms of this Agreement. Without limitation of the  
2 foregoing, throughout the Term PDC agrees to perform the following responsibilities:

3 3.2.1 Manage and operate the Coliseum so that the Public Goals and objectives set  
4 forth in Section 3.4.2 are met;

5 3.2.2 Employ personnel and engage contractors, in accordance with the terms of  
6 Sections 3.5 and 15, necessary and sufficient to perform PDC's obligations under this Agreement;

7 3.2.3 Provide for the scheduling of Events at the Coliseum, using Reasonable  
8 Efforts, and the establishment of rental and usage rates for the Coliseum in accordance with the  
9 terms of Section 4.2.2;

10 3.2.4 Provide for the marketing, advertising, and promotion of the Coliseum in  
11 accordance with the terms of Section 4.2;

12 3.2.5 Provide for public safety, security and traffic control with respect to all  
13 Events at the Coliseum in accordance with the terms of Section 4.3;

14 3.2.6 Grant concessions, licenses, and other comparable rights regarding the  
15 Coliseum in accordance with the terms of Section 4.4;

16 3.2.7 Provide for the Maintenance and Repair of the Coliseum in accordance with  
17 the terms of Section 4.5 and, without an affirmative duty of inspection, advise the City promptly in  
18 writing of any condition in the Coliseum of which PDC's officers or managerial employees  
19 becomes aware which may indicate the need for a Structural Repair;

20 3.2.8 To the extent not otherwise exempt, pay all Impositions in accordance with  
21 the terms of Section 4.6;

22 3.2.9 Purchase or lease and maintain all materials, tools, machinery, equipment,  
23 and supplies necessary for the operation of the Coliseum and for the performance of PDC's other  
24 obligations under this Agreement in accordance with the terms of Section 4.7;

1                   3.2.10 As provided in Section 4.9, work with PAM management to coordinate and  
2 integrate the operations of the Coliseum and the Arena. As provided in Section 4.11, partake in  
3 Advertising activities;

4                   3.2.11 Establish the Operating Account and pay all Operating Expenses in  
5 accordance with the terms of Sections 5.3 and 5.4, and pay all User Fees pursuant to Section 5.3;

6                   3.2.12 Distribute Net Income in accordance with the terms of Sections 5.5 and 5.6;

7                   3.2.13 Provide for the preparation and dissemination of budgets, financial  
8 statements, reports, and other materials in accordance with the terms of Section 6;

9                   3.2.14 Maintain accounts, books, and records with respect to the Coliseum in  
10 accordance with the terms of Section 6.4;

11                  3.2.15 Perform Capital Improvements to the Coliseum in accordance with the  
12 terms of Section 7;

13                  3.2.16 Procure and maintain in force insurance regarding the Coliseum in  
14 accordance with the terms of Section 10;

15                  3.2.17 Keep and maintain the Coliseum, and all activities occurring on or in  
16 connection with the Coliseum, in compliance with Governmental Regulations, excepting  
17 Governmental Regulations related to Structural Repairs;

18                  3.2.18 Arrange for and maintain in force all licenses, permits, certificates,  
19 approvals, franchises, and other authorizations required in connection with the operation, use,  
20 Maintenance, Repair, and Capital Improvement of the Coliseum;

21                  3.2.19 Arrange for the provision of all utility services for the Coliseum;

22                  3.2.20 Collect all charges, fees, rents, proceeds, share of concession income and all  
23 other amounts payable with respect to the rental, use, licensing, provision of concessions and all  
24 other income generating activities at the Coliseum (except for parking revenue and Scoreboard



1 advertising revenue, which is beyond the scope of this Agreement), pursuant to the standards and  
2 procedures set forth in Exhibit 3.2.20, subject to modification as that is allowed in Exhibit 3.2.20;

3 3.2.21 Initiate and conduct (and, if appropriate, settle) any litigation, arbitration, or  
4 other proceeding required to collect amounts owing with respect to the operations of the Coliseum,  
5 and defend and conduct (and, if appropriate, settle) any litigation, arbitration, or other proceeding  
6 initiated by other Persons asserting a claim based on a Coliseum Agreement, concession  
7 agreement, or similar contract, all using legal counsel Approved of by the City. The costs and  
8 expenses of the same shall be paid from PDC Funds if the underlying claim resulted from PDC  
9 Negligence or breach of contract of PDC. Otherwise, the costs and expenses of the same shall be  
10 an Operating Expense; and

11 3.2.22 Enter into, comply with, and enforce the PWH Sublicense.

12 3.3 **Scope of Authority**

13 Subject to the other terms of this Agreement, PDC shall have the authority to take,  
14 and to refrain from taking, all actions to the extent reasonably necessary to carry out its  
15 responsibilities described in Section 3.2, but in no event shall any such action bind, or impose any  
16 liability upon, the City without the City’s prior written consent.

17 3.4 **Standards of Performance**

18 3.4.1 PDC shall perform its obligations under this Agreement in accordance with  
19 all of the following standards as those standards may change over time. The failure of PDC to  
20 meet these standards shall constitute a PDC Event of Default:

21 3.4.1.1 Other than as provided in Section 3.4.1.2, below, PDC shall use its  
22 Reasonable Efforts and skills;

23 3.4.1.2 PDC shall, in all respects, manage and operate the Coliseum with a  
24 level of diligence, skill, expertise, and effort which is at or above the average level of diligence,  
25 skill, expertise, and effort of other operators of arenas and Spectator Facilities;

1                   3.4.1.3 PDC shall manage and operate the Coliseum in accordance with the  
2 terms of this Agreement and in such a manner so as to consistently achieve the Public Goals and  
3 objectives set forth in Section 3.4.2; and

4                   3.4.1.4 PDC shall act as a fiduciary with respect to handling and  
5 accounting for money generated by the operations of the Coliseum, but not with respect to any  
6 other obligations of PDC set forth in this Agreement. PDC shall not be liable for punitive  
7 damages for any breach of its fiduciary duties in handling funds.

8                   3.4.2 In all aspects of the operations of the Coliseum, PDC shall use Reasonable  
9 Efforts to accomplish the following Public Goals throughout the Term. If PDC is unable to  
10 achieve these Public Goals due to market conditions at a given point in time or from time to time,  
11 such an event shall not be a PDC Event of Default under Section 17 so long as PDC uses  
12 Reasonable Efforts to respond to such market conditions so as to endeavor to accomplish the  
13 Public Goals. A PDC Event of Default will include, but is not limited to: the failure of PDC to  
14 meet the standards set forth in Section 3.4 or PDC's failure to use Reasonable Efforts as required  
15 by this Section 3.4.2. These Public Goals shall also be used to guide the City's decision making  
16 with respect to matters requiring the City's Approval and shall be the focus of the Performance  
17 Review referred to in Section 6.7. The "**Public Goals**" are the following:

18                   3.4.2.1 Work to schedule conferences, conventions, and trade shows in the  
19 Coliseum, including the Exhibit Hall;

20                   3.4.2.2 Seek Events at the Coliseum which offer affordable entertainment;

21                   3.4.2.3 Encourage and promote the utilization of the Coliseum for Events;

22                   3.4.2.4 Maintain the Coliseum as a fully functional, marketable, and  
23 attractive (as a maintenance, but not design standard) facility throughout the Term;

24                   3.4.2.5 Provide for efficient and cost effective management of the  
25 Coliseum;

1                   3.4.2.6 Maximize net revenue, from all sources, which the City may realize  
2 from the operations of the Coliseum;

3                   3.4.2.7 Coordinate the operations of the Coliseum and the Arena so that  
4 whenever an Event is scheduled for the Coliseum there will be available at the Coliseum  
5 personnel, supplies, and equipment sufficient for that Event;

6                   3.4.2.8 Bring significant specialized knowledge, expertise and experience  
7 to the management and operations of the Coliseum in order to assure its continuing status as a  
8 major public facility in the region; and

9                   3.4.2.9 Prolong the useful life of the Coliseum, except as to any Capital  
10 Improvement obligations of the City.

11           **3.5    Personnel and Contractors**

12                   3.5.1 PDC shall employ and contract for the services of such Persons as may be  
13 necessary and sufficient to discharge the duties set forth in Section 3.2, including, without  
14 limitation, the Independent Operator referenced in Section 14.2. All such employees,  
15 contractors, and the Independent Operator shall be employed or engaged by PDC. Any and all  
16 contracts with such Persons shall be subject to the terms of Section 15 and Section 2.2.2. In no  
17 event shall the City have any liability or obligation with respect to any such employees,  
18 contractors, or the Independent Operator unless the City expressly elects in writing to assume any  
19 of the contracts with such Persons pursuant to Section 17.3.4 and all bids or contracts shall so  
20 provide.

21                   3.5.2 Prior to the commencement of the Term, but not later than March 1, 2023, or  
22 March 1, 2028, as applicable, PDC will prepare a staffing plan showing the personnel position that  
23 PDC will create and fill for the oversight of the Independent Operator and showing the  
24 approximate portion of such position's time that will be allocated to the management and  
25 operations of the Coliseum. The cost of preparation of the staffing plan shall be paid from PDC  
26 Funds. The plan shall show the salary level of such position. By the date provided in the first  
27 sentence of this Section 3.5.2, PDC shall submit such plan to the CAO for the CAO's review and  
28 approval, which approval shall not be unreasonably withheld.

1           3.5.3 PDC shall be responsible for all matters pertaining to the employment or  
2 engagement of Persons in connection with the Coliseum, including, without limitation,  
3 recruitment, hiring, discharge, training, supervision, compensation, promotion, provision of  
4 benefits, and institution of appropriate guidelines. PDC shall comply, and shall require its  
5 contractors to comply, with all Governmental Regulations relating to employment, including,  
6 without limitation, those pertaining to workers' compensation, social security, unemployment  
7 insurance, hours of labor, wages, and working conditions.

8           3.5.4 PDC shall be responsible for conducting negotiations with any labor unions  
9 representing any Persons PDC engages and may, in its own name, enter into collective bargaining  
10 agreements or other labor contracts affecting the Coliseum, provided that all such contracts shall  
11 comply with the provisions of Section 15 and Section 2.2.2.

12           3.5.5 [Reserved]

13           3.5.6 PDC shall comply, and shall cause its contractors and the Independent  
14 Operator to comply with PDC's then-applicable business and workforce equity policies and goals  
15 with respect to the recruitment, training and selection of all Persons at the Coliseum.

16           3.5.7 [Reserved]

17           3.5.8 Nothing in this Section 3.5 shall authorize PDC to delegate or subcontract all  
18 or any part of its responsibilities for the operation, management, and administration of the  
19 Coliseum without compliance with the requirements of Section 14. PDC shall in all cases be  
20 responsible for the diligent direction and supervision of any employees, contractors or  
21 subcontractors utilized pursuant to this Section 3.5.

22           3.5.9 PDC shall cause the Independent Operator to promptly replace any key  
23 management personnel of the Independent Operator who leave the employ of the Independent  
24 Operator, with personnel of comparable or better experience and expertise.

25           3.6    **Office Location**



1 PDC shall furnish PDC employees engaged in scheduling, marketing, security,  
2 accounting, and other functions relating to the management and operation of the Coliseum with  
3 office space and equipment, at no cost to the Coliseum or to the City. PDC may elect to furnish  
4 such office space and equipment at the other reasonably convenient off-site locations at no cost to  
5 the Coliseum or the City. Notwithstanding the location of such employee's offices, PDC shall,  
6 throughout the Term, maintain sufficient personnel on the Coliseum premises as necessary or  
7 appropriate for PDC to perform its duties under this Agreement.

8 **SECTION 4 OPERATION OF THE COLISEUM**

9 PDC shall manage and operate the Coliseum continuously throughout the Term in  
10 accordance with the terms of this Section 4.

11 **4.1 Promotion and Marketing of the Coliseum**

12 4.1.1 PDC shall promote and market or shall cause the Independent Operator to  
13 promote and market the Coliseum. PDC or the Independent Operator shall provide at least one  
14 employee, skilled in marketing and promotion, whose primary responsibility is the marketing and  
15 promotion of the Coliseum and for booking Events at the Coliseum.

16 4.1.2 [Reserved]

17 4.1.3 [Reserved]

18 4.1.4 [Reserved]

19 4.1.5 [Reserved]

20 4.1.6 PDC will seek non-traditional uses of the Coliseum which will produce  
21 additional revenue, such as public skating.

22 **4.2 Scheduling and Pricing of Events**

23 4.2.1 All agreements providing for the scheduling of an Event at the Coliseum  
24 shall be executed in the name of PDC and shall be subject to the requirements of Section 15 and  
25 shall expressly provide that the City shall have no liability thereunder; however, any such

1 agreement shall expressly: allow the City to assume such agreement upon a PDC Event of Default  
2 or a termination of this Agreement, shall provide that the City is a third party beneficiary of each  
3 such agreement, and shall allow the City to terminate the agreement without cost or penalty upon  
4 any termination of this Agreement.

5 4.2.2 PDC shall establish rates for the use of the Coliseum (the “**Pricing Policy**”)  
6 as follows:

7 4.2.2.1 Subject to Section 4.2.2.2, PDC shall establish rental and usage  
8 rates for the Coliseum including, without limitation, for the Coliseum Arena, Exhibit Hall, meeting  
9 spaces, and associated lobby and concourse areas, which shall take into account the following:  
10 encouraging the use of the Coliseum, being reasonable in comparison to rates charged by  
11 competitive facilities in the metropolitan area for Events where the promoter is choosing only  
12 between facilities in the metropolitan area and being reasonable in comparison to rates charged by  
13 competitive facilities in other cities where the promoter is choosing between Portland and other  
14 cities; being reasonable in comparison with then Operating Expenses. PDC shall actively  
15 monitor rates charged at competitive facilities in the Portland Metropolitan Area and in other cities  
16 and shall revise rates for the Coliseum to respond to prevailing market conditions. Rates  
17 established by PDC may be below competitive rates if necessary to obtain an Event, but such rates  
18 shall not be less than the Direct Expenses of having such an Event at the Coliseum.

19 4.2.2.2 The rental and usage rates established by PDC for the Coliseum  
20 pursuant to paragraph 4.2.2 shall be summarized in writing in a Pricing Policy which shall be  
21 reviewed by the CAO for compliance with the City’s goals and objectives set forth in Section 3.4.2  
22 and approved by the CAO on an annual basis as part of the budget approval process under  
23 Section 6.1. The Pricing Policy shall include such elements as use rates. In the event a new  
24 Pricing Policy is not Approved at the end of any one-year period, the Pricing Policy previously  
25 Approved by the City shall remain in effect until the City Approves the new Pricing Policy. PDC  
26 shall not charge rates for Coliseum events or services which materially vary from the Pricing  
27 Policy without prior City approval. If PDC desires to materially vary from the Pricing Policy for  
28 an Event (a “**Pricing Policy Exception**”), PDC must first obtain the City’s Approval of such  
29 Pricing Policy Exception. The City shall delegate authority to review and approve pricing policy

1 exceptions to a sufficient number of City Employees to respond to PDC’s request for Pricing  
2 Policy Exceptions in the time required under this Section 4.2.2.2. PDC shall submit requests for  
3 Pricing Policy Exceptions in writing and the City shall take all reasonably necessary steps to  
4 review the request for compliance with the City’s goals and objectives stated in this Agreement.  
5 The City shall state in writing whether the request is Approved or denied within five (5) Business  
6 Days from the date PDC’s request is received by the City. The failure of the City to Approve or  
7 deny such a request is not the basis for a default by the City and the City shall have no liability to  
8 PDC or otherwise due to such failure. If the Pricing Policy Exception is denied, the City shall  
9 give PDC reasons for the decision. The City’s approval of any single Pricing Policy Exception  
10 shall not constitute a waiver of the City’s right to review PDC’s overall management under the  
11 terms of this Agreement or any subsequent Pricing Policy Exception. The City’s disapproval of  
12 any Pricing Policy Exceptions shall be taken into account in evaluating PDC’s achievement of the  
13 goals hereunder. In the event applicable legal requirements call for pricing policies or approval  
14 standards or methods which vary from the provisions of this Section 4.2.2.2 such legal  
15 requirements shall control. Notwithstanding anything in this Section 4.2.2.2 to the contrary, PDC  
16 may elect during the annual budgeting process in accordance with Section 6.1 to suspend the  
17 Pricing Policy approval required in this Section 4.2.2.2 for the following Fiscal Year.

18 4.2.3 The PWH Sublicense shall provide that the Coliseum will serve as the  
19 primary “home” venue of the Portland Winter Hawks hockey team. Provided PDC and PWH  
20 have entered into the PWH Sublicense for a term not to expire prior to the expiration of the Term,  
21 and subject to the other terms and conditions of this Section 4.2.3, then PDC may (but is not  
22 obligated to) elect to schedule and hold at the Coliseum only Portland Winter Hawks hockey  
23 pre-season, regular season, and post-season games (the “**PWH Events**”). PDC’s right to limit the  
24 use of the Coliseum to the PWH Events is further subject to the following:

25 4.2.3.1 The City and PDC have mutually agreed that it is not financially  
26 feasible to continue with other Events (i.e., non-PWH Events).

27 4.2.3.2 PDC acknowledges that certain charitable events (collectively, the  
28 “**Community Events**”) have a long-standing history at the Coliseum, including without limitation  
29 the following, Homeless Connect, Hands On Serve-a-Thon, and holiday toy drives. PDC shall

1 strive to make the Coliseum available for ten (10) Community Events in each Fiscal Year. PDC  
2 shall charge rental rates for Community Events, which permit recovery of only Direct Expenses  
3 incurred by PDC in connection with the Community Event. Concessions for Community Events  
4 may charge their normal rates. With respect to any advertising for a Community Event, PDC  
5 shall not have the right to regulate the content of such advertising and any advertising agreement to  
6 which PDC is a party which grants to another Person any exclusive rights with respect to  
7 advertising for Events at the Coliseum shall reflect this fact.

8 4.2.3.3 PDC further acknowledges that certain civic events (collectively,  
9 the “**Special Events**”) have a long-standing history at the Coliseum, including without limitation  
10 the following: (a) the Rose Festival Parade; (b) graduation ceremonies for area high schools and  
11 area higher education institutions; and (c) Oregon School Activities Association events and  
12 competitions. PDC shall make the Coliseum available for Special Events. PDC shall charge  
13 reasonable rental rates, which may be different than the Pricing Policy, considering the nature of  
14 the Special Event. Concessions for Special Events may charge their normal rates.

15 4.2.3.4 PDC shall allow events to be held at the Coliseum that support  
16 significant events at the Arena and provide social and economic benefit to Portland and the region  
17 (such Events being referred to as “**Cooperative Events**”). Such Cooperative Events include,  
18 without limitation, allowing the use of the Coliseum as: (a) a practice facility during and for  
19 NCAA basketball tournaments; (b) a practice facility during and for U.S. Figure Skating  
20 Championships; and (c) if a National Hockey League team locates to the City of Portland, as a  
21 practice venue for such team. To the extent the Coliseum is used for a Cooperative Event, PDC  
22 shall submit to the CAO a bid package identifying, at a minimum, the proposed rental rate being  
23 charged by PAM for the Cooperative Event’s use of the Arena. The City shall not unreasonably  
24 withhold a rental rate for a Cooperative Event that is less than the Pricing Policy.

25 4.2.3.5 PDC shall from time to time issue and make available guidelines  
26 regarding the availability of the Coliseum for Community Events and Special Events, which shall  
27 be subject to City Approval.



1           4.2.4 PDC shall permit users of the Exhibit Hall to use the Coliseum Arena for the  
2 same Event at rates equivalent to those charged for the Exhibit Hall for that Event to the extent the  
3 Coliseum Arena is not reserved for other Events.

4           4.2.5 PDC will request that users of the Coliseum allow the City to use the  
5 Coliseum public address system for public service announcements at non-interruptive times  
6 during Events.

7           4.2.6 Nothing in this Agreement shall require that PDC allow an Event at the  
8 Coliseum where the promoter of the Event does not agree to pay the actual Direct Expenses for  
9 such Event.

10           4.3    **Security, Safety and Traffic Control**

11           4.3.1 PDC shall prepare and implement a security program sufficient to provide  
12 reasonable protection for the Coliseum, equipment and other Personal Property located at the  
13 Coliseum, and individuals using, engaged at, or visiting the Coliseum from time to time.

14           4.3.2 PDC shall provide for the reasonable safety of individuals using, engaged at,  
15 or visiting the Coliseum from time to time, including, without limitation, by instituting effective  
16 “crowd control” measures for Events and by performing Maintenance and Repair activities  
17 pursuant to Section 4.5 and Capital Improvements pursuant to Section 7.

18           4.3.3 PDC shall provide reasonable pedestrian and vehicular traffic control with  
19 respect to all Events and shall comply with the Traffic Management Plan. Further, in the event of  
20 simultaneous activities at the Coliseum and the Arena, including Cooperative Events, PDC shall  
21 use Reasonable Efforts to coordinate such activities consistent with the Traffic Management Plan.

22           4.4    **Concessions and Licenses**

23           4.4.1 PDC shall negotiate and enter into licenses, concession arrangements, and  
24 other comparable agreements relating to the sale of food, beverages, and merchandise at the  
25 Coliseum. PDC shall enter into licenses, concession agreements and comparable agreements  
26 with qualified concessionaires who will provide a level of quality in the sale of food, beverages

1 and merchandise at the Coliseum at least as good as the quality provided prior to the Term.  
2 However, PDC shall use its Reasonable Efforts, subject to the physical and equipment limitations  
3 of the Coliseum, to improve the quality and service of the concessions over time. Any such  
4 agreements shall comply in all respects with the terms set forth in Section 15.

5 4.4.2 PDC or Affiliates of PDC may offer food, beverages, or merchandise for sale  
6 at the Coliseum, provided that any such arrangements shall be in conformance with Section 4.4.1,  
7 be set forth in written agreements between PDC and such Affiliates (in the case of such activities  
8 being performed by Affiliates), and be subject to the terms set forth in Section 16.

9 4.4.3 PDC may make available to promoters, as a service, the use of direct labor to  
10 sell merchandise at the Coliseum, so long as any such arrangement covers the cost of direct labor  
11 and does not otherwise decrease Net Income. All direct labor for such service shall be an  
12 Operating Expense and all revenue realized from such service shall be Operating Revenue.

13 4.5 **Maintenance and Repair**

14 4.5.1 PDC shall perform all Maintenance, and Repair of the Coliseum (excepting  
15 Structural Repairs) as required by, and to the quality level established by, the Standard described in  
16 Section 4.5.2. Costs and expenses for the Maintenance and Repair of the Coliseum shall be  
17 Operating Expenses, except for damage caused by PDC Negligence which shall be Repaired as a  
18 PDC Cost and not as an Operating Expense.

19 4.5.2 The “**Standard**” for the timing of, frequency of, extent of, and quality of  
20 Maintenance and Repair to be conducted by PDC at the Coliseum is as follows: the frequency,  
21 level, extent, and quality of Maintenance and Repair activities reasonably necessary in order to  
22 maintain and operate the Coliseum as a high quality spectator facility, taking into consideration the  
23 age of the Coliseum, and in order to fulfill the Public Goals and objectives set forth in Section 3.4.2  
24 and meet applicable Governmental Regulations. In the event the City and PDC disagree with  
25 respect to the requirements of the Standard as to any specific instance of Maintenance or Repair,  
26 this dispute shall be resolved by the Consulting Engineer pursuant to Section 4.5.6.

27 4.5.3 “**Maintenance**” shall consist of all of the following with respect to each and  
28 every Part of the Coliseum:

1                   4.5.3.1 Removing dirt, debris, foreign materials, trash, graffiti, markings,  
2 and similar remnants of usage of the Coliseum, promptly after the Coliseum is used for an Event  
3 and periodically at other times;

4                   4.5.3.2 At all times keeping the Coliseum reasonably clean and neat;

5                   4.5.3.3 Inspecting, testing, and determining the operating status of all  
6 equipment, and each operating system and component within the Coliseum, but excluding  
7 structural components of the Coliseum;

8                   4.5.3.4 Periodically replacing all fluids and parts of any system or  
9 component of a system within the Coliseum, which reasonably require replacement, with new  
10 fluids or parts; and

11                   4.5.3.5 Following all suggested “maintenance” activities recommended by  
12 the Consulting Engineer and the manufacturer, contractor or seller of each and every part or  
13 component of the Coliseum, and PDC’s preventive maintenance plan referred to in Section 4.5.8.

14                   4.5.4 “**Repair**” means the rebuilding, reconstruction, or replacement of any  
15 destroyed, dysfunctional, or obsolete Part of the Coliseum so as to restore the Part to not less than  
16 its functional level prior to the need for such rebuilding, reconstruction, or replacement. To the  
17 extent a Repair involves replacing a Part of the Coliseum with a new Part and the new Part  
18 enhances the functional capabilities of the Part being replaced (assuming that at the time of  
19 replacement the Part being replaced was new), the replacement will constitute both a Repair and a  
20 Capital Improvement (defined below) and the relative extent of Repair and Capital Improvement  
21 shall be determined by the Consulting Engineer pursuant to Section 4.5.6. If in any Fiscal Year,  
22 the actual cost of all Repairs made during that Fiscal Year exceeds \$250,000 (as adjusted annually  
23 pursuant to Section 19.1) then subsequent Repairs (after such \$250,000 has been spent, as adjusted  
24 pursuant to Section 19.1) are Capital Improvements regardless of whether such Repairs otherwise  
25 meet the definition of Capital Improvements.

26                   4.5.5 A “**Capital Improvement**” is any improvement with all of the following  
27 characteristics: (i) a useful life of ten years (as determined in accordance with GAAP), (ii) a cost  
28 in excess of One Hundred Thousand Dollars (\$100,000.00) (as adjusted annually pursuant to

1 Section 19.1), and (iii) the improvement otherwise would be considered a capital cost in  
2 accordance with GAAP. A “Capital Improvement” shall also consist of certain replacement  
3 items of Personal Property, as more particularly described in Section 4.7.2.

4 4.5.6 The Consulting Engineer shall be an individual skilled in the maintenance of  
5 large public facilities or major office buildings in Portland, Oregon. The Consulting Engineer  
6 will not be a full time employee or consultant, but will be retained on an as needed basis to perform  
7 his responsibilities under this Agreement. The City and PDC shall jointly select the Consulting  
8 Engineer for a Fiscal Year within the first ten (10) days of each July during the Term. If, within  
9 that period of time, the City and PDC cannot agree on a Consulting Engineer, then each Party shall  
10 nominate two (2) candidates meeting the requirement set forth above and willing to serve, by  
11 written notice to the other given by July 15 of each calendar year during the Term. On the last  
12 Business Day of each July during the Term, the City and PDC shall meet, and each Party may  
13 strike the name of one candidate of the other Party. The remaining two (2) names shall be placed  
14 on two (2) pieces of paper, placed in a container, and one (1) name shall be drawn at random. The  
15 candidate whose name is so selected shall be the Consulting Engineer for that Fiscal Year and,  
16 until his replacement is designated, for the next Fiscal Year. The fees of the Consulting Engineer  
17 shall be an Operating Expense.

18 4.5.7 Prior to the Reference Date, the City and PAM established the Assessment  
19 wherein the City and PAM categorized all elements of the Coliseum (including, without limitation,  
20 all systems and structures) as of the date of Final Completion as being within one of the following  
21 categories for the Fiscal Year following the Fiscal Year of Final Completion: (a) Repair; (b)  
22 Maintenance; (c) Capital Improvement; (d) Structural Repair; or (e) deferred Capital Improvement  
23 or deferred Structural Repair. An element categorized in the Assessment under Section 4.5.7(e),  
24 above, as may be revised pursuant to Section 4.5.12, is referred to as a “**Deferred CI/SR.**” With  
25 respect to elements categorized as a Deferred CI/SR, the City accepted responsibility for the cost  
26 of additional Repairs or other increased Operating Expense out of the City’s own funds. PAM’s  
27 obligations under the Original Operating Agreement, including, without limitation, with respect to  
28 Maintenance and Repairs, remained intact. Items of Deferred CI/SR shall be deemed removed  
29 from the Assessment, and the Assessment deemed updated, at such time as the deferred Capital  
30 Improvement or deferred Structural Repair referenced in the Assessment is completed.



1 Beginning in the 2013-2014 Fiscal Year and through the 2017-2018 Fiscal Year, the City agreed to  
2 carry a line item in the City’s Spectator Facilities Fund budget applicable towards the costs of  
3 Repairs, Capital Improvements, or other increased Operating Expenses arising out of Deferred  
4 CI/SR, which budgeted item was in the amount of Two Hundred Fifty Thousand and No/100  
5 Dollars (\$250,000.00) per Fiscal Year and subject to the Escalator. Beginning in the 2023-2024  
6 Fiscal Year, such amount shall be increased to Three Hundred Seventy-Five Thousand and No/100  
7 Dollars (\$375,000.00) per Fiscal Year (the “**Budget Amount**”) and subject to the Escalator, and  
8 shall also be applicable towards the costs of Structural Repairs. In no event shall the City be  
9 obligated to spend more than the Budget Amount on Repairs, Capital Improvements, Structural  
10 Repairs, or other increased Operating Expenses arising out of Deferred CI/SR in any applicable  
11 Fiscal Year. Further, the City’s payment of any Budget Amount is subject to PDC having first  
12 satisfied its funding obligations under Section 4.5.4. Any unspent Budget Amount in a Fiscal  
13 Year shall be carried over to the next Fiscal Year and be additive to the next Fiscal Year’s Budget  
14 Amount. The Budget Amount will be subordinate and subject, at all times, to any existing debt  
15 (or refinancing which does not increase the City’s total debt obligations or the amount of debt  
16 service payments) and other non-discretionary, fixed and existing contractual obligations imposed  
17 upon the City’s Spectator Facilities Fund.

18 4.5.8 During the Transition Period, the City shall provide to PDC a copy of the  
19 Assessment, as updated as provided in Section 4.5.8, above. By the Effective Date, and taking  
20 into account the Assessment (as updated), PDC shall develop and submit to the City a preventive  
21 maintenance plan for the Coliseum specifying measures to be taken by PDC to protect against  
22 deterioration of the systems, components, machinery, and equipment of or at the Coliseum. The  
23 preventive maintenance plan shall be implemented on an ongoing basis by PDC and shall be  
24 updated by notice to the City by no later than January 1 of each succeeding calendar year during  
25 the Term. The preventive maintenance plan and any update of the plan shall be subject to the  
26 City’s Approval. To the extent the Parties cannot agree on the terms of the maintenance plan, the  
27 Consulting Engineer shall first mediate the dispute and if that does not achieve agreement then the  
28 terms shall be established by the Consulting Engineer.

1                   4.5.9 With respect to all Personal Property, PDC shall Maintain and Repair such  
2 Personal Property. Replacement of Personal Property is subject to the requirements of Section  
3 4.7.3.

4                   4.5.10 The City shall be responsible for and shall perform all Structural Repairs.  
5 “**Structural Repairs**” shall mean Repairs or Capital Improvements to the following elements of  
6 the Coliseum which are either (i) required to bring the Coliseum into compliance with all  
7 applicable Governmental Regulations regarding the occupancy of the Coliseum or (ii) are  
8 otherwise necessary or appropriate, in the City’s judgment, to render the Coliseum safe for  
9 occupancy: foundations, subflooring, load-bearing walls, exterior walls (but not plate glass), the  
10 roof trusses and load-bearing girders, pillars, and similar support elements. Structural Repairs  
11 shall include all improvements to the structural components of the Coliseum made by the City to  
12 comply with applicable Laws regarding seismic standards for structures. Structural Repairs shall  
13 not include repairs to any of the foregoing elements required due to PDC Negligence. The City  
14 may reduce the amount of the Budget Amount to recover the cost of Structural Repairs. With  
15 respect to the performance of Structural Repairs, the City shall not be responsible for the  
16 negligence of its non-managerial employees (but shall be responsible for the gross negligence or  
17 willful misconduct of its non-managerial employees or the negligence or willful misconduct of its  
18 managerial employees) and the cost of remedying the negligence of its non-managerial employees  
19 shall be an Operating Expense.

20                   4.5.11 The City shall, at reasonable intervals during the Term, conduct inspections  
21 of the structural elements of the Coliseum to determine the need for any Structural Repairs. The  
22 cost of such inspections shall be an Operating Expense. The City, its agents and contractors, shall  
23 have the right upon reasonable advance notice to PDC to perform Structural Repairs whenever the  
24 City determines that such Structural Repairs are necessary.

25                   4.5.12 In the case of a Capital Improvement or Structural Repair which is not  
26 approved in an Annual Budget pursuant to Section 6.1 and which is not an emergency capital  
27 improvement as described in Section 7.7, a determination by the Consulting Engineer that a  
28 Capital Improvement or Structural Repair is required shall not in itself require the City to  
29 immediately make such Capital Improvement or Structural Repair unless the Capital Improvement

1 or Structural Repair is required in order to keep the Coliseum open and operating in a manner  
2 contemplated by this Agreement, or the cost of such Capital Improvement (including Structural  
3 Repairs which are Capital Improvements) is less than the then amount of the Budget Amount.  
4 Furthermore, if the Capital Improvement or Structural Repair which the Consulting Engineer  
5 might otherwise determine is such that additional Repairs or other increased Operating Expenses  
6 are available which would allow the continued operations of the Coliseum as contemplated by this  
7 Agreement and which would allow the deferral of such Capital Improvement or Structural Repair,  
8 then the City shall be entitled to defer such Capital Improvement or Structural Repair, provided  
9 that such Capital Improvement or Structural Repair, as applicable, shall be deemed a Deferred  
10 CI/SR for the next Fiscal Year's Annual Budget.

11 4.6 **Impositions**

12 4.6.1 PDC shall pay any and all Impositions with respect to the Coliseum prior to  
13 the date on which any fine, penalty, interest, or cost may be added to such Imposition or imposed  
14 by law for its nonpayment. The payment of Impositions is an Operating Expense.

15 4.6.2 Any Imposition that includes a period of time prior to or after the Term  
16 (whether or not such Imposition shall be assessed, levied, or otherwise become payable during the  
17 Term) shall be prorated such that the portion of the Imposition that is applicable to the Term shall  
18 be paid as an Operating Expense and the remainder shall be the responsibility of the City.

19 4.6.3 PDC may, upon prior written notice to the City, contest the legal validity or  
20 amount of any Imposition in its reasonable discretion and may institute such proceedings as it  
21 reasonably considers necessary in connection with such contest. PDC may withhold or defer  
22 payment of the contested Imposition, provided such actions do not subject the Coliseum to a risk  
23 of sale or forfeiture. If PDC withholds or defers payment of an Imposition, PDC shall withdraw  
24 from the Operating Account (or, if sufficient funds are not available from the Operating Account,  
25 shall pay from PDC Funds) and place in a separate interest-bearing reserve account the amount  
26 contested and unpaid, together with an amount reasonably sufficient to pay all fines, penalties,  
27 interest, and costs that may be incurred in connection with the contest, which amounts will be  
28 applied to payment of the Imposition to the extent required. If the contest is resolved in favor of  
29 PDC, the amounts held in such reserve account shall be returned to the Operating Account (or to

1 PDC, to the extent of any contribution made by PDC out of PDC Funds). The City shall make  
2 reasonable efforts to cooperate, without compromising its regulatory authority, in any contest  
3 permitted under this Section 4.6.3 and shall execute any documents or pleadings reasonably  
4 required for such contest. Any proceeding described in this Section 4.6.3 shall be brought in the  
5 name of PDC, unless Governmental Regulations provide that such proceeding must be brought in  
6 the name of the City by virtue of the City's ownership of the Coliseum. If the City Approves of  
7 any such contest, the actual reasonable cost of pursuing such contest shall be an Operating  
8 Expense.

9 4.6.4 If the Multnomah County Tax Assessor determines that the Coliseum is  
10 subject to ad valorem taxation pursuant to ORS Chapter 307, the City may elect by written notice  
11 to PDC, to challenge this determination under the statutory procedures and may appeal any  
12 adverse determination. The actual reasonable cost of such challenge and appeal shall be an  
13 Operating Expense. PDC shall reasonably cooperate with any such contest and if PDC incurs a  
14 cost directly as a result of such cooperation, the cost will be an Operating Expense. Upon any  
15 such taxation determination having been made by the Tax Assessor, PDC shall establish a tax  
16 reserve, and shall thereafter reserve from Operating Revenues reasonably sufficient amounts to  
17 cover Coliseum real property taxes, assessments, interest, and penalties. If, after the City's  
18 challenge to the Tax Assessor's determination is finally resolved, the Coliseum remains subject to  
19 ad valorem taxation, the reserve shall be used by PDC to pay all accrued but unpaid ad valorem  
20 taxes, penalties and interest; and if the Coliseum is not subject to ad valorem taxation, the funds in  
21 the reserve shall be paid to PDC and the City pursuant to Sections 5.5 and 5.6.

22 4.6.5 Nothing in this Section 4.6 shall in any way relieve PDC of its obligation to  
23 pay, at its own cost and expense, any and all taxes, assessments, levies, fees, or other Impositions  
24 payable with respect to PDC's income, assets, business or properties.

#### 25 4.7 **Acquisition of Supplies, Materials, and Equipment**

26 4.7.1 Subject to agreement with PAM, at the commencement of the Term, PDC  
27 may acquire from PAM for use in the operations of the Coliseum the inventory of consumables,  
28 supplies, equipment and materials pertaining to the Coliseum in existence upon the  
29 commencement of the Term at PAM's book cost for such items. PDC will conduct a physical



1 inventory of all such consumables, supplies, equipment, and materials at the Coliseum within the  
2 first seven (7) days following the Effective Date and will provide a copy thereof to the City. The  
3 cost of acquisition of such articles shall be an Operating Expense.

4           4.7.2 Subject to PAM’s rights and obligations contained in the Original Operating  
5 Agreement, on or before the Effective Date of this Agreement, PDC, the City, and PAM shall  
6 conduct an inventory of: the tools, machinery, equipment fixtures, furniture, and other personal  
7 property at the Coliseum as of the Effective Date and that inventory shall be attached as Exhibit  
8 4.7.2. After the inventory is completed, the City may remove items from the inventory and from  
9 the Coliseum which are described in Exhibit 4.7.2 and which are not needed for the operations of  
10 the Coliseum. The items which remain on the inventory will be the “**Personal Property**”. PDC  
11 and the City shall, within the first thirty (30) days following the Effective Date, conduct a physical  
12 inventory of the tools, machinery, equipment, fixtures, furniture and other personal property  
13 located at the Coliseum and used in the operation of the Coliseum. The City makes no  
14 representation or warranty regarding the condition of the Personal Property and PDC accepts the  
15 Personal Property as is. Any new tools, machinery, equipment, fixtures, furniture, or other  
16 personal property acquired as a Capital Improvement or Repair during the Term shall be included  
17 in the Personal Property upon acquisition of such items by PDC. PDC shall have a license to use  
18 the Personal Property in connection with the operation of the Coliseum. PDC shall be responsible  
19 for Maintaining and Repairing the Personal Property. If any item of Personal Property becomes  
20 unusable and it is not reasonable to Repair such item, then PDC shall obtain a replacement item  
21 and the cost of such replacement item shall be a Repair if the cost is Fifty Thousand Dollars  
22 (\$50,000.00) (as adjusted pursuant to Section 19.1) or less, or if the cost is more than Fifty  
23 Thousand Dollars (\$50,000.00) (as adjusted pursuant to Section 19.1), then such replacement shall  
24 be a Capital Improvement, subject to Section 4.5.5.

25           4.7.3 In accordance with an approved Annual Budget, PDC shall purchase, lease,  
26 or otherwise acquire such additional materials, tools, machinery, equipment, supplies, and other  
27 articles required for the operation of the Coliseum and the performance of PDC’s other obligations  
28 under this Agreement. The cost of acquiring materials, supplies and consumables shall be an  
29 Operating Expense and the cost of acquiring additional machinery or equipment shall be treated as

1 either a Repair or a Capital Improvement pursuant to Section 4.7.2. All items referred to in this  
2 Section 4.7.3 shall be included in the Personal Property.

3 4.7.4 Acquisition of the items described in Section 4.7 shall conform to PDC's  
4 then-existing "Emerging Small Business Utilization Goals."

5 4.7.5 Items of Personal Property shall be owned by the City, subject to PDC's  
6 license to use such items and the other applicable terms and provisions of this Agreement.

7 4.8 **Assumption of Agreements**

8 4.8.1 The "Existing Agreements" are the agreements listed on the attached  
9 Exhibit 4.8.1, excluding such agreements which are terminated prior to commencement of the  
10 Term, but including any Authorized Agreements. PDC shall have the right to reasonably approve  
11 (i) agreements entered into after the Reference Date, to the extent the term of such agreement  
12 extends beyond the Effective Date; and (ii) agreements directly or indirectly modifying, to the  
13 benefit of PAM, the economic terms of the Additional PAM Options. Any such agreement shall  
14 be approved or disapproved by PDC in writing within thirty (30) calendar days of PDC's receipt of  
15 the same. PDC's failure to respond within such 30-day period shall be deemed PDC's approval  
16 of the applicable agreement. Such approved agreements shall be referred to as "**Authorized**  
17 **Agreements**" and, except for agreements modifying the Original Operating Agreement, shall be  
18 included in the Existing Agreements. The City may, upon written notice to PDC prior to the  
19 Effective Date, supplement Exhibit 4.8.1, and thereby add to Exhibit 4.8.1 such other existing  
20 agreements affecting the Coliseum as may be discovered by the City and such agreements shall be  
21 included in the Existing Agreements. Upon the commencement of the Term, PDC shall assume  
22 the Existing Agreements. Thereafter, PDC shall perform all of the City's or PAM's obligations  
23 under the Existing Agreements. The City represents and warrants that (i) there are no agreements  
24 which pertain to the Coliseum and which would be binding on PDC, other than the Existing  
25 Agreements; (ii) the Existing Agreements shall be assignable to PDC and, on or before  
26 commencement of the Term, the City shall have received any consents required to such  
27 assignment; and (iii) except as otherwise disclosed in writing by the City, the Existing Agreements  
28 are in full force and effect, the City (or its agent signing the Existing Agreement) is not in default  
29 of any of the Existing Agreements, and, based on the City's actual knowledge, the other party to

1 each Existing Agreement is not in default of such Existing Agreement. With respect to any  
2 agreement which would have been included in the Existing Agreements but for the fact the  
3 agreement is in default as of the commencement of the Term, PDC will have the option to assume  
4 such agreement and if PDC does so, then this agreement shall be included in the Existing  
5 Agreements. With respect to agreements which may be terminated on such sixty (60) days  
6 advance notice, PDC may give this notice during the Transition Period.

7 4.8.2 With respect to any of the Existing Agreements, PDC and the City shall  
8 prorate as of the commencement of the Term any revenue or expenses derived from such Existing  
9 Agreements. Any deposits previously paid by the City or PAM and refundable under the terms of  
10 such Existing Agreements shall be refunded to the City or PAM, as applicable, in accordance with  
11 the terms of such Existing Agreements. Prior to the commencement of the Term, the City will  
12 provide PDC with a schedule of all deposits paid by or held by the City pursuant to the Existing  
13 Agreements. On the commencement of the Term, the City will transfer any deposits held by the  
14 City to PDC to be held by PDC under the terms of the applicable Existing Agreement. PDC will  
15 pay over to the City any funds previously paid as deposits by PAM or the City whenever PDC  
16 recovers such deposit.

17 4.8.3 Subject to Section 4.8.4, after assumption by PDC, and subject to the  
18 limitations of the Oregon Constitution and the Oregon Tort Claims Act, PDC shall defend,  
19 indemnify, and hold the City harmless from any claim, default, loss or damage claimed by the  
20 other party to an Existing Agreement and arising out of events occurring after PDC's assumption  
21 of the Existing Agreement. Notwithstanding the foregoing, such obligations to defend,  
22 indemnity, and hold harmless shall not apply to the extent the damages under the Existing  
23 Agreement are caused by the negligence of the City (excluding PDC). The foregoing defense and  
24 indemnification obligation shall be at PDC's sole cost and expense (and not as an Operating  
25 Expense) if the underlying claim arose out of PDC Negligence or PDC's actual breach of the  
26 underlying Existing Agreement. To the extent an Existing Agreement is assumed by PDC, and  
27 PDC's right, title or other interest in such Existing Agreement is thereafter the subject of a  
28 Transfer involving the Independent Operator, then the Independent Operator and PDC shall be  
29 jointly and severally liable for the indemnification obligations under this Section 4.8.3. The  
30 Independent Operator Agreement shall contain provisions consistent with this Section 4.8.3.



1                   4.8.4 After assumption by PDC, and subject to the limitations of the Oregon  
2 Constitution and the Oregon Tort Claims Act, the City shall defend, indemnify, and hold PDC  
3 harmless from any claim, default, loss or damage claimed (i) by the other party to an Existing  
4 Agreement and arising out of events occurring prior to PDC's assumption of the Existing  
5 Agreement and (ii) under any contract between the City and a third party related to the Coliseum  
6 that PDC is not assuming, or to which PDC is not a party, or the obligations of which PDC  
7 otherwise is not obligated to perform pursuant to this Agreement. Notwithstanding the foregoing,  
8 the City's obligations to defend, indemnify, and hold harmless shall not apply to the extent the  
9 damages under the Existing Agreements are caused by PDC Negligence.

10           4.9    **Coordination and Integration with Arena Operations**

11                   4.9.1 With respect to the Cooperative Events, PDC shall work cooperatively with  
12 the Arena management to operate, manage, schedule, advertise, market, promote, license,  
13 Maintain, and Repair the Coliseum and the Arena in a coordinated and integrated manner  
14 throughout the Term.

15                   4.9.2 Subject to prior scheduling commitments at the Coliseum, to the extent  
16 Cooperative Events or other events or operations at the Arena require access to facilities available  
17 at the Coliseum, including, without limitation, loading docks, PDC shall use Reasonable Efforts to  
18 provide such access to events at the Arena. PDC shall charge rental rates for such access that is  
19 consistent with the bid package contemplated in Section 4.2.3.4.

20           4.10   **Alterations**

21                   PDC may not make any Alterations to or of the Coliseum unless such Alterations  
22 are Approved of by the City in advance or are Approved as part of the Annual Budget. This  
23 Section 4.10 shall not apply to Repairs, which shall be subject to Section 4.5, nor to emergency  
24 Capital Improvements made pursuant to Section 7.8. Further, an Alteration is distinguished from,  
25 and shall not be deemed to be a Capital Improvement.

26           4.11   **Advertising**



1                   4.11.1 The rights to apply a non-temporary name to a portion of the Coliseum  
2 (excluding the Veterans' Memorial gardens), such as the seating bowl, the press box, entryways,  
3 or a concourse are "**Naming Rights.**" The rights to apply a non-temporary name to all or a  
4 portion of the Scoreboard are "**Scoreboard Naming Rights.**" PDC shall have the exclusive right  
5 to offer for sale all Naming Rights. Any sale of Naming Rights shall occur only pursuant to a  
6 written agreement (a "**Naming Rights Agreement**") setting forth the price, payment terms, and  
7 any other terms for the sale of the applicable Naming Right. The association of a name, on a  
8 non-permanent basis, with a part of the Coliseum is included in Advertising and not Naming  
9 Rights, and is subject to the restrictions in Section 4.11.4.

10                   4.11.2 The proposed form of any Naming Rights Agreement proposed by PDC  
11 shall be submitted to the City for review and Approval. PDC will not enter into a Naming Rights  
12 Agreement unless it has received City Approval. Any such Approval is subject to the limitations  
13 and standards set forth below. The City may only disapprove a Naming Rights Agreement if its  
14 terms and conditions are inconsistent with the terms of this Agreement, or if such Naming Rights  
15 Agreement, if assumed by the City, would impose unacceptable obligations or liabilities on the  
16 City. A Naming Rights Agreement shall specify a specific name to be applied to the applicable  
17 portion of the Coliseum.

18                   4.11.3 The following limitations apply to PDC's sale or offering of Naming  
19 Rights:

20                   4.11.3.1 PDC may convey Naming Rights applicable to components or  
21 elements of the Coliseum contained within the Coliseum's perimeter walls, to a business (but not  
22 an individual or political entity), including to a business associated with or connoting alcohol  
23 products or gambling. Naming Rights shall not be conveyed to a business associated with or that  
24 connotes: tobacco products, gun manufacturers or businesses whose primary business is selling  
25 guns or sexual products.

26                   4.11.3.2 Nothing in this Agreement shall be deemed to grant PDC any  
27 rights to sell, offer to sell, or otherwise apply a permanent or temporary name to the entire  
28 Coliseum itself.

1                           4.11.3.3 Nothing in this Agreement shall be deemed to grant PDC any  
2 rights to sell, offer to sell, or otherwise apply a permanent or temporary name to the Veterans'  
3 Memorial gardens.

4                           4.11.3.4 Nothing in this Agreement shall be deemed to grant PDC any  
5 rights to sell, offer to sell, or otherwise apply a permanent name to the Scoreboard.

6                           **4.11.4 Limitation on Advertising**

7                           4.11.4.1 “**Advertising**” consists of the display of a company’s name, logo,  
8 trademarks, trade names, images, or products on a temporary basis, including, without limitation,  
9 audio and visual commercial messages announced or presented, even though the advertising may  
10 be contractually committed for more than one (1) year, where the physical representation of such  
11 name, logo, trademarks, trade names, images, or products can be readily removed or replaced with  
12 another company’s name, logo, trademark, trade name, image or product. Advertising includes  
13 sponsorships and promotions. During the Term, PDC shall have the exclusive commercial  
14 Advertising rights for the Coliseum (excluding the Veterans’ Memorial gardens and the  
15 Scoreboard), the area inside the Coliseum Arena and the Coliseum Arena’s outer concourses and  
16 the vestibule area of the concourse, including but not limited to: the fixed display panels attached  
17 to all equipment in the Coliseum Arena, all sign boards presently located inside the Coliseum  
18 Arena and on the Coliseum Arena’s outer concourses and vestibule area, and any new sign boards  
19 to be erected by PDC within the Coliseum Arena and the Coliseum Arena’s outer concourses and  
20 vestibule area. Costs (including, without limitation, sign boards), expenses and liability  
21 associated with Advertising shall be Operating Expenses. Without limiting the generality of this  
22 Section 4.11.4.1, PDC shall have the express right to sell or sublicense Advertising during the  
23 Term and, to the extent all or part of such rights are so sold or sublicensed to PWH, revenues from  
24 such Advertising shall be shared between PDC and PWH in accordance with the PWH Sublicense  
25 in effect on the Reference Date (not the Effective Date), which PWH Sublicense shall not be  
26 amended except as provided in Section 15.4.8, below.

27                           4.11.4.2 With respect to Advertising that occurs on the outside face of the  
28 perimeter walls of the Coliseum or outside of the perimeter walls of the Coliseum, such  
29 Advertising may not connote guns, sexual products, gambling, or tobacco products, unless in the

1 case of tobacco products the advertised name applies to a series of events, one of which is to be  
2 held at the Coliseum. Advertising that occurs on the outside face of the perimeter walls of the  
3 Coliseum or outside of the perimeter walls of the Coliseum may connote alcohol products.

4 4.11.4.3 With respect to Advertising that occurs within the perimeter walls  
5 of the Coliseum, such Advertising may not connote guns or sexual products, but may connote  
6 alcohol, gambling or tobacco products.

7 4.11.5 No Advertising, marketing, or promotional messages or materials shall  
8 refer to the City in its role as owner or operator of the Coliseum without the prior written approval  
9 of the City. The foregoing prohibition shall not apply to general references to the City of Portland  
10 as a geographic area or to the Veterans Memorial Coliseum. PDC shall exercise strict control  
11 over the quality and suitability of advertising, marketing, and promotional messages and materials  
12 promoting the Coliseum.

13 4.11.6 Upon the expiration of the Term, all PDC rights under this Section 4.11  
14 shall terminate, and the City may, but shall have no obligation to, assume any Naming Rights  
15 Agreement, Advertising contract, or similar obligation. PDC shall not contract for, or collect any  
16 sum applicable to, Naming Rights or Advertising for the period after the end of the Term.

17 4.12 **Exclusion of Parking**

18 PDC acknowledges that the management, use (except as provided in this Section  
19 4.12), and operations of, and revenue generated by (except as provided in Section 5.11 hereof) the  
20 parking facilities owned by the City, including, without limitation, the Benton surface lot if not  
21 already developed by PDC, are beyond the scope of this Agreement. Notwithstanding anything  
22 to the contrary in this Agreement, the City shall make the Benton surface lot available to PDC for  
23 Events until the earlier to occur of the development or sale of such property. The City shall have  
24 no obligation to provide an alternative parking location or otherwise replace the “Benton Lot” if  
25 such property is developed or otherwise sold.

26 **SECTION 5 FINANCIAL OBLIGATIONS**

27 5.1 [Reserved]

1           5.2    [Reserved]

2           5.3    **During the Term**

3                   5.3.1 **Operating Account.** On or prior to the commencement of the Term, PDC  
4 shall establish a separate bank account designated as the “Operating Account.” All Operating  
5 Revenues shall be paid into the Operating Account, and no disbursements shall be made from the  
6 Operating Account other than for payment or reimbursement of Operating Expenses or pursuant to  
7 Sections 5.5 and 5.6. The Operating Account shall be an interest bearing account to the extent  
8 interest bearing demand accounts are commercially available.

9                   5.3.2 **User Fees.** Separate and in addition to any other sums payable to the City  
10 under this Agreement, PDC shall: (a) pay to the City all User Fees with respect to Events for  
11 which PDC (or the Independent Operator) is the promoter; and (b) shall collect from promoters  
12 and remit to the City all User Fees with respect to Events for which PDC is not the promoter. By  
13 way of illustration and not limitation, if the Ticket Price for an Event is Ten Dollars (\$10.00), the  
14 User Fee would be \$0.70 (actual ticket price multiplied by 0.07). PDC’s obligations under this  
15 Section 5.3.2 shall terminate upon termination of this Agreement.

16                           5.3.2.1 **Payment Terms.** Payments shall be paid to the City at such place  
17 as the City may direct from time to time upon reasonable notice to PDC. The User Fees shall be  
18 paid or remitted, as the case may be, not later than seventy-two (72) hours following: (a) the date  
19 of the Event with respect to Events for which PDC (or the Independent Operator) is the promoter  
20 or is otherwise obligated to pay the User Fee; and (b) the later of (X) the date of the Event, or (y)  
21 the date that such User Fee is collected by PDC or the Independent Operator, with respect to  
22 Events for which PDC or the Independent Operator, as applicable, is not the promoter and is not  
23 otherwise obligated to pay the User Fee. Notwithstanding the foregoing, User Fees with respect  
24 to season or series tickets of the Portland Winter Hawks hockey team shall be paid in accordance  
25 with the City’s practices as of the Effective Date.

26                                   (a) PDC shall maintain a separate “**Ticket Revenue Account**” for the  
27 Coliseum, which shall be an interest-bearing account to the extent an interest-bearing demand  
28 account is available. User Fees payable with respect to season or series tickets, except season or



1 series tickets of the Winter Hawks, shall be deposited into such account by the first Business Day  
2 following the date of the Event for which the User Fee is due. User Fees with respect to season or  
3 series tickets of the Portland Winter Hawks hockey team shall be deposited into such account or  
4 paid directly to the City in accordance with the City’s practices as of the Effective Date. Any  
5 other User Fees shall be collected and deposited as follows (the “**User Fee Collection Policy**”):

6 (i) Tickets Sold on Date of Event: Revenues from sales of  
7 tickets to Events which include User Fees will be deposited into the Ticket Revenue Account no  
8 later than the next Business Day following the Event.

9 (ii) Advance Ticket Sales (Other than Season or Series):  
10 Revenues from the sale of tickets to Events which include User Fees will be deposited into the  
11 Ticket Revenues Account no later than the next Business Day following the later of the date of sale  
12 or the date received from third party ticket sellers.

13 (iii) Multiple Performance Shows: For events taking place in  
14 multiple performances over consecutive days, or over non-consecutive days interrupted by not  
15 more than five (5) non-performance days, the date of the Event shall be deemed to be the day of the  
16 last performance of the Event.

17 (iv) Remittance of Funds to PDC: Ticket agencies and other  
18 third party ticket sellers shall remit all advance ticket sale collections the earlier of the collection of  
19 \$100,000 or more, at the end of the week, or the day of the Event. Third party ticket sellers may  
20 remit by check.

21 (v) Ticket Agency Financial Requirements: Any and all ticket  
22 sellers, other than PDC, an Affiliate, or not otherwise exempted by mutual agreement between  
23 PDC and the City, shall comply with the following bonding requirement: The bonding  
24 requirement is accomplished by obtaining a fidelity bond insuring up to \$200,000, or irrevocable  
25 letter of credit for an equal amount.

26 (b) Each payment of User Fees shall be accompanied by a statement  
27 signed by an officer of PDC listing or accompanied by: (i) a description of the Event for which the  
28 User Fee is paid; (ii) the Box Office Statement; (iii) a copy of the executed Coliseum Agreement;

1 (iv) a Settlement Report; and (v) a report showing the number of Exempt Tickets issued. The City  
2 and PDC may agree from time to time on another User Fee reporting form or format. PDC shall  
3 be entitled to rely in good faith on information provided by any promoter or third-party ticket seller  
4 with respect to sales of Non-Exempt Tickets, Ticket Price, and other similar information that PDC  
5 cannot determine directly.

6 (c) PDC shall pay to the City all of the interest earned on User Fees  
7 while in the Ticket Revenue Account, monthly with the monthly statement described in Section  
8 5.3.2.1(f). To the extent ticket proceeds or other non-User Fee funds are also in such account, the  
9 interest will be reasonably allocated.

10 (d) The User Fee Collection Policy is intended to provide the City a  
11 degree of protection for collection of User Fees, and not for any other purpose. Accordingly,  
12 PDC may in its sole discretion adopt from time to time modified or alternative policies so long as  
13 such modified or alternative policies reasonably afford the City equal or superior protection for  
14 collection of User Fees. PDC shall provide to the CAO written statements of such modified or  
15 alternative policies, and the CAO shall not unreasonably withhold its approval thereof.

16 (e) PDC shall use Reasonable Efforts to collect User Fees from  
17 third-party promoters and shall use the same degree of diligence that it uses in collecting monies  
18 owed to it by that promoter, but shall not be liable for such User Fees if any promoter fails to pay,  
19 and PDC shall not be obligated to file an action to collect such User Fees. Notwithstanding the  
20 foregoing sentence, if PDC shall have collected any monies with respect to an Event from a  
21 promoter related to User Fees, rent, or services provided by PDC in connection with the Event  
22 which are not separately chargeable from rent such as users, security personnel, or state personnel,  
23 and if such promoter fails to pay all User Fees due for that Event, such collected monies shall be  
24 paid by PDC as follows: (i) first, to unpaid User Fees to the extent of the monies collected; (ii)  
25 second, to services provided by PDC in connection with the Event which are separately chargeable  
26 from rent; and (iii) third, to rent.

27 (f) PDC shall maintain books and records in accordance with GAAP  
28 that appropriately reflect Event ticket sales in order to determine User Fees. PDC shall have the  
29 right to rely in good faith on the reports and records of Event promoters and ticket sellers. On a

1 monthly basis, PDC shall provide to the City statements of monthly and fiscal year-to-date Event  
2 ticket sales and User Fees. The City and its representatives shall have the right upon reasonable  
3 notice at reasonable times during normal business hours and at reasonable frequencies to examine  
4 PDC's relevant books and records in order to confirm the amount of User Fees.

5 **5.3.2.2 Reduction of Obligation to Pay User Fees.** PDC and the City  
6 acknowledge that the City's obligation to defend, indemnify and/or hold PDC harmless as  
7 provided in Section 4.8.4 of this Agreement may be limited or may be void and therefore  
8 unenforceable in whole or in part. Nevertheless, if the City does not perform its stated obligation  
9 to defend, indemnify and/or hold PDC harmless as provided in Section 4.8.4 of this Agreement,  
10 whether by reason of a limitation or unenforceability of such provision or otherwise, PDC's  
11 obligation to pay User Fees shall be reduced dollar-for-dollar by all amounts (a) to which it would  
12 have been entitled to be paid, plus (b) which PDC has expended (such as costs of defense) which it  
13 would not otherwise have had to expend, had the City's obligation to defend, indemnify, and/or  
14 hold PDC harmless been fully enforceable and been fully performed. Such reduction shall be  
15 deemed to not, however, reduce the amount of User Fees for purposes of the computation of  
16 Operating Revenue.

17 **5.3.3** PDC shall not commingle funds held in the Operating Account with the other  
18 funds of PDC or other funds of any other Person, except to the extent PDC is required to make  
19 contributions to the Operating Account pursuant to Section 5.4.

20 **5.3.4** PDC shall hold all funds deposited in the Operating Account in trust for the  
21 City and shall disburse such funds strictly in accordance with the terms of this Agreement. PDC  
22 shall institute reasonable controls regarding the authorization of disbursements from the Operating  
23 Account, subject to City Approval. PDC shall be responsible for handling all such funds as a  
24 fiduciary, but shall not be considered a fiduciary in any other respect. PDC shall not be liable for  
25 punitive damages for any breach of its fiduciary duties in handling funds.

26 **5.4 Payment of Operating Expenses**

27 **5.4.1** All costs and expenses of operating the Coliseum during the Term shall be  
28 Operating Expenses, unless responsibility for payment of such cost or expense otherwise is

1 specifically allocated to either Party under this Agreement. The absence of specific identification  
2 of a cost or expense as an Operating Expense or Capital Improvement expense shall not, of itself,  
3 mean that such cost or expense is not an Operating Expense or Capital Improvement expense, if  
4 the cost in fact meets the definitional requirements of Operating Expenses or Capital  
5 Improvements. PDC shall pay all Operating Expenses in a timely manner using funds held in the  
6 Operating Account.

7           5.4.2 PDC may obtain a working capital credit line to provide working capital for  
8 the operations of the Coliseum. The amount of the credit line shall be reasonable and based on the  
9 actual need for working capital to operate the Coliseum, taking into account the amount of the City  
10 NOL Reimbursement, and shall be established as part of the Annual Budget referred to in  
11 Section 6.1. At or as of the end of each Fiscal Year during the Term, PDC will cause the credit  
12 line to be reduced to \$0.00, which may require an NOL payment referred to in Section 5.4.3.  
13 Interest, set-up costs, and annual fees paid on the credit line shall be an Operating Expense. PDC  
14 may itself provide such working capital for Coliseum operations, which shall bear interest from the  
15 date expended until repaid at the end of the Fiscal Year, at the lesser of (i) the Prime Rate plus two  
16 percentage points or (ii) the rate offered by competitive financial institutions for a similar working  
17 capital line of credit secured by PDC's credit. The credit line may be secured by a pledge or  
18 assignment of Net Income and both PDC and the City agree to pledge or assign their respective  
19 shares of Net Income to secure such credit line.

20           5.4.3 During the Term, to the extent funds (including working capital) in the  
21 Operating Account are insufficient to pay any due and payable Operating Expenses (the "NOL")  
22 subject to the City NOL Reimbursement (as defined below) and the PWH NOL Reimbursement  
23 (as defined below), PDC shall be solely responsible for the payment of such NOL and shall pay the  
24 NOL out of PDC Funds. PDC shall not accelerate or defer the payment of Operating Expenses  
25 for the purpose of limiting or reducing its obligation to satisfy any deficiency between Operating  
26 Revenues and Operating Expenses. Each payment made by PDC pursuant to this Section 5.4.3  
27 shall be referred to as an "NOL Payment." As used in this Agreement "City NOL  
28 Reimbursement" means an amount not to exceed Two Hundred Fifty Thousand and No/100  
29 Dollars (\$250,000) for each Fiscal Year during the Term, which shall be paid by the City to PDC to  
30 reimburse PDC for NOL, if any, existing in the prior Fiscal Year. For each Fiscal Year, the City



1 NOL Reimbursement will be calculated as follows: (i) 50% of the first \$250,000 of NOL; plus  
2 (ii) 100% of NOL greater than \$250,000 and less than or equal to \$375,000. A City NOL  
3 Reimbursement shall be paid within sixty (60) days following PDC’s delivery to the City of an  
4 accounting for the prior Fiscal Year evidencing the NOL, which accounting shall identify all  
5 Coliseum Expenses, Coliseum Revenues, applicable costs and expenses of PDC, including  
6 without limitation, management costs, and which accounting is subject to the Approval of the City.

7 5.4.4 The City and PDC acknowledge that under the terms of the PWH Sublicense,  
8 PWH will be obligated to reimburse PDC for 50% of the first \$250,000 of NOL each Fiscal Year  
9 during the Term (the “**PWH NOL Reimbursement**”).

10 5.4.5 If PDC engages PAM, Vulcan Ventures, Inc., a Washington corporation,  
11 Paul Allen, or any Affiliate, successor or assignee of any of the foregoing as the Independent  
12 Operator, then the City shall be entitled to recover (without interest) the amount of any City NOL  
13 Reimbursement occurring in a Fiscal Year from Net Income from each of the next consecutive  
14 three (3) Fiscal Years until the City NOL Reimbursement amount is reduced to zero (0), which  
15 recoveries shall be Operating Expenses. Such recoveries shall be allocated to the City NOL  
16 Reimbursement first incurred during such three (3) prior Fiscal Years. PDC shall not be entitled  
17 to recover an NOL Payment, in whole or in part, with respect to operations of the Coliseum  
18 following any termination of this Agreement. The City’s rights to User Fees are independent of  
19 any rights to Net Income, such that nothing in this Section 5.4.5 shall be deemed to reduce the  
20 amount, or otherwise modify the timing for payment of, any User Fees.

21 5.4.6 Under no circumstances shall the City be required to make contributions to  
22 the Operating Account or be liable in any other manner for any cost, expense, loss, damage, or  
23 other obligation relating to the operation, management, administration, use, scheduling,  
24 marketing, advertising, promotion, security, licensing, provision of concessions, Maintenance or  
25 Repair of or at the Coliseum, whether to contractors, concessionaires, licensees, or any other  
26 Person, except to the extent expressly set forth in this Agreement. Further, any obligations of the  
27 City with respect to the City NOL Reimbursement shall be considered an operating cost of the  
28 Spectator Facilities Fund.

29 5.5 **PDC Fee**

1           5.5.1 At the end of each calendar month during each Fiscal Year of the Term, PDC  
2 shall determine the Net Income for the Coliseum for that calendar month of such Fiscal Year.  
3 Within thirty (30) days after the end of each calendar month during each Fiscal Year, PDC shall  
4 promptly submit to the City an income statement for that month showing Coliseum gross revenues,  
5 a year-to-date calculation of Operating Expenses including Operating Expenses paid, Net Income  
6 or NOL Payments, a statement of the cash balance in the Operating Account, and a statement of  
7 the amount owed on the working capital credit line, plus a summary of the number of Events for  
8 that calendar month and, on a per event basis, gross revenue, and the number of paid and any  
9 unpaid attendees.

10           5.5.2 Subject to the limitations contained in Section 5.4.5, above, concurrent with  
11 any distributions payable under the Revenue Sharing Agreement (as amended by Section 5.11,  
12 below), but within sixty (60) days after the end of each Fiscal Year during the Term, PDC shall be  
13 paid from the Operating Account, as an Operating Expense, a fee for its services under this  
14 Agreement equal to forty percent (40%) of the Net Income for that Fiscal Year.

15           5.6     **Distribution to City**

16           At the same time that PDC pays the fee to PDC described in Section 5.5.2, which  
17 timing is subject to the limits set forth in Section 5.4.5, above, PDC shall disburse to the City the  
18 balance of the Net Income for the Coliseum for that Fiscal Year. From that disbursement to the  
19 City, one-half (1/2) shall be designated by the City for Capital Improvements and identified in the  
20 Budget Amount, and the other one-half (1/2) shall be designated by the City for general City  
21 purposes not limited to use in or for the Coliseum.

22           5.7     **Replacement of Capital Improvements Account**

23           The City and PDC acknowledge that the Original Operating Agreement  
24 contemplated the establishment and maintenance by the City of a “Capital Improvements  
25 Account.” For purposes of this Agreement, and in lieu of such a separate account, the City has  
26 agreed to carry the Budget Amount to be applied towards the costs of Repairs, Capital  
27 Improvements, or other increased Operating Expenses arising out of Deferred CI/SR.

28           5.8     **Late Charges**

1 In the event that payments to be made by PDC to the City referred to in Section 5.6  
2 are not made in full when due, such past due payment shall bear interest on the amount owed at the  
3 Prime Rate plus four percentage points from the date such payment was due until the date the  
4 payment is made. Any such accrued interest shall be paid from PDC Funds.

5 5.9 **Audit Adjustment**

6 5.9.1 If the Auditor determines in connection with the audit described in  
7 Section 6.3 that there have been underpayments to the City or PDC during the preceding Fiscal  
8 Year, the City or PDC (whichever has been underpaid) shall be paid from other party the amount  
9 of the underpayment determined by the Auditor, within thirty (30) days after completion of the  
10 audit. If the Auditor determines in the course of such audit that there have been overpayments to  
11 the City or PDC, then the City or PDC (whichever has been overpaid) shall pay the amount of the  
12 overpayment determined by the Auditor within thirty (30) days after completion of the audit. It is  
13 the intent of the Parties that this Section 5.9 and Sections 5.5 and 5.6 shall be applied so that, at  
14 least annually, Net Income is reconciled by way of disbursements into and withdrawals from the  
15 Operating Account, with the result that PDC receives 40% and the City sixty percent (60%) of the  
16 Net Income for each Fiscal Year.

17 5.9.2 If PDC has made NOL Payments during a Fiscal Year, and the audit  
18 described in Section 6.3 determines that at the end of such Fiscal Year there was Net Income for  
19 that Fiscal Year, then, following reimbursement to the City of any City NOL Reimbursement and  
20 to PWH of any PWH NOL Reimbursement, PDC shall be entitled to recover the amount of its  
21 NOL Payments for that Fiscal Year to the extent of Net Income, without interest, from that Fiscal  
22 Year's Net Income prior to any distribution of Net Income pursuant to Section 5.6.

23 5.10 **Advertising Revenues**

24 All revenue from Advertising (expressly excluding Scoreboard Advertising) and the sale  
25 of Naming Rights (expressly excluding Scoreboard Naming Rights) shall be Operating Revenue.

26 5.11 **Revenue Sharing**

1 As of the Reference Date, the City and PWH are parties to the Revenue Sharing  
2 Agreement, the term of which expires on June 30, 2022. PDC acknowledges and agrees that,  
3 without regard to the Effective Date of this Agreement, PDC shall have no right, title, or interest in  
4 or to any revenues or losses referenced in the Revenue Sharing Agreement, and such sums shall be  
5 expressly excluded from the calculation of Operating Expenses and Operating Revenues under  
6 this Agreement.

7 5.11.1 Beginning on July 1, 2023 (if the Effective Date is July 1, 2023) or July 1,  
8 2028 (if the Effective Date is July 1, 2028) (as applicable, the “**Revenue Sharing Effective**  
9 **Date**”), the Revenue Sharing Agreement will be deemed incorporated into the body of this  
10 Agreement, subject to the following revisions:

11 5.11.1.1 As of the Revenue Sharing Effective Date, PDC shall be deemed  
12 to have assumed any and all rights, title and obligations of PWH under the Revenue Sharing  
13 Agreement first arising on or after the Revenue Sharing Effective Date, such that references to  
14 PWH as a party to the Revenue Sharing Agreement shall be deemed references to PDC.

15 5.11.1.2 Subject to the terms of this Agreement and any Community  
16 Events, Special Events, and Cooperative Events, PWH may be the sole user of the Coliseum.

17 5.11.1.3 Exhibit B to the Revenue Sharing Agreement shall be deleted in  
18 its entirety and replaced with Exhibit B attached hereto and incorporated herein by this reference.

19 5.11.1.4 The term of the Revenue Sharing Agreement shall commence on  
20 the Revenue Sharing Effective Date of this Agreement and shall continue until the earliest to occur  
21 of: (a) 11:59 PM on June 30, 2033; (b) the termination of the Revenue Sharing Agreement by the  
22 City for Cause (as such definition is modified below); (c) the termination by PDC of the Revenue  
23 Sharing Agreement; (d) the occurrence of an event of default by PWH under the Final RDA for  
24 PWH’s failure to make payments as and when due under the Final RDA and such failure continues  
25 beyond any applicable cure period; and (e) the Early Termination Date of this Agreement. PDC  
26 shall have no option to extend the term of the Revenue Sharing Agreement, as amended by this  
27 Agreement.



1                   5.11.1.5 With respect to PDC, “Cause” shall exist to terminate the Revenue  
2 Sharing Agreement in the following circumstances: (a) if any officer or director of PDC (each, a  
3 “PDC Official”) engages in or makes fraudulent or dishonest acts or statements, or other similarly  
4 egregious misconduct, in the course of performing its obligations under this Agreement or the  
5 Revenue Sharing Agreement; (b) if any person other than a PDC Official engages in or makes  
6 fraudulent or dishonest acts or statements, or other similarly egregious misconduct, in the course  
7 of performing its obligations hereunder, under the Revenue Sharing Agreement, and such event is  
8 not cured within a reasonable time to the City’s reasonable satisfaction following delivery of  
9 notice to PDC from the City; (c) if PDC subjects the City to claims of liability to third parties by  
10 engaging in unlawful acts or breach of contract in the course of performing its obligations  
11 hereunder or under the Revenue Sharing Agreement, and such claims are not resolved to the City’s  
12 reasonable satisfaction following delivery of notice from the City to PDC; (d) if PDC is grossly  
13 negligent or engages in willful malfeasance in the performance of its obligations hereunder or  
14 under the Revenue Sharing Agreement, and such misconduct is not cured within any cure period  
15 provided for in the applicable agreement; or (e) if PDC files a petition for bankruptcy, or if a  
16 petition for bankruptcy is filed against PDC and not dismissed within sixty (60) days following the  
17 date of filing.

18                   5.11.1.6 The City’s obligation to share with PDC the PWH Share is  
19 contingent upon PWH funding the entire PWH Contribution (as defined in the Final RDA).

20                   5.11.1.7 Disputes between the City and PDC arising under the Revenue  
21 Sharing Agreement shall be subject to Dispute Resolution under this Agreement, rather than  
22 dispute resolution proceedings under the Final RDA.

23                   5.11.1.8 The representations of each of the City and PDC shall be deemed  
24 the representations and warranties of such parties from this Agreement, rather than the Final RDA.  
25 Accordingly, the representations and warranties of each of the City and PDC contained in this  
26 Agreement shall be deemed incorporated into the Revenue Sharing Agreement for the benefit of  
27 the other, as if such representations and warranties were fully contained therein.

1                               5.11.1.9 The notice provisions contained in this Agreement shall be  
2 deemed incorporated into and shall replace the notice provisions contained in the Revenue Sharing  
3 Agreement.

4                               5.11.2 If PAM exercises both of the Additional PAM Options under the Original  
5 Operating Agreement, the revisions to the Revenue Sharing Agreement referenced in Section  
6 5.11.1 shall be of no force or effect, it being the express agreement of PDC and the City that such  
7 revisions are contingent upon PDC assuming operational control of the Coliseum. In no event  
8 shall PWH be deemed a third party beneficiary of this Section 5.11.

9 **SECTION 6 OVERSIGHT**

10                   6.1 **Annual Budgets**

11                               6.1.1 No later than ninety (90) days prior to the commencement of each Fiscal  
12 Year, PDC shall prepare and submit to the City an operating budget setting forth in reasonable  
13 detail anticipated Events, anticipated attendance, anticipated Operating Revenues, anticipated  
14 Operating Expenses, any proposed Capital Improvements for the following Fiscal Year and  
15 anticipated User Fees for that Fiscal Year (the “**Annual Budget**”). The City and PDC shall meet  
16 approximately two (2) months prior to the start of each Fiscal Year to review the upcoming Annual  
17 Budget for the Coliseum. The Annual Budget will include all anticipated revenue and expenses  
18 for the upcoming Fiscal Year along with a list of potential projects on which the City may elect to  
19 spend all or part of the Budget Amount or on which PDC may elect to spend sums related to Repair  
20 and Maintenance of the Coliseum, or both. The Annual Budget shall be subject to the City’s  
21 Approval. The standard for the City’s Approval shall be whether the proposed budget will enable  
22 PDC, in operating the Coliseum, to fulfill the Public Goals and objectives set forth in Section  
23 3.4.2. The City will take action on the proposed budget within forty-five (45) days of its receipt  
24 by the City. If the City elects to withhold its Approval of such budget, the City and PDC shall  
25 seek in good faith to agree upon a mutually satisfactory Annual Budget. Until an Annual Budget  
26 is determined by the Parties or pursuant to Dispute Resolution, PDC shall continue to operate the  
27 Coliseum in accordance with the Annual Budget most recently approved by the City, increased as  
28 follows: all Operating Expenses and Operating Revenues from the prior Annual Budget shall be  
29 adjusted on an annual basis pursuant to Section 19.1.

1           6.1.2 PDC shall operate the Coliseum and expend funds for Operating Expenses  
2 during a Fiscal Year in accordance with the line items and the total approved Annual Budget,  
3 subject to any Allowed Variance. However, PDC shall not be required to expend funds equal to  
4 the total approved Operating Expenses so long as such under-spending will not compromise the  
5 achievement of the Public Goals set forth in Section 3.4.2. An “**Allowed Variance**” is a cost  
6 increase in a fixed, non-variable (based on number of Events) cost category in the Annual Budget  
7 up to a maximum cumulative annual increase of ten percent (10%), subject to an overall cost  
8 increase of up to ten percent (10%) of the total of all fixed, non-variable cost categories in an  
9 Annual Budget.

10           6.1.3 The Annual Budget will be based upon an assumed number and mix of  
11 Events to be Approved by the City pursuant to Section 6.1.1. To the extent that the actual number  
12 of Events or mix of Events is different than the assumed number and mix, then PDC may  
13 reasonably modify the variable expenses in the Operating Expenses and modify the Operating  
14 Revenues to reflect changes caused directly by the different number or mix of Events. PDC will  
15 give the City written notice of any change in the Annual Budget which occurs pursuant to this  
16 Section 6.1.3, within ten (10) days after the last day of the calendar month in which such change  
17 occurs.

18           6.1.4 If PDC desires to make a material modification to the provisions of an  
19 approved Annual Budget during a Fiscal Year which is not an Allowed Variance, PDC shall  
20 submit such proposed modification to the City for the City’s Approval subject to the then standard  
21 and time frame referred to in Section 6.1.1. If the City elects to withhold its Approval to any  
22 proposed modification, the City and PDC shall proceed in the manner described in this Section 6.1  
23 with respect to proposed budgets.

24           6.2    **Financial Statements**

25           In addition to the statements required under Section 5.3.2 of this Agreement, within  
26 sixty (60) days after the end of each Fiscal Year, PDC shall furnish to the City:

1                   6.2.1 A summary statement of the operations of the Coliseum for that Fiscal Year  
2 showing at least the number of Events, paid and turn-style attendees per event, and any other  
3 significant facts regarding operations;

4                   6.2.2 An income statement for the Coliseum for that Fiscal Year showing actual  
5 Operating Revenues, actual Operating Expenses (in the line items used for the Annual Budget),  
6 and expenditures for Capital Improvements;

7                   6.2.3 A statement of cash flows with respect to the Coliseum as of the close of that  
8 Fiscal Year;

9                   6.2.4 [Reserved];

10                  6.2.5 A schedule setting forth all payments made during that Fiscal Year pursuant  
11 to Sections 5.5 and 5.6; and

12                  6.2.6 A certificate from either PDC or the Independent Operator stating that (i) the  
13 financial statements described in Sections 6.2.2 and 6.2.4 have been prepared in accordance with  
14 GAAP, consistently applied throughout the periods covered by such statements, and fairly reflect  
15 the financial condition and results of operations of the Coliseum with respect to such periods; (ii)  
16 the statements referred to in Sections 6.2.1, 6.2.3, 6.2.5, and 6.2.6 are accurate in all material  
17 respects; (iii) all payments to the City, and PDC during the preceding Fiscal Year have been made  
18 in strict compliance with the terms of this Agreement; and (iv) all disbursements from the  
19 Operating Account have been made in strict accordance with this Agreement. The certificate  
20 referenced in this Section 6.2.6 shall be signed by the executive director, in the case of PDC, or the  
21 chief executive officer or chief financial officer of the Independent Operator.

### 22                  6.3     Report by Auditor

23                  Within thirty (30) days after the end of the Fiscal Year, the City may by written  
24 notice to PDC require that an audit be conducted of the financial results of operations of the  
25 Coliseum for that Fiscal Year. In that notice the City shall designate an auditor who shall be an  
26 independent auditor (the “**Auditor**”). PDC shall cooperate with the Auditor by providing the  
27 Auditor access to the books, records, and employees pertaining to the operation of the Coliseum.



1 The charges for the services of the Auditor described in the preceding sentence shall be an  
2 Operating Expense. The report issued by any independent third party Auditor shall be binding on  
3 the Parties.

4 6.4 **Accounts, Books, and Records**

5 PDC shall keep true and complete accounts, books, and records relating to the  
6 management, administration, operation, use, scheduling, advertising, marketing, promotion,  
7 licensing, provision of concessions, Maintenance, Repair, and Capital Improvement of or at the  
8 Coliseum. All such books and records shall be maintained at PDC's offices in Portland, Oregon.  
9 All such books and records shall be retained by PDC and available to City for a period of five (5)  
10 years following the expiration of the Term, or earlier termination of this Agreement, or such longer  
11 period as may be provided under applicable Laws. The City shall be entitled, at any reasonable  
12 time, to make copies of such books and records and the cost of such copying is an Operating  
13 Expense. To the extent permitted under applicable Law, and provided PDC establishes and keeps  
14 in force security, back-up and anti-tampering safeguards reasonably acceptable to the City, PDC  
15 may maintain records of transactions and inventory on electronic media.

16 6.5 **Submission of Records**

17 6.5.1 [Reserved]

18 6.5.2 Within ninety (90) days after the end of each Fiscal Year, PDC shall submit  
19 to the City (i) a complete record of its marketing and scheduling records during the preceding  
20 Fiscal Year; and (ii) a complete record of its rental and usage rates and its licensing, concession,  
21 food, and beverage policies and pricing practices applicable during the preceding Fiscal Year.  
22 The records shall be in a format reasonably agreed upon by the Parties.

23 6.6 **Review by the City**

24 The City may perform any or all of the following activities from time to time at the  
25 expense of the City, which is an Operating Expense. In performing such activities, the City will  
26 use reasonable efforts to avoid interfering with PDC's performance of its obligations under this  
27 Agreement.

1           6.6.1 Enter the Coliseum at any time to determine whether PDC is operating the  
2 Coliseum in compliance with the terms of this Agreement, including, without limitation, in  
3 accordance with the Maintenance and Repair obligations of PDC described in Section 4.5;

4           6.6.2 Inspect, review, and make copies of, at reasonable times, the accounts,  
5 books, and records maintained by PDC pursuant to Section 6.4, provided that the City shall have  
6 the right to inspect and review such accounts, books, and records at any time and without notice to  
7 PDC if the City reasonably believes that employees or contractors of PDC or its Affiliates have  
8 engaged in fraud, misappropriation of funds, or other misconduct relating to the operation of the  
9 Coliseum; and

10          6.6.3 Engage in such other reasonable activities as may be reasonably required to  
11 perform a complete review of the operation of the Coliseum.

12          6.7    **Performance Review**

13           During the Term, the City may initiate and the Parties shall conduct subsequent  
14 Assessments, which may also include determining the extent of achievement of the Public Goals  
15 and objectives set forth in Section 3.4.2 and the financial impacts of this Agreement upon the  
16 Parties (each, a “**Performance Review**”), not more frequently than annually, in accordance with  
17 this Section 6.7 and Section 6.8. PDC and the City shall designate one (1) senior employee each,  
18 both of whom shall devote as much time as is necessary during this period, to perform such  
19 Performance Reviews and the expense of such employees shall be borne by such employer. Upon  
20 completion of the Performance Review, PDC and the City agree to propose and to negotiate in  
21 good faith modifications to this Agreement to implement more fully the objectives set forth in  
22 Section 3.4.2. All modifications shall be subject to the approval of both PDC and the City and  
23 each Party agrees to act reasonably in determining whether to approve any modification.

24          6.8    **Noncompliance by PDC**

25           Without limitation of any other rights of the City under this Agreement, in the event  
26 the City believes as part of any Performance Review referred to in Section 6.7, which PDC has  
27 failed to accomplish the Public Goals and objectives set forth in Section 3.4.2, the City may give  
28 notice of that belief to PDC. Within thirty (30) days after the date of the City’s notice, PDC shall

1 prepare at its cost from PDC Funds and submit to the City a written plan setting forth PDC's  
2 proposed remedial action with respect to such noncompliance for the City's Approval. If the City  
3 Approves such plan, PDC shall promptly commence and diligently perform the remedial actions  
4 set forth therein. If the City does not approve such plan, the City shall submit to PDC a modified  
5 plan setting forth the City's proposed remedial action within thirty (30) days after the City's  
6 receipt of PDC's plan. If the Parties are unable to agree on a plan of remedial action within ten  
7 (10) days after submission of the City's modified plan, either party may initiate Dispute  
8 Resolution. Notwithstanding anything in this Agreement to the contrary, the arbitrator of any  
9 Dispute regarding a Performance Review or PDC accomplishing of the Public Goals and  
10 objectives of Section 3.4.2 shall not have the power or authority to modify this Agreement or any  
11 of the terms hereof. This Section 6.8 does not limit the City's rights with respect to a PDC Event  
12 of Default, as those rights are set forth in Section 17.1, including, without limitation, a PDC Event  
13 of Default referred to in Section 3.4.2.

14           6.9    **Oversight by Other Entities**

15                   The City shall have the right to assign its rights in whole or in part under this  
16 Section 6 to another public or quasi-public agency or instrumentality. Except for any such  
17 assignment to a City agency, to Metro, or to any agency of Metro, the City shall advise and consult  
18 with PDC prior to making such assignment, and shall consider in good faith and endeavor to  
19 address any reasonable objections or concerns to such assignment of PDC.

20   **SECTION 7 CAPITAL IMPROVEMENTS**

21                   PDC agrees to perform Capital Improvements (as defined in Section 4.5.5), but  
22 excluding Capital Improvements constituting Structural Repairs, to the Coliseum in accordance  
23 with the terms of this Section 7.

24           7.1    **Approval by the City**

25                   Subject to Section 7.8, no Capital Improvements shall be performed without the  
26 prior written Approval by the City of: a budget for the Capital Improvement, contracts for the  
27 labor and materials for such Capital Improvements, and plans and specifications for the Capital  
28 Improvement. Subject to such City Approvals having been given, and further subject to the

1 availability of funds therefor, Capital Improvements shall be performed in strict accordance with  
2 budgets and plans and specifications Approved by the City.

3 7.2 **Standards**

4 Capital Improvements shall be performed in accordance with the standards and  
5 requirements set forth in Section 11.5 with respect to Restoration of the Coliseum.

6 7.3 **Budget Amount**

7 As provided in Section 5.4.3, the City shall carry the Budget Amount applicable  
8 towards the costs of Repairs, Capital Improvements, Structural Repairs, or other increased  
9 Operating Expenses arising out of Deferred CI/SR. In no event shall the City be obligated to  
10 spend more than the Budget Amount (together with any unspent Budget Amounts from prior  
11 Fiscal Years that have been carried forward) in any applicable Fiscal Year. Further, the City's  
12 payment of any Budget Amount (and carried over unspent Budget Amounts) is subject to PDC  
13 having first satisfied its funding obligations under Section 4.5.4. Any unspent Budget Amount in  
14 a Fiscal Year shall be carried over to the next Fiscal Year and be additive to the next Fiscal Year's  
15 Budget Amount.

16 7.4 **Disbursements for Construction**

17 7.4.1 As part of the annual budget review process referred to in Section 6.1, PDC  
18 shall propose a Capital Improvements budget which shall be subject to the City's Approval.  
19 Subject to Section 7.8, no disbursements from the Budget Amount, may be made unless in  
20 accordance with a City Approved Capital Improvements budget or a written directive from the  
21 City. Disbursements from the Budget Amount shall be made by the City with respect to a Capital  
22 Improvement upon written application submitted by PDC to the City showing the cost of labor  
23 performed and materials provided and paid or payable by PDC. To the extent such disbursement  
24 is made with respect to amounts previously paid by PDC, disbursement shall be made to PDC.  
25 Otherwise, the City may, at its discretion, make disbursements to PDC, the general contractor, or  
26 any subcontractor or supplier entitled thereto. If the City makes disbursement to a Person other  
27 than PDC, the City shall promptly report to PDC the identity of such Person and the amount so  
28 disbursed. Any agreements relating to the performance of a Capital Improvement shall be subject



1 to the requirements of Section 15. If any construction lien is filed against all or any part of the  
2 Coliseum, or if a Little Miller Act Claim is made with respect to work performed on the Coliseum,  
3 then unless the City has withheld disbursement of funds from the Budget Amount sufficient to pay  
4 for amounts due respecting such work, PDC shall not be entitled to receive any further installment  
5 until such lien or claim is discharged or bonded against by PDC.

6 7.4.2 With respect to Repairs, Capital Improvements, Structural Improvements, or  
7 other increased Operating Expenses arising out of the Deferred CI/SR, the City shall develop, in  
8 consultation with PDC, procedures for the disbursement of funds from the Budget Amount.

9 7.5 **Cost Over-runs**

10 If the actual cost of the subject Repairs, Capital Improvements, or other increased  
11 Operating Expenses arising out of Deferred CI/SR exceeds the amount designated in the budget  
12 approved by the City for such work (for example, in the case of a non-fixed price contract), the  
13 City shall disburse the amount of the over-run from the Budget Amount so long as the over-run  
14 was not due to PDC Negligence, in which event PDC shall pay the over-run amount out of PDC  
15 Funds.

16 7.6 **Scheduling**

17 All Capital Improvements shall be scheduled and conducted in a manner designed  
18 to minimize interference to the extent reasonably practicable in the operation of the Coliseum.

19 7.7 **Emergency Capital Improvements**

20 In the event of an emergency requiring the construction of a Capital Improvement  
21 at or to the Coliseum in order to prevent imminent injury to individuals or damage to property,  
22 under circumstances not permitting compliance with the budget and plans and specifications  
23 requirements of Sections 6.1 and 7.1, PDC shall immediately contact the City and propose  
24 remedial action for the City's Approval. The City shall at all times during the Term designate at  
25 least one Person who shall be generally available to respond to such contacts and proposals. If  
26 PDC reasonably determines that it is not possible for PDC to contact the City in a timely manner,  
27 PDC shall have the authority to construct a Capital Improvement without obtaining the prior

1 Approval of the City, provided that (i) PDC shall contact the City at the earliest possible  
2 opportunity regarding the emergency, and (ii) the Capital Improvement is reasonably required  
3 prior to Approval by the City in order to prevent imminent injury to individuals or damage to  
4 property. If an emergency Capital Improvement is Approved by the City, the City shall advance  
5 the cost to the extent of funds available in the Budget Amount and if not, PDC shall advance the  
6 cost. Any amounts advanced by PDC in accordance with the preceding sentence shall be  
7 reimbursed from the Budget Amount and, to the extent of any deficiency, from other City  
8 Spectator Facilities funds, so long as PDC's decision to make a Capital Improvement described in  
9 Section 7.7 without obtaining the City's prior approval was reasonable. If such decision was not  
10 reasonable, the deficiency shall be paid from PDC Funds. Within three (3) Business Days after  
11 construction of any Capital Improvement pursuant to this Section 7.7, PDC shall furnish City with  
12 a detailed written statement setting forth the nature of the emergency, a description of the Capital  
13 Improvement, and an itemized listing of all disbursements made by PDC in connection with the  
14 Capital Improvement.

15 7.8 **Development Agreement**

16 Except for Structural Repairs, the process for design, construction and installation  
17 of Capital Improvements shall be reasonably agreed between the Parties; provided, however, that  
18 such process shall afford the City at least an equivalent degree of control and supervision as that  
19 accorded the City with respect to Public Improvements (as defined in the Development  
20 Agreement) constructed under the Development Agreement.

21 **SECTION 8 SCOREBOARD**

22 As indicated in the definitions, the Scoreboard is expressly excluded from the  
23 definition of "Coliseum." The Scoreboard is owned by the City. However, the City has no  
24 obligation to provide a scoreboard for the Coliseum, and subject to the terms of the Scoreboard  
25 Agreement, the City has no obligation to operate, repair, maintain, or replace the Scoreboard.  
26 Further subject to the terms of the Scoreboard Agreement, the City and PDC acknowledge that  
27 PWH (a) is obligated to operate (for PWH Events only), maintain and repair the Scoreboard and  
28 (b) may replace the Scoreboard. Unless otherwise expressly provided in this Agreement, all  
29 rights, obligations, and duties relating to operation, management, administration, use, scheduling,

1 marketing, advertising, promotion, security, licensing, maintenance, repair, replacement, capital  
2 improvement, and any other activity relating to the Scoreboard and any part or component thereof,  
3 whether financial or otherwise, are beyond the scope of this Agreement. Accordingly, no costs or  
4 expenses associated with, relating to, or otherwise arising out of any of the foregoing shall be  
5 deemed Operating Expenses. Unless arising out of the sole negligence of the City, the City shall  
6 have no obligation or other liability relating to the Scoreboard or the activities described in this  
7 Section 8.

8 **SECTION 9 INDEMNIFICATIONS**

9 **9.1 Scope of PDC Indemnification**

10 Subject to any applicable limitations on liability stated elsewhere in the Agreement  
11 or the Laws, including the Oregon Constitution and the Oregon Tort Claims Act, PDC shall hold  
12 harmless, indemnify and defend the City and its officers, employees and agents (the “**City Related**  
13 **Persons**”) from and against all claims, demands, penalties, remediation, and causes of action of  
14 any kind or character (including the cost of defense thereof except attorney fees) (collectively,  
15 “**Damages**”) (except to the extent such Damages are directly attributable to the negligence or  
16 willful misconduct of the City or any of the City Related Persons or are otherwise excluded as set  
17 forth below) in favor of any Person, which arises out of, or results from, the acts or omissions of  
18 PDC, its officers, employees, or agents, which may be imposed upon, incurred by, or asserted  
19 against the City or any of the City Related Persons arising from any of the matters set forth in  
20 Sections 9.1.1 through 9.1.6. PDC shall not be obligated to indemnify, defend, or hold harmless  
21 the City and the City Related Persons under the terms of Sections 9.1 through 9.6 from Damages  
22 caused by: the design, structural integrity, or construction of the Coliseum (except as those are  
23 modified or affected by PDC), the presence of Hazardous Materials in, at, or beneath the Coliseum  
24 prior to the Term, and any breach of this Agreement by the City.

25 9.1.1 Any conduct, act, or omission of PDC or PDC’s directors, officers,  
26 employees, agents, contractors (including all Persons with whom PDC has entered into a Coliseum  
27 Agreement), subcontractors, licensees, or invitees occurring during the Term.

1                   9.1.2 Any accident, injury, death, or damage caused to any Person or to the  
2 property of any Person occurring during the Term on or about the Coliseum.

3                   9.1.3 Any use, non-use, possession, occupation, operation, scheduling,  
4 advertising, marketing, promotion, Maintenance, Repair, licensing, provision of concessions,  
5 Restoration (as defined in Section 11.1.1), or management of all or any part of the Coliseum.

6                   9.1.4 Any PDC Event of Default of any obligations of PDC under this Agreement,  
7 or a PDC Default under any agreement affecting any part of the Coliseum not cured within any  
8 applicable cure period provided in such other agreement.

9                   9.1.5 Construction of any Capital Improvements (other than Structural Repairs) of  
10 or at the Coliseum.

11                  9.1.6 The actual or alleged presence, use, treatment, storage, generation,  
12 manufacture, transport, release, leak, spill, disposal, or other handling of Hazardous Substances  
13 on, from, or about the Coliseum during the Term caused by PDC.

14                  9.2     **Insurance**

15                  The obligations of PDC under Sections 9.1 through 9.6 shall not in any way be  
16 affected or limited by the absence in any case of insurance coverage or by the failure or refusal of  
17 any insurance carrier to perform any obligation on its part to be performed under insurance policies  
18 affecting the Coliseum.

19                  9.3     **Defense of Claims**

20                  If any claim, action, or proceeding is made or brought against the City or any of the  
21 City Related Persons by reason of any event or condition described in Section 9.1, then, upon  
22 demand by the City or the affected City Related Person(s), PDC, at PDC's cost and expense  
23 (except as provided in Section 9.5), shall resist and defend such claim, action, or proceeding in the  
24 name of the City or such City Related Person(s) by the attorneys for PDC's insurance carrier (if  
25 such claim, action, or proceeding is covered by insurance), or by such attorneys as PDC shall  
26 select subject to the Approval of the City. Notwithstanding the foregoing, after notice to PDC,



1 the City or such City Related Person(s) shall have the right to appear, defend, or otherwise take  
2 part in such claim, action, or proceeding, at the election of the City or such City Related Person(s),  
3 by counsel of its or their own choosing, at their own expense, except as otherwise provided herein.

4 9.4 **Effect of Approval**

5 The obligations of PDC set forth in Section 9.1 shall not be diminished, altered, or  
6 affected by the Approval (prior to or after the fact), whether explicit or implied by the City, either  
7 exercising the City's rights under this Agreement or in the exercise of its regulatory authority, of  
8 any plan, action, or activity for which PDC obtained the City's Approval either as required by this  
9 Agreement or as required by any ordinance of the City, even if such plan, action, or activity  
10 Approved by the City is a factual basis, in whole or in part, for a claim for which the City is entitled  
11 to indemnification pursuant to Section 9.1.

12 9.5 **Responsibility for Indemnification Costs**

13 Notwithstanding the categories of activities set forth in Section 9.1.1., but subject to the  
14 limitations of the Oregon Constitution and the Oregon Tort Claims Act, PDC shall be responsible  
15 for, and shall pay out of PDC Funds, the indemnification cost for any PDC Negligence, a PDC  
16 Event of Default, or the matters referred to in Section 9.1.6.

17 9.6 **Hazardous Materials**

18 9.6.1 The City agrees to be responsible for any remediation of Hazardous  
19 Substances existing at, upon, or under the Coliseum prior to June 23, 1993, or resulting from the  
20 migration of Hazardous Substances from adjacent property, where the remediation is required by  
21 Governmental Regulations and where the failure to remediate would result in a governmental  
22 order closing the Coliseum. The City shall owe no indemnity obligation to PDC, except for the  
23 City's failure to perform any governmentally required remediation. Further, the City's  
24 obligations under this Section 9.6.1 remain subject to the Oregon Constitution and the Oregon Tort  
25 Claims Act. Without limiting the generality of this Section 9.6.1, the City hereby releases PDC,  
26 and PDC shall have no liability for, the actual or alleged presence, use, treatment, storage,  
27 generation, manufacture, transport, release, leak, spill, disposal, or other handling of Hazardous

1 Substances on, from, or about the Coliseum prior to the Effective Date, except to the extent caused  
2 by PDC.

3 9.6.2 Subject to the limits of the Oregon Constitution and the Oregon Tort Claims  
4 Act, PDC agrees to be responsible for any remediation of Hazardous Substances at, upon or under  
5 the Coliseum arising during the Term. Except for remediation of Hazardous Substances  
6 described in Section 9.1.6, the expense of such remediation shall be an Operating Expense. PDC  
7 shall perform such remediation in accordance with applicable procedures and standards set forth in  
8 Section 9 of the Final RDA, except to the extent the City reasonably directs otherwise.

9 9.7 **Applicability of Sections 9.1 through 9.6 to Independent Operator**

10 Without limiting the generality of Section 14.2, the Independent Operator  
11 Agreement shall contain provisions consistent with and binding the Independent Operator to the  
12 terms of Sections 9.1 through and including 9.6.

13 9.8 **Scope of City Indemnification**

14 Subject to any applicable limitations on liability stated elsewhere in this Agreement  
15 or the Laws, including the Oregon Constitution and the Oregon Tort Claims Act, the City shall  
16 hold harmless, indemnify and defend PDC and its officers, employees and agents (the “**PDC**  
17 **Related Persons**”) from and against all Damages (except to the extent such Damages are directly  
18 attributable to the negligence or willful misconduct of PDC or any of the PDC Related Persons or  
19 are otherwise excluded as set forth below) in favor of any Person, which arises out of, or results  
20 from, the acts or omissions of the City, its officers, employees, or agents, which may be imposed  
21 upon, incurred by, or asserted against PDC or any of the PDC Related Persons arising prior to the  
22 Effective Date from any of the matters set forth in Sections 9.8.1 and 9.8.2. The City shall not be  
23 obligated to indemnify, defend, or hold harmless PDC and the PDC Related Persons under the  
24 terms of this Section 9.8 from Damages caused by: the design, structural integrity, or  
25 construction of the Coliseum (except as those are modified or affected by the City), the presence of  
26 Hazardous Materials in, at or beneath the Coliseum prior to the Term, and any breach of this  
27 Agreement by PDC.

1                   9.8.1 Any conduct, act, or omission of the City or the City Related Persons  
2 occurring prior to the Effective Date.

3                   9.8.2 Construction by the City of any Structural Repairs of or at the Coliseum prior  
4 to the Effective Date.

5 **SECTION 10 INSURANCE**

6                   10.1 **Acquisition of Insurance Policies**

7                   Subject to this Section 10.1 and Section 10.10, below, PDC shall, as an Operating  
8 Expense, procure and maintain, or cause to be procured and maintained, during the Term the  
9 insurance described in this Section 10 (or the then-available commercial equivalent of such  
10 insurance). Notwithstanding anything to the contrary in this Agreement, Sections 10.1 through  
11 10.9 of this Agreement identify insurance requirements and terms acceptable to the City as of the  
12 Reference Date. Exhibit 10.1 attached hereto (as amended from time to time, the “Insurance  
13 Exhibit”) identifies, as of November 14, 2012, general insurance requirements to City contractors  
14 and consultants. During the Transition Period, PDC and the City shall evaluate the terms of  
15 Sections 10.1 through 10.9 of this Agreement, as compared with the then-effective Insurance  
16 Exhibit, and will modify, if necessary, the scope of one or more of the requirements contained in  
17 such sections to in order to cause such sections to be consistent with the Insurance Exhibit,  
18 provided that any such modifications shall be subject to the approval of the Risk Management  
19 Department of the City of Portland. In addition to the insurance review to be conducted during the  
20 Transition Period, policy limits and coverages shall be reviewed annually by the City and PDC and  
21 shall be adjusted by the City in its reasonable judgment to reflect inflation, changes in coverage  
22 customarily obtained for comparable properties, and other relevant factors. By not later than  
23 thirty (30) days prior to the commencement of the Term, PDC shall provide the City with a copy of  
24 all policies required under this Section 10, as the same may be modified by the reviews referenced  
25 in the preceding sentence, as well as certificates from the companies issuing such policies stating  
26 that such coverage is in effect. At least sixty (60) days prior to the expiration of any such policy,  
27 a copy of the renewal policy shall be provided to the City. To the extent allowed by applicable  
28 law, PDC may provide some or all of the insurance required by Section 10 under blanket or  
29 umbrella type policies.

1           10.2    **Types of Required Insurance**

2                   PDC shall procure and maintain, or cause to be maintained, the following:

3                   10.2.1 **Liability Insurance.** Commercial General Liability insurance and/or  
4 such other similar or supplemental insurance providing, without limitation, the following specific  
5 coverages as they relate to the Coliseum or Coliseum-related operations or activities:

6                           10.2.1.1 Bodily Injury and Property Damage for premises and operations  
7 liability including products and completed operations, blanket contractual (including but without  
8 limitation, coverage for PDC’s tort liability indemnification obligations pursuant to this  
9 Agreement);

10                           10.2.1.2 PDC’s Personal and Advertising Injury Liability;

11                           10.2.1.3 Liquor Liability Endorsement for the serving and selling of  
12 alcoholic beverages; and

13                           10.2.1.4 Business Auto Coverage – “Symbol 1” to insure against liability  
14 arising out of the use of any automobile including bodily injury and property damage.

15 Such insurance shall specifically refer to and describe the Coliseum as that term is defined in this  
16 Agreement. Such insurance shall be maintained in an amount of no less than \$25,000,000 (as  
17 adjusted pursuant to Section 19.1). Such insurance shall provide coverage with respect to any  
18 costs or expenses, including attorneys’ fees, incurred by the City (or City Related Persons) in  
19 connection with any claim or proceeding.

20                   10.2.2 **Property Insurance.** Insurance covering the Coliseum and the Personal  
21 Property providing Special Perils (ISO 1991 edition as amended) (all risk) including endorsements  
22 to cover earthquake, flood, debris removal, pollutant clean up and removal, sprinkler leakage,  
23 building ordinance coverage, demolition and off premises services due to power failure, with  
24 Inflation Guard and Replacement Cost endorsements, in an amount not less than the actual  
25 replacement value of the Coliseum and its improvements and all Personal Property (except for  
26 equipment and personal property owned by parties other than the City). Such replacement value



1 shall be determined from time to time by PDC’s insurer or, if the City objects to the insurer’s  
2 valuation and the parties cannot agree upon a valuation within thirty (30) days after such objection,  
3 then by a qualified appraiser, selected by the City and paid for as an Operating Expense.

4           **10.2.3 Builder’s Risk.** During any period of construction or renovation of  
5 Capital Improvements at the Coliseum, in addition to the other coverages required under this  
6 Section 10, standard “all risk” builder’s risk insurance (including, without limitation, coverage  
7 against collapse), or equivalent coverage, written on a completed value basis, in an amount not less  
8 than the projected total cost of construction of such Capital Improvements as reasonably estimated  
9 by PDC’s architect and as approved by the City not more than sixty (60) days prior to the  
10 commencement of construction and as thereafter revised by the City and PDC during the course of  
11 such construction.

12           **10.2.4 Worker’s Compensation.** Worker’s compensation and disability  
13 benefits insurance covering all Persons employed by PDC in amounts no less than those required  
14 by applicable law. PDC shall require all of its contractors and subcontractors and all others  
15 providing construction services on the Coliseum to maintain worker’s compensation coverage as  
16 required by law.

17           **10.2.5 Business Interruption.** Use and occupancy, business interruption, or lost  
18 income insurance including extra expense and rental income loss against hazards covered by the  
19 Commercial Property Insurance Policy described in Section 10.2.2, in an amount not less than the  
20 sum of the following: (a) Net Income plus continuing expenses, for the immediately preceding  
21 Fiscal Year, (b) User Fees payable to the City on account of Events at the Coliseum for the  
22 immediately preceding Fiscal Year, (c) [INTENTIONALLY DELETED], and (d) advertising  
23 revenue payable to PDC, if any, on account of Coliseum advertising for the immediately preceding  
24 Fiscal Year. For the initial year of the Term, the insurance amount required under this Section  
25 10.2.5 shall be based on information from the Fiscal Year immediately preceding the Transition  
26 Period, which information the City shall provide to PDC during the Transition Period. Such  
27 insurance shall provide coverage for the categories of losses set forth on clauses (a) through (d)  
28 above. The portion of the premium for such policy allocable to item (a) shall be an Operating  
29 Expense. The portion of the premium for such policy allocable to items (b) and (c) shall be a

1 charge against amounts otherwise payable to the City pursuant to Section 5.6. The portion of the  
2 premium for such policy allocable to item (d) shall be a charge against amounts otherwise payable  
3 to PDC pursuant to Section 5.5. If in any Fiscal Year there are insufficient funds available for  
4 distribution to the Parties to cover the amounts to be charged under the preceding two sentences,  
5 the charges shall be paid as an Operating Expense initially, with the charges carried forward for  
6 reconciliation as soon as possible in subsequent Fiscal Years. If the Parties cannot agree upon an  
7 allocation of premiums pursuant to this Section 10.2.5 within thirty (30) days of written notice  
8 from either Party to the other requesting such allocation, such allocation shall be made pursuant to  
9 Dispute Resolution.

10           10.2.6 **Other Insurance.** Such other and additional insurance, in such amounts  
11 as may from time to time be reasonably required by City or by law, as is customary with respect to  
12 facilities and/or personal property comparable to the Coliseum and the Personal Property located  
13 at the Coliseum.

14           10.3 **Terms of Insurance**

15           The policies required under Section 10.2 shall:

16           10.3.1 Be written as primary policies not contributing with and not in excess of  
17 coverage that the City may carry.

18           10.3.2 Name the City and the City's elected officials, officers, employees, and  
19 agents as named insureds.

20           10.3.3 Expressly provide that the City shall not be required to give notice of  
21 accidents or claims and that the City shall have no liability for premiums.

22           10.3.4 Provide that such policies shall not be renewed, canceled, or materially  
23 modified without sixty (60) days prior written notice to the City.

24           10.3.5 Be fully paid for and not assessable.

1           10.3.6 Be issued by an insurer of recognized standing, rated A-VIII or better as  
2 established by Best’s Rating Guide or an equivalent rating issued by such other publication of a  
3 similar nature as shall be in current use, and licensed to do business in the State of Oregon.

4           10.3.7 Be written on an occurrence basis, rather than on a “claims made” basis, but  
5 only if occurrence basis coverage is then available from the insurer. If occurrence basis coverage  
6 is not then available from the insurer, PDC and the City shall cooperate in good faith to obtain  
7 alternative coverage from an insurer that does make such coverage available.

8           10.3.8 If PDC or other insured parties fail to comply with the insurance policy’s  
9 terms or conditions, the carrier shall remain obligated to pay covered losses sustained on behalf of  
10 the City to the extent their interest appears.

11           10.3.9 Provide that the insurer waives subrogation as to any rights to recovery  
12 resulting from the conduct of the City, its subsidiary, parent, associated and/or affiliated entities,  
13 successors or assigns, its elected officials, trustees, employees, agents, and volunteers; provided,  
14 however, that such provision need not be included with respect to workers’ compensation policies  
15 or in any policy in which the City is a named insured..

16           10.3.10 The Commercial General Liability policy required under Section 10.2.1  
17 shall not contain an Other Insurance Clause affecting any other insurance policy carried by the  
18 City or impacting any self-insurance maintained by the City.

19           10.3.11 All policies must be issued by companies which are equal opportunity  
20 employers.

21           10.3.12 Contain deductibles or retainage limits reasonably acceptable to the City.

22           10.3.13 Be subject to good faith review during the Transition Period, as provided  
23 in Section 2.3.6.

24           10.4 **No Effect on Indemnity**

25           PDC’s procurement of the insurance required under this Section 10 shall in no  
26 manner affect or limit PDC’s indemnification obligations pursuant to Sections 9.1 through 9.6.

1           10.5    **The City's Acquisition of Insurance**

2                   10.5.1 If PDC at any time during the Term fails to procure or maintain any  
3 insurance coverage required under this Section 10, or to pay premiums for such insurance, the City  
4 shall have the right to procure the same and to pay any and all premiums for such insurance, and  
5 any amounts paid by the City in connection with the acquisition of such insurance shall be due and  
6 payable to the City upon demand from the Operating Account (or, if there are insufficient funds in  
7 the Operating Account, from an NOL Payment by PDC).

8                   10.5.2 The City may at any time obtain through alternative insurers any of the  
9 policies referred to in Section 10.2 and PDC will terminate at the earliest reasonably possible time  
10 the policies it has obtained and purchase the policy offered by the City if the policy obtained by the  
11 City has substantially equivalent coverage but has a premium which is at least ten percent (10%)  
12 less expensive than PDC's comparable policy. PDC may, in lieu of purchasing such policy, pay  
13 from PDC Funds into the Operating Account the difference in premiums between the policies.  
14 Any Disputes arising out of the application of this Section 10.5.2 shall be resolved through Dispute  
15 Resolution.

16                   10.5.3 PDC shall keep the City reasonably advised of its efforts to obtain or renew  
17 any insurance policies subject to this Section 10 so that the City will have an opportunity to price  
18 alternative policies, including giving the City reasonable advance notice of the prospective  
19 termination of any policy, the insurance company from which PDC intends to obtain a replacement  
20 or renewal policy, and the terms (including, without limitation, premiums) of such proposed  
21 policy.

22           10.6    **Public Liability Policy Regarding Structural Failure**

23                   10.6.1 No later than ninety (90) days prior to commencement of the Term, PDC  
24 shall either (i) use Reasonable Efforts to obtain a policy of insurance insuring PDC from liability to  
25 third parties, including its employees and the general public, from death or injury from a structural  
26 failure or collapse of the Coliseum with total coverage in the amount of \$75,000,000, or (ii) deliver  
27 written notice to the City that despite its Reasonable Efforts, it cannot obtain such a policy, in  
28 which case the City may provide such a policy pursuant to Section 10.6.2. The cost of the



1 premium for this policy shall be paid by the City and the cost shall not be an Operating Expense.  
2 If PDC provides such coverage as part of an umbrella policy, PDC and the City shall reasonably  
3 agree upon the portion of the premium for such policy which is allocable to the coverage referred  
4 to above pursuant to Section 10.7. Policy limits and coverages of insurance obtained pursuant to  
5 this Section 10.6 shall be reviewed annually by the City and PDC and shall be adjusted to reflect  
6 inflation, changes in coverage customarily obtained for comparable properties, and other relevant  
7 factors. Such policy limits shall not otherwise be subject to further adjustment under Section  
8 19.1. If the Parties cannot agree on an adjustment within thirty (30) days after request by one  
9 Party to the other requesting such adjustment, either Party may submit the matter to Dispute  
10 Resolution. Pending agreement or resolution of such Dispute, such required insurance shall  
11 remain at then-existing coverages and limits. The Parties agree that, at commencement of this  
12 Agreement and for so long as such coverage is commercially available, the requirements of this  
13 Section 10.6.1 shall be satisfied by (i) PDC maintaining in force a commercial general liability  
14 policy covering the Coliseum, including coverage for the perils described in the first sentence of  
15 this Section 10.6.1, with coverage of \$75,000,000 (primary and excess), and (ii) allocation to the  
16 City of the lesser of five percent (5%) of the premium for such policy or Ten Thousand Dollars  
17 (\$10,000) of such premium per Fiscal Year.

18 10.6.2 If PDC gives written notice to the City that it is unable to obtain the  
19 insurance referred to in Section 10.6.1, then the City will have ninety (90) days to obtain such a  
20 policy. If the City provides PDC with a policy providing the coverage referred to in Section  
21 10.6.1, this Agreement shall continue in full force and effect. The City shall pay the premium for  
22 such a policy and the premium shall not be an Operating Expense. The City's failure or inability  
23 to obtain such a policy will not be the basis for any liability to PDC, and in such an event, PDC's  
24 only remedy is to terminate this Agreement pursuant to Section 2.2.3.

25 10.6.3 PDC shall use its Reasonable Efforts to maintain the insurance coverage  
26 referred to in Section 10.6.1 throughout the Term by obtaining renewal policies of insurance at  
27 least one hundred eighty (180) days prior to the expiration of the then existing policy providing  
28 such coverage. If PDC has not obtained such coverage by that time, PDC shall give the City  
29 written notice of that fact. During the period between the one hundred eightieth (180<sup>th</sup>) day and the  
30 ninetieth (90<sup>th</sup>) day prior to the termination of the then existing policy, both the City and PDC shall

1 use Reasonable Efforts to obtain such a policy for the succeeding year. If during that time, no such  
2 policy is obtained, then that fact shall constitute notice of Early Termination pursuant to Section  
3 2.2.4.

#### 4 10.7 Allocation of Premiums

5 If PDC obtains a policy of insurance to meet its obligations under this Section 10,  
6 and the policy covers any entities other than the City and PDC and/or the policy covers any land or  
7 structure other than the Coliseum, then the premium for such policy shall be fairly apportioned  
8 between the coverage required by this Agreement and the other coverage included in such policy  
9 in accordance with this Section 10.7. At least ninety (90) days prior to the proposed  
10 commencement date of any policy referred to in this Section 10.7, PDC shall submit to the City its  
11 insurance agent's or broker's proposed fair allocation of the premium with supporting  
12 documentation. Within ten (10) days of the receipt of this information the City and PDC shall  
13 meet in an attempt to agree to a fair allocation of the premium. If the City and PDC have not  
14 reached an agreement within ten (10) days, then either Party may submit this Dispute to Dispute  
15 Resolution.

#### 16 10.8 Cooperation

17 PDC and City shall cooperate in connection with the collection of any insurance  
18 proceeds which may be payable in the event of casualty and shall execute and deliver such proofs  
19 of loss and other instruments as may be required for such collection.

#### 20 10.9 Termination of Required Insurance, Insurance Alternative

21 10.9.1 With respect to any type of insurance coverage required under this Section  
22 10, or with respect to a specific insured risk, PDC shall not be required to provide such coverage in  
23 the event that: (i) at least seventy-five percent (75%) of all comparable facilities in the United  
24 States which have historically carried the coverage in question no longer carry such coverage  
25 because of the expense of such coverage; and (ii) there is no such coverage available through a  
26 pool arrangement among other comparable facilities. PDC's obligations to carry such coverage in  
27 the amounts required in this Section 10 shall be suspended for as long as the above criteria are met,  
28 provided PDC complies with the following procedure:

1                   10.9.1.1 Prior to suspending the coverage, PDC shall give the City ninety  
2 (90) days written notice of its intention to discontinue carrying the coverage. The notice shall  
3 specify the premium quoted to PDC for the coverage and evidence that seventy-five percent  
4 (75%) or more of comparable facilities in the United States have discontinued such coverage and  
5 have not substituted for the coverage risk pooling alternatives that are available to such facilities;  
6 and

7                   10.9.1.2 At least thirty (30) days prior to suspending the coverage, PDC  
8 shall demonstrate to the City that no reasonable insurance pools are available to replace the  
9 coverage and, if sufficiently demonstrated, PDC shall obtain insurance or other financial assurance  
10 reasonably acceptable to the City to replace the discontinued coverage and shall give the City an  
11 opportunity to review the extent and terms of alternate insurance or assurance, in an amount  
12 sufficient to cover:

13                   (a)     The lesser of: (A) the unpaid Obligations; and (B) the  
14 discounted present value of the anticipated Coliseum User Fees and the City's share of Net  
15 Revenues from the Coliseum for the remainder of the Term.

16                   (b)     the amount necessary to demolish the Coliseum, remove the  
17 debris and restore the site of the Coliseum to a level building site with underground utilities in  
18 place, ready for future development; and

19                   (c)     PDC shall "self-insure" the remaining risk with respect to  
20 which it is excused from carrying insurance by creating an interest bearing fund into which PDC  
21 will pay a deemed premium, as an Operating Expense, equal to the average of the premiums paid  
22 to an insurance company for such coverage for the earliest three (3) years out of the last four (4)  
23 years during which PDC was required to carry such insurance under this Section 10. The above  
24 described fund shall be the functional equivalent of insurance coverage for that risk. At the end of  
25 the Term, any remaining amounts in the above fund not reserved for resolution of claim shall be  
26 deposited in the Operating Account, and shall be applied as provided in Section 17.3.1.

27                   10.9.2 The provisions of Section 10.5 shall control over any conflicting provisions  
28 of this Section 10.9, to the extent the insurance premium for any policy obtained by the City

1 pursuant to Section 10.5 is materially less than prevailing insurance premium rates for comparable  
2 policies available for the comparable facilities which discontinued their coverage as described in  
3 this Section at the latest time that such facilities continued to maintain such policies, subject to  
4 increase pursuant to Section 19.1.

5 10.9.3 Any dispute regarding this Section 10.9 shall be subject to Dispute  
6 Resolution pursuant to Section 18. The Dispute Resolution process shall be completed and  
7 resolved in PDC's favor before PDC suspends coverage. At any time that the criteria for  
8 suspension are no longer met, PDC's obligation to carry the suspended insurance coverage shall be  
9 reinstated.

#### 10 10.10 **Applicability of Section 10 to Independent Operator and PWH**

11 Without limiting the generality of Section 14.2 or Section 15.4, the Independent  
12 Operator Agreement and PWH Sublicense, respectively, shall contain coverages and provisions  
13 consistent with the terms of the Insurance Exhibit (as updated during the Transition Period) and  
14 binding on the Independent Operator and PWH. Each of PDC, the Independent Operator, and  
15 PWH must obtain and maintain the insurance policies referenced in the then-existing Insurance  
16 Exhibit, however, PDC and the Independent Operator are not required to each separately obtain  
17 and maintain the insurance policies referenced in Sections 10.2.2 (property), 10.2.3 (builder's  
18 risk), and 10.2.5 (business interruption), as such Sections and terms of the Insurance Exhibit are  
19 updated during the Transition Period. If, and only if, the Independent Operator obtains and  
20 maintains the insurance policies referenced in Sections 10.2.2, 10.2.3, and 10.2.5 (as such Sections  
21 or related provisions in the Insurance Exhibit are modified or supplemented during the Transition  
22 Period), then PDC shall not be required to separately obtain and maintain such coverages. For the  
23 avoidance of doubt, the Parties expressly acknowledge and agree that the Insurance Exhibit must  
24 be updated and finalized during the Transition Period, and such modified terms and coverages  
25 must be contained in the Independent Operating Agreement and PWH Sublicense.

### 26 **SECTION 11 DAMAGE OR DESTRUCTION**

#### 27 11.1 **PDC's Notice Obligation**



1 If all or any or part of the Coliseum or the Personal Property is destroyed or  
2 damaged in whole or in part by fire or other casualty (including, without limitation, by any  
3 casualty for which insurance was not obtained) of any kind, PDC shall give notice to the City  
4 immediately following such occurrence.

5 11.2 **Insured Loss**

6 11.2.1 **Obligation to Restore.** If all or any part of the Coliseum or the Personal  
7 Property is destroyed or damaged in whole or in part by fire or other casualty and the cause of the  
8 damage is an insured event under the policy required pursuant to Section 10.2.2 or 9.2.3 (as  
9 applicable), then, except as provided in Section 11.4, the City shall promptly repair, alter, restore,  
10 replace, and rebuild (collectively “**Restore**”) the damaged portion of the Coliseum and/or the  
11 damaged Personal Property to a condition, character, and nature at least the functional equivalent  
12 to those existing immediately prior to such occurrence (such repairs, alterations, restoration,  
13 replacements, and rebuilding is collectively “**Restoration**”) all in accordance with the  
14 requirements of this Section 11.

15 11.2.2 **Funding.** The cost of Restoration shall be paid out of net insurance  
16 proceeds recovered by the City or PDC on account of such loss. If the cost of Restoration exceeds  
17 the amount of net insurance proceeds, the City will advance the excess from the Budget Amount to  
18 the extent thereof and any further excess shall be paid by the City, so long as PDC obtained the  
19 type of and amount of insurance coverage required by Section 10.2, and if PDC did not, then PDC  
20 shall pay, out of PDC Funds, any excess to the extent insurance proceeds would have been  
21 available had the proper required coverage been obtained. If the cost of Restoration, less the  
22 amount of insurance proceeds, is One Hundred Thousand Dollars (\$100,000.00) or less, then such  
23 cost shall be deemed to be a Repair and not a Capital Improvement.

24 11.2.3 **Disposition of Excess Proceeds.** If the insurance proceeds exceed the  
25 cost of Restoration, the excess shall be paid to the City. If the Parties elect not to Restore, all  
26 insurance proceeds shall be paid to the City.

27 11.3 **Uninsured Loss**

1           11.3.1 If all or any part of the Coliseum or the Personal Property is destroyed or  
2 damaged due to a cause which is not an insured event in the policy required pursuant to Section  
3 10.2.2 or 10.2.3 (as applicable), then, except as provided in Section 11.4, the City shall, within  
4 ninety (90) days of the loss, obtain estimates from two (2) qualified contractors of the cost of  
5 Restoring the damage (the “**Damage Estimate**”). If the Damage Estimate is less than the then  
6 unused balance of the Budget Amount, then the damage shall be Restored by the City pursuant to  
7 this Section 11 and the City shall disburse from the Budget Amount the amount of the actual cost  
8 of the Restoration. The cost of the Damage Estimate shall be paid from funds in the Budget  
9 Amount, to the extent of available funds.

10           11.3.2 If the Damage Estimate exceeds the unused balance of the Budget Amount,  
11 the City shall have sixty (60) days from the above-referenced ninety (90) days to give PDC written  
12 notice electing whether or not to rebuild the Coliseum. If the City elects not to rebuild, then this  
13 Agreement shall terminate sixty (60) days after the City’s notice. If the City elects to rebuild the  
14 Coliseum then, this Agreement shall remain in force and effect, but suspended during the period of  
15 Restoration except for the provisions applicable to Restoration, and the City shall promptly  
16 Restore the Coliseum. Upon Restoration, this Agreement will be automatically reactivated and  
17 continue for the balance of the Term.

18           11.3.3 In the event of an uninsured loss, where the City has elected not to Restore  
19 and PDC has elected not to fund Restoration, then this Agreement shall terminate as of the date of  
20 the casualty loss.

21           11.3.4 If, pursuant to Section 11.3.2, the City elects not to Restore the Coliseum  
22 and PDC elects not to pay the cost of Restoration, but within two (2) years of the casualty loss, the  
23 City officially commits to Restore the Coliseum, then PDC shall have the option, exercisable  
24 within sixty (60) days of when Restoration work commences (based on the City’s notice to PDC),  
25 to elect in writing to resume operations of the Coliseum under the terms of this Agreement. If  
26 PDC so elects, this Agreement will be reinstated (with the same Termination Date, but subject to  
27 extension pursuant to Section 2.1.2) upon completion of the Restoration.

28           11.4 **Election Not to Restore**

1           In the event of an insured or uninsured casualty, the City may elect, within thirty  
2 (30) days of the casualty, by written notice to PDC to not Restore the Coliseum. If the City so  
3 elects, any insurance proceeds shall be applied to pay down the Obligations and this Agreement  
4 shall terminate as of the date of the City’s notice. If insurance proceeds exceed the amount  
5 necessary to pay off the Obligations, the excess shall be the property of the City.

6           11.5   **Manner of Restoration**

7           Any Restoration of the Coliseum shall be of first-class quality and workmanship  
8 according to the standards then prevailing in the Portland Metropolitan Region for comparable  
9 improvements of similar age. Any Restoration of Personal Property shall be performed in a good  
10 and workmanlike manner. The City shall diligently commence and continuously carry out such  
11 Restoration to full completion as soon as possible, except to the extent of delays due to strikes,  
12 lockouts, shortages of labor or materials after due diligence in seeking the same, governmental  
13 restrictions, fire, casualty, riot, Force Majeure, or other causes beyond the reasonable control of the  
14 City. The City shall be responsible for obtaining all permits and authorizations required by  
15 Governmental Authorities with respect to any Restoration. All Restoration shall be conducted in  
16 accordance with all Governmental Regulations and with plans and specifications approved by  
17 PDC pursuant to Section 11.6. All Restoration shall be performed by duly licensed, bonded, and  
18 qualified contractors.

19           11.6   **Plans and Specifications**

20           Prior to commencing any Restoration or applying for any governmental approvals  
21 required for such Restoration, the City shall submit plans and specifications for the Restoration to  
22 PDC for PDC’s review and comment. The City shall seriously consider any reasonable  
23 objections of PDC to such plans and specifications. The City shall not be required to submit any  
24 plans and specifications for Restoration reasonably estimated by the City to cost less than Two  
25 Hundred Fifty Thousand Dollars (\$250,000.00).

26           11.7   **Disbursement of Insurance Proceeds**

1           The proceeds of any insurance required pursuant to Section 10 and payable as a  
2 result of any occurrence requiring Restoration by PDC, including, without limitation, the  
3 coverages described in Sections 10.2.2 and 10.2.5, shall be paid to the City.

4           **11.8 Casualty At End of Term**

5           **11.8.1 Termination.** In the event of a material casualty affecting the Coliseum  
6 and occurring in the final three (3) years of the Term, either Party shall have the right to terminate  
7 this Agreement by notice to the other Party given within thirty (30) days after such occurrence,  
8 provided that PDC shall have the right to terminate this Agreement only if (i) the casualty did not  
9 result from PDC Negligence and (ii) there are, in the City's reasonable estimation, sufficient  
10 proceeds from the insurance coverage obtained by PDC to fund the required Restoration and to  
11 hold the City harmless against any loss of revenue under this Agreement resulting from such  
12 occurrence.

13           **11.8.2 Incomplete Restoration.** If the Term shall expire prior to the completion  
14 of any Restoration, and insurance proceeds from the coverage obtained by PDC pursuant to  
15 Section 10.2.2 are insufficient to cover the remaining cost of the Restoration, PDC shall be  
16 responsible for that portion of the deficiency that is attributable to the failure of PDC to discharge  
17 its obligations under Section 10. All unused funds remaining in the Budget Amount shall be  
18 applied to any remaining deficiency. If a deficiency remains after application of these funds,  
19 PDC shall be responsible for such remaining deficiency. Within thirty (30) days after expiration  
20 of the Term, PDC shall make a payment to the City from PDC Funds in an amount reasonably  
21 determined by the City discharging in full PDC's obligations under this Section 11.8.2.

22           **11.9 No Termination or Abatement**

23           Except to the extent expressly provided in this Section 11, this Agreement shall not  
24 terminate or be affected in any manner, and there shall be no reduction, deferment, suspension, or  
25 abatement of the amounts payable to the City under this Agreement, by reason of damage to or  
26 total, substantial, or partial destruction of the Coliseum or Personal Property, for or due to any  
27 reason or cause whatsoever (except to the extent such amounts shall be paid by the application by  
28 the City of the proceeds of business interruption insurance pursuant to Section 10.2.5).



1           11.10 **Conflict with Covenants, Conditions and Restrictions**

2           In the event that any provision of this Section 11 covers disposition of insurance proceeds  
3 arising out of damage to the Exhibit Hall and conflicts with any provision in any Declaration of  
4 Covenants, Conditions and Restrictions which may be placed upon the Coliseum (“CC&Rs”), the  
5 provisions of the CC&Rs covering such disposition of insurance shall control.

6           11.11 **Scoreboard Casualty**

7           As indicated in the definitions, the Scoreboard is expressly excluded from the definition of  
8 “Coliseum.” Accordingly, and except as otherwise provided in Section 15.4, below, proceeds  
9 relating to any Scoreboard casualty event shall be the sole property of the owner of the Scoreboard.

10 **SECTION 12 CONDEMNATION**

11           12.1 **Total or Substantial Condemnation**

12           If, at any time during the Term, the exercise by any Governmental Authority of the  
13 right of eminent domain, or the sale, transfer, or other disposition of all or part of the Coliseum to  
14 a Governmental Authority under threat of condemnation (either such event, a “**Condemnation**”),  
15 shall result in the acquisition by the Governmental Authority of all or a Substantial Portion (as  
16 defined in this Section 12.1) of the Coliseum, either Party may elect to terminate this Agreement  
17 by notice given to the other within thirty (30) days after the date upon which notice of such  
18 Condemnation shall have been received. For purposes of this Section 12, a “**Substantial**  
19 **Portion**” of the Coliseum means any portion of the Coliseum for which the estimated cost of  
20 Restoration to a condition, character, and nature substantially equivalent to those existing  
21 immediately prior to such Condemnation, in the joint determination of the City and PDC, exceeds  
22 the amount of the Condemnation award and the balance then existing in the Budget Amount. A  
23 Condemnation of a Substantial Portion of the Coliseum also includes a condemnation of a portion  
24 of the Coliseum which will substantially and adversely change the economics of the operations of  
25 the Coliseum, as jointly determined by the City and PDC, or if the City and PDC cannot agree,  
26 then as determined through Dispute Resolution. Notwithstanding the foregoing, PDC shall not  
27 have the right to terminate this Agreement pursuant to Section 12.1 if the City agrees to pay the  
28 cost of Restoration as described in Section 12.2.1.

1           12.2    **Partial Condemnation**

2                   12.2.1 **Restoration by PDC.** In the event of a Condemnation occurring during  
3 the Term involving less than a Substantial Portion of the Coliseum, or should neither Party elect to  
4 terminate this Agreement pursuant to Section 12.1, this Agreement shall remain in full force and  
5 effect, subject to the provisions of Section 12.4, and the City shall Restore the Coliseum, to the  
6 extent practicable, to a condition, character, and nature substantially equivalent to those existing  
7 immediately prior to such Condemnation. Any such Restoration shall be performed in  
8 accordance with the provisions of Section 11. Any award with respect to such Condemnation  
9 shall be paid to the City. If any portion of the Condemnation award is remaining upon completion  
10 of the Restoration, such portion shall be retained by the City. In the event the Condemnation  
11 award is insufficient to cover the cost of the Restoration, all remaining funds in the Budget  
12 Amount shall be applied to the deficiency. If a deficiency remains after application of these  
13 funds, then either (i) the City may elect to advance the deficiency (in which event it may later  
14 recover the advance, with interest at the Prime Rate plus two (2) percentage points, from amounts  
15 otherwise payable in the future into the Budget Amount; or (ii) the City may terminate this  
16 Agreement and cease use of the Coliseum as a Spectator Facility. If the City notifies PDC of its  
17 election to trigger option (ii), PDC may instead advance the deficiency, in which event this  
18 Agreement shall remain in effect and PDC shall be entitled to recover the advance, with interest at  
19 the Prime Rate plus two (2) percentage points, from amounts otherwise payable in the future into  
20 the Budget Amount. The City shall retain the proceeds, if any, payable under the coverage  
21 described in Section 10.2.2 with respect to the Condemnation.

22                   12.2.2 **No Abatement.** There shall be no reduction, deferment, suspension, or  
23 abatement of the amounts payable to the City under this Agreement during the period of any  
24 Restoration under Section 12.2.1.

25           12.3    **Successive Condemnations**

26                   Should an additional partial Condemnation or Condemnations occur from time to  
27 time, Section 12.2 shall govern each such Condemnation.

28           12.4    **End of Term**

1           Notwithstanding the provisions of Section 12.2, in the event of a Condemnation of  
2 less than a Substantial Portion, but of more than five percent (5%) of the usable square feet, of the  
3 Coliseum which occurs in the final three (3) years of the Term, either Party may elect to terminate  
4 this Agreement by notice given to the other within thirty (30) days after the date upon which notice  
5 of such Condemnation shall have been received. In the event of a termination of this Agreement  
6 pursuant to this Section 12.4, the entire award for the Coliseum shall be paid to the City. Should  
7 neither Party elect to terminate this Agreement, the Parties shall comply with the provisions of  
8 Section 12.2 with respect to Restoration of the Coliseum.

9           12.5   **Scoreboard**

10           As indicated in the definitions, the Scoreboard is expressly excluded from the definition of  
11 “Coliseum.” Accordingly, and except as otherwise provided in Section 15.4, below, proceeds  
12 relating to any Scoreboard condemnation or other taking event shall be the sole property of the  
13 owner of the Scoreboard.

14   **SECTION 13   LIENS**

15           Neither PDC nor the Independent Operator shall allow or suffer any encumbrance,  
16 charge, or other lien against or in any way applicable to all or any part of the Coliseum, the  
17 Operating Account, the Budget Amount, or any of the receipts, income, proceeds, or Operating  
18 Revenues derived or to be derived from the Coliseum, or any Little Miller Act Claim. If any such  
19 lien or claim shall be allowed or suffered to exist, PDC at its cost from PDC Funds shall cause such  
20 lien or claim to be discharged or bonded within fifteen (15) days following the filing or other  
21 assertion of such lien. If PDC fails to cause the discharge of or bonding around such lien or claim  
22 to the satisfaction of the City within this period, the City may (but shall not be obligated to), in  
23 addition to any other right or remedy available to it under this Agreement or applicable law,  
24 discharge such lien or claim in any manner it determines. Any amount paid by the City to  
25 discharge any such lien or claim, as well as all costs and expenses incurred by the City in  
26 connection with such discharge, shall be payable to the City by PDC on demand.

27   **SECTION 14   ASSIGNMENT AND TRANSFER**

28           14.1   **Prohibition on Transfer**

1 PDC acknowledges that the City has entered into this Agreement in express  
2 reliance on the qualifications and financial condition of PDC. Under no circumstances shall PDC  
3 make or suffer to be made a Transfer (as defined in Section 14.1.1) of any or all of its right, title, or  
4 interest in or to this Agreement, nor shall a Change of Control occur (as defined in Section 14.1.3),  
5 without the prior written Approval of the City, which may be withheld in the City's sole discretion.  
6 Any attempted or purported Transfer or Change of Control shall be void and of no force or effect.

7 14.1.1 **Transfer.** For purposes of this Agreement, a "**Transfer**" shall include any  
8 sale, assignment, pledge, conveyance, encumbrance, subcontract, delegation, or other disposition,  
9 whether direct or indirect, voluntary or involuntary, other than to an Affiliate of the transferor of  
10 PDC's interest in this Agreement. A Transfer shall also include a Change of Control.

11 14.1.2 **Control.** For purposes of this Agreement, "**Control**" shall mean the  
12 power, directly or indirectly, to direct or cause the direction of the management or policies of the  
13 Person in question.

14 14.1.3 **Change of Control.** A "**Change of Control**" shall refer to a change in the  
15 control of PDC, which shall be deemed to have occurred if PDC ceases to be the urban renewal  
16 agency of the City of Portland.

17 14.1.4 **Information Regarding Prospective Transferee.** If PDC desires to  
18 effect a Transfer, then PDC shall, at PDC's cost from PDC Funds, promptly deliver to the City any  
19 and all information that the City may reasonably request regarding a prospective transferee of  
20 PDC's interest in this Agreement or a prospective transferee of Control of PDC, including, without  
21 limitation, information pertaining to the identity, financial condition, and professional experience  
22 of such transferee and its principals.

23 14.1.5 **Standards for Approval.** The City in exercising its Approval rights with  
24 respect to a Transfer or Change of Control will approve the Person to whom the Transfer will be  
25 made or to whom Control will be conveyed if:

26 14.1.5.1 The Person and its controlling owners and principal officers, if  
27 any, have never been convicted of a felony; have never lost a liquor license due to a violation of



1 applicable Law; and have never filed for or been the subject of any form of bankruptcy action in  
2 the immediately preceding ten (10) years;

3                   14.1.5.2 The Person has at least five (5) years of experience operating at  
4 least one sports facility used as the home venue for a professional sports team or another  
5 comparable facility, and has never been terminated as the operator of such facility due to such  
6 Person's lack of competence, or the Person either has: (i) engaged a manager for the Coliseum  
7 having such qualifications under a management agreement with a term of at least five (5) years  
8 from the date of Transfer or Change of Control or (ii) has engaged to manage the Coliseum the  
9 persons who are the then key management personnel of PDC under an employment agreement  
10 with a term of at least five (5) years. If clause (i) or (ii) of the preceding sentence applies as the  
11 basis for approving a Transfer or Change in Control, and for any reason such manager or key  
12 management personnel leaves the employ of the Person within two (2) years following the  
13 Transfer or Change in Control, such Person shall be obligated immediately to replace such  
14 management with management of comparable or better experience and expertise. The previous  
15 sentence does not limit the obligation of the Person to fulfill its management duties under this  
16 Agreement for the full Term. The City shall have the right to Approve of any proposed  
17 management agreement for the Coliseum, including, without limitation, the Independent Operator  
18 Agreement referenced in Section 14.2, below, and of the Person who will manage the Coliseum  
19 based on the above standards;

20                   14.1.5.3 The Person has a liquid net worth which in the City's reasonable  
21 judgment is reasonably sufficient in light of the responsibilities to be assumed by such Person  
22 under this Agreement;

23                   14.1.5.4 The Person has a demonstrated record of business successes;

24                   14.1.5.5 Unless the Western Hockey League has disbanded or ceased to  
25 exist, the Person has received all approvals from the Western Hockey League, or any other hockey  
26 authority whose consent is necessary, for a Transfer of PDC's obligations under this Agreement to  
27 such Person; and

1                           14.1.5.6 The Person has agreed in writing to assume PDC's obligations  
2 under this Agreement.

3                           **14.1.6 Execution of Instrument of Assumption.** Without limitation of other  
4 conditions that may be imposed by the City, PDC agrees that it shall be a condition precedent to  
5 the consummation of any Transfer of PDC's interest in this Agreement or any Change of Control  
6 that the transferee agrees in writing to comply, without modification or qualification, with the  
7 covenants and restrictions applicable to PDC under this Agreement. Any such Transfer made  
8 without execution by the transferee of the instrument described in the preceding sentence shall be  
9 null and void and of no force or effect, but the failure to execute such instrument shall in no event  
10 limit or modify the obligations of such transferee to perform the obligations of PDC under this  
11 Agreement. Any such instrument shall identify the City as an express third party beneficiary of  
12 such covenants and restrictions, with full standing to enforce the same, as if the City were a party  
13 to such instrument. PDC's obligations (excluding any accrued obligations or liabilities as of the  
14 effective date of the Transfer) shall cease as of the effective date of any Transfer pursuant to this  
15 Section 14.1.

16                           **14.1.7 Unauthorized Transfer.** If any right, title, or interest of PDC in this  
17 Agreement, or Control of PDC, is transferred in violation of the provisions of this Section 14, such  
18 Transfer shall be null and void and of no force or effect. Notwithstanding the foregoing, the City  
19 shall have the right to collect from any such transferee an amount equal to the amounts payable to  
20 the City under this Agreement.

21                           **14.2 Independent Operator**

22                           Unless, prior to the Effective Date, PDC can demonstrate that it satisfies each of the  
23 standards identified in Section 14.1.5 to the reasonable satisfaction of the City, PDC shall engage a  
24 third party subcontractor to perform operating and management services under this Agreement  
25 (the "**Independent Operator**"). Any such Independent Operator is subject to Approval pursuant  
26 to the terms of this Section 14. The resulting agreement between PDC and the Independent  
27 Operator (the "**Independent Operator Agreement**") shall expressly provide, and the  
28 Independent Operator shall acknowledge, that PDC's management and operational obligations  
29 and duties under this Agreement are the obligations and duties of such Independent Operator, and

1 that PDC's engagement of such Independent Operator shall not release PDC from such  
2 management and operational duties hereunder. Any and all costs associated with an Independent  
3 Operator, including, without limitation, monthly service fees shall be Operating Expenses. PDC  
4 shall, subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, indemnify,  
5 defend, and hold the City and the City Related Persons harmless from and against any penalties,  
6 costs, and expenses (including attorneys' fees) relating to any Independent Operator Agreement.  
7 Further, all Independent Operator Agreements shall provide that the Independent Operator shall  
8 indemnify, defend, and hold the City and the City Released Persons harmless from and against any  
9 penalties, costs, and expenses (including attorneys' fees) relating to such Independent Operator  
10 Agreement.

11 14.3 **Liability of PDC**

12 No Transfer of all or any part of the interest of PDC in this Agreement, including,  
13 without limitation, pursuant to the Independent Operator Agreement, shall be deemed a waiver by  
14 the City of any term, covenant, or condition of this Agreement. Upon any Transfer Approved of  
15 by the City: (a) the obligations imposed on PDC under this Agreement shall be deemed the  
16 obligations of the Independent Operator; and (b) PDC shall remain liable to the City for the full  
17 performance of all of its obligations under this Agreement due both prior to the effective date of  
18 the Transfer and thereafter.

19 **SECTION 15 AGREEMENTS AFFECTING COLISEUM**

20 15.1 **Conditions to Agreements**

21 PDC may enter into agreements relating to the management, administration,  
22 operation, use, scheduling, advertising, marketing, promotion, security, licensing, provision of  
23 concessions, Maintenance, Repair, or Capital Improvement of or at the Coliseum (any such  
24 agreement, a "**Coliseum Agreement**") upon compliance with the following requirements and any  
25 other applicable requirements of this Agreement. Except as otherwise expressly provided in this  
26 Agreement, the Independent Operator Agreement and the PWH Sublicense shall each be deemed a  
27 Coliseum Agreement.

1                   15.1.1 **Agreement with PDC.** Each Coliseum Agreement shall be in the name of  
2 PDC, unless the City elects in writing to enter into any such Agreement in the name of the City.

3                   15.1.2 **Approval by the City.** Prior to execution by PDC of any Coliseum  
4 Agreement, which would extend beyond the Term, PDC shall submit such Coliseum Agreement to  
5 the City and receive the City's Approval of such Coliseum Agreement, provided, such Approval is  
6 subject to Section 15.1.3, below.

7                   15.1.3 **Assumption by the City.** Each Coliseum Agreement shall expressly  
8 provide that the City shall have the right (but not the obligation) to assume the rights and  
9 obligations of PDC under such Coliseum Agreement upon the occurrence of a PDC Event of  
10 Default, occurrence of an Early Termination of this Agreement, or the expiration of the Term, and  
11 that in the event of such assumption, the City shall not be liable for any previous act or omission of  
12 PDC under such Coliseum Agreement or be subject to or bound by any offset or any other  
13 obligation of PDC not expressly provided for in such Coliseum Agreement. Each such Coliseum  
14 Agreement shall designate the City as an express third party beneficiary.

15                   15.1.4 **Termination.** Each Coliseum Agreement shall be terminable by the City  
16 at any time in the event of a PDC Event of Default, Early Termination, or otherwise upon the  
17 Termination Date. Subject to the City's termination right in the preceding sentence, the term of  
18 the Independent Operator Agreement shall coincide with the term of this Agreement.

19                   15.1.5 **Insurance.** Each Coliseum Agreement, other than the Independent  
20 Operator Agreement and PWH Sublicense (each of which shall comply with the provisions of  
21 Section 10.10 of this Agreement), shall require the contracting party to provide insurance  
22 sufficient, in the reasonable judgment of PDC, for the services to be performed or the materials to  
23 be furnished under that Agreement. The Independent Operator Agreement and PWH Sublicense  
24 shall require the Independent Operator and PWH, respectively, to carry insurance in such amounts  
25 as provided in Section 10.10 of this Agreement.

26                   15.1.6 **Independent Operator Agreements with Affiliates.** The Independent  
27 Operator may enter into a Coliseum Agreement with an Affiliate subject to the following  
28 conditions. The costs and expenses in fulfilling such conditions shall not be Operating Expenses.



1                   15.1.6.1 The Independent Operator shall fully disclose to the City the  
2 proposed agreement (or any amendment or modification) and all material facts regarding the  
3 proposed agreement.

4                   15.1.6.2 The Independent Operator shall demonstrate to the City, in the  
5 exercise of the City’s reasonable judgment, that the terms of the proposed agreement (or any  
6 amendment or modification) are fair and reasonable and consistent with or better than industry  
7 standards.

8                   15.1.6.3 The City and PDC (on behalf of the Independent Operator) shall  
9 have agreed upon the reporting information to be provided by the Independent Operator with  
10 respect to such an agreement and the scope of and degree of the City’s oversight rights with respect  
11 to such agreement.

12                   15.1.6.4 [Reserved]

13                   15.1.6.5 In lieu of entering into a Coliseum Agreement with an Affiliate,  
14 the Independent Operator may itself perform services which an Affiliate otherwise could perform  
15 pursuant to this Section 15.1.6; provided, however, that (i) the terms and conditions of such  
16 performance, including any fees or charges accruing to or payable by PDC or the Independent  
17 Operator in connection therewith, shall be subject to the prior written approval of the City, which  
18 shall be given in accordance with the standards set forth in Sections 15.1.6.1 through 15.1.6.4 (as if  
19 the word “agreement” therein read “arrangement”), (ii) the Independent Operator shall at all times  
20 keep and maintain its books and records respecting such services separate from its books and  
21 records respecting performance of its duties under the Independent Operator Agreement and this  
22 Agreement, and (iii) PDC and the City shall have first executed an agreement memorializing the  
23 terms and conditions of PDC’s performance of such services by the Independent Operator.

24                   **15.1.7 Prohibition of Delegation to Affiliates.** The Independent Operator shall  
25 not delegate to an Affiliate, nor enter into a Coliseum Agreement with an Affiliate, respecting any  
26 duties which PDC or the Independent Operator have a direct obligation to perform under this  
27 Agreement or the Independent Operator Agreement, without first obtaining the prior Approval of  
28 the City, which may withheld in the City’s sole discretion. None of PDC, the Independent

1 Operator, nor any Affiliate of the Independent Operator shall receive any additional compensation  
2 or fee for performance of such duties except for the PDC Fee pursuant to Section 5.5.

3           **15.1.8 No Liability of the City.** Each Coliseum Agreement shall expressly  
4 provide that the City shall have no liability with respect to any services performed or to be  
5 performed at the Coliseum or any materials furnished or to be furnished at the Coliseum, and that  
6 no mechanic's or other lien for such services or materials shall attach to or affect the interest of the  
7 City in the Coliseum or any other asset or property of the City. Each party to any Coliseum  
8 Agreement relating to the construction of Capital Improvements at the Coliseum shall provide  
9 notice to the City sufficient to permit the City to post a notice of non-responsibility at the  
10 construction site prior to the commencement of construction, but the failure of the City to post  
11 such a notice shall in no event impose liability on the City with respect to such construction.

12           **15.2 Assignment by PDC**

13           PDC hereby assigns for security purposes to the City, PDC's right, title, and  
14 interest in and to any and all Coliseum Agreements, whether now existing or hereafter made. The  
15 Parties acknowledge and agree that PDC shall have the right to exercise all rights and enjoy all  
16 benefits conferred on PDC pursuant to any Coliseum Agreement until the occurrence of a PDC  
17 Event of Default, upon which the City may elect, in its sole discretion, to assume any or all of the  
18 Coliseum Agreements. The assignment contained in this Section 15.2 shall not be construed to  
19 impose any responsibility on the City for the management, administration, operation, use,  
20 scheduling, advertising, marketing, promotion, security, licensing, provision of concessions,  
21 Maintenance, Repair, or Capital Improvement of or at the Coliseum. Nothing in this Section 15.2  
22 shall obligate the City to perform or discharge any obligation of PDC under any Coliseum  
23 Agreement. PDC may not assign any Coliseum Agreement to any other party.

24           **15.3 Effect of Termination**

25           Without limiting anything contained in this Section 15, the Parties expressly  
26 acknowledge that all Coliseum Agreements executed or otherwise entered into by or on behalf of  
27 PDC during the Term are the sole and absolute responsibility of PDC. Except as may be  
28 expressly provided in this Agreement, the City is under no obligation to operate the Coliseum, and

1 the Spectator Facilities Fund shall not be liable for costs or expenses associated with the continued  
2 operation of the Coliseum, or otherwise under the Coliseum Agreements (including the PWH  
3 Sublicense). If the Coliseum is closed or this Agreement is terminated for any reason (including  
4 upon expiration of the Term), PDC shall, subject to the limits of the Oregon Constitution and the  
5 Oregon Tort Claims Act, indemnify, defend, and hold the City harmless from and against any  
6 penalties, costs, and expenses (including attorneys' fees) relating to such Coliseum Agreements  
7 executed or otherwise entered into by or on behalf of PDC, including, without limitation, the PWH  
8 Sublicense.

9           15.4   **PWH Sublicense**

10                   Without limiting the generality of Sections 14 or 15, the PWH Sublicense shall  
11 require the following, and the City shall be a third party beneficiary of any rights of PDC under the  
12 PWH Sublicense, but without liability therefor, with respect to the following:

13                   15.4.1 During the term of the PWH Sublicense, and subject to the terms of the  
14 Scoreboard Agreement, PWH shall be responsible for: (a) operations, management,  
15 administration, use, scheduling, marketing, promotion, security, licensing, maintenance, repair,  
16 ensuring that the Scoreboard remains in good condition and working order in a manner consistent  
17 with the Scoreboard Agreement; (b) engaging in and seeking Scoreboard Advertising and  
18 Scoreboard Naming Rights; and (c) such other activities relating to the Scoreboard.

19                   15.4.2 Subject to the provision of the Scoreboard Agreement, PWH shall make the  
20 Scoreboard available for all non-PWH Events.

21                   15.4.3 PWH shall be subject to all limitations, approval requirements (including,  
22 without limitation, obligations to enter into Naming Rights Agreements), and other restrictions  
23 contained in Section 4.11 of this Agreement with respect to Scoreboard Advertising and  
24 Scoreboard Naming Rights. Notwithstanding the foregoing, Scoreboard Advertising must be of  
25 the type and nature that can be covered, cloaked, or otherwise removed for non-PWH Events.

26                   15.4.4 [Intentionally deleted].

27                   15.4.5 With respect to the Scoreboard, PWH shall indemnify and hold the City and

1 any City Related Persons harmless from and against all claims, demands, penalties, defaults,  
2 losses, damages, remediations, and causes of action of any kind or character (including the cost of  
3 defense thereof except attorney fees, and except to the extent the same are directly attributable to  
4 the negligence or willful misconduct of the City or City Related Persons), in favor of any Person,  
5 which arises out of, or results from, the acts or omissions of PWH, its officers, employees, or  
6 agents, which may be imposed upon, incurred by, or asserted against the City or any of the City  
7 Related Persons arising from any of the matters set forth below:

8                           15.4.5.1 Any negligent conduct, act, or omission of PWH or PWH's  
9 directors, officers, employees, agents, contractors, subcontractors, or licensees, occurring during  
10 the term of the PWH Sublicense.

11                           15.4.5.2 Any accident, injury, death, or damage caused to any Person or to  
12 the property of any Person occurring during the term of the PWH Sublicense on or about the  
13 Coliseum.

14                           15.4.5.3 Scoreboard Advertising and Scoreboard Naming Rights, and  
15 subject to the terms of the Scoreboard Agreement, any use, non-use, possession, occupation,  
16 operation, scheduling, promotion, maintenance, repair, licensing, restoration, or management of  
17 all or any part of the Scoreboard.

18                           15.4.5.4 Any event of default by PWH of any obligations of PWH under  
19 any agreement affecting the Scoreboard not cured within any applicable cure period provided in  
20 such other agreement.

21                           15.4.5.5 Construction, to the extent performed by or at the direction of  
22 PWH, any Scoreboard-related capital improvements.

23                           15.4.5.6 The actual or alleged presence, use, treatment, storage, generation,  
24 manufacture, transport, release, leak, spill, disposal, or other handling of Hazardous Substances  
25 on, from, or about the Scoreboard caused by PWH.

26                           15.4.6 [Intentionally deleted].



1 15.4.7 [Intentionally deleted].

2 15.4.8 The PWH Sublicense shall contain economic terms no more favorable to  
3 PWH than the terms contained in the Conditional PAM SLA (as defined in the Final RDA). The  
4 City shall have the right to reasonably approve agreements directly or indirectly modifying, to the  
5 benefit of PWH, the economic terms of the PWH Sublicense. Any such agreement shall be  
6 approved or disapproved by the City in writing within thirty (30) calendar days of the City's  
7 receipt of the same; provided, however, that any request for approval under this Section 15.4.8  
8 shall be simultaneously delivered to the City by: (a) one of the methods provided for in Section  
9 19.3(a), (c), or (d); and (b) confirmed e-mail copy pursuant to Section 19.3(b). The City's failure  
10 to respond within such 30-day period shall be deemed the City's approval of the applicable  
11 agreement.

12 In no event shall costs or expenses attributable to, arising under, or otherwise relating to PDC's or  
13 PWH's compliance with this Section 15.4, whether under this Agreement, the PWH Sublicense, or  
14 otherwise, be deemed Operating Expenses.

15 **SECTION 16 REPRESENTATIONS, WARRANTIES, AND COVENANTS**

16 All representations, warranties, and covenants of the City contained in this  
17 Section 16 shall not limit, restrict, or otherwise affect any ordinance, consent, decree, or other  
18 action of the City issued, promulgated, granted, or taken in the City's governmental, legislative,  
19 judicial, or administrative capacity.

20 **16.1 Representations and Warranties of the City**

21 Subject to the qualifications set forth in Exhibit 15.1 attached hereto, the City  
22 hereby represents and warrants to PDC as follows:

23 **16.1.1 Organization.** The City is a municipal corporation duly organized and  
24 validly existing under the laws of the State of Oregon, and has full requisite municipal power and  
25 authority to execute, enter into and deliver this Agreement and each related document to which it is  
26 or will be a party, and to perform its obligations hereunder or thereunder.

1           **16.1.2 Authorization.** This Agreement is the valid and binding obligation of the  
2 City, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency,  
3 reorganization, moratorium, and other laws applicable to creditors' rights and remedies and to the  
4 exercise of judicial discretion in accordance with general principles of equity, and subject to a  
5 judicial interpretation of Portland City Charter, Section 2-105(a)(3). The execution, delivery, and  
6 performance by the City of this Agreement have been duly authorized by all necessary action of  
7 City.

8           **16.1.3 No Conflicts.** The execution, delivery, and performance by the City of  
9 this Agreement and the transactions contemplated by this Agreement are not prohibited by and do  
10 not conflict with any other agreements, instruments, judgments, or decrees to which the City is a  
11 party or is otherwise subject.

12           **16.1.4 No Violation of Laws.** The execution, delivery, and performance by the  
13 City of this Agreement do not violate any ordinance, rule, or regulation of the City of Portland.  
14 The City has received no notice as of the date of this Agreement asserting any noncompliance in  
15 any material respect by the City with any Governmental Regulations binding on the City with  
16 respect to the matters contemplated by this Agreement. The City is not in default with respect to  
17 any judgment, or decree of any Governmental Authority which is in any respect material to the  
18 matters contemplated by this Agreement.

19           **16.1.5 Litigation.** The City has not been served process with respect to any  
20 litigation, suit, or other proceeding pending before or by any Governmental Authority seeking to  
21 restrain or prohibit, or seeking damages or other relief in connection with, the execution, delivery,  
22 or performance by the City of this Agreement or the consummation of the transactions  
23 contemplated by this Agreement or which may materially and adversely affect the use and  
24 operation of the Coliseum as contemplated by this Agreement except for such litigation, if any,  
25 previously disclosed in writing to PDC.

26           **16.1.6 Ownership of Coliseum.** The City is the owner of the Coliseum, subject  
27 to the liens, encumbrances, and restrictions set forth on Exhibit 15.1.6.

1           16.1.7 **Use.** The current use of the Coliseum and the future use of the Coliseum as  
2 contemplated by this Agreement complies with all applicable zoning ordinances and other laws  
3 and regulations.

4           16.2 **Representations and Warranties of PDC**

5           PDC hereby represents and warrants to the City as follows:

6           16.2.1 **Organization.** PDC is the duly designated urban renewal agency of the  
7 City of Portland duly organized and validly existing under the laws of the State of Oregon, and has  
8 full requisite power and authority to execute, enter into and deliver this Agreement and each  
9 related document to which it is or will be a party, and to perform its obligations hereunder or  
10 thereunder.

11           16.2.2 **Authorization.** This Agreement is the valid and binding obligation of  
12 PDC, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency,  
13 reorganization, moratorium, and other laws applicable to creditors' rights and remedies and to the  
14 exercise of judicial discretion in accordance with general principles of equity. The execution,  
15 delivery, and performance by PDC of this Agreement have been duly authorized by all necessary  
16 action of PDC. Without limiting the generality of this Section 16.2.2, PDC represents and  
17 warrants that PDC is legally authorized to assume the responsibilities and obligations imposed on  
18 it pursuant to this Agreement.

19           16.2.3 **No Conflicts.** The execution, delivery, and performance by PDC of this  
20 Agreement and the transactions contemplated by this Agreement are not prohibited by and do not  
21 conflict with any other agreements, instruments, judgments, or decrees to which PDC is a party or  
22 is otherwise subject.

23           16.2.4 **No Violation of Laws.** PDC has received no notice as of the date of this  
24 Agreement asserting any noncompliance in any material respect by PDC with any Governmental  
25 Regulations with respect to the matters contemplated by this Agreement. PDC is not in default  
26 with respect to any judgment, order, or decree of any Governmental Authority which is in any  
27 respect material to the matters contemplated by this Agreement.

1                   **16.2.5 Litigation.** PDC has not been served process with respect to any  
2 litigation, suit, or other proceeding pending before or by any Governmental Authority seeking to  
3 restrain or prohibit, or seeking damages or other relief in connection with, the execution, delivery,  
4 or performance by PDC of this Agreement or the consummation of the transactions contemplated  
5 by this Agreement or which may materially and adversely affect the use and operation of the  
6 Coliseum as contemplated by this Agreement.

7                   **16.2.6 Consents.** No consent, approval, or waiver of any Person is necessary in  
8 connection with the execution, delivery, or performance by PDC of this Agreement or the  
9 transactions contemplated by this Agreement, including, without limitation, consents or waivers  
10 from parties to loans, licenses, franchises, or other agreements affecting PDC.

11                   **16.2.7 Resources.** PDC has legally available resources to fulfill all of PDC's  
12 obligations under this Agreement.

13                   16.3 [Reserved]

14                   16.4 **Covenants of PDC**

15                   16.4.1 [Reserved]

16                   **16.4.2 Permits and Authorizations.** PDC shall obtain and maintain in force all  
17 permits, licenses, and other governmental authorizations required for PDC to perform its  
18 responsibilities under this Agreement, all at PDC's cost and expense.

19                   16.5 **Mutual Covenants**

20                   **16.5.1 Further Assurances.** The City and PDC shall execute or cause to be  
21 executed such further documents and take such further actions as may be reasonably requested by  
22 the other Party in order to consummate the transactions provided for in, and to give effect to the  
23 provisions of, this Agreement. In exercising its rights and performing its obligations under this  
24 Agreement, both the City and PDC shall act at all times in good faith.



1           **16.5.2 Notice of Violations.** Each of the City and PDC shall promptly notify the  
2 other Party of any matter which is likely to constitute or give rise to a breach of its obligations  
3 under this Agreement.

4           **16.5.3 Compliance with Laws.** During the Term, each of the City and PDC  
5 shall, in connection with the exercise of its rights and the performance of its obligations under this  
6 Agreement, comply with all Governmental Regulations.

7           **16.5.4 Public Records Law.** The Parties intend that all records, books, and  
8 documents generated by PDC or the City as a result of this Agreement shall be public records as  
9 that term is used in ORS 192.005(5) and disclosable or exempt from disclosure as set forth in ORS  
10 192.501 and ORS 192.502. Accordingly, and notwithstanding anything to the contrary contained  
11 in this Agreement, PDC shall maintain such records, books, and documents for at least five (5)  
12 years following the Termination Date or the Early Termination Date.

13           **16.5.5 Non-Discrimination.** Recognizing that the Coliseum is a publicly owned  
14 facility, PDC agrees that in its management and operations of the Coliseum it will be bound by all  
15 laws which would be binding on the City if the City managed the Coliseum, with respect to rights  
16 guaranteed by the Constitutions of the United States and the State of Oregon and by local  
17 governmental ordinances and regulations, and all laws which bar discrimination on account of  
18 race, color, age, sex, national origin, and similar protected categories.

19 **SECTION 17 DEFAULT; REMEDIES; TERMINATION**

20           **17.1 PDC Default; Remedies**

21           **17.1.1 PDC Event of Default.** A “**PDC Event of Default**” shall be deemed to  
22 have occurred under this Agreement in the event that:

23                   17.1.1.1 PDC fails to pay the City in full any amount due under this  
24 Agreement within five (5) Business Days after the effective date of written notice from the City  
25 stating that such amount is past due;

1                           17.1.1.2 Immediately in the event PDC makes a Transfer of all or part of its  
2 interest in this Agreement, or a Change of Control occurs, in either case in violation of Section 14;

3                           17.1.1.3 Immediately in the event PDC fails to obtain any insurance  
4 coverage required pursuant to Section 10;

5                           17.1.1.4 Immediately in the event PDC lacks immediately available funds  
6 and appropriates to cover NOL;

7                           17.1.1.5 Immediately in the event that PDC lacks legal authority to operate  
8 or otherwise manage (or cause to be operated or otherwise managed) the Coliseum as provided for  
9 in this Agreement;

10                          17.1.1.6 PDC fails to perform any obligation under this Agreement other  
11 than those described in Sections 17.1.1.1 through 17.1.1.5 and PDC fails to cure such  
12 nonperformance within thirty (30) days after the effective date of written notice from the City  
13 describing the nonperformance with reasonable specificity or if such nonperformance cannot be  
14 cured solely by the payment of money and cannot be cured within such 30-day period despite the  
15 exercise of due diligence, PDC fails to commence curative action within such 30-day period and to  
16 continue such action to completion with due diligence;

17                          17.1.1.7 Immediately if any representation or warranty made by PDC in  
18 this Agreement is determined to have been materially false or misleading when made;

19                          17.1.1.8 Immediately if PDC or a PDC Related Person commits: fraud,  
20 misrepresentation, breach of fiduciary duty with respect to handling funds, or gross negligence or  
21 intentional misconduct, in connection with the transactions contemplated by this Agreement;

22                          17.1.1.9 Immediately if PDC defaults under the PWH Sublicense, the  
23 Independent Operator Agreement, or both, and PDC has not cured such default within the time  
24 period, if any, provided in such agreement;

1                   17.1.1.10 Immediately if PWH defaults under the Final RDA, including,  
2 without limitation, for failing to timely fund any sums referenced therein, and PWH has not cured  
3 such default within the time period, if any, provided in such agreement; or

4                   17.1.1.11 Immediately if PDC commences a voluntary case under the  
5 federal bankruptcy laws or under any other federal or state law relating to insolvency or debtor's  
6 relief; such a case is commenced against PDC by any Person and is not dismissed within thirty (30)  
7 days; a decree or order for relief is entered against PDC in an involuntary case under the federal  
8 bankruptcy laws or under any other applicable federal or state law relating to insolvency or  
9 debtor's relief; there is appointed, or PDC consents to the appointment of, a receiver, trustee, or  
10 custodian of any of PDC's assets; or PDC makes a general assignment for the benefit of creditors.

11                   **17.1.2 The City's Remedies.** Upon the occurrence of a PDC Event of Default,  
12 the City shall be entitled to exercise any or all of the following remedies:

13                   **17.1.2.1 Termination.** The City may terminate this Agreement by notice  
14 to PDC given at least ten (10) days prior to the designated date of termination. The ten (10) day  
15 notice period referred to above is not a cure period.

16                   **17.1.2.2 Assumption of PDC Agreements.** The City shall be entitled,  
17 but not obligated, to assume or terminate any or all of the Coliseum Agreements pursuant to  
18 Section 15.

19                   **17.1.2.3 Cure.** Without limitation of other cure rights provided in this  
20 Agreement, the City shall be permitted to cure the default(s) of PDC and a cure shall not relieve  
21 PDC from an Event of Default and to recover from PDC on demand from PDC Funds any costs or  
22 expenses incurred by the City in the course of such cure. PDC shall have no right of action  
23 against the City or the City's officials, employees, agents, or contractors arising from any cure  
24 undertaken pursuant to this Section 17.1.2.3.

25                   **17.1.2.4 Terminate Revenue Sharing Agreement.** The City may  
26 terminate the Revenue Sharing Agreement and keep this Agreement in full force and effect.

1                   17.1.2.5 **Other Remedies.** The City may pursue or exercise any other  
2 right or remedy available to the City, at law, in equity, or under this Agreement.

3                   17.1.3 **Interest.** Any damages payable by PDC under this Agreement shall bear  
4 interest at the Prime Rate plus four (4) percentage points beginning on the date such amount is due  
5 and payable to the City pursuant to this Agreement and ending on the date of payment. All  
6 damages and interest shall be paid from PDC Funds.

7                   17.1.4 **Cumulative Remedies.** To the extent permitted by applicable law, all  
8 remedies provided for in this Section 17.1 are cumulative and may be exercised by the City  
9 concurrently, independently, or successively, in any order whatsoever.

10                  17.1.5 **No Setoff.** PDC shall not assert any breach of any obligation,  
11 representation, or warranty of the City as, and no such breach shall constitute, a defense, offset, or  
12 counterclaim with respect to any obligation of PDC under this Agreement, but PDC may, subject  
13 to the other provisions of this Agreement, pursue independent remedies for any such breach by the  
14 City.

15                  17.2    **City Default; Remedies**

16                  17.2.1 **City Event of Default.** A “City Event of Default” shall be deemed to  
17 have occurred under this Agreement in the event that:

18                         17.2.1.1 The City fails to perform any obligation under this Agreement and  
19 fails to cure such nonperformance within thirty (30) days after the effective date of written notice  
20 from PDC describing the nonperformance with reasonable specificity or if such nonperformance  
21 cannot be cured solely by the payment of money and cannot be cured within such 30-day period  
22 despite the exercise of due diligence, fails to commence curative action within such 30-day period  
23 and to continue such action to completion with due diligence; or

24                         17.2.1.2 Any representation or warranty made by the City in this  
25 Agreement is determined to have been materially false or misleading when made.



1           **17.2.2 PDC Remedies.** Upon the occurrence of a City Event of Default, PDC  
2 shall be entitled to pursue or exercise any right or remedy granted to it under this Agreement or  
3 available at law or in equity. Without limiting the generality of the foregoing, upon a City Event  
4 of Default relating to the Budget Amount under Section 4.5.7, termination of this Agreement is a  
5 remedy available to PDC. To the extent permitted by applicable law, all remedies provided for in  
6 this Section 17.2 are cumulative and may be exercised by PDC concurrently, independently, or  
7 successively, in any order whatsoever. Any damages payable by the City under this Agreement  
8 shall bear interest at the Prime Rate plus four percentage points beginning on the date such amount  
9 is due and payable to PDC pursuant to this Agreement and ending on the date of payment. All  
10 such damages and interest shall be paid from City Funds.

11           **17.3 Rights and Obligations upon Termination**

12           Upon termination of this Agreement, the Parties shall have the following rights and  
13 be subject to the following obligations:

14           **17.3.1 Final Accounting.** Within ten (10) days after the Termination Date (or  
15 any Early Termination Date), PDC shall account for and deliver to the City (i) all funds payable to  
16 the City under this Agreement and (ii) all funds contained in the Operating Account as of the date  
17 of termination. PDC shall be entitled to receive the amount of its PDC Fee prorated through the  
18 date of termination.

19           **17.3.2 Personal Property.** Within fifteen (15) days after the Termination Date  
20 or Early Termination Date, as applicable, the Parties shall jointly perform an inventory of all  
21 supplies, materials, equipment, and consumable items at the Coliseum or located elsewhere but  
22 needed for the operations of the Coliseum and the City may purchase the inventory of such items  
23 from PDC at PDC's book cost for such items. Such purchase price shall be included in Operating  
24 Revenue. If the City does not elect to purchase this inventory, then PDC may either: liquidate  
25 the inventory or buy the inventory at book cost, in which event the proceeds shall be included in  
26 Operating Revenue; or divide the inventory evenly between PDC and the City. Within fifteen  
27 (15) days after the Termination Date or Early Termination Date, as applicable, the Parties shall  
28 jointly perform an inventory of all equipment and machinery used in the operations of and located  
29 at the Coliseum. PDC shall turn over to City the items of Personal Property which were turned

1 over to PDC at the commencement of the Term, or replacements of those items, and which were  
2 paid for as Operating Expenses or Capital Improvements. PDC shall remove all of its personal  
3 property from the Coliseum within thirty (30) days after the Termination Date or Early  
4 Termination Date, as applicable. If PDC fails to remove any such personal property in a timely  
5 manner, the City shall have the right to perform such removal at the cost and expense of PDC from  
6 PDC Funds (payable to the City upon demand), and without liability for any damage or loss  
7 occurring in connection with such removal.

8           **17.3.3 Vacation of Coliseum.** All personnel of PDC or any Affiliate of PDC  
9 shall vacate the Coliseum within thirty (30) days after the Termination Date or Early Termination  
10 Date, as applicable, other than in connection with the sale and removal of personal property  
11 described in Section 17.3.2.

12           **17.3.4 Assumption of Agreements.** Upon the effective date of the Termination  
13 Date or Early Termination Date, as applicable, the City shall assume those then existing Coliseum  
14 Agreements which the City has agreed (in writing to assume) and which meet the requirements of  
15 Section 15 and the City shall honor all advance bookings or commitments for Events at the  
16 Coliseum. All agreements with Affiliates of PDC which are Coliseum Agreements, shall  
17 terminate automatically as of the termination date.

18           **17.3.5 Prorations.** All Operating Revenue and Operating Expenses of operation  
19 of the Coliseum shall be prorated as of the Termination Date or any Early Termination Date, and,  
20 to the extent of information then available, such prorations shall be made on such date of  
21 termination. The Parties shall use their best efforts prior to such termination date to prepare a  
22 schedule of prorations covering as many items to be prorated as practicable so that prorations may  
23 be made on the termination date. Such prorations shall be adjusted, if necessary, and completed  
24 as soon as practicable after such termination date as soon as final information becomes available.  
25 Security deposits and other refundable deposits shall be transferred from the Operating Account or  
26 any other account in which they are held into an account maintained by the City. For the purposes  
27 of making such prorations, income and expenses for the period prior to the proration date shall be  
28 Operating Expenses, Operating Revenues, or charged to either Party if this Agreement so

1 provides, and income and expenses for the period after the Termination Date shall be for the  
2 benefit of or the responsibility of the City.

3 **17.3.6 Indemnity.**

4 **17.3.6.1** Subject to the limits of the Oregon Constitution and the Oregon  
5 Tort Claims Act, the City shall defend, indemnify and hold harmless PDC and PDC’s officers,  
6 agents, and employees (“**PDC Related Persons**”) from and against any and all Damages which  
7 may be imposed upon, incurred by, or asserted against the PDC Related Persons by reason of any  
8 breach by the City of this Agreement or any Coliseum Agreement assumed by the City after the  
9 Termination Date or Early Termination Date, as applicable.

10 **17.3.6.2** Subject to the limits of the Oregon Constitution and the Oregon  
11 Tort Claims Act, PDC shall defend, indemnify and hold harmless the City and the City Related  
12 Persons, at PDC’s sole cost and expense and from PDC Funds, from and against any and all  
13 Damages which may be imposed upon, incurred by, or asserted against the City Related Persons  
14 by reason of any breach by PDC of this Agreement or any Coliseum Agreement prior to the  
15 termination date of this Agreement.

16 **17.3.6.3** The Independent Operator shall defend, indemnify and hold  
17 harmless the City and the City Related Persons, at the Independent Operator’s sole cost and  
18 expense, from and against any and all Damages which may be imposed upon, incurred by, or  
19 asserted against the City or the City Related Persons by reason of any breach by the Independent  
20 Contractor of this Agreement or the Independent Contractor Agreement. The Independent  
21 Operator Agreement shall contain terms consistent with the requirements of this Section 17.3.6.3.

22 **17.3.7 Full Cooperation to Effect Transfer.** From and after the Termination  
23 Date or any applicable Early Termination Date, the Parties shall use Reasonable Efforts to effect  
24 an orderly and efficient transition of operations of the Coliseum to the City or the City’s designee.  
25 The transition plan shall include, at a minimum, a mechanism for advance scheduling of events in  
26 the Coliseum for the period after termination of this Agreement, training of City personnel by PDC  
27 regarding operations of the Coliseum, and access to the Coliseum by the City’s (or its designee’s)  
28 agents and employees during a reasonable transition period. The City (or its designees) shall be

1 assisted by PDC in the orderly transition of operations of the Coliseum in the same way that the  
2 City is required to assist PDC in the orderly transition of the management of the Coliseum pursuant  
3 to Section 2.3.

4           **17.3.8 Access to Records.** For a period of five (5) years after the Termination  
5 Date or Early Termination Date, as applicable, PDC shall provide the City with access to the  
6 accounts, books, and records to be maintained by PDC pursuant to Section 6.3. If reasonably  
7 required by the City, PDC shall provide the City with the originals of any such books or records for  
8 the period of the City's requirements.

9 **SECTION 18 DISPUTE RESOLUTION**

10           With respect to any disagreement between the Parties, any dispute, or any instance  
11 where mutual agreement is not reached (a "**Dispute**"), the Parties shall resolve such a situation  
12 through dispute resolution pursuant to this Section 18 ("**Dispute Resolution**"). Except as  
13 provided in Section 18.7, Dispute Resolution shall be the exclusive means to resolve Disputes.  
14 Dispute Resolution does not apply where a decision or approval is subject to the Party's sole  
15 discretion, however, to the extent that such decision is subject to a Party's "reasonable discretion,"  
16 the reasonableness of the decision shall be subject to Dispute Resolution.

17           **18.1 Good Faith Negotiations**

18           In the event either Party believes a Dispute exists, it shall give notice to the other  
19 specifying in reasonable detail the nature of such Dispute. The Parties shall seek in good faith to  
20 negotiate a settlement of the Dispute, including, without limitation, by agreeing to reasonable  
21 requests of the other to hold a meeting to discuss such Dispute.

22           **18.2 Designation of Arbitrator**

23           If, within ten (10) days after the effective date of any notice given pursuant to  
24 Section 18.1, the Parties have been unable to reach a resolution of the Dispute, the Parties shall  
25 attempt to agree on an arbitrator (the "**Arbitrator**"). If the Parties shall fail to agree on an  
26 Arbitrator within twenty (20) days after the effective date of the notice given pursuant to  
27 Section 18.1, the Parties shall each designate, by written notice to the other given not later than



1 twenty-five (25) days after the effective date of the notice given pursuant to Section 18.1, a  
2 representative, who need not be neutral and who shall either: have at least five (5) years of  
3 experience in connection with the management of public facilities, or be a business lawyer with at  
4 least ten (10) years of experience. If either Party fails to designate a representative within this  
5 period, the representative of the Party who met the deadline shall act as Arbitrator. If both Parties  
6 meet the deadline, the two (2) representatives shall, within ten (10) days after the last of the two (2)  
7 representatives is designated, select an Arbitrator who shall either: have at least five (5) years of  
8 experience in connection with the management of public facilities, or be a business lawyer with at  
9 least ten (10) years' experience. If the representatives cannot agree on an Arbitrator, the  
10 Presiding Judge of the Circuit Court for Multnomah County, Oregon shall, upon application by  
11 either Party, nominate three (3) arbitrators having such qualification. The Party initiating Dispute  
12 Resolution shall have the right to strike one (1) proposed arbitrator and thereafter the responding  
13 Party shall have the right to strike one (1) proposed arbitrator. If either Party fails to exercise its  
14 right to strike within five (5) days, then the right to strike passes to the other Party. The Arbitrator  
15 chosen pursuant to this Section 18.2 shall be the sole Arbitrator. The fee of the Arbitrator shall be  
16 shared equally by the City and PDC from City Funds and PDC Funds, respectively.

17 **18.3 Scope of Arbitration**

18 In connection with any arbitration proceeding, each Party shall submit, in writing,  
19 the specific requested action or decision it wishes to take, or make, with respect to the Dispute, and  
20 the Arbitrator shall be obligated to choose one or the other of such specific requested actions or  
21 decisions, without being permitted to effectuate any compromise position.

22 **18.4 Conduct of Arbitration**

23 Except to the extent provided in this Agreement, or as the Parties may otherwise  
24 agree in writing, any arbitration proceeding shall be conducted in accordance with the rules and  
25 procedures of ASP then in force. Although the rules and procedures of ASP shall be used to  
26 govern the conduct of the arbitration, the Arbitrator shall be chosen by the procedure described in  
27 Section 18.2 and the arbitration need not be conducted through ASP, unless the Parties otherwise  
28 agree. For purposes of an arbitration conducted under this Section 18, whenever ASP rules refer  
29 to the "tribunal administrator," such reference shall be deemed to be the Arbitrator chosen under

1 Section 18.2. The Parties expressly agree that any arbitration proceeding may proceed in the  
2 absence of any Party who, after due notice, fails to be present at such arbitration or to obtain an  
3 adjournment, and that, in such event, an award may be made based solely upon the evidence  
4 submitted by the Party who is present. All arbitration proceedings shall be conducted in Portland,  
5 Oregon or in such other location as the Parties may agree. In making any determination, the  
6 Arbitrator shall apply the pertinent provisions of this Agreement without modification or  
7 qualification in any respect. The Arbitrator shall have no power to award consequential or  
8 punitive damages or terminate this Agreement. The Arbitrator shall furnish the Parties with a  
9 written decision within thirty (30) days after the date the Arbitrator is selected, unless the  
10 Arbitrator determines that a longer period of time is required for a fair hearing to be held and a  
11 reasoned decision to be rendered.

12 18.5 **Effect on Agreement**

13 Unless otherwise agreed in writing, during the period that any arbitration is pending  
14 under this Agreement, the Parties shall continue to comply with all terms and provisions of this  
15 Agreement which are not the subject of the Dispute.

16 18.6 **Effect of Determination**

17 The decision or award rendered by the Arbitrator shall be final, nonappealable,  
18 conclusive, and binding upon the Parties, and judgment may be entered upon it in accordance with  
19 applicable law in a court of competent jurisdiction subject, however, to appeal of any matters that  
20 are appealable from a binding arbitration under Oregon law. Neither the requirement to utilize  
21 the procedures set forth in this Section 18, nor the pendency of any arbitration proceeding, shall in  
22 any way invalidate any notices or extend any cure periods provided for in this Agreement.

23 18.7 **Equitable Proceedings**

24 In the event a Party desires to seek interim judicial relief, whether affirmative or  
25 prohibitive, in the form of a temporary restraining order, preliminary injunction, or other interim  
26 equitable relief with respect to a Dispute, either before or after the initiation of arbitration  
27 proceeding, that Party may initiate the judicial proceeding necessary to obtain such relief  
28 (“**Equitable Proceeding**”). Nothing in this Section 18.7 shall be construed to suspend or

1 terminate the obligation of the Parties to comply with the procedures set forth in this Section 18  
2 with respect to the Dispute that is the subject of such Equitable Proceeding during the pendency of  
3 any such Equitable Proceeding, including any appeal or review. Notwithstanding the  
4 determination of the Arbitrator, any interim relief granted by such Equitable Proceeding shall not  
5 be reversed or modified by the Arbitrator's determination, and any factual or legal determinations  
6 made in the permanent injunction stage of such Equitable Proceeding shall be binding upon the  
7 Parties in the Dispute before the Arbitrator.

8           18.8    **Further Disputes**

9                    The Parties agree that any Disputes which arise during the Term out of a settlement  
10 agreement or arbitrator's determination shall be resolved exclusively by the procedures set forth in  
11 this Section 18.

12           18.9    **Confidentiality**

13                    The arbitration proceedings shall be kept confidential, subject to the requirements  
14 of ORS Chapter 192, and the Parties and the Arbitrator agree not to disclose any information  
15 regarding the arbitration to any third parties, except for employees, advisers, legal counsel, and  
16 accountants for the respective Parties on a need-to-know basis. However, the decision of the  
17 Arbitrator with respect to the resolution of a Dispute need not be kept confidential.

18    **SECTION 19   GENERAL PROVISIONS**

19           19.1    **Standard of Measurement**

20                    As used in this Agreement, "**Escalator**" means the CPI as adjusted in accordance with the  
21 methodology set forth in this Section 19.1. If a dollar amount is to be adjusted with the passage  
22 of time under this Agreement, the adjustment shall take place annually based on the change in the  
23 CPI between the second half of the prior calendar year compared to the second half of the year  
24 immediately preceding the prior calendar year. For example, for fiscal year 2024-2025 (July 1,  
25 2024 – June 30, 2025), the Budget Amount will be multiplied by a fraction, the numerator of which  
26 is the CPI for the second half of 2023 (July 1 – December 31, 2023) and the denominator of which  
27 is the CPI for the second half of 2022 (July 1 – December 31, 2022).

1           19.2   Exhibits

2                   The Exhibits to this Agreement referred to in the text and attached hereto are  
3 incorporated by this reference and made an integral part hereof.

4           19.3   Notices

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

12                           If to the City: City of Portland  
13   1120 S.W. Fifth Avenue, Room 1204  
14   Portland, Oregon 97204  
15   Attn: Chief Administrative Officer  
16   E-Mail: VMC.OA@portlandoregon.gov  
17   Confirmation No.: 503-823-5288

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

25                           and to: Radler White Parks & Alexander LLP  
26   111 SW Columbia Street, Suite 1100  
27   Portland, Oregon 97201  
28   Attn: Dina Alexander  
29   E-Mail: dalexander@radlerwhite.com  
30   Confirmation No.: 971-634-0203

31                           If to PDC:   Portland Development Commission  
32   222 NW Fifth Avenue  
33   Portland, Oregon 97209  
34   Attn: Peter Englander



1 E-Mail: englanderp@pdc.us  
2 Confirmation No.: 503-823-3347

3 with copies to: Portland Development Commission  
4 222 NW Fifth Avenue  
5 Portland, Oregon 97209  
6 Attn: General Counsel  
7 E-Mail: iversone@pdc.us  
8 Confirmation No.: 503-823-3221  
9

10 and to: Miller Nash LLP  
11 3400 U.S. Bancorp Tower  
12 111 S.W. Fifth Avenue  
13 Portland, Oregon 97204  
14 Attn: Michael Ryan  
15 E-Mail: [mike.ryan@millernash.com](mailto:mike.ryan@millernash.com)  
16 Confirmation No.: 503-205-2543

17  
18 Each Party may, by notice to the other Party, specify a different address or confirmation  
19 number for subsequent notice purposes. Notices may be sent by counsel for a Party.  
20 Notice shall be deemed effective on the earlier of actual delivery or refusal of a Party to  
21 accept delivery; provided that notices delivered by e-mail shall not be deemed effective  
22 unless simultaneously transmitted by another means allowed under this Section 19.3.  
23 For a notice to be effective, the copied persons must also be given notice.

24 19.4 **Time of Essence**

25 Time is of the essence of the Parties' respective obligations under this Agreement.

26 19.5 **Conflict of Interest**

27 No member, official, or employee of City or PDC shall have any personal financial  
28 interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee  
29 participate in any decision relating to this Agreement which affects his/her personal financial  
30 interest or the financial interest of any Person in which he/she is, directly or indirectly, interested.  
31 No member, official, or employee of City or PDC shall be personally liable to the other or any  
32 successor in interest to the other in the event of any default or breach by City or PDC, as

1 applicable, or for any amount which may become due to the other or such successor with respect to  
2 any obligations under the terms of this Agreement.

3 19.6 **Relationship of Parties**

4 No provision of this Agreement shall be construed to create a partnership or joint  
5 venture relationship, an employer-employee relationship, a landlord-tenant relationship, a  
6 principal-agent relationship, or any other relationship between City and PDC other than that of  
7 owner and independent contractor.

8 19.7 **Severability**

9 If any term or provision of this Agreement or its application to any party or  
10 circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and  
11 the application of such term or provision to such party or circumstances other than those as to  
12 which it is held invalid or unenforceable shall not be affected, and each term or provision of this  
13 Agreement shall be valid and enforceable to the fullest extent permitted by law.

14 19.8 **Construction and Interpretation**

15 To the extent consistent with the context, words in the singular shall include the  
16 plural, words in the masculine gender shall include the feminine gender and the neuter, and vice  
17 versa, and different tenses of defined terms may be used and shall have the meaning of the actual  
18 defined term as appropriate to reflect the tense used. All provisions of this Agreement have been  
19 negotiated at arm's length, and this Agreement shall not be construed for or against any Party by  
20 reason of the authorship or alleged authorship of any provision of this Agreement.

21 19.9 **Binding Effect**

22 The provisions of this Agreement shall be binding upon and inure to the benefit of  
23 the Parties and their respective successors and assigns, subject to the provisions of Section 14.

24 19.10 **Captions**

1           The captions or titles of the sections of this Agreement are intended for ease of  
2 reference only and shall have no effect whatsoever on the construction or interpretation of any  
3 provision of this Agreement.

4           19.11 **Integration**

5           This Agreement and the Revenue Sharing Agreement (as amended hereby) contain  
6 the entire agreement and understanding of the Parties with respect to the matters contemplated by  
7 this Agreement and supersede all prior and contemporaneous agreements between them with  
8 respect to such matters.

9           19.12 **Amendment**

10           This Agreement may not be modified or amended except by the written agreement  
11 of the Parties. The CAO or his designee may negotiate, approve and execute amendments to this  
12 Agreement in form and substance acceptable to the CAO or his designee in his or her sole  
13 discretion, unless such amendment results in a material adverse change in the financial terms and  
14 provisions of this Agreement.

15           19.13 **Waiver**

16           Failure of any party at any time to require performance of any provision of this  
17 Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of any  
18 breach of any provision of this Agreement constitute a waiver of any succeeding breach of such  
19 provision or a waiver of such provision itself. Any waiver of any provision of this Agreement  
20 shall be effective only if set forth in writing and signed by the party to be bound.

21           19.14 **Survival**

22           All representations and warranties set forth in this Agreement, and all provisions of  
23 this Agreement, the full performance of which is not required prior to a termination of this  
24 Agreement, shall survive any such termination and be fully enforceable thereafter.

25           19.15 [Reserved]

1           19.16 **Governing Law**

2                   This Agreement shall be governed by and construed in accordance with the laws of  
3 the State of Oregon.

4           19.17 **Estoppel Certificates**

5           Each Party shall at any reasonable time, within twenty (20) days after written request by  
6 another party, execute, acknowledge and deliver to the requesting party or to any prospective  
7 Lender, assignee or subtenant designated by the requesting party, a certificate stating that: (a) this  
8 Agreement is in full force and effect and has not been modified, supplemented or amended in any  
9 way, and if there have been modifications, the Agreement is in full force and effect as modified,  
10 identifying such modification agreement; and if the Agreement is in full force and effect as  
11 modified, identifying such modification agreement; and if the Agreement is not in force and effect,  
12 the certificate shall so state; (b) the dates on which the term of this Agreement commenced; (c)  
13 whether all conditions under the Agreement to be performed by a designated party, to the  
14 knowledge of the other party, have been satisfied and, as of the date of such certificate, whether  
15 there are any existing defenses or offsets which one party has against the enforcement of the  
16 Agreement by another party, or, if such conditions' have not been satisfied or if there are any  
17 defenses or offsets, the certificates shall so state. The party to whom any such certificate shall be  
18 issued may rely on the matters therein set forth and thereafter the party issuing the same shall be  
19 estopped from denying the veracity or accuracy of the same. Any certificate required to be made  
20 by the City pursuant to this Section may be made on its behalf by the CAO.

21           19.18 **Waiver of Claim**

22                   PDC hereby waives any claim that this Agreement is invalid under or in violation  
23 of the Portland City Charter, Section 2-105(a)(3) and PDC shall never file any litigation or claim a  
24 Dispute with respect to the effect of the above referenced Charter section on this Agreement.

25           19.19 **Non-Waiver of Government Rights**

26                   By entering into this Agreement, the City is specifically not obligating itself or any other  
27 agency with respect to any discretionary or regulatory action relating to development or operation



1 of the Coliseum, including, but not limited to, rezoning, variances, environmental clearances,  
2 regulatory plan approvals, code compliance or any other governmental agency approvals or  
3 regulatory actions which are or may be required or authorized.

4 19.20 **Recitals**

5 The Parties acknowledge and agree that the Recitals set forth at the beginning of this  
6 Agreement are incorporated into the body of this Agreement as if fully set forth herein.

7 19.21 **Original Operating Agreement**

8 The terms and provisions of this Agreement shall become effective, if ever, on the Effective  
9 Date. Nothing in this Agreement shall be deemed to modify, amend, or otherwise impact the  
10 terms of the Original Operating Agreement.

11 19.22 **No Third Party Beneficiaries**

12 The Parties intend that the right, obligations and covenants in this Agreement shall be  
13 exclusively enforceable by the Parties. There are no third party beneficiaries to this Agreement.

14

15 IN WITNESS WHEREOF, PDC and City have executed this Memorial Coliseum  
16 Operating Agreement as of the date first set forth above.

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PDC:

PORTLAND DEVELOPMENT COMMISSION,  
the duly designated urban renewal agency of the City  
of Portland

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

APPROVED AS TO FORM

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City:

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

By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: City Auditor

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney  
City of Portland

EXHIBIT A-1  
Arena Property

Parcel A (Kosei Property):

A tract of land being a portion of Block 15, McMILLENS ADDITION, a portion of Blocks 54 and 55, HOLLADAYS ADDITION, a portion of NE Multnomah Street vacated by Ordinance No. 121782, a portion of vacated NE Williams Avenue and a portion of vacated NE Hassalo St., said tract being situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at the Northeast corner of said Block 55, HOLLADAYS ADDITION and proceeding thence North  $89^{\circ} 51' 42''$  West along the North line of said Block 55, a distance of 30.50 feet to the point of beginning for the following described tract; thence South  $0^{\circ} 14' 28''$  West on a line parallel with and 30.50 feet Westerly, when measured at right angles, from the East line of said Block 55, a distance of 191.96 feet to a point of non-tangent curve; thence on the arc of a 216.50 foot radius curve to the left, thru a central angle of  $30^{\circ} 59' 00''$ , with a chord that bears South  $70^{\circ} 55' 58''$  West, 115.65 feet, an arc distance of 117.07 feet to a point of non-tangency at the center line of vacated NE Hassalo Street; thence North  $89^{\circ} 51' 42''$  West along said center line, a distance of 135.35 feet to the West line of NE Williams Avenue as widened to 45.00 feet from the center line thereof as evidenced by Ordinance No. 108110; thence North  $0^{\circ} 14' 28''$  East along said line for NE Williams Avenue, a distance of 260.00 feet to the center line of NE Multnomah Street, vacated by Ordinance No. 121782; thence South  $89^{\circ} 51' 42''$  East along said center line of NE Multnomah Street, a distance of 244.50 feet to a point that is 30.50 feet, when measured at right angles, Westerly from the Northerly projection of the East line of said Block 55; thence South  $0^{\circ} 14' 28''$  West, a distance of 30.00 feet to the point of beginning.

Parcel B (Kosei Sign Pad):

A tract of land situated in the northeast 1/4 of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, City of Portland, County of Multnomah and the State of Oregon and more particularly described as follows:

Commencing at a monument at the intersection of the centerline of vacated N. Cherry Street and the centerline of vacated N. Larabee Avenue; thence proceeding S.  $38^{\circ} 28' 52''$  E. along the centerline of said Larabee Avenue, a distance of 1144.79 feet; thence N.  $51^{\circ} 31' 08''$  E., a distance of 456.10 feet to the Point of Beginning, being the center point for a 12.00 foot radius curve, the above referenced tract being a circle, with a radius of 12.00 feet, a central angle of  $360^{\circ} 00' 00''$  and a perimeter arc length of 75.40 feet, said tract contains 452 square feet, more or less.

Parcel C (Arena Land Description):

PARCEL 1: (Leasehold portion of Arena Building)

A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon and more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry Street and the center line of vacated N. Larabee Avenue; thence proceeding South 38° 28' 52" East, along the center line of said Larabee Avenue, a distance of 836.18 feet; thence North 51° 31' 08" East, a distance of 406.60 feet to the intersection of the center line of vacated NE Multnomah Street with the West line of NE Williams Avenue (80.0 feet in width), and the point of beginning for the following described tract; thence South 0° 14' 28" West along said West line of NE Williams Avenue, a distance of 237.14 feet; thence North 88° 28' 38" West, a distance of 0.38 feet; thence North 73° 28' 34" West, a distance of 47.83 feet; thence North 58° 28' 41" West, a distance of 47.83 feet; thence North 43° 28' 40" West, a distance of 0.23 feet; thence on the arc of a 183.14 foot radius curve to the right through a central angle of 7° 19' 59", with a chord that bears North 47° 11' 53" West, 23.42 feet, an arc length of 23.44 feet to a point of non-tangent curve; thence on the arc of a 23.92 foot radius curve to the right, through a central angle of 166° 52' 15", with a chord that bears North 36° 04' 38" West, 47.52 feet, an arc length of 69.66 feet to a point of non-tangent curve; thence on the arc of a 183.14 foot radius curve to the right, thru a central angle of 6° 08' 08", with a chord that bears North 25° 33' 18" West, 19.60 feet, an arc length of 19.61 feet to a point of non-tangency; thence South 54° 43' 30" West, a distance of 15.95 feet to a point of non-tangent curve; thence on the arc of a 27.50 foot radius curve to the right thru a central angle of 176° 45' 02", with a chord that bears North 36° 54' 00" West, a distance of 54.98 feet, an arc length of 84.84 feet to a point of non-tangency; thence North 53° 57' 31" East, a distance of 3.65 feet to a point of non-tangent curve; thence on the arc of a 4.50 foot radius curve to the left, through a central angle of 128° 53' 54", with a chord that bears North 2° 03' 13" West, 8.12 feet, an arc length of 10.12 feet to a point of reverse curve; thence on the arc of a 19.98 foot radius curve to the right thru a central angle of 121° 08' 11", with a chord that bears North 5° 56' 04" West, 34.81 feet, an arc distance of 42.25 feet to a point of non-tangent reverse curve; thence on the arc of a 4.50 foot radius curve to the left, thru a central angle of 113° 42' 44", with a chord that bears North 10° 59' 03" West, 7.54 feet, an arc distance of 8.93 feet to a point of non-tangent reverse curve; thence on the arc of a 19.38 foot radius curve to the right, thru a central angle of 141° 04' 09", with a chord that bears North 15° 40' 48" East, 36.55 feet, an arc distance of 47.73 feet to a point of non-tangency; thence North 76° 32' 37" East, a distance of 12.16 feet; thence North 14° 23' 06" West, a distance of 28.21 feet; thence North 11° 13' 22" West, a distance of 38.33 feet; thence North 7° 59' 45" West, a distance of 33.26 feet; thence North 1° 31' 22" East, a distance of 16.02 feet; thence North 16° 31' 23" East, a distance of 47.83 feet; thence North 31° 31' 22" East, a distance of 47.83 feet; thence North 46° 31' 22" East, a distance of 47.83 feet; thence North 61° 31' 46" East, a distance of 15.92 feet; thence North 47° 04' 40" West, a distance of 107.05 feet; thence North 0° 17' 12" East, a distance of 203.92 feet to a point of non-tangent curve; thence on the arc of a 395.57 foot radius curve to the right, thru a central angle of 23° 51' 54", with a chord that bears South 77° 57' 30" West, 163.57 feet, an arc distance of 164.76 feet to a point of non-tangency; thence North 24° 02' 50" East, a distance of 5.00 feet; thence South 65° 02' 03" East, a distance of 14.02 feet; thence South 25° 50' 30" West, a distance of 5.00 feet to a point of non-tangent curve; thence on the arc of a 395.57 foot radius curve to the right, thru a central angle of 5° 34' 33", with a chord that bears South 61° 14' 10" East, 38.48 feet, an arc distance of 38.50 feet to a point of non-tangency; thence North 31° 44' 15" East, a distance of 5.00 feet; thence South 57° 26' 18" East, a distance of 14.02 feet; thence South 33° 25' 10" West, a distance of



5.08 feet to a point of non-tangent curve; thence on the arc of a 395.57 foot radius curve to the right, thru a central angle of  $6^{\circ} 07' 59''$  with a chord that bears South  $54^{\circ} 14' 09''$  East, 42.32 feet, an arc distance of 42.34 feet to a point of non-tangency; thence North  $32^{\circ} 40' 20''$  East, a distance of 5.00 feet; thence South  $50^{\circ} 16' 19''$  East, a distance of 18.73 feet; thence South  $40^{\circ} 34' 03''$  East, a distance of 56.61 feet to a point of non-tangent curve; thence on the arc of a 473.50 foot radius curve to the right, thru a central angle of  $40^{\circ} 52' 09''$ , with a chord that bears South  $20^{\circ} 07' 59''$  East, 330.63 feet, an arc distance of 337.75 feet to a point of non-tangency; thence South  $89^{\circ} 45' 32''$  East, a distance of 2.00 feet; thence South  $0^{\circ} 14' 28''$  West, a distance of 65.15 feet to said center line of NE Multnomah Street; thence North  $89^{\circ} 51' 42''$  West, a distance of 244.50 feet to the point of beginning.

TOGETHER WITH an easement for ingress and egress over the following described contiguous tract of land situated in the Northeast one-quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, being more particularly described as follows:

Commencing at a monument at the intersection of the centerline of vacated N. Cherry Street and centerline of vacated N. Larabee Avenue; thence proceeding South  $38^{\circ} 28' 52''$  East, along the centerline of said Larabee Avenue, a distance of 343.61 feet; thence North  $51^{\circ} 31' 08''$  East a distance of 633.84 feet to the point of beginning for the following described tract; thence South  $89^{\circ} 42' 48''$  East a distance of 71.09 feet to a point of curve; thence on the arc of a 124.50 foot radius curve to the right, thru a central angle of  $11^{\circ} 05' 50''$ , with a chord that bears South  $84^{\circ} 09' 53''$  East 24.08 feet, an arc length of 24.11 feet to a point of non-tangency; thence South  $19^{\circ} 04' 22''$  West a distance of 32.72 feet to a point of non-tangent curve; thence on the arc of a 395.57 foot radius curve to the left, thru a central angle of  $12^{\circ} 35' 49''$ , with a chord that bears North  $76^{\circ} 32' 46''$  West 86.79 feet, an arc length of 86.97 feet to a point of non-tangency; thence North  $0^{\circ} 17' 12''$  East a distance of 13.54 feet to the point of beginning.

EXCEPTING from said Parcel 1 the following described Exception Parcel 1A:

Exception Parcel 1A:

Any portion of the following described "Terrace Parcel" which also lies 12 feet above the finished Plaza level.

"TERRACE PARCEL"

A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, said tract being more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry Street and the center line of vacated N. Larabee Avenue; thence proceeding South  $38^{\circ} 28' 52''$  East, along the center line of said Larabee Avenue, a distance of 727.21 feet; thence North  $51^{\circ} 31' 08''$  East, a distance of 262.89 feet to the point of beginning of the following described tract; thence North  $76^{\circ} 32' 37''$  East, a distance of 6.32 feet; thence South  $13^{\circ} 28' 37''$  East, a distance of 75.36 feet; thence South  $19^{\circ} 08' 11''$  East, a distance of 7.00 feet; thence South  $1^{\circ} 25' 00''$  West, a distance of 53.60 feet to a point of non-tangent curve; thence on the arc of a 27.50 foot radius curve to the right, thru a central angle of  $174^{\circ} 39' 05''$ , with a chord that bears North  $35^{\circ} 51' 01''$  West 54.94 feet, an arc length of 83.83 feet to a point of non-tangency; thence North  $53^{\circ} 57' 31''$  East a distance

of 3.65 feet to a point of non-tangent curve; thence on the arc of a 4.50 foot radius curve to the left, thru a central angle of  $128^{\circ} 53' 54''$ , with a chord that bears North  $2^{\circ} 03' 13''$  West 8.12 feet, an arc length of 10.12 feet to a point of reverse curve; thence on the arc of a 19.98 foot radius curve to the right, thru a central angle of  $121^{\circ} 08' 11''$ , with a chord that bears North  $5^{\circ} 56' 04''$  West 34.81 feet, an arc length of 42.25 feet to a point of non-tangent reverse curve; thence on the arc of a 4.50 foot radius curve to the left, thru a central angle of  $113^{\circ} 42' 44''$ , with a chord that bears North  $10^{\circ} 59' 03''$  West 7.54 feet, an arc length of 8.93 feet to a point of non-tangent reverse curve; thence on the arc of a 19.38 foot radius curve to the right, thru a central angle of  $141^{\circ} 04' 09''$ , with a chord that bears North  $15^{\circ} 40' 48''$  East 36.55 feet, an arc length of 47.73 feet to the point of beginning.

(continued on next page)

PARCEL 2: (Air Rights for Arena Roof)

AIR-RIGHTS NO. 1

A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, said tract being that space with a bottom elevation that is 9 feet above the finished Plaza level and extending vertically to a top elevation that is 42 feet above the finished Plaza level, said tract being more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry Street and the center line of vacated N. Larabee Avenue; thence proceeding South 38° 28' 52" East, along the center line of said Larabee Avenue, a distance of 555.19 feet; thence North 51° 31' 08" East, a distance of 472.89 feet to the point of beginning for the following described tract; thence South 47° 04' 40" East, a distance of 31.57 feet; thence South 61° 31' 46" West, a distance of 15.92 feet; thence South 46° 31' 22" West, a distance of 47.83 feet; thence South 31° 31' 22" West, a distance of 9.05 feet to a point of non-tangent curve; thence on the arc of a 239.97 foot radius curve to the right, thru a central angle of 18° 13' 44", with a chord that bears North 23° 30' 02" East, 76.02 feet, an arc distance of 76.34 feet to the point of beginning.

AIR-RIGHTS NO. 2

A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, said tract being that space with a bottom elevation that is 95 feet above the finished Plaza level and extending vertically to a top elevation that is 120 feet above the finished Plaza, said tract being more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry Street and the center line of vacated N. Larabee Avenue; thence proceeding South 38° 28' 52" East, along the center line of said Larabee Avenue, a distance of 643.86 feet; thence North 51° 31' 08" East, a distance of 319.86 feet to the point of beginning for the following described tract; thence North 7° 59' 45" West, a distance of 5.21 feet; thence North 4° 29' 14" West, a distance of 38.47 feet; thence North 57° 44' 12" West, a distance of 2.09 feet; thence North 5° 15' 37" West, a distance of 15.69 feet; thence North 51° 31' 22" East, a distance of 49.81 feet; thence South 31° 31' 22" West, a distance of 34.46 feet; thence South 16° 31' 23" West, a distance of 47.83 feet; thence South 1° 31' 22" West, a distance of 16.02 feet to the point of beginning.

AIR-RIGHTS NO. 3

A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, said tract being that space with a bottom elevation that is 95 feet above the finished Plaza level and extending vertically to a top elevation that is 120 feet above the finished Plaza level, said tract being more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry Street and the center line of vacated N. Larabee Avenue; thence proceeding South 38° 28' 52" East, along the center line of said Larabee Avenue, a distance of 1035.25 feet; thence North 51° 31' 08" East, a distance of 239.23 feet to the point of beginning for the following described tract; thence North 55° 13' 31" West, a distance of 19.81 feet; thence North 47° 25' 58" West, a distance of 45.81 feet; thence North 40° 24' 07" West, a distance of 0.70 feet; thence South 58° 28' 41" East, a distance

of 12.18 feet; thence South  $73^{\circ} 28' 34''$  East, a distance of 47.83 feet; thence South  $88^{\circ} 28' 38''$  East, a distance of 0.38 feet; thence South  $0^{\circ} 14' 28''$  West, a distance of 22.86 feet; thence North  $89^{\circ} 51' 42''$  West, a distance of 6.05 feet, to the point of beginning.

AIR-RIGHTS NO. 4

A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, said tract being that space with a bottom elevation that is 95 feet above the finished Plaza level and extending vertically to a top elevation that is 120 feet above the finished Plaza level, said tract being more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry Street and the center line of vacated N. Larabee Avenue; thence proceeding South  $38^{\circ} 28' 52''$  East, along the center line of said Larabee Avenue, a distance of 1035.25 feet; thence North  $51^{\circ} 31' 08''$  East, a distance of 239.23 feet to the point of beginning for the following described tract; thence South  $89^{\circ} 51' 42''$  East, a distance of 77.68 feet; thence South  $51^{\circ} 31' 22''$  West, a distance of 44.68 feet; thence North  $59^{\circ} 08' 49''$  West, a distance of 19.95 feet; thence North  $55^{\circ} 13' 31''$  West, a distance of 31.13 feet to the point of beginning.

AIR-RIGHTS NO. 5

A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, said tract being that space with a bottom elevation that is 9 feet above the finished Plaza level and extending vertically to a top elevation that is 42 feet above the finished Plaza level, said tract being more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry Street and the center line of vacated N. Larabee Avenue; thence proceeding South  $38^{\circ} 28' 52''$  East, along the center line of said Larabee Avenue, a distance of 864.74 feet; thence North  $51^{\circ} 31' 08''$  East a distance of 184.31 feet to the point of beginning for the following described tract; thence North  $1^{\circ} 25' 00''$  East a distance of 78.16 feet; thence South  $15^{\circ} 06' 52''$  East a distance of 40.63 feet; thence South  $22^{\circ} 54' 24''$  East a distance of 4.97 feet to a point of non-tangent curve; thence on the arc of a 183.14 foot radius curve to the left, through a central angle of  $6^{\circ} 08' 08''$ , with a chord that bears South  $25^{\circ} 33' 18''$  East 19.60 feet, an arc length of 19.61 feet to a point of non-tangent curve; thence on the arc of a 23.92 foot radius curve to the left, through a central angle of  $166^{\circ} 52' 15''$ , with a chord that bears South  $36^{\circ} 04' 38''$  East 47.52 feet, an arc length of 69.66 feet to a point of non-tangent curve; thence on the arc of a 183.14 foot radius curve to the left, through a central angle of  $4^{\circ} 53' 35''$ , with a chord that bears South  $45^{\circ} 58' 41''$  East a distance of 15.64 feet, an arc length of 15.64 feet to a point of non-tangent curve; thence on the arc of a 39.14 foot radius curve to the right through a central angle of  $127^{\circ} 25' 30''$ , with a chord that bears North  $62^{\circ} 17' 50''$  West 70.19 feet, an arc length of 87.05 feet to the point of beginning.

PARCEL 3: (Entry and Arena Subsurface)

A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon and more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry



Street and the center line of vacated N. Larabee Avenue; thence proceeding South 38° 28' 52" East along the center line of said Larabee Avenue, 488.38 feet to the point of beginning for the following described tract; thence North 51° 31' 42" East, a distance of 134.55 feet; thence North 38° 56' 34" East, a distance of 90.47 feet; thence North 51° 31' 42" East, a distance of 240.22 feet; thence South 0° 17' 12" West, a distance of 2.33 feet; thence South 47° 04' 40" East, a distance of 107.05 feet; thence South 61° 31' 46" West, a distance of 15.92 feet; thence South 46° 31' 22" West, a distance of 47.83 feet; thence South 31° 31' 22" West, a distance of 47.83 feet; thence South 16° 31' 23" West, a distance of 47.83 feet; thence South 1° 31' 22" West, a distance of 16.02 feet; thence South 7° 59' 45" East, a distance of 33.26 feet; thence South 11° 13' 22" East, a distance of 38.33 feet; thence South 14° 23' 06" East, a distance of 28.21 feet; thence South 76° 32' 37" West, a distance of 12.16 feet to a point of non-tangent curve; thence on the arc of a 19.38 foot radius curve to the left, thru a central angle of 141° 04' 09", with a chord that bears South 15° 40' 48" West, 36.55 feet, an arc distance of 47.73 feet to a point of non-tangent reverse curve; thence on the arc of a 4.50 foot radius curve to the right, thru a central angle of 113° 42' 44", with a chord that bears South 10° 59' 03" East, 7.54 feet, an arc distance of 8.93 feet to a point of non-tangent reverse curve; thence on the arc of a 19.98 foot radius curve to the left, thru a central angle of 121° 08' 11", with a chord that bears South 5° 56' 04" East, 34.81 feet; an arc distance of 42.25 feet to a point of reverse curve; thence on the arc of a 4.50 foot radius curve to the right, thru a central angle of 128° 53' 54", with a chord that bears South 2° 03' 13" East, 8.12 feet, an arc distance of 10.12 feet to a point of non-tangency; thence South 53° 57' 31" West, a distance of 3.65 feet to a point of non-tangent curve; thence on the arc of a 27.50 foot radius curve to the left, thru a central angle of 17° 40' 04", with a chord that bears South 42° 38' 29" West, 8.45 feet, an arc distance of 8.48 feet to a point of non-tangency; thence South 76° 31' 21" West, a distance of 13.68 feet; thence North 89° 45' 49" West, a distance of 28.93 feet; thence North 0° 17' 12" East, a distance of 113.05 feet; thence North 89° 42' 48" West, a distance of 52.77 feet to a point of non-tangent curve; thence on the arc of a 30.00 foot radius curve to the left, thru a central angle of 62° 11' 21" with a chord that bears North 19° 17' 40" West, 30.99 feet, an arc distance of 32.56 feet to a point of non-tangency; thence North 89° 42' 48" West, a distance of 12.35 feet; thence North 0° 17' 12" East, a distance of 2.00 feet; thence North 89° 42' 48" West, a distance of 15.16 feet; thence North 0° 17' 12" East, a distance of 1.67 feet; thence North 89° 42' 48" West, a distance of 1.17 feet; thence South 0° 17' 12" West, a distance of 32.86 feet; thence North 89° 42' 48" West, a distance of 116.93 feet; thence South 51° 31' 42" West, a distance of 242.80 feet; thence North 52° 43' 15" West, a distance of 50.42 feet; thence North 48° 58' 25" West, a distance of 2.35 feet; thence North 51° 31' 42" East, a distance of 188.34 feet to the point of beginning.

Excepting from said Parcel 3 the following described exception Parcels 3A and 3B:

Exception Parcel 3A:

Any portion of the following described "Plaza Parcel" which also lies above the waterproof membrane located at various elevations which are shown on those certain construction drawings identified as:

- (1) Document No. aa S231, Level 1 three Annex Building First Floor Plan, dated April 26, 1993 prepared by EB Architects (attached as Exhibit A).
- (2) Document No. aa S232, Level 3 Truck Dock Roof and Annex Building First Floor Plan, dated April 26, 1993 prepared by EB Architects (attached as Exhibit B).
- (3) Document No. S223, Arena Level Two N.W. Quadrant EL 90-0, dated March 1, 1993, prepared by EB Architects (attached as Exhibit C)
- (4) Document No. SDL303, Partial Site Plan, grading and drainage dated June 8, 1993 prepared by EB Architects. (ATTACHED AS EXHIBIT D)

Parcel D (Plaza Parcel):

"PLAZA PARCEL"

A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon and more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry Street and the center line of vacated N. Larabee Avenue; thence proceeding South  $38^{\circ} 28' 52''$  East along the center line of said Larabee Avenue, 1031.95 feet to the point of beginning for the following described tract; thence South  $0^{\circ} 19' 37''$  West, a distance of 5.13 feet; thence North  $58^{\circ} 43' 52''$  West, a distance of 36.29 feet to a point of curve; thence on the arc of a 63.50 foot radius curve to the right, thru a central angle of  $3^{\circ} 05' 06''$ , with a chord that bears North  $57^{\circ} 11' 19''$  West, 3.42 feet, an arc distance of 3.42 feet to a point of tangency; thence North  $55^{\circ} 38' 46''$  West, a distance of 11.57 feet to a point of curve; thence on the arc of a 2.50 foot radius curve to the right, thru a central angle of  $30^{\circ} 00' 00''$ , with a chord that bears North  $40^{\circ} 38' 46''$  West, 1.29 feet, an arc distance of 1.31 feet to a point of tangency; thence North  $25^{\circ} 38' 46''$  West, a distance of 15.96 feet to a point of curve; thence on the arc of a 27.50 foot radius curve to the left, thru a central angle of  $30^{\circ} 00' 00''$ , with a chord that bears North  $40^{\circ} 38' 46''$  West, 14.24 feet, an arc distance of 14.40 feet to a point of tangency; thence North  $55^{\circ} 38' 46''$  West, a distance of 123.49 feet; thence North  $89^{\circ} 54' 03''$  East, a distance of 50.94 feet; thence South  $29^{\circ} 50' 06''$  East, a distance of 22.02 feet; thence North  $60^{\circ} 09' 44''$  East, a distance of 38.75 feet; thence South  $89^{\circ} 44' 46''$  East, a distance of 31.17 feet; thence North  $0^{\circ} 17' 12''$  East, a distance of 353.59 feet; thence North  $38^{\circ} 25' 14''$  West, a distance of 162.87 feet; thence North  $51^{\circ} 31' 42''$  East, a distance of 21.88 feet; thence North  $38^{\circ} 28' 18''$  West, a distance of 150.65 feet; thence South  $51^{\circ} 31' 42''$  West, a distance of 58.91 feet; thence North  $38^{\circ} 28' 18''$  West, a distance of 120.06 feet; thence North  $51^{\circ} 31' 42''$  East, a distance of 58.91 feet; thence North  $38^{\circ} 28' 18''$  West, a distance of 141.32 feet; thence South  $89^{\circ} 42' 48''$  East, a distance of 514.68 feet to a point of curve; thence on the arc of a 124.50 foot radius curve to the left, thru a central angle of  $49^{\circ} 08' 45''$ , with a chord that bears South  $65^{\circ} 08' 26''$  East, 103.55 feet, an arc distance of 106.79 feet to a point of tangency; thence South  $40^{\circ} 34' 03''$  East, a distance of 85.70 feet; thence North  $50^{\circ} 16' 19''$  West, a distance of 18.73 feet; thence South  $32^{\circ} 40' 20''$  West, a distance of 5.00 feet to a point of non-tangent curve; thence on the arc of a 395.57 foot radius curve to the left, thru a central angle of  $6^{\circ} 07' 59''$ , with a chord that bears North  $54^{\circ} 14' 01''$  West, 42.32 feet, an arc distance of 42.34 feet to a point of non-tangency; thence North  $33^{\circ} 25' 10''$  East, a distance of 5.08 feet; thence North  $57^{\circ} 26' 18''$  West, a distance of 14.02 feet; thence South  $31^{\circ} 44' 15''$  West, a distance of 5.00 feet to a point of non-tangent curve; thence on the arc of a 395.57 foot radius curve to the left, thru a central angle of  $5^{\circ} 34' 33''$ , with a chord that bears North  $61^{\circ} 14' 10''$  West, a distance of 38.48 feet, an arc distance of 38.50 feet to a point of non-tangency; thence North  $25^{\circ} 50' 30''$  East, a distance of 5.00 feet; thence North  $65^{\circ} 02' 03''$  West, a distance of 14.02 feet; thence South  $24^{\circ} 02' 50''$  West, a distance of 5.00 feet to a point of non-tangent curve; thence on the arc of a 395.57 foot radius curve to the left, thru a central angle of  $23^{\circ} 51' 54''$ , with a chord that bears North  $77^{\circ} 57' 30''$  West, 163.57 feet, an arc distance of 164.76 feet to a point of non-tangency; thence South  $0^{\circ} 17' 12''$  West, a distance of 203.92 feet; thence South  $47^{\circ} 04' 40''$  East, a distance of 107.05 feet; thence South  $61^{\circ} 31' 46''$  West, a distance of 15.92 feet; thence South  $46^{\circ} 31' 22''$  West, a distance of 47.83 feet; thence South  $31^{\circ} 31' 22''$  West, a distance of 47.83 feet; thence South  $16^{\circ} 31' 23''$  West, a distance of 47.83 feet; thence South  $1^{\circ} 31' 22''$  West, a distance of 16.02 feet; thence South  $7^{\circ} 59' 45''$  East, a distance of 33.26 feet; thence

South  $11^{\circ} 13' 22''$  East, a distance of 38.33 feet; thence South  $14^{\circ} 23' 06''$  East, a distance of 28.21 feet; thence South  $76^{\circ} 32' 37''$  West, a distance of 12.16 feet to a point of non-tangent curve; thence on the arc of a 19.38 foot radius curve to the left, thru a central angle of  $141^{\circ} 04' 09''$ , with a chord that bears South  $15^{\circ} 40' 48''$  West, a distance of 36.55 feet, an arc distance of 47.73 feet to a point of non-tangent reverse curve; thence on the arc of a 4.50 foot radius curve to the right, thru a central angle of  $113^{\circ} 42' 44''$ , with a chord that bears South  $10^{\circ} 59' 03''$  East, 7.54 feet, an arc distance of 8.93 feet to a point of non-tangent reverse curve; thence on the arc of a 19.98 foot radius curve to the left, thru a central angle of  $121^{\circ} 08' 11''$ , with a chord that bears South  $5^{\circ} 56' 04''$  East, 34.81 feet, an arc distance of 42.25 feet to a point of reverse curve; thence on the arc of a 4.50 foot radius curve to the right, thru a central angle of  $128^{\circ} 53' 54''$ , with a chord that bears South  $2^{\circ} 03' 13''$  East, 8.12 feet, an arc distance of 10.12 feet to a point of non-tangency; thence South  $53^{\circ} 57' 31''$  West, a distance of 3.65 feet to a point of non-tangent curve; thence on the arc of a 27.50 foot radius curve to the left, thru a central angle of  $176^{\circ} 45' 02''$ , with a chord that bears South  $36^{\circ} 54' 00''$  East, 54.98 feet, an arc distance of 84.84 feet to a point of tangency; thence North  $54^{\circ} 43' 30''$  East, a distance of 15.95 feet; thence on the arc of a 183.14 foot radius curve to the left, thru a central angle of  $6^{\circ} 08' 08''$ , with a chord that bears South  $25^{\circ} 33' 18''$  East, 19.60 feet, an arc distance of 19.61 feet to a point of non-tangent curve; thence on the arc of a 23.92 foot radius curve to the left, thru a central angle of  $166^{\circ} 52' 15''$ , with a chord that bears South  $36^{\circ} 04' 38''$  East, 47.52 feet, an arc distance of 69.66 feet to a point of non-tangent curve; thence on the arc of a 183.14 foot radius curve to the left, thru a central angle of  $7^{\circ} 19' 59''$ , with a chord that bears South  $47^{\circ} 11' 53''$  East, a distance of 23.42 feet, an arc distance of 23.44 feet to a point of non-tangency; thence South  $43^{\circ} 28' 40''$  East, a distance of 0.23 feet; thence South  $58^{\circ} 28' 41''$  East, a distance of 47.83 feet; thence South  $73^{\circ} 28' 34''$  East, a distance of 47.83 feet; thence South  $88^{\circ} 28' 38''$  East, a distance of 0.38 feet; thence South  $0^{\circ} 14' 28''$  West, a distance of 22.86 feet; thence South  $89^{\circ} 51' 42''$  East, a distance of 135.35 feet to a point of non-tangent curve; thence on the arc of a 216.50 foot radius curve to the left, thru a central angle of  $12^{\circ} 40' 36''$ , with a chord that bears South  $49^{\circ} 06' 10''$  West, 47.80 feet, an arc distance of 47.90 feet to a point of reverse curve; thence on the arc of an 87.50 foot radius curve to the right, thru a central angle of  $28^{\circ} 11' 20''$ , with a chord that bears South  $56^{\circ} 51' 32''$  West, 42.62 feet, an arc distance of 43.05 feet to a point of reverse curve; thence on the arc of a 112.50 foot radius curve to the left, thru a central angle of  $19^{\circ} 35' 00''$ , with a chord that bears South  $61^{\circ} 09' 42''$  West, 38.26 feet, an arc distance of 38.45 feet to a point of compound curve; thence on the arc of a 205.50 foot radius curve to the left, thru a central angle of  $30^{\circ} 45' 59''$ , with a chord that bears South  $35^{\circ} 56' 20''$  West, 109.03 feet, an arc distance of 110.35 feet to a point of reverse curve; thence on the arc of a 137.50 foot radius curve to the right, thru a central angle of  $17^{\circ} 02' 20''$ , with a chord that bears South  $29^{\circ} 04' 30''$  West, 40.74 feet, an arc distance of 40.89 feet to a point of reverse curve; thence on the arc of a 300.50 foot radius curve to the left, thru a central angle of  $4^{\circ} 37' 29''$ , with a chord that bears South  $35^{\circ} 16' 56''$  West, 24.25 feet, an arc distance of 24.26 feet to a point of non-tangency; thence North  $0^{\circ} 19' 37''$  East, a distance of 170.91 feet; thence North  $89^{\circ} 42' 20''$  West, a distance of 128.00 feet; thence South  $0^{\circ} 19' 37''$  West, a distance of 100.77 feet to the point of beginning.

Exception Parcel 3B:

Any portion of the following described "Annex Phase 1 Parcel" which also lies above the bottom of the finish slab located at various elevations as shown on

that certain construction drawing identified as:

(1) Document No. aa S232, Level 3 Truck Dock Roof and Annex Building First Floor Plan, dated April 26, 1993 prepared by EB Architects (attached as Exhibit B).

"ANNEX PHASE 1 PARCEL"

A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon and more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry Street and the center line of vacated N. Larabee Avenue; thence proceeding South  $38^{\circ} 28' 52''$  East, along the center line of said Larabee Avenue, a distance of 549.57 feet to the point of beginning for the following described tract; thence North  $51^{\circ} 31' 42''$  East, a distance of 67.29 feet; thence South  $89^{\circ} 42' 48''$  East, a distance of 84.60 feet; thence North  $0^{\circ} 17' 12''$  East, a distance of 133.49 feet; thence North  $89^{\circ} 42' 48''$  West, a distance of 2.00 feet; thence North  $0^{\circ} 17' 12''$  East, a distance of 23.74 feet; thence North  $51^{\circ} 31' 42''$  East, a distance of 36.91 feet; thence South  $38^{\circ} 25' 14''$  East, a distance of 162.87 feet; thence South  $0^{\circ} 17' 12''$  West, a distance of 353.59 feet; thence North  $89^{\circ} 44' 46''$  West, a distance of 31.17 feet; thence South  $60^{\circ} 09' 44''$  West, a distance of 38.75 feet; thence North  $29^{\circ} 50' 16''$  West, a distance of 22.02 feet; thence South  $89^{\circ} 54' 03''$  West, a distance of 135.38 feet to a point of non-tangent curve; thence on the arc of a 2329.20 foot radius curve to the right, thru a central angle  $2^{\circ} 24' 24''$ , with a chord that bears North  $55^{\circ} 09' 45''$  West, 97.83 feet, an arc distance of 97.84 feet to a point of compound curve; thence on the arc of a 335.50 foot radius curve to the right, thru a central angle of  $5^{\circ} 19' 20''$ , with a chord that bears North  $51^{\circ} 17' 53''$  West, 31.15 feet, an arc distance of 31.16 feet to a point of tangency; thence North  $48^{\circ} 38' 13''$  West, a distance of 108.71 feet; thence North  $52^{\circ} 43' 15''$  West, a distance of 5.66 feet; thence North  $51^{\circ} 31' 42''$  East, a distance of 175.51 feet to the point of beginning.

PARCEL 4: (NE Pylon)

A tract of land situated in the Southeast one-quarter of Section 27, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry Street and the center line of vacated N. Larabee Avenue; thence North  $51^{\circ} 30' 58''$  East along the center line of said N. Cherry Street, a distance of 808.90 feet; thence North  $38^{\circ} 29' 02''$  West, a distance of 94.01 feet to the point of beginning, being the center point for a 10.00 foot radius curve, the above referenced tract being a circle, with a radius of 10.00 feet, a central angle of  $360^{\circ} 00' 00''$  and a perimeter arc length of 62.83 feet.

PARCEL 5: (NW Pylon)

A tract of land situated in the Northeast one-quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a monument at the intersection of the center line of vacated N. Cherry Street and the center line of vacated N. Larabee Avenue; thence North  $51^{\circ} 30' 58''$  East along the center line of said N. Cherry Street, a distance of 52.51 feet; thence North  $38^{\circ} 29' 02''$  West, a distance of 328.95 feet to the point of beginning, being the center point for a 10.00 foot radius curve, the above referenced tract being a circle,

with a radius of 10.00 feet, a central angle of  $360^{\circ} 00' 00''$  and a perimeter arc length of 62.83 feet.



EXHIBIT A-2  
Coliseum Property

PARCEL 1: A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, City of Portland, County of Multnomah and State of Oregon and more particularly described as follows:

Commencing at a monument at the intersection of the centerline of vacated N. Cherry Street and the centerline of vacated N. Larabee Avenue; thence proceeding South 38° 28' 52" East along the centerline of said Larabee Avenue, 498.38 feet to the point of beginning for the following described tract; thence South 51° 31' 42" West, a distance of 188.35 feet; thence North 48° 58' 25" West, a distance of 5.51 feet to a point of non-tangent curve; thence on the arc of a 1727.50 foot radius curve to the right, thru a central angle of 4° 06' 31", with a chord that bears North 47° 13' 09" West, 123.85 feet, an arc distance of 123.88 feet to a point of compound curve; thence on the arc of a 37.50 foot radius curve to the right, thru a central angle of 6° 33' 04", with a chord that bears North 41° 53' 22" West, 4.29 feet, an arc distance of 4.29 feet to a point of tangency; thence North 38° 36' 50" West, a distance of 110.99 feet to a point of curve; thence on the arc of a 62.50 foot radius curve to the left, thru a central angle of 4° 19' 50", with a chord that bears North 40° 46' 45" West, 4.72 feet, an arc distance of 4.72 feet to a point of compound curve; thence on the arc of a 1695.50 foot radius curve to the right, thru a central angle of 3° 12' 22", with a chord that bears North 41° 20' 29" West, 94.87 feet, an arc distance of 94.88 feet to a point of tangency; thence North 39° 44' 18" West, a distance of 96.41 feet to a point of curve; thence on the arc of a 17.50 foot radius curve to the right, thru a central angle of 91° 15' 15", with a chord that bears North 5° 53' 20" East, 25.02 feet, an arc distance of 27.87 feet to a point of tangency; thence North 51° 30' 58" East, a distance of 6.20 feet to a point of curve; thence on the arc of a 227.50 foot radius curve to the left, thru a central angle of 69° 42' 03", with a chord that bears North 16° 39' 57" East, 260.00 feet, an arc distance of 276.76 feet to a point of reverse curve; thence on the arc of a 12.50 foot radius curve to the right, thru a central angle of 85° 45' 29", with a chord that bears North 24° 41' 40" East, 17.01 feet, an arc distance of 18.71 feet to a point of compound curve; thence on the arc of a 214.50 foot radius curve to the right, thru a central angle of 22° 42' 47", with a chord that bears North 78° 55' 48" East, 84.48 feet, an arc distance of 85.03 feet to a point of tangency; thence South 89° 42' 48" East, a distance of 227.64 feet; thence South 38° 28' 18" East, a distance of 141.32 feet; thence South 51° 31' 42" West, a distance of 58.91 feet; thence South 38° 28' 18" East, a distance of 120.06 feet; thence North 51° 31' 42" East, a distance of 58.91 feet; thence South 38° 28' 18" East, a distance of 150.65 feet; thence South 51° 31' 42" West, a distance of 66.09 feet; thence South 38° 56' 34" West (document South 38° 56' 34" East), a distance of 90.47 feet; thence South 51° 31' 42" West, a distance of 134.55 feet to the point of beginning.

EXCEPTING THEREFROM those portions as taken for public street rights-of-way by document recorded June 24, 1993 in Fee No. 93-081873 and by document recorded May 7, 2001 at Fee No. 2001-066348, Records of Multnomah County, Oregon.

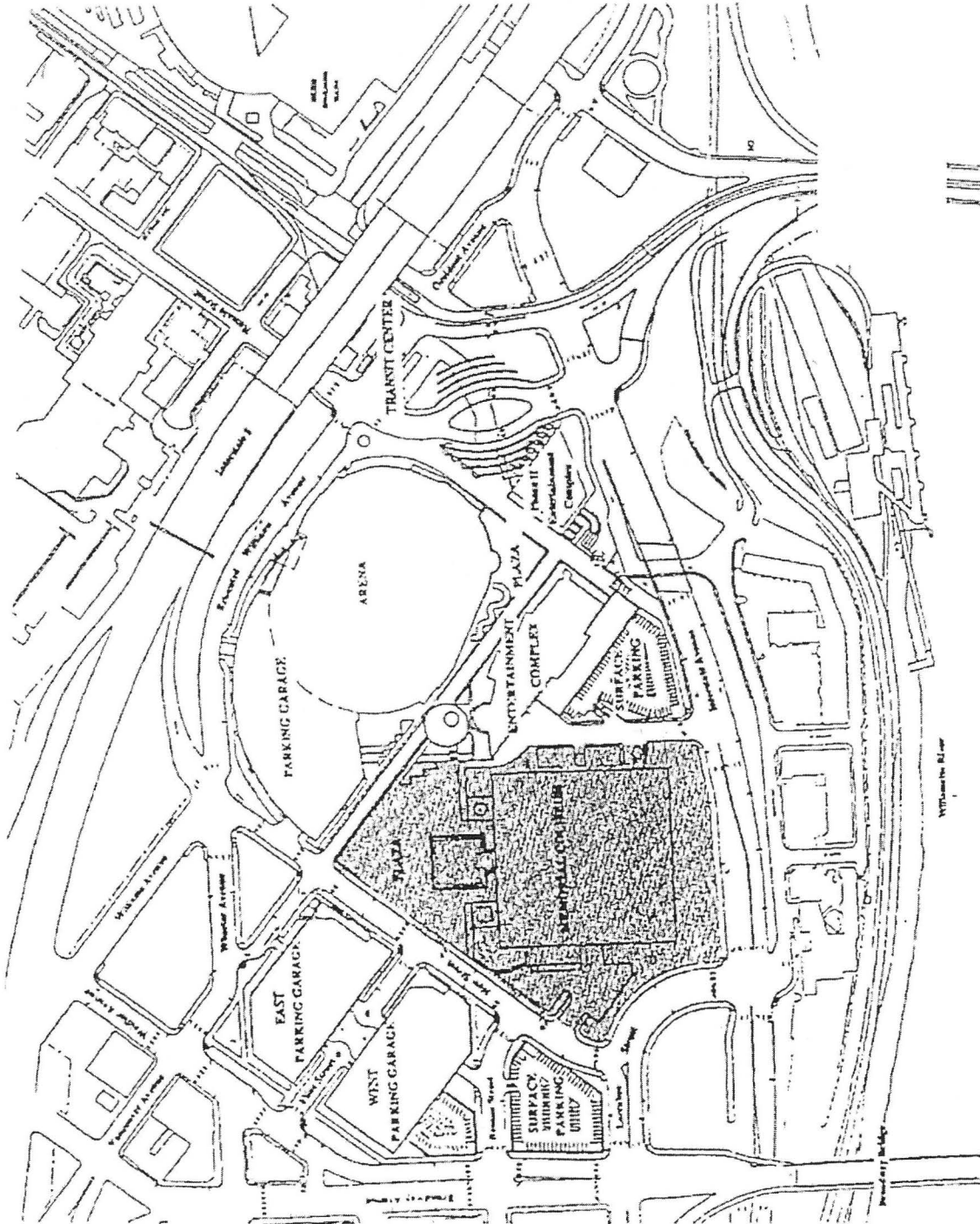
PARCEL 2: SUB-SURFACE:

A tract of land situated in the Northeast quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, City of Portland, County of Multnomah and State of Oregon and more particularly described as follows:

Commencing at a monument at the intersection of the centerline of vacated N. Cherry Street and the centerline of vacated N. Larabee Avenue; thence proceeding South 38° 28' 52" East, along the centerline of said Larabee Avenue, 94.52 feet to the point of beginning for the following described tract; thence North 51° 31' 42" East, a distance of 222.92 feet; thence North 38° 28' 18" West, a distance of 52.47 feet; thence North 51° 44' 33" East, a distance of 35.64 feet; thence South 89° 42' 48" East, a distance of 233.98 feet; thence South 38° 28' 18" East, a distance of 290.00 feet; thence South 51° 31' 42" West, a distance of 218.10 feet; thence South 38° 56' 34" West, a distance of 90.47 feet; thence South 51° 31' 42" West, a distance of 218.85 feet; thence North 38° 28' 28" West, a distance of 57.35 feet; thence South 51° 31' 42" West, a distance of 38.85 feet; thence North 38° 28' 18" West, a distance of 346.51 feet; thence North 51° 31' 42" East, a distance of 123.08 feet to the point of beginning.

EXCEPTING THEREFROM those portions as taken for public street rights-of-way by document recorded June 24, 1993 in Fee No. 93-081873 and by document recorded May 7, 2001 at Fee No. 2001-066348, Records of Multnomah County, Oregon.

**EXHIBIT A-3**  
**Depiction of Coliseum**



**EXHIBIT A-4**  
**Revenue Sharing Agreement**

[To be attached following closing of Final RDA.]



**EXHIBIT B**  
Replacement Exhibit B to Revenue Sharing Agreement

City Baseline/PWH Projections

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
<i>Hawks User Fees:</i>										
Hawks User Fee Baseline	\$154,679	\$159,320	\$164,099	\$169,022	\$174,093	\$179,316	\$184,695	\$190,236	\$195,943	\$201,821
<i>VMC User Fees Other Events:</i>										
Other Event User Fee Baseline	\$173,183	\$178,379	\$183,730	\$189,242	\$194,919	\$200,767	\$206,790	\$212,993	\$219,383	\$225,965
<i>Parking:</i>										
VMC/Winterhawks Parking Baseline	\$361,861	\$374,526	\$387,634	\$401,202	\$415,244	\$429,777	\$444,819	\$460,388	\$476,502	\$493,179
	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33
<i>Hawks User Fees:</i>										
Hawks User Fee Baseline	\$207,876	\$214,112	\$220,536	\$227,152	\$233,966	\$240,985	\$248,215	\$255,661	\$263,331	\$271,231
<i>VMC User Fees Other Events:</i>										
Other Event User Fee Baseline	\$232,744	\$239,726	\$246,918	\$254,325	\$261,955	\$269,814	\$277,908	\$286,245	\$294,833	\$303,678
<i>Parking:</i>										
VMC/Winterhawks Parking Baseline	\$510,440	\$528,306	\$546,797	\$565,934	\$585,742	\$606,243	\$627,462	\$649,423	\$672,153	\$695,678

**EXHIBIT 2.3.4**  
**Transition Plan Elements**

1. Accounting systems and accounts transition
2. Control systems development transition
3. Supply inventory transfer
4. Equipment inventory transfer
5. Security, safety and traffic control procedure transition
6. Food and beverage transition
7. Employee transition
8. Policies and procedures transition
9. Maintenance, Repair, and Capital Improvements transition
10. Parking and transportation transition
11. Marking and public relations transition
12. Scheduling transition (including Community Events, Special Events, and Cooperative Events)
13. Independent contractors transition
14. Purchasing transition
15. Ticketing transition
16. Miscellaneous (insurance, licenses, permits, etc.)
17. Public oversight
18. Insurance coverage and requirements

**EXHIBIT 3.2.20**  
**Collection Procedures**

**BOOKINGS PAID IN ADVANCE**

PDC will continue in the practices currently in effect at Memorial Coliseum concerning deposits required of promoters, retention of advance ticket sale revenues in a trust account until the event has occurred, and aggressive and immediate collection of all outstanding invoices. PDC is committed to using all reasonable efforts to collect any monies owed from any third party.

For most major events, PDC will be in receipt of deposits from promoters and advance ticket sale revenues so that at commencement of the Effective Date the promoter is paid only after amounts owing PDC have been deducted.

**DEPOSITS (NORMAL PROCEDURE)**

- a. Percentage Rental Events (Most Coliseum Arena Seated Spectator Shows):

First-time users and promoters in good standing will make nonrefundable deposits of one hundred percent (100%) of the Minimum Rent. Any promoter who has a bad credit history will be required to deposit one hundred percent (100%) of the potential percentage rental and all additional charges.

- b. Fixed Rental Events (Primarily Exhibit Hall Events):

First time users and promoters in good standing will make nonrefundable deposits of one twenty-five percent (25%) of the fixed rental for the run of the show. Any promoter who has a bad credit history will be required to deposit one hundred percent (100%) of the fixed rental for the run of the show and all additional charges.

**ADVANCE TICKET SALE REVENUES**

As is currently the practice, PDC will retain in a trust account all advance ticket sale revenues generated for Coliseum events on its authorized ticketing systems (including sales at the Coliseum box office, ticketing outlets and phone rooms) until the event has occurred. Interest accruing on advance ticket sale revenues shall be deposited in the Operating Account and treated as Operating Revenues. At closing on the night of the event, the promoter will be given a check for the balance of these ticket sale proceeds after all rental and building expenses have been deducted.

**CREDIT**

PDC will not extend credit to any user or promoter unless consistent with generally accepted industry standards.

**COLLECTION PROCEDURES**

PDC shall use Reasonable Efforts to bill for and collect sums owed by third parties described in Section 3.2.20 and shall use the same degree of diligence which it uses in collecting monies owed to PDC and its Affiliates but shall not be liable for sums owed by third parties if any third party fails to pay. If third parties under Coliseum Agreements owe PDC payments from events or operations, PDC will exercise the following procedures:

- a. An invoice will be prepared indicating terms per contract or, in the absence of specific contract terms, the invoice term will be net fifteen (15) days.
- b. If payment is not made within the terms set forth on the invoice, the following day a statement will be mailed and a phone call will be made to the debtor to discuss the reasons for nonpayment and to ascertain when payment will be made. At this time PDC will prepare and send a revised invoice including late charges and interest.
- c. If payment is still not received as promised, PDC will immediately make personal contact with the chief financial officer or owner by telephone or in person, as necessary.
- d. If after thirty (30) days from the original due date the invoice still have not been paid, PDC in-house counsel will send a demand letter.
- e. Legal proceedings, if justified and considered cost effective by PDC counsel will commence promptly and be prosecuted to completion, as necessary.
- f. If PDC declines to bring legal proceedings, or fails to bring such proceedings within thirty (30) days of any request by the City to bring such proceedings, PDC shall assign to the City the claim at issue. The City shall be entitled to all revenue thereafter realized from payment, settlement or judgment on such claim, and such revenue shall not be Operating Revenues.

### **MODIFICATIONS**

This Collection Policy is intended to provide the City a degree of protection for collection of payments pursuant to Section 3.2.20 of the Agreement. Accordingly, PDC may, in its sole discretion, adopt from time to time modified or alternative policies so long as such modified or alternative policies reasonably afford the City equal or superior protection for collection. PDC shall, prior to the date of such modification, provide to the City written statements of such modified or alternative policies.



**EXHIBIT 4.7.2**  
**Inventory**

[NOTE: Per Section 4.7.2, the inventory list will be established prior to the 2023 Effective Date.]

**EXHIBIT 4.8.1**  
**Existing Agreements**

1. Development Agreement between Oregon Arena Corporation (predecessor-in-interest to PAM) and the City having an effective date of November 4, 1992, as amended by:
  - a. First Amendment to Development Agreement having an effective date of April; 14, 1993;
  - b. Second Amendment to Development Agreement having an effective date of April 23, 1993;
  - c. Third Amendment to Development Agreement having an effective date of June 23, 1993; and
  - d. Fourth Amendment to Development Agreement having an effective date of June 23, 1993.

The foregoing are collectively referred to as the “**Development Agreement**.” Such Development Agreement is evidenced by the Memorandum of Development Agreement dated June 23, 1993, and recorded in the Official Records of Multnomah County, Oregon on June 24, 1993, at Book 2712, Page 199 (93-081885). The interest of Oregon Arena Corporation under the Development Agreement was assigned to PAM by the Assignment of Interest in the Development Agreement dated December 31, 2004, and recorded in the Official Records of Multnomah County, Oregon on January 4, 2005, as Instrument No. 2005-001768.

2. Declaration of Covenants, Conditions and Restrictions for the Oregon Arena Project between Oregon Arena Corporation (predecessor-in-interest to PAM) and the City having an effective date of June 23, 1993, and recorded in the Official Records of Multnomah County, Oregon on June 24, 1993, at Book 2712, Page 265 (93-081889), as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for the Oregon Arena Project having an effective date of April 19, 1996, and recorded in the Official Records of Multnomah County, Oregon on April 19, 1996, as Instrument No. 96059271 (collectively, the “**CC&Rs**”). The interest of Oregon Arena Corporation under the CC&Rs was assigned to PAM by the Assignment of Interest in the Declaration of Covenants Conditions and Restrictions for the Oregon Arena Project dated December 31, 2004, and recorded in the Official Records of Multnomah County, Oregon on January 11, 2005, as Instrument No. 2005-006099.
3. Memorial Coliseum Operating Agreement between Oregon Arena Corporation (predecessor-in-interest to PAM) and the City, having an effective date of April 23, 1993, as amended by the First Amendment to Coliseum Operating Agreement between Oregon Arena Corporation (predecessor-in-interest to PAM) and the City, having an effective date of June 23, 1993 (collectively, the “**Operating Agreement**”). Such Operating Agreement is evidenced by the Memorandum Regarding use of Memorial Coliseum dated June 23, 1993, and recorded in the Official Records of Multnomah County, Oregon on June 24,

1993, at Book 2712, Page 1299 (93-081905). The interest of Oregon Arena Corporation under the Operating Agreement was assigned to PAM by the Assignment of Interest in the Memorial Coliseum Operating Agreement dated December 31, 2004, and recorded in the Official Records of Multnomah County, Oregon on January 4, 2005, as Instrument No. 2005-001765. The Operating Agreement is being further amended concurrent with the Closing of the RDA, as provided in the Second Amendment to Coliseum Operating Agreement between PAM and the City dated \_\_\_\_\_, 2013.

4. Arena Ground Lease between Oregon Arena Corporation (predecessor-in-interest to PAM) and the City, having an effective date of June 23, 1993.
5. Entertainment Complex Ground Lease between Oregon Arena Corporation (predecessor-in-interest to PAM) and the City, having an effective date of June 23, 1993, as amended by the Amendment No. 1 to Entertainment Complex Ground Lease having an effective date of Jun 17, 2008.
6. Plaza Lease between Oregon Arena Corporation (predecessor-in-interest to PAM) and the City, having an effective date of June 23, 1993.
7. Personal Service Contract (Architectural Design and Engineering: Veterans Memorial Coliseum Renovation) dated November 17, 2011, between PDC and Opsis Architecture LLP.
8. Assignment of Architect Agreement effective as of \_\_\_\_\_, 2013, by and among PDC, the City, and PAM.
9. Public Parking Facilities Management Agreement between Oregon Arena Corporation (predecessor-in-interest to PAM) and the City, dated as of June 23, 1993, as extended by letter agreement dated June 8, 2000, and Extension Agreement for Public Parking Facilities Management Agreement for Rose Quarter [undated].
10. Memorial Coliseum Agreement between Oregon Arena Corporation (predecessor-in-interest to PAM) and PWH, having an effective date as of July 1, 1994.
11. Proposed Transaction Terms (Renovation of Veterans Memorial Coliseum) dated November 17, 2011, among the City, PAM, and PWH.
12. Permit of Entry dated November 22, 2011, between PAM and PDC.
13. Intergovernmental Agreement between the City and PDC dated February 24, 2012, as amended by Amended and Restated Intergovernmental Agreement dated \_\_\_\_\_, 2013.
14. Sublicense, as defined in Section 2.5.1 of the Agreement.
15. Conditional PDC SLA, as defined in Section 2.5.3 of the Agreement.
16. Conditional PAM SLA, as defined in Section 2.5.4 of the Agreement.

17. Conditional PDC OA, as defined in Section 2.13 of the Agreement.
18. Neighborhood Livability Partnership Agreement between PAM, Lloyd District Community Association and Eliot Neighborhood dated December 14, 2011.
19. Revenue Sharing Agreement, as defined in Section 2.8 of the Agreement.
20. Design-Build Contractor Agreement dated April 25, 2012 between PAM and Colorado Structures, Inc., doing business as CSI Construction Company for the Replacement Ice Plant and Ice Floor located at Veterans Memorial Coliseum.
21. Contractor Agreement dated August 27, 2012, between PAM and Cascadia Sports Systems, Inc. for new Dasher Boards System Associated with the Replacement Ice Floor.
22. Professional Services Agreement dated June 29, 2012 between PAM and Mayes Testing Engineers, Inc. for Special Testing and Inspection Services.
23. Consulting Services Agreement dated July 12, 2012 between PAM and Green Building Services (GBS) for LEED Consulting Services applicable to the Replacement Ice Plant and Ice Floor project.
24. Consulting Services Agreement dated July 12, 2012 between PAM and Green Building Services (GBS) for Commissioning Services applicable to the Replacement Ice Plant and Ice Floor project.
25. Contractor Agreement dated September 26, 2012 between PAM and Christensen Electric, Inc. for Electrical and Low Voltage Systems Restoration/Repairs Resulting from Ice Floor Demolition.
26. Contractor Agreement October 11, 2012 between PAM and McKinstry Co., LLC for Mechanical Refurbishment, Upgrades, and Connections Associated with New Ice Plant.
27. Permit of Entry and Indemnification Agreement dated October 19, 2012 between the City and PDC for performance of non-invasive environmental inspections at various locations including the Benton Lot, which is part of the Coliseum.
28. Scoreboard Agreement dated as of \_\_\_\_\_, 2013, between the City and PWH.
29. Option Agreement (OMF – PDC) having an effective date of February \_\_\_, 2013, among the City, PDC, and PAM, and a Memorandum of Option Agreement related thereto recorded in the Official Records of Multnomah County, Oregon on \_\_\_\_\_, as Document No. \_\_\_\_\_.



**EXHIBIT 10.1**  
Insurance Requirements

**Suggested Insurance requirements – November 14, 2012**

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NOTES: For purposes of this Exhibit 10.1:

- A. Blanks, noted with “\_\_\_\_\_” are intended to be completed with The City of Portland, Oregon.
- B. References to “Contractor” and/or “Consultant” are intended to refer to PDC, the Independent Operator, PWH, or any other contractor or consultant under a Coliseum Agreement.
- C. References to “Risk Management Department” mean the Risk Management Department of the City.
- D. References to “the Contract,” “this Contract,” or phrases of similar import refer to the Agreement, the Independent Operator Agreement, the PWH Sublicense, or the applicable Coliseum Agreement, as the context so requires.

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These general requirements should be incorporated into every contract and should not to be waived without consulting with the Risk Management Department.

1. All insurers must be licensed or approved to do business within the State of Oregon, and unless otherwise specified, all policies must be written on a per occurrence basis.
2. The Contractor/Consultant shall provide the Public Entity a Certificate of Insurance evidencing all required coverages, before commencing work or entering public entity premises. A sample of a completed Certificate of Insurance is attached.
3. The Contractor/Consultant shall name The Public Entity, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns; its elected officials, trustees, employees, agents, and volunteers as “Additional Insureds” for work that is being performed by the Contractor.
4. Upon request by the (\_\_\_\_), Contractor must provide a copy of the actual insurance policy and/or required endorsements effecting coverage(s) required by the Contract.
5. The City requires that all policies of insurance be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the Public Entity.
6. The Contractor/Consultant shall advise the (\_\_\_\_) in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At their own expense, the Contractor will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the (\_\_\_\_) with a new certificate of insurance showing such coverage is in force.
7. *Commercial General Liability Completed Operations coverage must be kept in effect for up to three (3) years after completion of the project – operating agreement.*
8. *Contractors Pollution Liability coverage (including Completed Operations) must be kept in effect for up to three (3) years after completion of the project.*
9. *Contractors Professional Liability (Errors and Omissions) policy must be kept in effect for up to three (3) years after completion of the project.*

10. Certificates of insurance shall state that on the policies that the City is required to be named as an Additional Insured, the insurance carrier shall provide a minimum of 30 days advance written notice to the City for cancellation, non-renewal, or material changes to policies required under the contract. On all other policies it is the Contractor's responsibility to give the City 30 days notice if policies are reduced in coverage or limits, cancelled or non-renewed. However, in those situations where the insurance carrier refuses to provide notice to (\_\_\_\_), the Contractor shall notify (\_\_\_\_) of any cancellation, or reduction in coverage or limits of any insurance within seven (7) days or receipt of insurer's notification to that effect.
11. The Contractor/Consultant agrees that the insurance requirements specified in the contract do not reduce the liability Contractor has assumed in the indemnification/hold harmless section of the Contract.
12. Failure of the Contractor to fully comply with these requirements during the term of the Contract may be considered a material breach of contract and may be cause for immediate termination of the Contract at the option of the (\_\_\_\_). The (\_\_\_\_) reserves the right to negotiate additional specific insurance requirements at the time of the contract award.

### **Non-Waiver**

The parties hereto understand and agree that the (\_\_\_\_) is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Oregon Tort Claims Act et seq., as from time to time amended, or otherwise available to the (\_\_\_\_), its subsidiary, parent, associated and/or affiliated entities, successors, or assigns; or its elected officials, employees, agents, and volunteers.

### **Independent Contractor**

Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not agents of the (\_\_\_\_). Any provisions in this Contract that may appear to give the (\_\_\_\_) the right to direct Contractor as to details of doing work or to exercise a measure of control over the work mean that Contractor shall follow the direction of the (\_\_\_\_) as to end results of the work only.

As an independent contractor, Contractor is not entitled to Workers' Compensation benefits except as may be provided by the Contractor, nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the Contractor or some other entity. The Contractor is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this contract.

### **Mutual Cooperation**

The (\_\_\_\_) and Contractor/Consultant shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

**The following paragraphs should be reviewed by legal counsel and inserted into the contract:**

**Indemnification Clause:**

Contractor shall indemnify, hold harmless and, not excluding the (\_\_\_\_\_) 's right to participate, defend the (\_\_\_\_\_) , its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its (\_\_\_\_\_)s, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the (\_\_\_\_\_) its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the (\_\_\_\_\_).

**Non-Waiver**

The parties hereto understand and agree that the (\_\_\_\_\_) is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Oregon Tort Claims Act et seq., as from time to time amended, or otherwise available to the(\_\_\_\_\_), its subsidiary, associated and/or affiliated entities, successors, or assigns; or its elected officials, employees, agents, and volunteers.

**Insurance Requirements:**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The (\_\_\_\_\_) in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **Minimum Scope and Limits of Insurance:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and liability assumed under an Insured Contract including defense costs.

- a. Policy shall be endorsed to include Liquor Liability for the serving and selling of alcoholic beverages.
- b. The policy shall be endorsed to include the following additional insured language: “(\_\_\_\_), its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers shall be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Contractor”.
- c. Policy shall be endorsed to include a per location aggregate limit of liability.
- d. A Waiver of Subrogation shall apply in favor of the (\_\_\_\_), its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers.

**Minimum Limits:**

General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Each Occurrence Limit	\$ 1,000,000
Personal/Advertising Injury	\$ 1,000,000
Fire Damage Expense	\$ 1,000,000
Premises Medical Expense (Each Person)	\$ 5,000

2. **Automobile Liability (can be waived if contract does not involve use of motor vehicle)**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

**Minimum Limits:**

**Bodily Injury/Property Damage (Each Accident) \$ 1,000,000**



**3. Property Insurance**

- a. Property insurance shall be written on a Covered Cause of Loss-Special Form, replacement cost coverage, including coverage for flood and earth movement.
- b. The (\_\_\_\_) shall be named as a loss payee on property coverage for City owned property in the care, custody and control of the Contractor.
- c. If property coverage on the building is required, “the (\_\_\_\_) shall be named as an Additional Insured-Owner/ loss payee”.
- d. A waiver of subrogation applies the (\_\_\_\_) for any Property loss covered by the contractor’s insurance.

**Minimum Limits:**

Coverage on Building (required )	100% replacement cost
Coverage for Loss of Rents, Business Interruption and Extra Expense	Amount equal to all Minimum Annual Rent and other sums payable under the contract
Coverage for Contents (to insure all property owned by contractor and property of the City in the contractor’s care, custody and control)	100% replacement cost

**4. Worker’s Compensation and Employers’ Liability**

This requirement shall not apply when a contractor or subcontractor is exempt under Oregon Workers’ Compensation Act., **AND** when such contractor or subcontractor executes the appropriate independent contractor form.

**Minimum Limits:**

Coverage A (Workers’ Compensation)	Statutory
Coverage B (Employers Liability)	\$ 100,000
	\$ 100,000

\$ 500,000

**5. Third Party Fidelity Coverage or Crime Insurance**

Coverage shall include employee dishonesty including Endorsement for Client's Property (CR 0401 or equivalent). If a Crime Insurance Policy is not used, Third Party Fidelity Coverage shall be provided for in limits as stated below in a.

- a. The coverage shall be issued with limits of 50% of the contract value or \$100,000 - whichever amount is greater.
- b. The coverage shall include coverage for all directors, officers, agents and employees of the Contractor.
- c. The coverage shall not include coverage for extended theft and mysterious disappearance.
- d. The coverage shall not contain a condition requiring an arrest and conviction.

- B. **Additional Insurance Requirements:** The policies shall include, or be endorsed to include, the following provisions:
1. On insurance policies where the (\_\_\_\_) is named as an additional insured, the (\_\_\_\_) shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
  2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- C. **Notice of Cancellation:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the (\_\_\_\_), except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to ((\_\_\_\_) **Agency/Department Representative's Name & Address**). If any insurance company refuses to provide the require notice, the Contractor or its insurance broker shall notify the (\_\_\_\_) of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.
- D. **Acceptability of Insurers:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Oregon and with an "A.M. Best" rating of not less than A-VII. The (\_\_\_\_) in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **Verification of Coverage:** Contractor shall furnish the (\_\_\_\_) with certificates of insurance (ACORD form or equivalent approved by the (\_\_\_\_)) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the (\_\_\_\_) before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates and any required endorsement shall be sent directly to ((\_\_\_\_) **Agency/Department Representative's Name and Address**). The (\_\_\_\_) project/contract number and project description shall be noted on the certificate of insurance. The (\_\_\_\_) reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE RISK MANAGEMENT DEPT.**

- F. **Subcontractors:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Contractor shall furnish to the (\_\_\_\_) separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **Approval:** Any modification or variation from the insurance requirements in this Agreement shall be made by Risk Management or \_\_\_\_\_, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.



**QUALIFICATIONS AND INDEMNIFICATIONS RELATING TO CITY'S  
REPRESENTATIONS AND WARRANTIES**

The City's representations and warranties contained in Section 20.1 of the Agreement are qualified as follows:

1. No representation or warranty is made regarding the effect on the enforceability of the Agreement or the Related Agreements of federal or state Laws regarding regulation of competition, or the compliance with such Laws.

2. No representation or warranty is made regarding the effect on the enforceability of portions of the Agreement relating to the Exemption Ordinance, or that findings supporting the Exemption Ordinance are sufficient to comply with the Laws relating to exemption of contracts for public improvements from the requirements of competitive bidding. The City will defend, indemnify and hold PAM, PWH and their respective successors and assigns harmless from and against any damage, claim or liability, including consequential damages, arising out of any challenge to the validity and enforceability of this Agreement and the Related Agreements other than the Operating Agreement (as amended by the Second Amendment) based upon a challenge to the Exemption Ordinance or its findings brought by a person other than PAM or PWH.

3. (a) The validity and enforceability of the Operating Agreement (as amended by the Second Amendment) may be limited by the application of Section 2-105(a)(3) of the City Charter.

(b) The validity and enforceability of this Agreement and the Related Agreements other than the Operating Agreement (as amended by the Second Amendment) may also be limited by the application of Section 2-105(a)(3) of the City Charter. The City will defend, indemnify and hold PAM, PWH and their respective successors and assigns harmless from and against any damage, claim or liability, including consequential damages, arising out of any challenge to the validity and enforceability of this Agreement and the Related Agreements other than the Operating Agreement (as amended by the Second Amendment) based upon Section 2-105(a)(3) of the City Charter by any person other than PAM or PWH.

4. The validity and enforceability of this Agreement and the Operating Agreement (as amended by the Second Amendment) may be limited by the U.S. Constitution and the Oregon Constitution to the extent they afford citizens rights of speech and assembly at publicly-owned facilities.

5. To fully redevelop the VMC as contemplated in the Agreement and Related Agreements, it will be necessary for PAM to obtain discretionary land use approvals, building permits and other regulatory approvals. None of the City statements in Section 20.1 of the Agreement constitutes a representation or warranty that the City will exercise its legislative or quasi-judicial authority in a manner that guarantees a certain outcome. As stated elsewhere in

the Agreement, the Agreement and Related Agreements do not bind the City Council in the exercise of its legislative powers and do not impair the City's obligation to perform its regulatory or quasi-judicial functions in an impartial and unbiased manner.

6. As recognized in the Agreement and Related Agreements, it will be necessary to reach or modify agreements with various third parties in order to develop the VMC as contemplated. None of the City statements in Section 20.1 of the Agreement is intended to constitute a representation or warranty that such agreements or modifications have been accomplished or can be.

**EXHIBIT 15.1.6**  
**Condition of Title to Coliseum**

**PERMITTED EXCEPTIONS**

1.	<p>The subject property is under public, charitable, fraternal, or religious organization ownership and is exempt from ad valorem taxation. Any change in ownership prior to delivery of the assessment roll may result in tax liability.</p> <p>Levy Code: 883</p> <p>Account No.: R215949 Map No.: 1 N1E34AB-01200</p> <p>Account No.: R215945 Map No.: 1 N1E34AB-01100</p>
2.	<p>City lien in favor of the City of Portland,</p> <p>Purpose: Street LID Amount: Estimate Reference No: 00143429 Affects: Parcel 1</p>
3.	<p>Any easements or rights of way for existing utilities or other rights of way over those portions of said Land lying within the public right of way vacated by resolution or ordinance</p> <p>Dated: June 4, 1958 Ordinance No.: 108110</p>
4.	<p>Limited access to and from the Land as contained in Decree of Condemnation entered in the proceedings as set forth below, which provides that there shall be no right of easement or right of access from the Land to the highway other than as expressly provided for in said Decree:</p> <p>Suit No: 264772 Filed: March 19, 1962 County: Multnomah Court: Circuit</p>
5.	<p>Conditions and restrictions as established by the City of Portland:</p> <p>Ordinance No/File No: DZ 8-65 Recording Date: June 21, 1965 Recording No: Book 319, Page 24</p>
6.	<p>Conditions and restrictions as established by the City of Portland:</p> <p>Ordinance No/File No: DZ 16-78 Recording Date: July 3, 1978 Recording No: Book 1276, Page 2163</p>
7.	<p>Conditions and restrictions as established by the City of Portland:</p> <p>Purpose: Teller machine Ordinance No/File No: DZ 177-85 Recording Date: December 18, 1985 Recording No: 85-090098</p>
8.	<p>Conditions and restrictions as established by the City of Portland:</p> <p>Purpose: Design Review Ordinance No/File No: DZ 128-86 Recording Date: April 7, 1987 Recording No: 87-028002</p>
9.	<p>Conditions and restrictions as established by the City of Portland:</p> <p>Ordinance No/File No: DZ 24-89 Recording Date: July 10, 1989 Recording No: Book 2218, Page 1082, 89-054743,</p>

10.	<p>Conditions and restrictions as established by the City of Portland</p> <p>Purpose: Design review  Ordinance No/File No: LUR 92-00845 DZ AD  Recording Date: April 10, 1992  Recording No: Book 2528, Page 1853, 92-037683</p>
11.	<p>Any easements or rights of way for existing utilities or other rights of way over those portions of said Land lying within the public right of way vacated by resolution or ordinance</p> <p>Ordinance No. 166614  Recording Date: June 24, 1993  Recording No: 93-081872</p>
12.	<p>Conditions and restrictions as established by the City of Portland:</p> <p>Purpose: Public street right of way  Ordinance No/File No: 166614  Recording Date: June 24, 1993  Recording No: Book 2712, Page 146, 93-081873</p>
13.	<p>Conditions and restrictions as established by the City of Portland:</p> <p>Purpose: Easements  Ordinance No/File No: 166651  Recording Date: June 24, 1993  Recording No: Book 2712, Page 179, 93-081879</p>
14.	<p>Unrecorded Development Agreement</p> <p>Executed by: The City of Portland, a municipal corporation  And: Oregon Arena Corporation, an Oregon corporation  As Disclosed By: Memorandum  Recording Date: June 24, 1993  Recording No.: Book 2712, Page 199, 93-081885</p> <p>The interest of Oregon Arena Corporation was assigned by instrument,  Assigned to: Portland Arena Management LLC, a Delaware limited liability company  Recording Date: January 4, 2005  Recording No.: 2005-001768</p>
15.	<p>Covenants, conditions, restrictions and easements, but omitting restrictions, if any, based on race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant, (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, imposed by instrument, including the terms and provisions thereof.</p> <p>Recording Date: June 24, 1993  Recording No.: 93-081889</p> <p>Said covenants, conditions, restrictions, and easements were amended by instrument,  Recording Date: April 19, 1995  Recording No.: 96059271</p> <p>Assignment of Interest in the Declaration of Covenants, Conditions and Restrictions for the Oregon Arena Project, including the terms and provisions thereof,  To: Portland Arena Management LLC, a Delaware limited liability company  Recording Date: January 11, 2005  Recording No.: 2005-006099</p>
16.	<p>Unrecorded Use of Memorial Coliseum Agreement</p> <p>Executed by: City of Portland, Oregon  And: Oregon Arena Corporation  Disclosed By: Memorandum  Recording Date: June 24, 1993  Recording No.: Book 2712, Page 1299, 93-081905</p> <p>The interest of Oregon Arena Corporation was assigned by instrument,  Dated: December 31, 2004  To: Portland Arena Management LLC, a Delaware limited liability company  Recording Date: January 4, 2005  Recording No.: 2005-001765</p>



17.	<p>Unrecorded Operating Agreement, as disclosed by Memorandum Regarding Use of Memorial Coliseum</p> <p>Executed by: City of Portland, Oregon  And: Oregon Arena Corporation  Recording Date: June 24, 1993  Recording No.: Book 2712, Page 1299, 93-081905</p> <p>Unrecorded First Amendment to Coliseum Operating Agreement  Dated Date: June 23, 1993</p> <p>Assignment of Interest in the Memorial Coliseum Operating Agreement  Assigned to: Portland Arena Management LLC, a Delaware limited liability company  Recording Date: January 4, 2005  Recording No.: 2005-001765</p>
18.	<p>Conditions and restrictions as established by the City of Portland:</p> <p>Purpose: Administrative Decision  Ordinance No/File No: LUR 93-00544 DZ (Memorial Coliseum)  Recording Date: September 23, 1993  Recording No: Book 2755, Page 2386, 93-127183</p>
19.	<p>Conditions and restrictions as established by the City of Portland</p> <p>Purpose: Administrative Decision  Ordinance No/File No: LUR 94-007200Z  Recording Date: November 16, 1994  Recording No: 94-169312</p>
20.	<p>Conditions and restrictions as established by the City of Portland:</p> <p>Purpose: Street vacation  Ordinance No/File No: 170537  Recording Date: September 8, 2000  Recording No: 2000-124890</p>
21.	<p>Any easements or rights of way for existing utilities or other rights of way over those portions of said Land lying within the public right of way vacated by resolution or ordinance</p> <p>Ordinance No.: 170537  Recording Date: September 8, 2000  Recording No: 2000-124890</p>
22.	<p>Conditions and restrictions as established by the City of Portland</p> <p>Purpose: Land use review  Ordinance No/File No: LUR 00-00644 GW  Recording Date: March 23, 2001  Recording No: 2001-039707</p>
23.	<p>Conditions and restrictions as established by the City of Portland:</p> <p>Ordinance No/File No: 175532  Recording Date: May 7, 2001  Recording No: 2001-066348</p>
24.	<p>Conditions set forth in City of Portland Land Use Document No. LUR 12-108761 HDZ, including the terms and provisions thereof.</p> <p>Recording Date: June 8, 2012  Recording No: 2012-070067</p>
25.	<p>Memorandum of Option Agreement (OMF – PDC) having an effective date of February _____, 2013, among the City, PDC, and PAM, and recorded in the Official Records of Multnomah County, Oregon on _____, as Document No. _____.</p>