

**DEVELOPMENT AND OPERATING AGREEMENT**

BY AND BETWEEN

SPORTS & EXHIBITION AUTHORITY  
OF PITTSBURGH AND ALLEGHENY COUNTY

AND

PITTSBURGH ASSOCIATES

EXECUTED JUNE\_\_\_\_, 2000

EFFECTIVE AS OF MAY 17, 1999

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## DEVELOPMENT AND OPERATING AGREEMENT

This **DEVELOPMENT AND OPERATING AGREEMENT** (this "**Agreement**") is made this \_\_\_ day of \_\_\_\_\_, 2000, effective as of May 17, 1999 by and between the **SPORTS & EXHIBITION AUTHORITY OF PITTSBURGH AND ALLEGHENY COUNTY**, formerly known as the Public Auditorium Authority of Pittsburgh and Allegheny County, a body corporate and politic, organized and existing pursuant to the Public Auditorium Authorities Law, Act of July 29, 1953, P.L. 1034, 53 Purdon's Statutes 23841 et. seq. (the "**Owner**"), and **PITTSBURGH ASSOCIATES**, a Pennsylvania limited partnership (the "**Developer**").

### **BACKGROUND**

A. The Developer holds, owns and controls a professional baseball franchise which is a member of Major League Baseball (the "**MLB**").

B. The Owner, acting in its governmental capacity, has determined that the financing, construction and operation of the Ballpark and the performance of this Agreement for the development and operation of the Ballpark, are in the best interests of the Owner and will serve a paramount public purpose. Among other things, such construction and operation will support the development of the City of Pittsburgh and Allegheny County, their convention, tourism, economic development and entertainment industries and the local economy, preserve downtown Pittsburgh as the home of a major professional sports franchise, encourage the growth of cultural, tourism, economic development and entertainment opportunities, and be an integral part of the revitalization and resurgence of downtown Pittsburgh and a prominent symbol of the vibrancy of Allegheny County.

C. Simultaneously with the execution of this Agreement (i) the Developer is entering into a Lease with the Owner providing for the Developer to play substantially all of its home games in the Ballpark for a term of approximately 29.5 years (the "**Lease**"), and (ii) the Developer and the Owner are entering into the other Related Agreements.

D. This Agreement is executed in conjunction with the Related Agreements to provide for the development and operation of the Ballpark prior to its completion and during the term of this Agreement and the Lease.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, UNDERTAKINGS AND COVENANTS HEREINAFTER SET FORTH, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE OWNER AND THE DEVELOPER COVENANT AND AGREE AS FOLLOWS:**

## 1. DEFINITIONS

As used in this Agreement, the following terms shall have the meaning set forth:

**Accountants** shall mean an independent and nationally recognized accounting firm selected by developer.

**Affiliate** of a specified person or entity shall mean any corporation, partnership, sole proprietorship or other person or entity which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the person or entity specified. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity.

**Agreement** shall mean this Development and Operating Agreement by and between the Sports & Exhibition Authority of Pittsburgh and Allegheny County and Pittsburgh Associates.

**Alterations** shall have the meaning set forth in the Lease.

**Assumption Notice** shall have the meaning set forth in Section 10.2(b) hereof.

**Astorino** shall mean L. D. Astorino & Associates.

**Balance Sheet** shall have the meaning set forth in Section 4.3 hereof.

**Ballpark** shall have the meaning set forth in Section 2.1(a) hereof.

**Baseball Rules and Regulations** shall mean collectively, the Major League Agreement, the Major League Constitution, the Major League Rules, and any other rules, guidelines, regulations or requirements of the Office of the Commissioner of Baseball, the Commissioner, the Ownership Committee of Baseball, and/or any other Person appointed by the foregoing that are generally applicable to Major League clubs, as applicable, all as the same now exist or may be amended or adopted in the future.

**Business Day** means any day other than a Saturday, Sunday or other day on which banks are authorized to close in Pittsburgh, Pennsylvania. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

**Capital Reserve Fund** shall have the meaning set forth in Section 7.6 hereof.

**Challenge** shall have the meaning set forth in Section 11.5 hereof.

**Change Orders** shall have the meaning set forth in Section 5.1(c) hereof.

**City** shall mean the City of Pittsburgh.

**Commencement Date** shall have the meaning set forth in the Lease.

**Commonwealth** shall mean the Commonwealth of Pennsylvania.

**Commonwealth Contribution** shall have the meaning set forth in 2.5(c) hereof.

**Completion Date** shall mean the date that is the earlier of (a) the date on which the Developer has commenced occupancy of the Ballpark pursuant to the Lease, or (b) the date on which the following have occurred: (i) the Developer has issued to the Owner a certificate of substantial completion certifying that the Ballpark has been "substantially completed," subject to the completion of minor punchlist items which do not materially affect the use or occupancy of the Ballpark, which certificate is supported by certificates of substantial completion from each of the DCM, HOK and Astorino; and (ii) a temporary Certificate of Occupancy has been issued.

**Construction Coordinators** shall have the meaning set forth in Section 2.2(g).

**Construction Documents** shall mean the DCM Agreement, the HOK Agreement, the schematic design drawings, specifications and narratives, the design development drawings, specifications and narratives and the construction drawings and specifications.

**Construction Start Date** shall mean May 3, 1999.

**Construction Team** shall mean the Developer, Design and Construction Manager, HOK, Astorino and any consultants retained by the Developer.

**Contamination** shall mean the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Site, which pursuant to Environmental Laws requires notification or reporting to any Governmental Authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or other response action to such Regulated Substances or which otherwise constitutes a violation of Environmental Laws.

**Cost Overrun** shall have the meaning set forth in Section 2.7(a) hereof.

**County** shall mean the County of Allegheny.

**CPI Increases** shall mean increases, calculated from January 1 of the calendar year in which the Commencement Date occurs to such date as may be relevant, in the index known as the United States Department of Labor Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, United States City Average, All items (1982-84=100) (the "CPI") or the successor index that most closely approximates the CPI.

**Damages** shall mean any loss, liability, claim, damage (including incidental and consequential damages), cost and expense (including costs of investigation and defense and reasonable attorneys' fees, whether the action is for money damages, equitable or declaratory relief).

**DCM Agreement** shall mean the Design and Construction Management Agreement made as of October 16, 1998, by and between the Developer, as agent for the Owner, with the

Design and Construction Manager, as the same may be amended, modified or supplemented from time to time with the prior written consent of the Owner, which consent shall not be unreasonably withheld.

**Design Development Documents** shall mean the Design Development Documents, dated February 2, 1999, as supplemented by Addenda 1 through 5.

**Design and Construction Manager** or **DCM** shall mean Dick Corporation/Barton Malow, a joint venture comprised of the Dick Corporation, Large, PA, and Barton Malow Company, Baltimore, MD.

**Developer** shall mean Pittsburgh Associates, a Pennsylvania limited partnership.

**Developer's Agents** shall have the meaning set forth in Section 7.6 hereof.

**Developer Contribution** shall have the meaning set forth in Section 2.5(a) hereof.

**Developer Indemnified Persons** shall have the meaning set forth in Section 10.3 hereof.

**Developer's Initial Payment** shall have the meaning set forth in 2.5(a)(i) hereof.

**Developer's Share of Project Costs** shall have the meaning set forth in Section 2.5(a) hereof.

**Environmental Consultant** shall have the meaning set forth in Section 2.3(b) hereof.

**Environmental Assessment** shall have the meaning set forth in Section 2.3(b) hereof.

**Environmental Complaint** shall mean any written complaint by any Person or Governmental Authority setting forth a cause of action for personal injury or property damage, natural resource damage, contribution or indemnity for response costs, civil or administrative penalties, criminal fines or penalties, or declaratory or equitable relief arising under any Environmental Law or any order, notice of violation, citation, subpoena, request for information or other written notice or demand of any type issued by any Governmental Authority pursuant to any Environmental Law.

**Environmental Law** shall mean all Laws, including without limitation, any consent decrees, settlement agreements, judgments, or orders, issued by or entered into with a Governmental Authority pertaining or relating to: (i) pollution or pollution control; (ii) protection of human health or the environment; (iii) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (iv) the presence of Contamination; and (v) the protection of endangered or threatened species.

**Event of Default** shall have the meaning set forth in Section 9.1 hereof.

**Final Report** shall have the meaning set forth in Section 2.3(b) hereof.

**Force Majeure** shall mean acts of God, accidents, fire or other casualty, earthquake, flood, war, riot, intervention by civil or military authorities of government, insurrection, or other civil commotion, material shortages, strikes, boycotts or labor disputes, including but not limited to player labor stoppages, whether attributable to strikes or lockouts, or any other similar or like event or occurrence beyond the reasonable control of either party hereto, that causes such party to be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder.

**Franchise** shall mean the Pittsburgh Pirates National League franchise.

**General Parking Spaces** shall have the meaning set forth in Section 7.7(a) hereof.

**General Partner** shall mean Pittsburgh Baseball, Inc., a Pennsylvania corporation, general partner of the Developer.

**GAAP** shall mean generally accepted accounting principles.

**Geotechnical Report** shall have the meaning set forth in Section 2.3(d) hereof.

**Governmental Authority** shall mean any national, federal, state, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof, or any court, tribunal, grand jury or arbitrator.

**GMP** shall have the meaning set forth in Section 2.2(b)(iii) hereof.

**"Grant Agreement"** shall mean that certain Contract, effective as of July 1, 1999, pursuant to which the Commonwealth, acting through the Office of Budget, agreed to grant the sum of Seventy-Five Million Dollars (\$75,000,000) to the Authority to be used toward construction and development of the Ballpark.

**Guaranty** shall have the meaning set forth in Section 2.7(b) hereof.

**Hard Costs** shall have the meaning set forth in Section 2.4(b)(ii) hereof.

**HOK** shall mean HOK Architects, Inc., an architectural and engineering firm based in Kansas City, MO.

**HOK Agreement** shall mean the Agreement as of May 1, 1998 to be entered into by the Developer, as agent for the Owner, with HOK, as the same may be amended, modified or supplemented from time to time, with the prior written consent of the Owner, which consent shall not be unreasonably withheld.

**Interim Agency Agreement** shall mean the Interim Agency Agreement by and between the Owner and the Developer dated May 17, 1999 (attached hereto as *Exhibit 2*).

**Law** shall mean any law (including common law), code, ordinance, regulation or constitutional or charter provision, duly enacted or adopted by the United States, the Commonwealth, the City, or the County.

**Lease** shall mean the Lease Agreement by and between the Owner and the Developer of even date herewith (attached hereto as *Exhibit 3*).

**Lease Term** shall have the meaning set forth in the Lease.

**Legal Requirements** shall mean all present and future Laws (including, but not limited to, Environmental Laws) applicable to the Owner and the Developer in connection with the design, development, construction, equipping, use, occupancy, possession, operation, maintenance and management of the Ballpark, including without limitation all Laws relating to the issuance by the Owner of any bonds in connection with the financing of the Project.

**Letter of Credit** shall have the meaning set forth in Section 2.7(c) hereof.

**Major League Baseball** shall mean, collectively, the Office of the Commissioner of Baseball, the Commissioner of Baseball, the Major League clubs, the Ownership Committee of Baseball, and/or any other Person appointed by any of the foregoing.

**Management Affiliate(s)** shall have the meaning set forth in Section 7.2 hereof.

**Management Firms** shall have the meaning set forth in Section 7.2 hereof.

**Master Project Schedule** shall mean the master project schedule to be prepared by the DCM for the Project pursuant to the DCM Agreement. A copy of the preliminary Master Project Schedule is attached as *Exhibit 4*, which shall be updated in accordance with the DCM Agreement.

**MLB** shall mean Major League Baseball, or any successor substitute association or entity of which the Developer is a member or joint owner and which engages in professional baseball in a manner comparable to Major League Baseball.

**Option Agreement** shall have the meaning set forth in Section 7.7(b) hereof.

**Owner** shall mean the Sports & Exhibition Authority of Pittsburgh and Allegheny County.

**Owner Contribution** shall have the meaning set forth in Section 2.5(b) hereof.

**Owner Debt** shall have the meaning set forth in Section 2.5(b) hereof.

**Owner Indemnified Persons** shall have the meaning set forth in Section 10.1 hereof.

**Payment Date** shall have the meaning set forth in Section 5.10 hereof.

**Permits** shall mean any permit, license or approval to be issued by any Person, including but not limited to required permits for construction, demolition, installation, alteration or repair of any improvements related in any manner to the Project. A schedule of Permits is attached hereto as *Exhibit 6*.

**Permitted Encumbrances** shall mean utility easements and other similar matters of record which do not interfere materially with the Project or the operation of the Ballpark and which are listed on *Exhibit 7* hereto.

**Person** shall mean any natural person, sole proprietorship, corporation, partnership, trust, limited liability company, limited liability association, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

**Phase II** shall have the meaning set forth in Section 2.3(b).

**Premises** shall have the meaning set forth in the Lease.

**Proceeding** shall have the meaning set forth in Section 10.2(a).

**Project** shall have the meaning set forth in Section 2.1(a).

**Project Accounts** shall have the meaning set forth in Section 2.6 hereof.

**Project Budget** shall mean the final detailed development budget for the development and construction of the Project, approved by the Owner, as further referenced in Section 2.4.

**Project Coordinator** shall mean Thomas Kennedy.

**Project Costs** shall have the meaning set forth in Section 2.5(a)(i) hereof.

**Project Creditor** shall have the meaning set forth in Section 2.7(b)(i) hereof.

**Project Funds** shall mean the Developer Contribution, the Owner Contribution and the Commonwealth Contribution.

**Project Review Coordinator** shall mean Morse Diesel Inc., Cleveland, Ohio.

**Prose Statement** shall mean the narrative description of the Project to be included in the GMP Amendment to the DCM Agreement.

**RAD** shall mean the Allegheny Regional Asset District, a body corporate and politic.

**Regulated Substances** shall mean, without limitation, any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a "hazardous substance," "hazardous waste," "toxic substance," "extremely hazardous substance," "toxic chemical," "toxic waste," "solid waste," "industrial waste," "residual waste," "municipal waste," "special handling waste," "mixed waste," "infectious waste," "chemotherapeutic waste," "medical waste,"



"regulated substance," "pollutant" or "contaminant" or any other substance, material or waste, regardless of its form or nature, which otherwise is regulated by Environmental Laws.

**Related Agreements** shall mean the Lease, the Interim Agency Agreement, the URA Agreement, the DCM Agreement, and the HOK Agreement, all as amended, supplemented, renewed or replaced from time to time.

**Rent** shall have the meaning set forth in the Lease.

**Representatives**, with respect to each of the Owner and the Developer, shall have the meaning set forth in Section 11.21 hereof.

**Required Environmental Permits** shall mean all Permits, licenses, bonds, consents, programs, approvals or authorizations required under Environmental Laws for the Developer to conduct its operations, maintain or occupy the Premises or construct, maintain, operate or occupy any Alterations or improvements, regardless of whether such Permits are required to be or have been obtained by the Owner or the Developer.

**Required Environmental Reports** shall mean all notices, reports, plans, forms or other filings which pursuant to Environmental Laws, Required Environmental Permits or at the request or direction of a Governmental Authority must be submitted to a Governmental Authority or which otherwise must be maintained with respect to the Premises, Contamination and the operations and activities of the Developer.

**Response Action** shall mean the investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or any other response action to the presence of Regulated Substances or Contamination in, on, at, under or emanating from the Premises, including but not limited to the correction or abatement of any violation required pursuant to Environmental Laws, Required Environmental Permits or by a Governmental Authority.

**Security** shall have the meaning set forth in Section 2.7(c) hereof.

**Site** shall have the meaning set forth in Section 2.1(a) hereof.

**Site Plan** shall refer to *Exhibit 9* attached hereto.

**Site Work** shall have the meaning set forth in Section 2.3(a) hereof.

**Soft Costs** shall have the meaning set forth in Section 2.4(b)(i) hereof.

**Stadium Authority** shall mean the Stadium Authority of the City of Pittsburgh, a body corporate and politic.

**Substantial Completion** shall have the meaning set forth in the Lease.

**Title Defect** shall have the meaning set forth in Section 3.5 hereof.

URA shall mean the Urban Redevelopment Authority of Pittsburgh, a body corporate and politic.

URA Agreement shall mean the agreement, attached hereto as *Exhibit 10*, whereby the URA agrees to apply for Project funding from the Commonwealth for the benefit of the Developer.

Work shall have the meaning set forth in Section 5.1(a) hereof.

## 2. OVERVIEW

### 2.1 THE PROJECT.

(a) Project Definition.

The parties hereby agree, subject to the conditions, covenants and other obligations of this Agreement, that the Project shall consist of (i) the construction by the Developer, as agent for the Owner pursuant to this Agreement, of a baseball facility, designed by the Developer with the capacities and amenities listed on and depicted in the drawings prepared with respect to that facility, a schedule of which is attached hereto as Schedule 2.1(a) (such facility to be referred to as the "**Ballpark**"), as such drawings are amended from time to time as necessary for completion of the Project, (ii) on property bounded by W. Robinson Drive on the North, Federal Street on the East, Stadium Drive on the West and Roberto Clemente Park on the South in the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania, more particularly described on Exhibit A to the Lease, which is attached hereto as *Exhibit 9* (such property to be referred to as the "**Site**"), and shown on the Site Plan attached hereto as *Exhibit 9*, (iii) to be ready for occupancy and use for the opening of the 2001 MLB season in April 2001, subject to Section 9.5(a) hereof (force majeure). The Project is further described in more detail on the Prose Statement.

(b) Ballpark Specifications.

The Ballpark shall initially contain approximately 1,000,000 square feet of space, shall contain approximately 38,100 seats, and shall be fully built-out and fitted, including, but not limited to fixtures, flooring, wall coverings, ceilings, lighting, all necessary mechanical, plumbing, air-handling and conditioning, electrical and other systems and finishes, all as agreed to by the Owner and the Developer in accordance with the procedures outlined in Article 5. The design of the Ballpark by the Developer shall otherwise be subject to the covenants contained in Article 7 of this Agreement.

(c) Ownership of Project.

The Owner shall own the Ballpark, together with all fixtures, equipment, furniture and related improvements being constructed on the Site with funds allocated under the Project Budget, or subsequently acquired with moneys expended from the Capital Reserve Fund, or other funds allocated by the Owner. All equipment, furniture and other items of personal

property purchased by the Developer with the Developer's own funds, or by any other Person with such Person's own funds, during the term of this Agreement, shall be owned by the Developer or such Person, as the case may be.

## 2.2 AGENCY RELATIONSHIP DURING CONSTRUCTION PERIOD.

### (a) Appointment of Developer.

Subject to such terms as are set forth herein, the Owner hereby appoints the Developer as its sole and exclusive agent with respect to the design and construction of the Ballpark and the Developer hereby accepts such appointment. The Owner hereby delegates to the Developer the day-to-day duties that a prudent and conscientious owner of a facility such as the Ballpark would exercise in enforcing the Owner's rights to contract and to interface with the DCM for the Project. The Developer hereby agrees to assume those delegated duties and to be responsible to the Owner for the proper performance of the duties so delegated. The Developer shall, when acting as agent for the Owner, disclose its agency capacity hereunder. Such appointment and delegation by the Owner shall not limit or impair the Owner's right to enforce remedies under any agreement to which it is a party or of which it is a beneficiary, nor shall it relieve any person from any obligation to the Owner.

### (b) Responsibilities of Developer.

In its capacity as agent of the Owner, the Developer shall be responsible for all aspects of managing the design, development and construction of the Ballpark, and acknowledges its obligation and responsibility to the Owner for the proper performance of those obligations. In such capacity:

(i) The Developer is hereby authorized to identify, select and contract directly with a "bridging" architect for the Project (it being understood that HOK is hereby approved by the Owner in such capacity), which will prepare conceptual, schematic design and design development drawings relating to the Ballpark, and which will review construction drawings. The HOK Agreement will provide and acknowledge that the Owner and the Developer shall have a nonexclusive license to use all materials created by HOK for the Project including, but not limited to, all drawing, specifications, and other project documents in connection with the design, construction and maintenance of the Project. Other than the Owner's obligation to make payments with respect to the Project Budget and except as otherwise set forth herein, the Owner will have no responsibilities, liabilities or obligations with respect to the HOK Agreement.

(ii) The Developer is hereby further authorized to identify and select, and has identified and selected, Dick Corporation/Barton Malow, a joint venture comprised of Dick Corporation, Large, PA, and Barton Malow Company, Baltimore, MD, as the Design and Construction Manager (the "**Design and Construction Manager**" or the "**DCM**"), which joint venture is hereby approved by the Owner as Design and Construction Manager. Dick Corporation and Barton Malow Company shall at all times be jointly and severally liable for the acts, omissions and contractual obligations of the Design and Construction Manager in connection with the Project and the DCM Agreement. The Design and Construction Manager

will, in conjunction with consultants retained by the Developer and the Design and Construction Manager (including the architect to be retained by the Design and Construction Manager, Astorino, being hereby approved by the Owner as such architect), develop plans and specifications for the Ballpark. Other than the Owner's obligation to make payments with respect to the Project Budget and except as otherwise set forth herein, the Owner will have no responsibilities, liabilities or obligations with respect to the DCM Agreement. The DCM Agreement will provide and acknowledge that the Owner and the Developer shall have a nonexclusive license to use all materials created by the DCM and its consultants (including Astorino) for the Project, including, but not limited to, all drawings, specifications, and other Project documents in connection with the design, construction and maintenance of the Project.

(iii) Subject to the approval of all terms by the Owner, which approval shall not be unreasonably withheld, delayed or conditioned, the Developer is authorized to enter into the DCM Agreement, as agent for the Owner. The Design and Construction Manager shall provide to the Developer, and the DCM Agreement will so provide, a guaranteed maximum price ("**GMP**") for design and construction of the Ballpark, which GMP shall not exceed the sum of \$189,136,718.

(iv) The Developer shall be responsible for the administration of the DCM Agreement, as agent for the Owner, subject to the rights of the Owner, as provided herein and in the Related Agreements.

(v) Subject to such cost limitations as will be set forth on the Project Budget, the Developer is further authorized to select and retain the consultants and professionals that will comprise the Construction Team so as to facilitate the timely design and construction of the Project.

(vi) The Construction Team will prepare component packages in form and content suitable for competitive bidding, and the Developer will administer the bidding processes for the selection of trade contractors, and where required, for suppliers. The Developer will further negotiate and prepare trade and supply contracts, provided that all such contracts will be awarded by the Owner in compliance with Legal Requirements and assigned to the DCM, which assignment will provide for the release of any claim against, or obligation of, the Owner other than the obligation to make payments with respect to the Project Budget. The Developer will prepare the necessary public advertisements, the cost of which shall be paid as part of the Project Budget, and will cause such public advertisements to be made by the DCM for competitive bids on each component package of the Project. The Developer will further develop and administer, subject to the approval of the Owner, which approval shall not be unreasonably withheld, delayed or conditioned, a "bid challenge" process. The Owner will have no liabilities, responsibilities or obligations of any kind with respect to any trade or supply contracts other than the obligation to make payments with respect to the Project Budget, and all trade and supply, bid and contract documents will so provide. The cost of performing the functions described in this paragraph (vi) shall be paid as part of the Project Budget.

(vii) The Developer intends to provide for the prequalification of bidders, so that bids will be awarded only to those bidders previously determined as having been qualified bidders. Attached hereto as *Exhibit 11* are the procedures for such prequalification and recommendation for bid award. The Owner hereby approves such procedures. If the Owner refuses to award the contract to the recommended contractor after the application of such procedures (unless Legal Requirements require otherwise), the Owner shall reimburse the Developer for any additional costs incurred by the Developer or the Project as a result thereof (which reimbursement shall be outside of the Project Budget) and shall indemnify, defend and hold harmless the Developer from any Damages incurred by the Developer as a result thereof.

(viii) The Developer will supervise and coordinate construction on a day-to-day basis.

(ix) The Developer will oversee and coordinate submission of invoices in form suitable to the Owner for payment from the DCM, trade contractors, and any subcontractors, suppliers and materialmen, pursuant to the procedures set forth on *Exhibit 12* attached hereto.

(x) Except with respect to bid package No. 3, the Design and Construction Manager will not be permitted to self-perform work, either directly or through an affiliated entity.

(xi) The Owner shall be an intended beneficiary of any agreement entered into by the Developer in the role as agent hereunder and each such agreement shall so provide. Further, no agreement entered into by the Developer as agent for the Owner shall provide for arbitration of claims thereunder without the approval of the Owner. No agreement (including this Agreement) shall allow, or result in, a lien against the Owner.

Notwithstanding the foregoing, the Developer shall not have the right, without the Owner's consent, to incur debt or other obligations for which the Developer will not be solely liable or to delegate its rights or obligations hereunder, in its capacity as agent for the Owner, to any third party.

(c) Trade Contracts.

The Owner and the Developer hereby agree that all trade contracts awarded by the Owner shall, immediately upon their award, be assigned to the Design and Construction Manager. The DCM Agreement shall provide that the Design and Construction Manager shall perform in full all obligations under such trade contracts, and that the Owner will have no responsibilities, liabilities, or obligations of any kind whatsoever thereunder other than the Owner's obligation to make payments with respect to the Project Budget and except as otherwise set forth herein. All trade bid and contract documents shall so provide, and shall provide that the trade contractors shall waive and release any claims against the Owner.

(d) Payment Procedures.

(i) Attached hereto as *Exhibit 12* is a description of the payment procedures that will be implemented in connection with payments to be made from the Project Budget (as hereinafter defined) to the Developer, to the Design and Construction Manager and to all trade contractors.

(ii) After the execution of this Agreement and the Related Agreements, the Owner shall not be obligated to make any disbursement of Project Funds for development of the Project until the Developer shall have fulfilled, to the Owner's reasonable satisfaction, all provisions of this Agreement applicable thereto, including, without limitation, the following:

(A) The Construction Documents shall have been approved to the extent required under the provisions hereof;

(B) The Owner shall have received effective lien waivers filed prior to the commencement of any Work and releases from the Design and Construction Manager, all other contractors, subcontractors, suppliers and other Persons then under contract, and potentially having a right to file a mechanic's or materialmen's lien with respect to all work, materials and services for which Project Funds are being requested;

(C) All licenses, Permits, consents, approvals and authorizations for the construction of the Ballpark Project and required to be obtained by the Developer or the Design and Construction Manager shall be in full force and effect and no notices of violation or revocation with respect thereto shall have been received;

(D) No Event of Default shall have occurred and be continuing under this Agreement or any of the Related Agreements;

(E) The Owner shall have received a title bringdown evidencing that no mechanic's liens or other encumbrances shall have been filed of record since the date of the last title bringdown.

(iii) The Owner shall not be required to release the final disbursement of Project Funds unless fulfillment of the following conditions occurs:

(A) All conditions of Section 8.1 shall continue to be met as of the date of the release of the final disbursement of Project Funds;

(B) The Owner shall have received a certificate of the Developer, HOK, Astorino and the Design and Construction Manager to the effect, inter alia, that the Project has been fully completed in accordance with the Construction Documents and all Legal Requirements, and all matters in such certificate shall have been verified by the Construction Coordinators;

(C) A permanent certificate of occupancy for the Ballpark and all other Permits required for the use and occupancy of all aspects of the Ballpark Project shall have been duly issued and the Owner shall have received copies thereof;

(D) The Owner shall have received an as-built survey, showing the location of all improvements, easements, rights-of-way and other matters affecting the Lease;

(E) A Release of Liens signed by the DCM and all contractors, subcontractors, suppliers and other Persons providing Work.

(e) Owner's Approval Rights.

In addition to the rights reserved to the Owner elsewhere in this Agreement, the Owner shall have the right to disapprove any actions taken hereunder by the Developer if the Owner determines that such actions are not in compliance with this Agreement or with applicable Legal Requirements. The Developer shall cooperate with the Owner to provide the Owner with any information reasonably required by the Owner in connection with its determination as to whether to grant such approval. In furtherance thereof, in each case where the Owner's approval is required under this Agreement, the Developer shall provide written notice to the Owner of the time within which such approval is required and, if requested by the Owner, the Developer shall cause the Developer's Representative to meet with the Project Coordinator to review any such matters requiring the Owner's approval within the time periods provided to the Owner and the Developer for such approval. In any circumstance where the Owner's approval is required or authorized hereunder, provided that all documents and materials reasonably necessary to determine whether such approval should be given have been delivered, the Owner fails to grant or deny such approval within such period as may be required by any Construction Document, or if no such period is specified, within ten (10) days, the Owner shall be deemed to have granted its approval. Notwithstanding anything to the contrary in this Agreement (or any other agreement), the Developer hereby agrees that, except in the event of an emergency, the period of time provided to the Owner to grant or deny approval with respect to any matter requiring or authorizing the Owner's approval shall not be less than two (2) Business Days. Whenever the Owner's approval is required hereunder, such approval shall not be unreasonably withheld. If the Owner denies approval of any matter requiring its approval under this Agreement, the Owner shall state with specificity, in writing, its reason for such denial. If the Owner shall fail to give a timely approval with respect to any matter for which its approval is required hereunder, the Developer shall have the right to proceed without such approval. In such case, the Developer shall provide written notice to the Owner that it is proceeding without such approval, and the manner and direction in which the Developer is proceeding.

(f) Owner as Beneficiary.

It is specifically understood and agreed that the Developer is entering into the DCM Agreement and the HOK Agreement as agent for the Owner and that, accordingly, the Owner is an intended beneficiary of the HOK Agreement and the DCM Agreement. The duties and obligations of HOK and the DCM pursuant to those agreements are to be stated therein, and expressly understood and agreed by the Developer, HOK and DCM, to also be due and owing to

the Owner. Such duties and obligations, as well as any duties or obligations imposed by law upon HOK and upon DCM may be enforced by the Owner at law or in equity. Upon the occurrence of a default by the Developer under the HOK Agreement or the DCM Agreement which remains uncured and which permits the other party to such contract to exercise remedies thereunder, at the election of the Owner upon five (5) Business Days prior written notice to the Developer, the Developer shall assign either or both of the HOK Agreement and the DCM Agreement to the Owner whereupon the Owner shall be the primary contracting party and the Developer shall be a third party beneficiary with respect to each such agreement so assigned. The Developer shall promptly notify the Owner in writing of the occurrence of any such default. HOK shall be required to carry appropriate levels of insurance coverage (including professional liability coverage) subject to approval of the Owner in performance of its contract, and such insurance policy shall name the Owner as additional insured and shall not be cancelable without twenty (20) days' prior written notice to the Owner.

(g) Construction Coordinators.

The Owner has appointed Thomas Kennedy as the Project Coordinator, and Morse Diesel, Inc., Cleveland, Ohio, as the Project Review Coordinator. Each (and their respective successors as may be designated by the Owner) is authorized to act on behalf of the Owner with respect to the development and construction of the Project, and both Mr. Kennedy and Morse Diesel, Inc. are sometimes collectively referred to in this Agreement as the "**Construction Coordinators.**"

(h) Approval Of Construction Documents.

The Developer shall cooperate with the Owner to provide the Owner with any information reasonably required by the Owner in connection with its review of the Construction Documents. In furtherance thereof, the Developer shall provide to the Owner, together with any Construction Documents submitted for the Owner's approval, a list or other manner of identification of the changes made from the previously approved Construction Documents and, if requested by the Owner, shall cause the Developer's Representative to meet with Project Coordinator to review such Construction Documents within the time periods provided to the Owner and the Developer for such approval. The Construction Documents shall be submitted to the Construction Coordinators as completed and at the same time that they are delivered to the Developer, and may be submitted in various stages of completion as is agreed between the respective Representatives of the parties. Notwithstanding the manner or timing of submission, subject to the last sentence of this Section 2.2(h), (i) each portion of all Construction Documents must be approved in writing by the Construction Coordinators, which approval shall not be unreasonably withheld, and (ii) no portion of the Construction Documents will be submitted for required public bidding prior to being approved by the Construction Coordinators. The Construction Coordinators will diligently review the Construction Documents as submitted and, subject to the provisions of Section 5.1(b) hereof with respect to changes to the DCM Agreement and the HOK Agreement, provided that complete and accurate copies of all pertinent documents have been provided to the Owner, the Owner will approve or disapprove each respective submission within the time provided to the Developer in the Construction Documents for review



of each such submission. If the Construction Coordinators do not either approve the Construction Documents submitted or disapprove the Construction Documents submitted within such period, the Construction Documents as submitted shall be deemed to have been approved.

(i) Warranties.

Promptly after the Completion Date, to the fullest extent assignable, the Owner shall assign and transfer to the Developer all contractor, subcontractor, supplier and manufacturer warranties with respect to the Project that are required to be provided in accordance with the Construction Documents, subject to the reservation by the Owner of the right to enforce such warranties during the terms of this Agreement and the Lease. The Developer shall not knowingly take any action negating the Design and Construction Manager's, or any subcontractors', suppliers' or manufacturers' warranties, except for emergencies and matters of public safety.

(j) Erection of Signage.

The Developer will erect, or cause to be erected, signs in the area of construction of the Ballpark acknowledging the financial assistance of the Commonwealth with respect to construction, which signs will specifically include the following:

"Financial assistance provided by the Commonwealth of Pennsylvania, Honorable Tom Ridge (or any successor), Governor."

### 2.3 SITE.

(a) Acquisition and Delivery of Site.

The Owner, at its own cost, which shall not be deemed to be a part of the Project Budget for purposes of this Agreement, shall take all necessary action to acquire the separate properties comprising the Site and to remove all of the existing asphalt, utility poles, utility lines, and all concrete, foundations and other man-made structures on and under the Site (the "**Site Work**"), provided that the Site will be delivered to the Developer, subject to the Permitted Encumbrances, on or before April 4, 1999 (except for the portion of the Site on which the GE Building is situated, which shall be delivered to the Developer on or before April 24, 1999). In the event that the Developer determines that the Site shall not have been delivered by the Owner in the condition required by this Section 2.3(a), the Developer shall notify the Owner of any deficiencies as soon as practicable, but not later than five (5) Business Days after either (a) the date that the Developer first observes the conditions or (b) the date that such conditions are reported to the Developer by the Design and Construction Manager. Otherwise, the Developer shall be deemed to have waived all claims against the Owner under this Section 2.3(a).

(b) Environmental Matters.

After the Owner acquires all of the separate properties which comprise the Site, or contemporaneously with such acquisition, the Owner shall promptly engage an environmental

consulting firm (the "**Environmental Consultant**") to perform an environmental assessment of the Site (the "**Environmental Assessment**") to determine whether any Contamination is present at the Site. The final report of the results of the Environmental Assessment (the "**Final Report**") shall be addressed by the Environmental Consultant to the Developer and the Owner to enable each to rely on such Final Report. In the event the Final Report includes any recommendations for further environmental assessment to determine the extent and nature of any Contamination (a "**Phase II**"), the Owner, in consultation with the Developer, shall cause such Phase II to be performed if such Phase II is either required pursuant to applicable Environmental Laws or is otherwise determined to be reasonably necessary by the Owner and the Developer. The cost of the Environmental Assessment (including the cost to prepare the Final Report) and the Phase II (including the cost to prepare any report of the results thereof, if any) shall be paid by the Owner, but shall not be treated as part of the Project Budget. In the event the results of the Environmental Assessment or the Phase II indicate the presence of Contamination or if any Contamination is discovered during the course of construction which, pursuant to applicable Environmental Laws, requires the performance of a Response Action, the Owner shall, at its sole cost and expense, cause such Response Action to be performed as expeditiously as is reasonably possible. Any costs incurred by the Owner with respect to the performance of a Response Action shall not be part of the Project Budget. At the election of the Developer, the Developer shall have the right (but not the obligation) to perform the Response Action, provided that the Response Action shall have been approved by the Owner as to the scope and cost of the Response Action, which approval shall not be unreasonably withheld, and provided that the Owner shall reimburse the Developer for all costs and expenses incurred by the Developer in connection with the performance of the Response Action.

(c) Site Matters.

The Owner shall perform and deliver the following in order to establish the nature and condition of the Site and to provide evidence that the Site is clean and sound, all of which shall be delivered to the Developer upon or prior to delivery of the Site (or as soon thereafter as is reasonably practicable) to the Developer for the commencement of construction. Notwithstanding the foregoing, the obligation to pay the cost of the items listed below in this Section 2.3(c) shall be borne by the Owner and the Developer as set forth on Schedule 2.3(c) hereto, as such Schedule 2.3(c) may be amended from time to time by agreement of the parties (it being understood that the Developer has paid all or a portion of the Owner's share of such costs, as indicated on Schedule 2.3(c), and is entitled to be reimbursed for the Owner's share of such costs in accordance with Section 2.3(n) hereof).

(i) A boundary survey or other such legal description of the Site identifying new and existing confines of the site, including all easements. Such survey shall incorporate proposed road relocation and any proposed property and street vacation.

(ii) A final report concerning the site-use assessment of historical and archaeological artifacts including any necessary surveys and investigations, together with clearance by the appropriate public agencies approving findings and recommendations identified in the final report.

(iii) Evidence that the Permits listed on *Exhibit 6* to be obtained by the Owner have been issued by the agencies having jurisdiction.

(d) Geotechnical Matters.

After the Owner acquires all of the separate properties which comprise the Site and performs the work required by Sections 2.3(a) and (b) above, all matters relating to evaluation of the soil conditions, floodplain and other geotechnical attributes of the Site and whether such attributes are adequate to support the construction of the Ballpark shall be the responsibility of the Construction Team, and all evaluation and remediation in connection therewith shall be included within the Project Budget, subject, however, to the Owner's obligation to repair or complete any items reported to the Owner by the Developer pursuant to the last sentence of Section 2.3(a) hereof. Notwithstanding the foregoing, if conditions are encountered at the Site that are (1) man-made (as opposed to naturally existing) subsurface structures or otherwise man-made physical conditions or materials that differ materially from those indicated in the Geotechnical Report, prepared by GeoMechanics Incorporated, dated February 3, 1999 (the "**Geotechnical Report**"), or (2) unknown man-made physical conditions that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Construction Documents, then the Developer shall notify the Owner immediately, and before such conditions are disturbed, but in no event later than 10 days after either (a) the date the Developer first observes the conditions or (b) the date that such conditions are reported to the Developer by the Design and Construction Manager. The Owner shall promptly investigate such conditions. If such conditions fall within clauses (1) or (2) above and cause an increase in the cost of, or time required for, performance of any part of the Project, the Owner shall authorize additional payment(s) to be made to the Developer to cover any increased costs incurred, which payment(s) shall be in addition to the amounts committed in the Project Budget. If the Owner determines that the conditions do not fall within clauses (1) or (2) above, the Owner shall promptly so notify the Developer in writing, stating the reasons for such determination. In addition to the foregoing, the Owner and the Developer have agreed to purchase a \$10,000,000 insurance policy (the "**Policy**") which will cover, among other things, the potential risk of natural (as opposed to man-made) subsurface conditions that (A) differ materially from those indicated in the Geotechnical Report or (B) differ from those ordinarily found to exist and generally recognized as inherent on construction activities of the character provided in the Contract Documents relating to the Project. The actual purchase decision with respect to such insurance shall be deferred until the receipt and evaluation of the "auger cast piles" bid response; provided, however, that a decision not to then purchase such insurance must be agreed to by both the Developer and the Owner and absent such agreement, such insurance shall be purchased in accordance with the foregoing terms. The Owner and the Developer shall share equally the portion of the premium charged under such policy for the risks described in clauses (A) and (B) above. If such conditions are encountered at the Site, then the Developer shall notify the Owner immediately, and before such conditions are disturbed, but in no event later than 10 days after either (a) the date the Developer first observes the conditions or (b) the date that such conditions are reported to the Developer by the Design and Construction Manager. The Owner shall promptly investigate such conditions. If such conditions fall within clauses (A) or (B) above and cause an increase in the cost of, or time required for, performance

of any part of the Project, the Owner and the Developer shall share equally in such increased cost up to the amount of the deductible of \$500,000 under the Policy. The Owner's share of such payments shall be in addition to the amounts committed in the Project Budget. If the Owner determines that the conditions do not fall within clauses (A) or (B) above, the Owner shall promptly so notify the Developer in writing, stating the reasons for such determination.

(e) Street Vacation and Relocation.

The Owner shall use its best efforts to work with the City to vacate and relocate West General Robinson Street and Stadium Drive East so as to permit construction of the Ballpark in accordance with agreed upon plans and specifications.

(f) Utility Relocation.

The Owner shall be responsible for the removal and relocation of the public and private utilities on the Site, the upgrade of existing water and sewer lines on the Site, and the installation of all water and sewer lines to the site of the Ballpark so as to permit construction of the Ballpark in accordance with agreed upon plans and specifications and to provide sufficient services for the operation of the Ballpark, in accordance with the schedule for the construction of the Ballpark. Notwithstanding the foregoing, the Owner shall not be required to remove or relocate the ten (10) foot sewer line or the five (5) foot sewer line located under the site for the Ballpark or the 30 inch sewer line located in East Stadium Drive so long as (i) such sewer lines will not interfere with the construction and operation of the Ballpark, (ii) the Owner shall have caused such sewer lines to be inspected and, if necessary, properly repaired so that they are in good and operating condition, and (iii) the Owner shall have provided or will, following execution of this Agreement, diligently work to provide for emergency access to such sewer lines at a location sufficiently distant from the Ballpark so as to avoid any interference with operations at the Ballpark in the event emergency access is necessary, which access locations shall be subject to the reasonable prior approval of the Developer. In furtherance of the foregoing, if any work is required to be done with respect to such sewer lines or with respect to the Allegheny County Sanitation Department structures connected with such sewer lines in order to avoid relocation of such lines, or if such sewer lines or structures are required to be relocated, or if any modifications are required to be made to the Ballpark or to the bulkhead wall to be constructed along the river line adjacent to the site in order to accommodate such lines or structures, such work, relocation and/or modifications shall be made at the sole cost and expense of the Owner and at no additional cost to the Project or to the Developer.

(g) Transportation Management.

The Owner shall work with the Developer and shall use its best efforts to work with the City and other applicable municipal authorities to develop a transportation management plan, including truck routing during construction, street signage during and after construction, public transportation routing changes, signage on buses, subway access, parking meters and such other matters as shall be reasonably necessary or desirable.

(h) Expedited Permitting.

The Owner shall cooperate with and assist the Developer in expediting the review and issuance of all Permits required for the construction of the Ballpark at no increased cost to the Developer or to the Project. Notwithstanding the foregoing, the Developer shall pay, as part of the Project Budget, the \$24,000 in fees payable to GAI Consultants in connection with the engineering work required to obtain certain the Permits. Subject to the foregoing, the Owner shall be responsible for taking out and fulfilling the requirements of the Permits for which the Owner is responsible, as set forth on *Exhibit 6*. The Owner shall identify an individual within the Owner's organization to assist the Developer with such expedited permit issuance.

(i) Sales Tax Exemption.

The Owner shall cooperate with and assist the Developer in obtaining such sales tax exemptions as may be available in connection with the Project.

(j) Community Issues.

The parties agree that the Ballpark will be constructed in a way which minimizes and mitigates, to the maximum extent practicable, the impact of construction on nearby communities. The Owner shall cooperate with the Developer and shall use its best efforts to cause the City and other appropriate municipal authorities to cooperate with the Developer so as to mitigate the impact of construction on nearby communities.

(k) Construction Staging and Storage.

The Owner shall work with the Developer and shall use its best efforts to cause the City and other appropriate municipal authorities to work with the Developer to develop and implement mutually acceptable plans for construction staging, procedures and practices.

(l) Labor and Employment Issues.

The Developer shall cooperate and assist in obtaining a project stabilization agreement with the applicable trade unions so as to promote continuous and harmonious relationships and to promote the uninterrupted construction of the Ballpark.

(m) Insurance.

The Developer will maintain the comprehensive "owner controlled" insurance program, a summary of which is attached hereto as *Exhibit 14*, with respect to the Project until the later of the final Completion of the Project or the termination or expiration of the policy underlying such insurance program. The Developer will further maintain such insurance as is required by the Commonwealth pursuant to the terms of the Grant Agreement.

(n) Performance By Developer; Enforcement by the Owner.

The Owner hereby agrees that the Developer shall have the right (but shall have no obligation) to assist the Owner in the performance of the items set forth in this Article 2 or to perform the items set forth in this Article 2 as the agent of the Owner to the extent necessary in the Developer's reasonable judgment to expedite the performance and completion thereof and to cause the timely delivery of the Site and the timely completion of construction of the Ballpark to the Developer and that all costs and expenses incurred by the Developer in connection therewith, subject to prior written approval of the Owner, shall be reimbursed to the Developer. The Developer hereby agrees that the Owner shall have the right, but not the obligation, to enforce the contracts entered into by the Developer hereunder in its capacity as agent for the Owner if the Developer refuses or fails to take any action reasonably requested by the Owner in connection with the enforcement of any such contract for a period of fifteen (15) days after written notice thereof to the Developer. The Owner and the Developer hereby agree that the costs incurred by the Developer through the date hereof, as set forth on *Schedule 2.3(c)* hereto, are costs incurred by the Developer on the Owner's behalf with the Owner's prior consent and the Owner shall reimburse the Developer for such costs.

**2.4 PROJECT BUDGET.**

(a) Approval.

Subject to the representations contained in Section 2.4(b), the Owner hereby approves the Project Budget attached as *Exhibit 1*. The Owner and the Developer hereby agree that any construction savings realized throughout the construction of the Ballpark, whether from value engineering, contingency funds or otherwise, will be used first to upgrade and enhance the Ballpark (subject to the approval of the Owner, as set forth in Section 5.1(c) hereof) and then, to the extent of any excess, to fund the Capital Reserve Fund to be maintained by the Owner.

(b) Definition.

The Developer represents that the Project Budget takes into account the costs associated with the construction of a Ballpark meeting the criteria described in Sections 2.1(b) and 4.8 of this Agreement, and includes, without limitation, the following:

(i) Soft Costs. All of the following soft costs (the "**Soft Costs**") incurred (whether prior or subsequent to the execution of this Agreement) in connection with the design and construction of the Ballpark:

(A) All costs and expenses for architectural and design services associated with the design and construction of the Ballpark, including, without limitation, all costs associated with the preparation of the Construction Documents by HOK and/or Astorino, as the case may be, and all services provided by specialty consultants.

(B) Subject to Section 2.3(h) hereof, all costs and expenses for obtaining all Permits or approvals associated with the construction of the Ballpark.

(C) All other costs and expenses which would be categorized as soft costs in accordance with industry standards in connection with the design and construction of a major construction project such as the Ballpark.

(ii) Hard Costs. All of the following hard costs (the "**Hard Costs**") incurred in connection with the design and construction of the Ballpark:

(A) All costs and expenses incurred in completing the Work with respect to the Ballpark, including, without limitation, all costs and expenses incurred in connection with the construction of any permanent improvements on the Site, the extension of any applicable utility lines or related equipment or improvements delivered to the Site and the Ballpark and the interconnection of same to the Ballpark (except as otherwise specifically addressed in Section 2.3(f) hereof), including, without limitation, any required utility vaults, switchgear, transformers, feeders, distribution equipment, telecommunication equipment, water and sewer connections and other related utility hookups such as chilled water connections, improvements or interconnection equipment, all costs and expenses paid to the Design and Construction Manager, with respect to the Ballpark and all costs and expenses incurred in connection with constructing the Ballpark, including without limitation all costs and expenses included in the GMP.

(B) All costs and expenses, consistent with industry standards, incurred by the Developer in connection with the purchase and installation of all machinery, furnishings, fixtures and equipment required for the operation of the Ballpark in conformity with the criteria contained in Section 2.1, the cost of which is paid from the Project Budget.

(iii) An initial contingency reserve of 5% of the Hard Costs.

## 2.5 FINANCING OF PROJECT.

Subject to the terms and conditions of this Agreement, the parties shall provide the following financing toward the Project Budget:

(a) Developer Contribution.

The Developer hereby agrees to provide financing (the "**Developer's Share of Project Costs**") toward the Project Budget (the "**Developer Contribution**") as follows:

(i) The Owner agrees that all costs and expenses incurred by the Developer (other than the costs incurred by the Developer on the Owner's behalf pursuant to Section 2.3(c) or Section 2.3(n) hereof) in connection with the design, development and construction of the Ballpark (the "**Project Costs**") shall be paid out of the Project Budget, and that the first \$8,500,000 of Project Costs incurred by the Developer shall be applied against the Developer's initial \$8,500,000 payment (the "**Developer's Initial Payment**"). Except with respect to \$31,500,000 which shall be paid by the Developer as provided in Section 2.5(a)(ii) below, and except as otherwise provided in Section 2.7 or elsewhere in this Agreement, any Project Costs incurred by the Developer in excess of the Developer's Initial Payment, provided that such

Project Costs do not exceed the total amount of the Project Budget as approved by the Owner, shall promptly be reimbursed to the Developer by the Owner. From time to time, the Developer will submit to the Owner an itemization of all Project Costs incurred by the Developer, together with evidence reasonably satisfactory to the Owner supporting each item of Project Costs incurred by the Developer, and together with a request for reimbursement for any Project Costs incurred by the Developer in excess of the Developer's Initial Payment. Any costs that are within the scope of the Construction Documents or the agreements with the members of the Construction Team, and all other costs included within the categories set forth in the Project Budget, are deemed to be approved Project Costs, unless such costs would increase the Project Budget.

(ii) On November 1, 2000, the Developer shall pay to the Owner, in cash, \$31,500,000, which cash shall be deposited in one or more of the Project Accounts.

(b) Owner Contribution.

Subject to the terms and conditions of this Agreement, the Owner shall contribute a sum not to exceed \$94,174,184 from the proceeds of bond issuances (the "**Owner Debt**") by the Authority toward the Project Budget (the "**Owner Contribution**"), to be paid into the Project Accounts immediately upon closing such bond issuances.

(c) Commonwealth Contribution.

Subject to the execution of the URA Agreement and other arrangements to be entered into by and among the Developer, the Owner, the Urban Redevelopment Authority of Pittsburgh and the Commonwealth as may be requested by the Commonwealth, the Commonwealth will provide the sum of up to \$75,000,000 to be utilized for development and construction of the Project (the "**Commonwealth Contribution**"), which sum shall be deposited into the Project Accounts as soon as practicable upon receipt by the Owner.

## 2.6 PROJECT ACCOUNTS.

Project Funds will be maintained in such accounts (the "**Project Accounts**") as may be established by the Owner in connection with the debt issuance referenced in Section 2.5 above, and as may be required by the Commonwealth in connection with the award of Commonwealth funds as referenced in Section 2.5 above. To the extent permitted by applicable Laws, and by the Commonwealth, interest earned on the Project Accounts will be included within the Project Accounts and available for disbursement for Project Costs.

## 2.7 DEVELOPER GUARANTY OF COST OVERRUNS.

(a) Definition.

Any Project Costs incurred by, paid by, or billed to the Owner or the Developer in excess of the sum of \$209,174,184, excluding (i) costs specifically attributed to the Owner pursuant to this Agreement and deemed not to be included in the Project Budget; (ii) costs resulting from



changes to the Project requested or required by the Owner; or (iii) costs otherwise arising out of actions or omissions of the Owner, shall be considered to be cost overruns for purposes of this Agreement (the "**Cost Overruns**"). So long as the Developer is diligently proceeding to complete the Project in accordance with the Construction Documents (including the Master Project Schedule) as approved by the Owner, the Owner shall not have the right to incur costs for which the Owner will not be liable or to obligate the Developer to incur costs in excess of the sum of \$209,174,184 without the prior written approval of the Developer, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, the Developer acknowledges that in the event of a Cost Overrun (including one resulting from a time delay), the Developer is bound to its Cost Overrun obligations hereunder.

(b) Guaranty.

(i) The Developer hereby unconditionally and irrevocably agrees and becomes surety for the amount of any Cost Overrun, and agrees to pay any Cost Overrun on demand at such time as any portion thereof is legally required to be paid with respect to the Project. The Developer hereby agrees to cause such full payment to be made whether or not any one or more of the following events has occurred: (i) any Person which is owed money in connection with its Work (a "**Project Creditor**") has made any demand on the Owner; (ii) a Project Creditor has taken any action of any nature against the Owner; (iii) a Project Creditor has pursued any rights which it has against any other Person who may be liable for the Cost Overrun; (iv) the Project Creditor holds or has resorted to any security for the Cost Overrun; or (v) the Project Creditor has invoked any other remedy or right it has available with respect to the Cost Overrun. The Developer further agrees to cause such full payment to be made to the Owner even if circumstances exist which otherwise constitute a legal or equitable discharge of the Developer as surety or guarantor. The Developer acknowledges and agrees that: (i) no Project Creditor shall have any recourse against the Owner or any of its property for payment of any Cost Overrun; (ii) the right of the Owner to enforce this Guaranty against the Developer shall in no manner be impaired or adversely affected thereby; and (iii) that the sole source of repayment of Cost Overruns shall be from the assets and resources of the Developer.

(ii) If any Cost Overrun shall become payable, the Owner shall have the right, at any time and from time to time to the fullest extent permitted by Law, in addition to all other rights and remedies available to it, without prior notice to the Developer, to set-off against and to appropriate and apply to such due and payable amounts any debt owing to, and any other funds held in any manner for the account of the Developer by the Owner and any amounts which may be owed by the Owner to the Developer under any arrangement or agreement, whether related to this Agreement or otherwise. Such right shall exist whether or not the Owner shall have given notice or made any demand hereunder, whether or not such debt owing to the Developer is or are matured or unmatured, and regardless of the existence or adequacy of any collateral, guarantee or any other security, right or remedy available to the Owner. The Developer hereby consents to and confirms the foregoing arrangements, and confirms the Owner's rights of set-off against the Developer.

(iii) The Developer hereby agrees that, if at any time all or any part of any payment, from whomever received, theretofore applied by the Owner to any of the Cost Overruns is or must be rescinded or returned for any reason whatsoever including, without limitation, the insolvency, bankruptcy or reorganization of the Developer, such liability shall, for the purposes of this Guaranty, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by the Owner, and this Guaranty shall continue to be effective or be reinstated, as the case may be, as to such liabilities, all as though such application by the Owner had not been made.

(iv) The Developer hereby agrees that no failure or delay on the part of the Owner to exercise any of its rights, powers or privileges under this Guaranty shall be a waiver of such rights, powers or privileges or a waiver of any default, nor shall any single or partial exercise of any of the Owner's rights, powers or privileges preclude other or further exercise thereof or the exercise of any other right, power or privilege or be construed as a waiver of any default. The Developer further agrees that each written waiver shall extend only to the specific instance actually recited in such written waiver and shall not impair the rights of the Owner in any other respect.

(v) The Developer hereby unconditionally agrees to pay all Damages incurred by the Owner in enforcing this Guaranty against the Developer.

(c) Security.

As security for its Guaranty of all Cost Overruns, the Developer shall maintain (i) a \$5,000,000 letter of credit issued to the Owner by Fleet National Bank (the "**Letter of Credit**"), in form and substance reasonably acceptable to the Owner and which shall permit the Owner to make draws thereunder upon presentment of a certification in form substantially similar to the form attached hereto as *Exhibit 15*, with all blanks appropriately completed, and (ii) a cost overrun insurance policy (the "**Overrun Policy**") in the amount of \$10,000,000 (the "**Security**") which shall permit the Owner to file claims thereunder. The Owner shall be permitted to make draws under the Letter of Credit immediately upon the filing of a claim under the Overrun Policy, regardless of whether such claim is covered by the Overrun Policy. Any payments from the Overrun Policy shall be applied first to costs of completing the Project and then to any other costs incurred by the Owner and/or the Developer. The Developer hereby bears the sole responsibility for any costs or expenses associated with the provision and maintenance of the Security.

(d) Certain Costs.

Notwithstanding anything contained in the foregoing sections of this Section 2.7, the Owner and the Developer hereby agree that the Project Budget includes approximately \$7,500,000 for construction of the riverfront park and for construction of certain portions of the infrastructure around the Ballpark. The Owner has committed to the Developer to use reasonable efforts to obtain additional sources of funds to pay the cost of such riverfront park and infrastructure and that, if the Owner succeeds in obtaining such additional sources of funds, such funds will be applied by the Owner to pay the cost of such riverfront park and infrastructure and

such items shall not be deemed to be Cost Overruns, as defined herein. If the Owner is unable to obtain commitments for additional funds for construction of such riverfront park and infrastructure, then nothing contained in this subsection (d) shall be constructed in any manner to affect the obligations of the Developer that are set forth above in this Section 2.7 with respect to Cost Overruns.

(e) Additional Security.

As additional security for the Developer's obligations under this Agreement and the Related Agreements, the Developer irrevocably assigns and grants to the Owner a security interest in: (a) all Project Funds now or hereafter held by the Owner in the Project Accounts; (b) all funds, whether under the control of the Owner or the Developer, in the Project Accounts, whether or not disbursed, (c) all funds now or hereafter deposited by the Developer with the Owner under this Agreement or any of the Related Agreements, (d) all governmental Permits, approvals and licenses now or hereafter obtained for the lawful construction and operation of the Project, and (e) all reserves, deferred payments, deposits, refunds, cost savings and payments of any kind relating to the construction of the Project. Upon the occurrence of an Event of Default, the Owner, in addition to any other rights and remedies it may have under the Related Agreements or at law or in equity, may apply any funds held by the Owner against any of the obligations of the Developer to the Owner (whether or not the same be then due), in such order as the Owner may determine, and may use any of the other property referred to above for any purpose for which the Developer could have used them under this Agreement or with respect to the construction and development of the Project.

**3. REPRESENTATIONS AND WARRANTIES OF THE OWNER**

The Owner hereby represents and warrants to the Developer, that, as of the date of execution of this Agreement:

**3.1 AUTHORIZATION, VALIDITY AND ENFORCEABILITY.**

The Owner has all requisite power and authority to enter into this Agreement and to carry out the actions contemplated hereby. The execution, delivery, and performance by the Owner of this Agreement have been duly authorized and approved by all necessary Owner action (other than the various government approvals, licenses and Permits which are required for the development, construction, use and operation of the Ballpark), all of which have been obtained and remain in effect. The Owner Representative is the individual duly authorized to execute this Agreement on behalf of the Owner and has so executed this Agreement. This Agreement and the Related Agreements, when executed, will constitute the valid and legally binding obligations of the Owner, enforceable against it in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

### **3.2 NO CONFLICTS.**

The execution, delivery and performance of this Agreement or the Related Agreements will not result in a violation of, in any material respect, of any provision of any other agreements, instruments, contracts, judgments or decrees to which the Owner is a party, or by which the Owner or its assets may be bound or affected, including without limitation the Owner's Charter documents and any written rule, regulation or policy of the Owner.

### **3.3 NO VIOLATION OF LAWS.**

Except as otherwise previously disclosed in writing to the Developer, the Owner has complied in all material respects with all applicable Laws, statutes, rules, regulations or orders with respect to the Site or the transactions contemplated in and by this Agreement and the Related Agreements; and the Owner is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Authority which is in any respect material to the transactions contemplated in and by this Agreement. Neither the execution, delivery nor, performance of this Agreement by the Owner violates the articles of incorporation, by-laws, or any ordinance or resolution of the Owner, or any other agreement or instrument to which the Owner is subject or by which the Owner is bound.

### **3.4 LITIGATION.**

Except as otherwise disclosed by the Owner to the Developer in writing, there is no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Authority now pending or, to the actual knowledge of the Owner, threatened against the Owner seeking to restrain or prohibit, or seeking damages or other relief in connection with, the execution this Agreement and the performance of the transactions contemplated herein or which might materially and adversely affect the use and operation of the Ballpark as contemplated in and by this Agreement or the performance of the Owner hereunder or under the Related Agreements.

### **3.5 SITE POSSESSION AND TITLE.**

The Owner holds good and marketable title to the Site, free and clear of all liens and encumbrances other than the Permitted Encumbrances. If, other than a Permitted Encumbrance, any lien, encumbrance, easement, license, right-of-way, covenant, condition, restriction, or other title defect first arises subsequent to the execution of this Agreement which is created by, through or under the Owner and is not related to the acts of the Developer or their respective agents, contractors, employees and tenants, and which will materially diminish, impair or disturb the rights of the Developer under this Agreement with respect to the Site (a "**Title Defect**"), the Owner shall take all reasonable actions, at its sole cost and expense, to promptly eliminate such Title Defect. The Developer acknowledges that a Permitted Encumbrance shall not constitute a Title Defect. Except as expressly permitted under this Agreement and the Related Agreements and except for Permitted Encumbrances, the Owner shall not create any lien, encumbrance,

easement, license, right-of-way, covenant, condition or restriction which would encumber the Site and materially diminish, impair or disturb the rights of the Developer under this Agreement.

#### **4. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER**

The Developer hereby represents and warrants to the Owner that, as of the date of execution of this Agreement:

##### **4.1 ORGANIZATION, AUTHORITY AND LOCATION.**

The Developer is a limited partnership duly organized, validly existing and in good standing under the laws of the Commonwealth. The Developer has all requisite partnership power and authority to enter into this Agreement and each of the Related Agreements to which it is a party. The general partner of the Developer (the "**General Partner**") is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth. With the exception of the Developer's Spring training facility located in Florida, the principal place of business and the principal assets of each of the Developer and the General Partner and of each of their Affiliates have been located in Allegheny County since at least January 1, 1998.

##### **4.2 AUTHORIZATION, VALIDITY AND ENFORCEABILITY.**

All partnership action and all corporate action by the General Partner necessary for the authorization, execution, delivery and performance of all obligations of the Developer under this Agreement and the Related Agreements has been taken. All consents and approvals of any Person (including partners of the Developer, if necessary) required in connection with the execution of this Agreement and the Related Agreements have been obtained. This Agreement and the Related Agreements, when executed, shall constitute valid and legally binding obligations of the Developer enforceable in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

##### **4.3 FINANCIAL POSITION.**

The Developer has delivered to the Owner: (a) audited consolidated balance sheets of the Developer, as at October 31 in each of the years 1997 and 1998 (the balance sheet for the latter period to be referred to as the "**Balance Sheet**"), and the related audited consolidated statements of income, changes in stockholders' equity, and cash flow for each of the fiscal years then ended, together with the report thereon of the Developer's independent certified public accountants, and (b) an unaudited consolidated balance sheet of the Developer as of February 28, 2000 and the related unaudited consolidated statements of income, and cash flow for the four months then ended, including in each case the notes thereto. Such financial statements and notes fairly present the financial condition and the results of operations, changes in stockholders' equity, and cash flow of the Developer as of the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP; and the financial statements referred to in

this Section 4.3 reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. The books of account and other records of the Developer are complete and correct in all material respects and have been maintained in the regular course of business with reasonable internal accounting controls. All other financial data, including evidence of the availability of cash, provided by the Developer to the Owner as provided in this Agreement is true, correct and complete.

#### **4.4 NO CONFLICTS.**

The execution, delivery and performance of this Agreement or the Related Agreements will not result in a violation of, in any material respect, any provision of any other agreements, instruments, contracts, judgments or decrees to which the Developer is a party or by which the Developer or its assets may be bound or affected, including without limitation, the Developer's limited partnership agreement or its certificate of limited partnership, the General Partner's Articles of Incorporation or Bylaws, the MLB Constitution or Bylaws and any written rule, regulation or policy of the MLB, nor will the execution, delivery and performance of this Agreement or the Related Agreements result in the breach of or constitute a default under any loan or credit agreement, or other agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

#### **4.5 NO VIOLATION OF LAWS.**

Except as set forth on *Schedule 4.5* hereto, the Developer has received no written notice as of the date of execution of this Agreement asserting any noncompliance in any material respect by the Developer with Legal Requirements; and the Developer is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Authority which is in any respect material to the transactions contemplated in and by this Agreement.

#### **4.6 LITIGATION.**

Except as otherwise disclosed to the Owner in writing, there is no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Authority now pending or, to the actual knowledge of the Developer, threatened against or which affects the Developer which has been served upon or of which the Developer has knowledge, which could have a material adverse affect upon the Developer's performance under this Agreement or the financial condition or business of the Developer. There are no outstanding judgments against the Developer.

#### **4.7 NO PAYMENTS.**

The Developer has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

#### 4.8 DESIGN OF BALLPARK.

To the best of the Developer's knowledge, the Ballpark design as reflected in the initial Design Development Documents is in conformity with (i) current MLB standards, and (ii) all Legal Requirements, including without limitation those relating to individuals with disabilities, including the Americans with Disabilities Act, and shall be equipped with modern technological systems for acoustics, utilities and seating configurations, a baseball playing field, modern telecommunications systems, a modern HVAC system, emergency generators, baseball homerun fences, bullpen, food and beverage facilities, live television production facilities (not including production equipment), loading/unloading areas, mechanical systems, lighting and video distribution systems, storage facilities, furnishings, vertical transportation systems, environmental graphics and signage, video display boards, score boards, one exterior marquee, advertising displays, sound distribution and other features designed to provide patron, employee and tenant convenience.

### 5. CONSTRUCTION MATTERS

#### 5.1 CONSTRUCTION ADMINISTRATION.

(a) Developer's Responsibilities.

The Developer shall be responsible for managing, directing, supervising and coordinating the planning, design and construction of the Project in accordance with the Construction Documents, the Master Project Schedule and the Project Budget, all as approved by the Owner, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the approval rights granted to the Owner in the foregoing sentence or elsewhere herein, after the Owner's approval of the initial Design Development Documents, so long as any matter is consistent with the initial Design Development Documents approved by the Owner, the Owner hereby agrees that the Owner shall not have the right to withhold its approval to the extent that any such withholding of approval is based solely on aesthetic considerations or with respect to matters involving forms or finishes of the Ballpark, and that any withholding of such approval shall be deemed to be unreasonable unless such considerations or matters would increase the Project Budget. The Owner hereby confirms that it has approved the Design Development Documents. The Developer shall manage, direct, supervise and coordinate the planning, design and construction of the Ballpark, and coordinate the work of all parties involved therein (collectively, the "**Work**"). The Developer shall be responsible for the continuous, orderly and uninterrupted performance of all aspects of the Work required in connection with the construction of the Ballpark in accordance with the Construction Documents and this Agreement, including, without limitation, those matters set forth above, and:

- (i) Retaining the services of specialty consultants.
- (ii) Preparing, or causing to be prepared, the Project Budget.

(iii) Preparing, or causing to be prepared, the Master Project Schedule, and thereafter updating the Master Project Schedule on a monthly basis and delivering a copy of same to the Owner Representative and the Construction Coordinators.

(iv) Obtaining or causing to be obtained all Permits not otherwise required to be obtained by the Owner.

(v) Retaining and supervising the personnel reasonably required by the Developer in order to properly perform the Work.

(vi) Maintaining complete and accurate books and records, consistent with industry standards, regarding the design and construction of the Ballpark including, without limitation, records relating to the Construction Documents, shop drawings, Change Orders (as defined in Section 5.1(c)), as built drawings, applications for payment, Permits, insurance policies, correspondence, bills, vouchers, receipts and lien waivers.

(vii) Taking all action reasonably required to comply with all Legal Requirements and taking all reasonable action required to cause Astorino, HOK and the DCM and all other agents and contractors engaged by, or acting on behalf of, the Developer to design and construct the Ballpark in accordance with Legal Requirements.

(viii) Furnishing promptly to the Owner Representative and the Construction Coordinators all documents and information required to be provided pursuant to this Agreement and all other information that the Owner Representative and Construction Coordinators may reasonably request. The Developer shall promptly provide to the Owner Representative copies of any and all legal notices received by the Developer affecting in any manner the Project.

(ix) Notifying promptly the Owner Representative of any claim, suit, proceeding or action that is initiated or threatened in connection with the Project.

(x) Providing the Owner, upon completion of construction, with an original print and one sepia print or disk of as-built Construction Documents depicting the Project.

(xi) Supervising punchlist and warranty work after Substantial Completion of the Work. A post-completion warranty inspection shall occur under the supervision of the Developer prior to the first anniversary of the date on which Substantial Completion occurred.

(xii) Establishing and updating, as necessary, the schedule of dates for delivery of various design documents for review and approval of the Owner.

(xiii) Preparing minutes for all Project meetings and providing a copy of same to the Construction Coordinators and the Owner Representative.

(xiv) Providing the Owner Representative with copies of all contracts and subcontracts and all amendments thereto, which shall be subject to approval by the Owner as provided in this Agreement.



(xv) Causing the completion of the Project in accordance with the Master Project Schedule and the Construction Documents, subject to Force Majeure; provided that the Owner shall have the right to approve any grant by the Developer of an extension of time pursuant to Section 6.3.1 of the DCM Agreement, which approval right shall be subject to the terms of this Agreement.

(xvi) Providing the Owner with monthly progress reports containing such financial information as the Owner may reasonably request relating to Project Costs, including all expenditures by the Developer during the preceding month and a proposed monthly budget for the upcoming month.

(xvii) Supervising and coordinating, or causing the DCM to supervise and coordinate, the construction of the Ballpark so that the Ballpark is constructed, equipped, furnished and completed in a good and workmanlike manner in accordance with the Construction Documents, lien free, by the Completion Date (subject to Force Majeure) in accordance with all Legal Requirements and shall employ such consultants as may be reasonably required to insure that quality control appraisals of the Ballpark are conducted throughout the construction period in a manner consistent with industry standards.

(b) Changes of Agreements With HOK and the DCM.

The Owner Representative shall have the right to approve any material change, modification or amendment to the HOK Agreement or the DCM Agreement, including without limitation, the Master Project Schedule. The Developer shall submit to the Owner Representative for review and approval any such proposed change, modification or amendment. The Owner Representative shall have ten (10) days to approve or disapprove such change. If the Owner Representative shall fail to approve or disapprove such change within ten (10) days, the change shall be deemed to have been approved. Approval will not be unreasonably withheld and the Owner Representative will state reasons for any disapproval in writing.

(c) Change Orders And Ballpark Plan Changes.

The Developer shall promptly submit to the Construction Coordinators, for their review and approval (subject to the limitations set forth in Section 5.1(a) hereof): any change orders or change directives (i) which may or do result in a change, up or down (before netting), in the total amount of the Project Budget, or (ii) which materially alter the design of the Ballpark or add or eliminate material elements from the Ballpark criteria described in the previously approved Construction Documents (collectively, "**Change Orders**"). Provided that all pertinent documents have been provided, the Construction Coordinators shall have such period of time as is provided in the DCM Agreement to review and approve or disapprove the requested Change Order. No payment in connection with a change to a trade contract may be released to the DCM or to any trade contractor without a properly approved and documented Change Order in place. The failure of the Construction Coordinators to respond within such period shall constitute a deemed approval. The Construction Coordinators shall exercise good faith efforts to respond as diligently and expeditiously as possible to any requested Change Order. In the event that the Construction Coordinators disapprove a Change Order, the Construction Coordinators shall state,

## **5.6 PROTECTION AGAINST LIEN CLAIMS.**

The Developer shall promptly pay and discharge, with Project Funds (except as specifically set forth in Section 2.7), all charges for labor done and materials and services furnished in connection with the construction of the Project and shall promptly notify the Owner in writing of any dispute with any contractor or subcontractor. All contracts and agreements relating to any portion of the construction of the Project, including without limitation, the DCM Agreement and the HOK Agreement, shall expressly prohibit the filing of mechanics' liens, and all parties to any such contract shall waive the right to file mechanics' liens prior to the commencement of Work, and shall further agree to execute such lien waivers and releases as the Owner and the Developer may request. Any lien claimed or filed against any part of the Project for labor done or materials or services furnished in connection with the construction of the Project shall be discharged, by bond or otherwise, within ten (10) days after the date of the filing thereof, and the Owner reserves the right to withhold further disbursement of Project Funds until such lien or claim shall have been so discharged.

## **5.7 NONDISCRIMINATION, CONTRACTOR INTEGRITY, ETC.**

In its construction and development of the Project, the Developer will comply with all terms and conditions set forth on all of the following Exhibits, all of which are incorporated herein by reference: (i) Non-Discrimination Covenants attached as *Exhibit 16*; (ii) Contractor Integrity Covenants attached as *Exhibit 17*; (iii) Steel Products Procurement Act Contract Clause attached as *Exhibit 18*; (iv) Trade Practices Act Contract Clause attached as *Exhibit 19*; (v) Public Works Contracting Bond Law of 1967 Contract Clause, attached as *Exhibit 20*; (vi) Pennsylvania Prevailing Wage Act Contract Clause attached as *Exhibit 21*; and (vii) Provisions Concerning the Americans with Disabilities Act attached as *Exhibit 22*. All of the foregoing Exhibits are incorporated into this Agreement by reference as if set forth in full.

## **5.8 COOPERATION.**

The Developer will cooperate at all times with the Owner in bringing about the timely completion of the Project, and the Developer will resolve all disputes arising during the Work of construction in a manner which will allow the Work to proceed expeditiously in order to complete the Project on or before the Completion Date.

## **5.9 ACCOUNTING; CHANGES IN CONDITION.**

The Developer shall keep true and correct financial books and records on a cash basis for the construction of the Project and shall maintain adequate reserves for all contingencies. If required by the Owner, the Developer shall submit to the Owner, at such times as the Owner requires, a statement which accurately details the application of all Project Funds and other funds expended to date as well as the Developer's best estimate of the funds needed to defray the cost to complete the Project (including all direct and indirect costs associated therewith) and the source of those funds not more frequently than monthly, except upon the occurrence of a "**Default**" or an "**Event of Default**" under this Agreement or any of the Related Agreements.

The Developer shall promptly notify the Owner of any materially adverse change in its financial condition or in the physical condition of the Site.

## **6. NON-RELOCATION AND DEVELOPER IDENTITY**

### **6.1 PROHIBITION AGAINST ASSIGNMENT.**

Except as otherwise provided in this Section 6.1, the Developer shall not assign or transfer this Agreement or any of the Related Agreements or any of the Developer's rights or obligations under this Agreement or any of the Related Agreements, or sublet the Premises or any part thereof, or enter into any management, operation or similar agreement with respect to the operation or management of the Ballpark, without the Owner's prior written consent. For purposes hereof, (i) the sale of more than fifty percent (50%) of the direct or indirect voting equity interests of the Developer or (ii) the direct or indirect substitution of the General Partner, shall be deemed to be an assignment. Notwithstanding the foregoing, the Owner will consent in writing to any assignment of this Agreement and/or any of the Related Agreements provided that, after giving effect to such assignment (a) the Developer will have a ratio of assets to liabilities of not less than sixty percent (60%) to forty percent (40%) determined in accordance with the definitions and standards established by MLB and (b) the Developer will have not less than \$5,000,000 in working capital to be devoted exclusively to baseball operations or under a line of credit (in form and substance satisfactory to the Owner), subject to CPI Increases. The approval of the Executive Director of the Owner to subleases for retail and office use or portions of the Ballpark will be given if the proposed usage is consistent with (i) the operation of the Ballpark as a first-class sports and family-oriented entertainment facility and (ii) the development of the North Shore area (it being agreed by the parties that such retail leases are intended to be incidental to the public purpose of developing the North Shore area), and (iii) any rental or other periodic payments payable pursuant to such agreement shall be paid substantially proportionately over the term of the agreement. Notwithstanding any assignment, sublet or transfer, or the execution of any management or similar agreement, whether or not in violation of this Agreement or any of the Related Agreements, and notwithstanding the acceptance of any Rent by the Owner from an assignee, transferee or any other party, the Developer and each successor Person shall remain fully liable for the payment of the Rent, the Statutory Rent (as defined in the Lease) and all additional sums required to be paid to the Owner by the Developer under this Agreement, the Lease or any of the Related Agreements, and the performance of the Developer's other obligations under this Agreement. The Owner's consent to any assignment, subletting or occupancy, or management or similar agreement, or Owner's acceptance or collection of Rent from any assignee, sublessee or occupant, shall not be construed (a) as a waiver or release of the Developer from liability for the performance of any obligation to be performed under this Agreement, the Lease or any of the Related Agreements by the Developer, or (b) as relieving the Developer or any assignee, sublessee or occupant from the obligation of obtaining the consent of the Owner to other matters for which its consent is required. All restrictions and obligations imposed upon the Developer pursuant to this Agreement shall be deemed to extend to any sublessee or assignee of the Developer, and the Developer shall cause such persons or entities to comply with all such restrictions and obligations. Notwithstanding the foregoing, upon any

assignment of this Agreement or the Related Agreements and provided that the Owner has consented in writing to such assignment where such consent is required, and that the assignee assumes all of the obligations of the Developer hereunder and under the Related Agreements pursuant to an Assignment and Assumption Agreement in form and substance reasonably acceptable to the Owner, the Developer shall be released from all obligations thereafter arising hereunder or under any of the Related Agreements.

## **6.2 COVENANT NOT TO RELOCATE.**

In consideration for the participation of the Owner and the Commonwealth in this Project, the Developer affirmatively covenants, for a period of 29.5 years after the Commencement Date, (i) not to relocate or attempt to relocate the Franchise outside the City during the Initial Term of the Lease (as defined in the Lease), and (ii) not to initiate or participate in discussions that would be intended to result in the relocation of the Franchise during the Initial Term of the Lease. In accordance with such covenant, the Developer further agrees not to make an application to MLB to sell, pledge, encumber, assign, transfer or otherwise dispose of the Franchise without providing thirty (30) days' prior written notice of such intended application to the Owner and to the Commonwealth. These covenants shall expire only upon the expiration of the Initial Term of the Lease. The Developer hereby agrees to request acknowledgment of the terms hereof from MLB. It shall be a condition to any sale, pledge, encumbrance, assignment, transfer or other disposition that any new owner or controlling entity of the Franchise shall execute a counterpart of this Agreement, the URA Agreement and the Lease and assume the obligations of the Developer thereunder.

## **6.3 UNIQUE NATURE OF AGREEMENT.**

The Developer and the Owner agree that the rights conveyed by this Article 6 are of a unique and special nature. The Developer and the Owner agree that any violation of this Article 6 will result in immediate and irreparable harm to the Owner and that in the event of any actual or threatened breach or violation of any of the provisions of this Article 6, the Owner will be entitled as a matter of right to an injunction or a decree of specific performance without bond from any equity court of competent jurisdiction. The Developer waives the right to assert the defense that such breach or violation can be compensated adequately in damages in an action at law. Nothing in this Agreement will be construed as prohibiting the Owner from pursuing any other remedies at law or in equity available to it for such breach or violation or threatened violation; provided, however, that in no event shall the total amount of any damages assessed against the Developer arising from a breach of its covenant under Section 6.2 (or any comparable provision in any Related Agreement) exceed the "Maximum Repayment Obligation", as such term is defined in the URA Agreement.

## 7. OPERATIONS

### 7.1 MANAGEMENT AUTHORITY, RIGHTS AND DUTIES.

Until the expiration of the Lease, as long as the Developer remains in compliance with the terms of this Agreement and the Lease, the Developer shall, at its own cost, market, manage and operate the Ballpark subject to the terms, conditions and limitations of this Agreement and the Lease. The Developer's rights and responsibilities as manager shall include, without limitation:

(a) soliciting, negotiating and entering into leases, licenses and similar agreements regarding the use and presentation of events at the Ballpark with professional and amateur sports franchises other than the Franchise and with promoters of events in form and content which the Developer reasonably expects will maximize the use and revenues of the Ballpark by and from other professional and amateur sports franchises, lessees and other users or promoters of events;

(b) except as otherwise agreed to between the parties, entering into licenses for the use of luxury suites and club seats and agreements with respect to promotional and advertising at the Ballpark and the Site, and engaging in any and all necessary and appropriate marketing and sales activities with respect to such licenses and agreements;

(c) making appropriate scheduling, staffing and other arrangements with respect to the exercise by the Owner of its reserved rights to hold civic events at the Ballpark pursuant to the Lease;

(d) entering into agreements for the right to provide technical production services for radio, TV, cable and other transmissions from the Ballpark;

(e) negotiating and entering into agreements with agents and consultants with respect to management and marketing of the Ballpark and negotiating and entering into all other agreements with suppliers, vendors, promoters and other parties related to the operation and promotion of the Ballpark;

(f) negotiating and entering into an agreement or agreements regarding the naming of the Ballpark;

(g) managing, staffing and operating the Ballpark both during event and non-event periods in a manner appropriate to the operation of the Ballpark consistent with Legal Requirements and industry standards and employing all personnel, contractors and vendors necessary and appropriate to efficiently operate the Ballpark; and

(h) subject to the terms and conditions of this Agreement, and except as may be specifically limited hereby, taking any and all other action and entering into all other agreements with respect to the marketing, management and operation of the Ballpark that the Developer determines (using its reasonable judgment) to be necessary or appropriate to the marketing, management and operation of the Ballpark.

## **7.2 RETENTION AND DELEGATION OF MANAGEMENT AUTHORITY.**

In connection with the rights and obligations of the Developer to manage, market, maintain and operate the Ballpark, the Developer itself may perform marketing, management and operating rights and duties with respect to the Ballpark or may from time to time, either enter into contract(s) with a firm or firms of national or regional repute, experience and standing in certain or all aspects of marketing, management and operation (the "**Management Firms**") or with Affiliate(s) of the Developer (the "**Management Affiliate(s)**"), subject to their adherence to this Article 7. If Management Firms are retained by the Developer, and such Management Firms, or their principals, shall at any time have any business relationship with the Developer, or its principals, other than with respect to the Ballpark, the Developer shall disclose such relationship in writing to the Owner and shall maintain such other business relationship and the Ballpark relationship entirely independent and separate from each other. If Management Affiliates are used by the Developer to carry out any functions regarding the management and operation of the Ballpark, the Developer shall provide to the Owner on a quarterly basis, an accurate accounting of the allocation of such Management Affiliate's personnel and expenses to the Ballpark and of any allocation or sharing of operating or capital costs as between the Developer and such Management Affiliates. Prior to entering into any agreement with a Management Firm or Management Affiliate, the Developer shall receive the written approval of the Owner, which approval shall not be unreasonably withheld, delayed or conditioned.

## **7.3 MINORITY AND WOMEN BUSINESS ENTERPRISE PLAN.**

With respect to its management of the Ballpark as provided herein, the Developer shall implement the Minority and Women Business Enterprise Plan attached as *Exhibit 5* during the term of this Agreement. Upon request by the Developer, the Owner shall use good faith efforts to support the Developer in its efforts with one or more unions representing persons employed in any aspect of the management and operation of the Ballpark, if any, to obtain such equal employment opportunities concerning the operation of the Ballpark necessary to implement the Minority and Women Business Enterprise Plan.

## **7.4 AFFORDABLE SEATING PROGRAM.**

On or before the Commencement Date, and on or before February 28 of each year under the Lease thereafter, the Developer will submit to the Owner, and to the Commonwealth, for the approval of the Owner, and the Commonwealth, a plan to provide affordable seating for Home Season Games (as defined in the Lease), in portions of the Ballpark. This plan will identify in detail the number and location(s) of seats designated as affordable, the number and dates of games in which seats designated as affordable will be available, ticket prices to be charged, youth or other special admission programs, and the means by which information relating to the availability of affordable tickets will be publicized.

## **7.5 CAPITAL RESERVE FUND.**

The Owner will establish, at PNC Bank, the Capital Reserve Fund. Moneys deposited into the Capital Reserve Fund will provide funds for the repair or replacement of capital items as

further defined in the Lease. The Developer shall be required to deposit certain funds into the Capital Reserve Fund as provided in the Lease. Withdrawals from this account will be permitted only subject to such terms as are set forth in the Lease.

## **7.6 ENVIRONMENTAL MATTERS.**

After the Construction Start Date and until the expiration of the Lease, the Developer and its subtenants, licensees, concessionaires, agents, officers, director, independent contractors, servants and employees, and their respective successors and assigns (collectively, the "**Developer's Agents**") shall:

(a) cause all Required Environmental Permits to be maintained in full force and effect and the Developer shall comply with the terms and conditions thereof. The Developer shall submit to a Governmental Authority and/or maintain, as appropriate, all Required Environmental Reports;

(b) not permit, and shall take reasonable precautions against, the presence of Contamination as a result of use and occupancy of the Premises by the Developer and the Developer's Agents, except to the extent specifically authorized by Governmental Authorities, any Required Environmental Permit or pursuant to Environmental Laws;

(c) not permit, and shall take reasonable precautions against, the imposition of, any lien or other encumbrance authorized by Environmental Laws to be imposed against or attached to the Premises to the extent that such lien is caused by the Developer or the Developer's Agents;

(d) comply with applicable Environmental Laws relating to the construction, completion, use, maintenance, operation or occupancy of the Premises;

(e) at its sole cost and expense, perform in compliance with and to the extent required by applicable Environmental Laws, Required Environmental Permits or by Governmental Authorities all Response Actions required to address the presence of Contamination at, in, on, under, or emanating from the Premises caused as a direct result of the Developer's or the Developer's Agents' use and occupancy of the Premises;

(f) take all reasonable precautions against and shall not permit the Premises to be used to generate, manufacture, refine, treat, handle, label, distribute, store, dispose of, produce, process, recycle, transport or otherwise use or manage Regulated Substances in compliance with Environmental Laws or Required Environmental Permits, and which are used in the ordinary course of the business of the Developer; and

(g) immediately, upon obtaining actual knowledge of any of the following, notify the Owner in writing, including a detailed description, of: (i) the presence of Contamination; (ii) the receipt by the Developer of an actual or threatened Environmental Complaint; (iii) the imposition or attachment against the Premises of a lien or other encumbrance authorized under Environmental Laws; (iv) the inability to obtain or renew any Required Environmental Permit;

(v) any violation of Environmental Laws or Required Environmental Permits affecting the Premises.

## 7.7 PARKING.

### (a) General Parking Spaces.

The Owner shall ensure the availability for use in connection with MLB games of at least 5,000 parking spaces within 3,000 feet of the Ballpark (which spaces will not include any on-street parking) whether owned or operated by the Owner or other Person(s) (the "**General Parking Spaces**"); provided, however, that the General Parking Spaces may also be coextensively available for other purposes during MLB games. Terms and conditions relating to the availability of parking for the Ballpark are set forth in the Lease.

### (b) Future Development and Parking Revenues.

The Owner and the Developer agree that future development in the North Shore area of the City is critical to the continuing success of the Ballpark and the Franchise, the convention, tourism, and economic development the City and County, and the ultimate intent of the parties hereto in entering into this Agreement. In connection with their desire to support such future development, the Owner and the Developer intend to enter into an agreement which contains their mutual agreement with respect to future development in the North Shore area of the City (the "**Option Agreement**"). General terms to be applicable to the Option Agreement are set forth in Exhibit G to the Lease.

## 7.8 ACCOUNTING MATTERS.

### (a) Records.

The Developer shall and hereby agrees to keep and maintain during each calendar year that this Agreement remains in effect, and for a period of three (3) consecutive years following the end of each such calendar year, permanent, complete and accurate financial records for (i) the operations of the Ballpark, and (ii) the operations of the Developer, for each such year, which records shall be maintained in accordance with GAAP, and which records shall be audited not less than annually by the Accountants. In addition to the foregoing, the Developer shall keep and maintain throughout the entire term of this Agreement, and for a period of seven (7) years after the date of expiration of this Agreement, accurate and detailed records relating to Statutory Rent (as defined in the Lease) payable and deductions allowable that would otherwise reduce the amount of Statutory Rent payable.

### (b) Financial Reporting, etc.

(i) The Developer shall submit to the Owner on or before February 28 of each calendar year, beginning February 28, 2002, a complete and accurate financial statement with respect to the operations of the Ballpark during the prior Lease Year (as defined in the Lease), prepared on a cash basis, and in a form reasonably acceptable to the Owner, prepared and



certified or reviewed by the Accountants, and certified as accurate and correct by the chief financial officer of the Developer. This financial statement will clearly indicate the components of Rent payable under the Lease, including, without limitation, records relating to (a) Statutory Rent (as defined in the Lease) payable and allowable deductions under the Lease, (b) Excess Gate (as defined in the Lease), (c) Excess Concession Revenue (as defined in the Lease), and (d) Ticket Surcharge (as defined in the Lease), all of which shall be in form acceptable to the Owner, certified by the Accountants (as defined in the Lease), and further certified by the Chief Financial Officer of the Developer.

(ii) The Developer shall submit to the Owner on or before February 28 of each calendar year, beginning February 28, 2000, a complete and accurate financial statement prepared by the Accountants in accordance with GAAP with respect to the overall operations of the Developer.

(iii) Within 120 days after the end of each calendar year, the Developer shall provide to the Owner a statement from the Accountants which states that in the conduct of its audit performed under Section 7.9(b)(ii), nothing came to its attention which caused the Accountants to believe that the Developer was not in compliance with the covenants of Section 4.2 of the Lease relating to payment of Rent, and relating to accounting, payment, distribution or auditing matters.

(c) Owner Inspection and Audit.

All financial records of the Developer shall be open to the inspection and audit of the Owner and its representatives or agents during the term of this Agreement and for a period of three (3) years thereafter, which inspection shall occur at the Developer's office, following reasonable notice. The Owner shall have the right to review and examine all documents and materials in the possession of the Developer relating to the financial statements submitted to the Owner pursuant to Section 7.9(b)(i) above, the Developer's management of the Ballpark and the Developer's expenditures relating to the leasing and operation of the Premises, including without limitation, any and all contracts entered by the Developer with third-party non-Affiliates, to determine if all expenditures and contract terms were reasonable, and to determine the accuracy of any statements, schedules or other information provided under the terms of this Agreement and any Related Agreement.

## **7.9 FISCAL RESPONSIBILITY**

The Developer agrees that, during the term of this Agreement and the Related Agreements, the Developer will not permit or suffer to exist at the close of the Developer's fiscal year (or at the close of the calendar year if the Developer's fiscal year which includes the baseball season closes in the next calendar year) its ratio of assets to liabilities to be less than sixty (assets) to forty (liabilities) determined in accordance with definitions and standards established by MLB.

## 7.10 ADDITIONAL COVENANTS OF DEVELOPER.

(a) Maintenance of Existence. At all times during the Lease Term, the Developer will maintain its existence as an entity organized under the laws of the Commonwealth, and will not dissolve or liquidate, or change its form of existence, without the prior written consent of the Owner, which consent shall be given or withheld pursuant to such standards as may be set forth in this Agreement.

(b) Maintenance of Franchise. At all times during the Lease Term, the Developer shall (i) maintain its membership and Franchise in the MLB in good standing, (ii) hold, maintain and defend its rights and franchise to play baseball as a member of MLB in the City, and (iii) use reasonable efforts to oppose the adoption of any MLB rules or procedures that would limit its ability to comply with any of the terms of this Lease. If any such MLB rule or procedure is adopted despite the reasonable efforts of the Developer to oppose its adoption, the Owner acknowledges that the Developer has agreed to comply with such MLB rule or procedure.

(c) Maintenance of Corporate Headquarters, etc. At all times during the Lease Term, the Developer will maintain its headquarters and its principal place of business within Allegheny County, Pennsylvania, and will maintain all of its training facilities and camps and related facilities and activities, other than spring training facilities and minor league franchises, within the Commonwealth.

(d) Occupancy of the Ballpark. The Developer will remain and conduct MLB games at the Ballpark for the duration of the Lease Term, as further set forth herein, and in the Lease. The Developer further acknowledges that if it violates this covenant, the Owner, the URA and the Commonwealth have the right to seek both equitable relief and damages as further agreed in this Agreement, the Related Agreements and the Capital Facilities Act.

(e) Notice of Sale, etc. If at any time the Developer enters into a commitment, either orally or in writing, with any Person to sell, transfer, assign or convey any interests in the Developer or in its General Partner(s) or other managing entity, where the prior written consent of the Owner to the transaction is required under this Lease or any Related Agreement, in addition to the notice required under Article 6 above, the Developer will immediately furnish written notice to the Owner and to the Commonwealth in the manner set forth in Section 11.9 of this Agreement.

(f) Successors Bound. If at any time during the Lease Term this Agreement is assigned or the Premises sublet, or any interests in the Developer or in its General Partner(s) or other managing entity are sold, transferred, assigned or conveyed, and the consent of the Owner to any such transaction is required under this Agreement or any Related Agreement, the Developer will, as a condition to any such transaction, undertake to ensure that any successor entity be bound by all terms, covenants and conditions of this Agreement and the Related Agreements, and such successor will execute and deliver to the Owner such documentation evidencing that undertaking as is requested by the Owner.

(g) Maintenance and Repair. At all times during the Lease Term, the Developer will perform such maintenance and repair, and comply with all other obligations relating to the management and operation of the Ballpark, as are required by this Agreement and the Related Agreements.

(h) Commonwealth and Community Events. The Developer will make the Ballpark available for Community Events and Commonwealth Events as such terms are defined, and as is further set forth, in Sections 5.3 and 5.4 of the Lease.

(i) Compliance with Grant Agreement, etc. The Developer will, at all times during the Lease Term, comply with the following requirements set forth in the Grant Agreement, a fully executed copy of which has been furnished to the Developer:

- (A) Steel Products Procurement Act, 73 P.S. 1881, et seq.;
- (B) Trade Practices Act, 71 P.S. 773.101, et seq.;
- (C) Public Works Contractor's Bond Law of 1967, 8 P.S. 891;
- (D) Pennsylvania Prevailing Wage Act, 43 P.S. 165-1, et seq.;
- (E) Americans with Disabilities Act, 42 U.S.C. 12101, et seq.; and
- (F) The Nondiscrimination Provisions set forth in the Grant Agreement and in the Development Agreement.

(j) No Power to Bind. Developer shall have no power to bind Owner, except as specifically approved in writing in advance by the Owner.

(k) Payment of Rent. Developer will, at all times during the Lease Term, pay all Rent and other sums payable by Developer to Owner under the terms of the Lease.

## 8. GENERAL CONDITIONS

### 8.1 OWNER'S CONDITIONS.

The obligations of the Owner to perform this Agreement are subject to the satisfaction of each of the following conditions (any of which may be waived by the Owner, in whole or in part):

- (a) Lease.

The Developer shall have executed and delivered the Lease, attached hereto as *Exhibit 3*.

- (b) URA Agreement.

The Developer and the Urban Redevelopment Authority of Pittsburgh (the "URA") shall have executed and delivered the URA Agreement, attached hereto as *Exhibit 10*.

(c) Accuracy of Representations.

All of the representations and warranties of the Construction Team in this Agreement or any of the Related Agreements must have been accurate in all material respects as of their respective dates of execution and delivery, and, unless made as of a specified date, as of the respective dates of the Owner's performance of the obligations listed in the preamble to this Section 8.1.

(d) Performance.

All of the covenants and obligations that members of the Construction Team are required to perform or to comply with pursuant to this Agreement and the Related Agreements prior to the date of the Owner's performance, as applicable, including the delivery of all documents and notices provided for therein must have been performed and complied with in all material respects.

(e) No Injunction.

There must not be in effect any Legal Requirements or any injunction or other order that prohibits the consummation of this Agreement or the Related Agreements.

(f) Delivery of Other Documents.

The Owner and the Developer shall have delivered all documents and notices required by this Agreement and any Related Agreement including, without limitation, opinions of counsel.

## **8.2 DEVELOPER'S CONDITIONS.**

The obligations of the Developer to perform the Interim Agency Agreement and Section 2.5(a) of this Agreement are subject to the satisfaction of each of the following conditions (any of which may be waived by the Developer, in whole or in part):

(a) Lease.

The Owner shall have executed and delivered the Lease, attached hereto as *Exhibit 3*.

(b) URA Agreement.

The URA shall have executed and delivered the URA Agreement, attached hereto as *Exhibit 10*.

(c) Accuracy of Representations.

All of the Owner's representations and warranties in this Agreement must have been accurate in all material respects as of the date hereof and, unless made as of a specified date, as of the respective dates of the Developer's performance of the obligations listed in the preamble to this Section 8.2.

(d) Performance.

All of the covenants and obligations that the Owner is required to perform or to comply with pursuant to this Agreement and the Related Agreements prior to the date of the Developer's performance, as applicable, including the delivery of all documents and notices provided for therein, must have been performed and complied with in all material respects.

(e) No Injunction.

There must not be in effect any Legal Requirements or any injunction or other order that prohibits the consummation of this Agreement or the Related Agreements.

(f) Delivery of Other Documents.

The Owner and the Developer shall have delivered all documents and notices required by this Agreement and any Related Agreement including, without limitation, opinions of counsel.

## 9. DEFAULT AND REMEDIES

### 9.1 EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

(a) The Developer's violation or failure to perform or observe any other covenant or condition of this Agreement, which failure or violation shall continue for thirty (30) days after receipt of written notice to the Developer by the Owner identifying with particularity the failure or violation, provided that if such failure or violation is susceptible to cure but is not capable of being cured within such thirty (30) day period, there shall exist no Event of Default provided that the Developer promptly advises the Owner of the Developer's intention duly to institute all steps necessary to cure such default and the Developer promptly commences cure of such failure or violation, and diligently pursues such cure to completion;

(b) The Developer's violation or failure to perform or observe any material covenant or condition in any of the Related Agreements, which failure or violation shall continue beyond the grace period, if any, set forth therein or the occurrence of any "Default" or "Event of Default" in any of the Related Agreements which "Default" or "Event of Default" shall continue beyond the grace period, if any, set forth therein (it being understood that any such default or event of default shall be an additional Events of Default hereunder and shall not be construed to be in substitution of any other Events of Default);

(c) (i) The Developer, or any Affiliate thereof, shall institute voluntary proceedings in Bankruptcy, (ii) involuntary proceedings in Bankruptcy shall be instituted against the Developer, or any Affiliate thereof, which are not discharged within ninety (90) days thereafter, (iii) any proceedings shall be instituted by or against the Developer, or any Affiliate thereof, under any law relating to insolvency or reorganization, and in the case of an involuntary proceeding, which is not discharged within ninety (90) days after filing, (iv) a trustee or receiver shall be appointed for the Developer, or any Affiliate thereof, by any court of competent jurisdiction, (v) the Developer, or any Affiliate thereof, shall make a general assignment for the benefit of its creditors; (vi) a final, non-appealable judgment is entered against the Developer for an amount in excess of \$100,000, which final judgment is not bonded or satisfied within thirty (30) days of having become final, or (vii) the Developer shall dissolve or liquidate, or shall otherwise cease to exist as a Pennsylvania limited partnership;

(d) Any representation or warranty made by the Developer herein, or in any Related Agreement shall prove to have been incorrect when made, in any material respect.

## **9.2 INJUNCTIVE RELIEF.**

The Developer acknowledges that the rights conveyed by this Agreement to the Owner are of a unique and special nature, and that any violation of this Agreement will result in immediate and irreparable harm to the Owner and any third party beneficiaries of this Agreement (including without limitation any Owner Indemnified Person), and that in the event of any actual or threatened breach or violation of any of the provisions of this Agreement, the Owner, and any third party beneficiaries of this Agreement, shall be entitled as a matter of right to an injunction or a decree of specific performance without bond from any equity court of competent jurisdiction. The Developer waives the right to assert the defense that such breach or violation can be compensated adequately in damages in an action at law.

## **9.3 [intentionally omitted]**

## **9.4 REMEDIES CUMULATIVE.**

All rights and remedies set forth in this Agreement are cumulative and in addition to the parties' rights and remedies at law or in equity. A party's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies or obligations. Neither party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such party. If a party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other party may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy.

## 9.5 RISK OF CERTAIN LOSSES.

### (a) Force Majeure.

The nonoccurrence of any condition under this Agreement shall not give rise to any right otherwise provided in this Agreement when such failure or non-occurrence is due to the occurrence of a Force Majeure condition and without the fault of the party claiming an extension of time to perform, except with respect to the Owner's claims for Damages pursuant to Section 9.5(b)(i) of this Agreement. An extension of time for any such cause, if any, shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause, provided that, if notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. Times of performance under this Agreement also may be extended as mutually agreed upon in writing by the Owner and the Developer. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an event of default under this Agreement.

### (b) Risk of Delay in Completion Date or Failure to Complete.

(i) It is hereby acknowledged that it is the Owner's intention to demolish Three Rivers Stadium during January 2001 in order to assist in the completion of the new football stadium project for the Pittsburgh Steelers National Football League franchise, and that failure of the Owner to do so shall result in Damages to the Owner. The Developer shall use best efforts to vacate Three Rivers Stadium before February 1, 2001. The Developer shall notify the Owner in writing on or before January 1, 2001 if it appears that the Project will not be completed and ready for occupancy and use for the opening of the 2001 MLB season in April 2001. In the event that the Developer does notify the Owner that the Project will not be completed, the Owner hereby agrees that it shall refrain from demolishing Three Rivers Stadium until such time as the Project is completed and ready for occupancy.

The parties further acknowledge that, under various circumstances, the Developer may be entitled to payments as compensation for construction delays or payments to cover certain costs of acceleration pursuant to the "owner controlled" insurance program maintained by the Developer with respect to the Project or pursuant to other insurance policies that may be maintained by the Developer to cover the costs of delays in construction or construction acceleration costs. Under certain circumstances, the Developer may also be entitled to Delay Damages (as defined in the DCM Agreement) pursuant to the terms of the DCM Agreement (such Delay Damages, together with any amounts payable pursuant to the immediately preceding sentence being collectively referred to herein as "**Liquidated Damages**"). The parties hereby agree that if the Developer is entitled to receive Liquidated Damages prior to February 1, 2001, all such Liquidated Damages actually received by the Developer shall be retained by the Developer and shall be expended by the Developer to cover costs of accelerating the Project's completion date. If the Developer is entitled to receive Liquidated Damages during the period commencing February 1, 2001 and ending on the Guaranteed Substantial Completion Date (as

defined in the DCM Agreement), such Liquidated Damages actually received by the Developer shall be applied first toward costs of accelerating the Project's completion date and then, to the extent of any remaining Liquidated Damages actually received by the Developer, to the Owner in an amount not to exceed \$2,500,000 to defray the actual costs of accelerating the demolition of Three Rivers Stadium (unless the delay was caused by the Owner, in which event no such Liquidated Damages shall be payable to the Owner). If the Developer is entitled to receive Liquidated Damages after the Guaranteed Substantial Completion Date, ninety percent (90%) of the Liquidated Damages actually received by the Developer shall be retained by the Developer and ten percent (10%) shall be paid to the Owner.

(ii) The Developer shall not be obligated to cause to be played in the Ballpark any of its regularly scheduled home games until the Completion Date; however, the Developer will be required to continue to play its regularly scheduled home games in Three Rivers Stadium until the Completion Date.

(iii) The Owner shall not be liable or responsible to the Developer for the failure to complete the Project for the opening of the 2001 MLB season in April 2001, except to the extent that the Owner has taken any action, or failed to take any action, which results in a delay in the construction of the Project.

(iv) In the event the Completion Date does not occur within three (3) years after the Construction Start Date, subject to any extensions pursuant to Section 10.3(a), then, in such event, the Owner shall have the right to terminate this Agreement and the Related Agreements at any time prior to the Completion Date by giving 90 days' prior written notice of cancellation to the Developer, in which event, the obligations of the Developer and the Owner under this Agreement and the Related Agreements shall terminate upon the expiration of the ninety (90)-day period. The Developer and the Owner shall each be responsible for their respective obligations arising under this Agreement and the Related Agreements prior to the date of termination, provided, however, that the Developer shall repay to the Owner the payments, if any, made to the Developer or the Construction Manager pursuant to this Agreement. At the election of the Owner, the Developer shall also be required to promptly complete the demolition of the unfinished Project and pay all demolition costs, at the Developer's sole cost and expense, and return the Site to the Owner in the condition which existed prior to the commencement of construction of the Project free and clear of all Liens arising by, through and under the Developer or the Construction Manager.

(v) If the Developer agrees that Three Rivers Stadium may be demolished prior to Substantial Completion of the Project, the Developer waives any right to claim losses or damages against the Owner because Three Rivers Stadium is not available for the 2001 MLB Season.

(c) Risks of Damage or Destruction Prior to Completion.

The Owner and the Developer acknowledge that the Developer has obtained a builder's risk policy of property insurance for the Project, which provides \$228,000,000 of coverage for direct physical loss or damage resulting from an insured peril at the Project or to



personal property that is at the Project, in storage or in transit. This coverage includes various sublimits, including a \$39,000,000 sublimit of coverage for delay in completion (including gross earnings and soft costs) and a \$25,000,000 sublimit for flood coverage. The policy is an "all risk" or "special form" policy. In the event of any damage to or destruction of the Project prior to the Completion Date that results in loss or damage in excess of the coverage provided by the builder's risk policy or that is otherwise excluded from coverage under the builder's risk policy, the Developer shall be responsible for such excess loss or damage as set forth and to the extent provided in Section 2.7 hereof (it being understood that the Developer shall not be liable or otherwise financially responsible for any loss or damage caused by actions or omissions of the Owner that is not covered by the builder's risk insurance).

(d) Certain Other Risks. Each party assumes the risk that one or more terms or provisions of this Agreement and/or any of the Related Agreements may be deemed or found to be invalid, ultra vires, in violation of or contrary to Legal Requirements, or otherwise unenforceable. Accordingly, notwithstanding and prevailing over any contrary term, provision, acknowledgment, representation and/or warranty, or any implication contained in this Agreement or any of the Related Agreements, each party acknowledges and agrees that neither the Developer, nor the Owner shall have any liability to the others (including any liability for any breach of any representation or warranty under this Agreement or any Related Agreement) in the event any term or provision of this Agreement and/or any of the Related Agreements is ever found or deemed to be invalid, illegal, in violation of or contrary to Legal Requirements, ultra vires, or otherwise unenforceable.

(d) Additional Developer Duties. It is understood that to the extent Developer is first-named insured under any insurance policy purchased pursuant hereto, or otherwise from Project funds, in such capacity it is as agent of Owner, and shall act in such capacity in regard to all matters relating to such insurance policies. It is further understood that the Developer, in its capacity as agent of Owner, will apply the proceeds of any recovery under such builder's risk policy of property insurance toward restoration of the damage giving rise to such proceeds and to other costs arising out of such damage. The Developer, in its capacity as agent of Owner, will also apply the proceeds of any other insurance policy maintained pursuant to Section 2.3 (m) hereof toward payment of the costs, expenses and liabilities arising out of the claim that gave rise to such insurance proceeds.

## **9.6 LIMITED RECOURSE OBLIGATION OF THE OWNER.**

Notwithstanding and prevailing over any contrary provision or implication of this Agreement or any of the Related Agreements, any and all duties, liabilities and obligations of the Owner under this Agreement relating to the construction of the Project shall be required to be paid or performed by the Owner only to the extent that Project Funds, or funds in the Project Accounts are available, and no duties, liabilities, or obligations of the Owner with respect to this Agreement relating to the construction of the Project shall be required to be satisfied from any other funds, revenues or reserves of the Owner; provided that Owner shall have complied in all material respects with the terms and conditions within its sole control in order to obtain the Owner Contribution and the Commonwealth Contribution. All covenants, stipulations, promises,

agreements and obligations of the Owner contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Owner and not of any member, director, officer, employee or agent of the Owner in his or her individual capacity or any other Governmental Authority, and no recourse shall be had for any claim hereunder against any member, director, officer, employee or agent of the Owner or any other Governmental Authority.

## 10. INDEMNIFICATION.

### 10.1 INDEMNIFICATION AND PAYMENT OF DAMAGES BY DEVELOPER.

The Developer will indemnify, defend and hold harmless the Owner, the City, the RAD, the Stadium Authority and the County and each of their respective elected officials, appointed officials, board members, officers, employees, agents and attorneys (collectively, the "**Owner Indemnified Persons**") for, and will pay to the Owner Indemnified Persons the amount of any Damages, whether or not involving a third-party claim arising, directly or indirectly, from or in connection with:

- (a) any breach of any representation or warranty made by the Developer in this Agreement or in any schedule or exhibit attached hereto or any other certificate or document delivered by the Developer to the Owner pursuant to this Agreement;
- (b) any breach by the Developer of any covenant or obligation of the Developer in this Agreement;
- (c) any claim by any Person for Damages in connection with the violation by the Developer, HOK, Astorino, the Design and Construction Manager, or any agent, subcontractor or officer thereof of any Permit or Legal Requirements;
- (d) all amounts due and owing to Project Creditors, whether paid by the Owner or not;
- (e) any claims or expenses arising in connection with the delay in the demolition of Three Rivers Stadium as provided in and subject to Section 9.5(b); or
- (f) otherwise arising in any manner out of, or related to the Project, including without limitation, challenges to funding or bidding procedures, construction, the Work, the use of public funds, and any other costs, expenses, claims, actions and damages of any kind related to the transactions contemplated by this Agreement (except as set forth in Section 10.3 hereof).

If the Developer fails to make any payment of any sums payable by the Developer to Owner Indemnified Persons on the date due by contract, which failure shall continue for thirty (30) days, then Developer shall pay, together with such payment, a late charge of five percent (5%) of the amount of such payment and such payment shall bear interest at a rate of interest equal to the greater of four percent (4%) above the rate announced from time to time by PNC Bank, National Association, as its then "prime rate," or the highest rate permitted by law, payable from the date such payment was due to the date of payment thereof.

## 10.2 DEFENSE OF INDEMNIFIED CLAIMS.

### (a) Notice of Claims.

Promptly after receipt by an Owner Indemnified Person of the notice of the commencement of a claim against it for which the Owner Indemnified Person would be entitled to receive indemnification under Section 10.1 (a "**Proceeding**"), the Owner Indemnified Person will give notice to the Developer of the commencement of such claim, but the failure to notify the Developer will not relieve the Developer of any liability that it may have to the Owner Indemnified Person. The Developer shall promptly give written notice to the Owner of any claim, including a claim for damages, against an Owner Indemnified Person.

### (b) Assumption of Defense by Developer.

If any Proceeding referred to in Section 10.1 is brought against an Owner Indemnified Person and such Owner Indemnified Person gives notice to the Developer of the commencement of such Proceeding, the Developer will, unless the claim involves taxes or a matter described in Section 10.3 hereof, be required to assume the defense of such Proceeding with counsel reasonably satisfactory to the Owner Indemnified Person (unless the Developer is also a party to such Proceeding and the Owner Indemnified Person determines in good faith that joint representation would be inappropriate), and, after written notice from the Developer to the Owner and the Owner Indemnified Person that it has undertaken to assume the defense of such Proceeding (the "**Assumption Notice**"), the Developer will not, as long as it diligently conducts such defense, be liable to the Owner under this Article 10 for any fees of other defense counsel or any other expenses with respect to the defense of such Proceeding, in each case subsequently incurred by the Owner Indemnified Person in connection with retaining such other defense counsel, other than reasonable costs of investigation. After the Developer delivers its Assumption Notice (i) it will be conclusively established for purposes of this Agreement that the claims made in that Proceeding are within the scope of and subject to indemnification; (ii) no compromise or settlement of such claims may be effected by the Developer without the Owner Indemnified Person's consent unless (A) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any person and no effect on any other claims that may be made against an Owner Indemnified Person, and (B) the sole relief provided is monetary damages that are paid in full by the Developer; and (iii) the Owner Indemnified Person will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to the Developer of the commencement of any Proceeding and the Developer does not, within ten (10) days after the indemnified party's notice is given, deliver the Assumption Notice, the Developer will be bound by any determination made in such Proceeding or any compromise or settlement effected by the Owner Indemnified Person, including the payment of money damages.

### (c) Owner Indemnified Person's Defense of Claims.

Notwithstanding the foregoing, if the Owner Indemnified Person determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification

under this Agreement, the Owner Indemnified Person may, by notice to the Developer, assume the exclusive right to defend, compromise, or settle such Proceeding, but the Developer will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

(d) Jurisdiction.

The Developer hereby consents to the nonexclusive jurisdiction of any court in which a Proceeding is brought against an Owner Indemnified Person for purposes of any claim that the Owner may have under this Agreement with respect to such Proceeding or the matters alleged therein, and agree that process may be served on the Developer with respect to such a claim anywhere in the world.

### **10.3 INDEMNIFICATION AND PAYMENT OF DAMAGES BY OWNER.**

To the extent permitted by Law and without causing the Owner to waive its rights of sovereign immunity (it being understood that the Owner does not hereby waive its rights of sovereign immunity, to the extent available to the Owner), the Owner will indemnify, defend and hold harmless the Developer and its officers, employees and agents (collectively, the "**Developer Indemnified Persons**") for, and will pay to the Developer Indemnified Persons the amount of Damages arising, directly or indirectly, from or in connection with:

(i) any breach of any representation or warranty made by the Owner in this Agreement or in any schedule or exhibit attached hereto or any other certificate or document delivered by the Owner to the Developer pursuant to this Agreement; and

(ii) any breach by the Owner of any covenant or obligation of the Owner in this Agreement.

If the Owner fails to make any payment of any sums payable by the Owner to the Developer Indemnified Persons on the date due by contract, which failure shall continue for thirty (30) days, then the Owner shall pay, together with such payment, a late charge of five percent (5%) of the amount of such payment and such payment shall bear interest at a rate of interest equal to the greater of six percent (6%) above the rate announced from time to time by PNC Bank, National Association, as its then "prime rate," or the highest rate permitted by law, payable from the date such payment was due to the date of payment thereof.

## **11. MISCELLANEOUS**

### **11.1 SURVIVAL OF COVENANTS, AGREEMENTS, REPRESENTATIONS AND WARRANTIES.**

Unless otherwise expressly provided herein, all covenants, agreements, representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the Related Agreements, and shall be enforceable by the Owner during the Lease Term. No action taken pursuant to or related to this Agreement or the Related Agreements,

including, without limitation, any investigation by or on behalf of a party shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, condition or agreement in this Agreement or the Related Agreements.

#### **11.2 ADDITIONAL DOCUMENTS AND APPROVAL.**

The Owner and the Developer, whenever and as often as each shall be reasonably requested to do so by the other party, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient in order to consummate the transactions provided for in, and to carry out the purpose and intent, of this Agreement and each of the Related Agreements.

#### **11.3 GOOD FAITH.**

In exercising its rights and fulfilling its obligations under this Agreement and each of the Related Agreements, each of the Owner and the Developer shall act in good faith. Notwithstanding the foregoing, each party acknowledges that in each instance under this Agreement and the Related Agreements where a party is obligated to exercise good faith or to use good faith, diligent or other similar efforts, such party shall not be required to expend any funds, or grant any other consideration of any kind, in the performance of such undertaking, and each party further acknowledges that the obligation of any party to act in good faith, or undertake good faith, diligent or other similar efforts does not constitute a warranty, representation or other guaranty that the result which the parties are attempting to achieve will be successfully achieved and no party shall be liable for any failure to achieve the result or results intended so long as the party has complied with its obligation to act in good faith.

#### **11.4 CHALLENGE TO ENFORCEABILITY.**

Neither the Owner nor the Developer shall terminate this Agreement on the ground of ultra vires act or for any illegality or on the basis of any challenge to the enforceability of this Agreement, except as otherwise permitted in this Agreement or in the Related Agreements. Subject to the preceding sentence, no such challenge may be asserted by the Owner or the Developer except by the institution of a declaratory action in which the Owner and the Developer are parties.

#### **11.5 COOPERATION.**

The Owner and the Developer shall individually contest any challenge to the validity, authorization and enforceability of this Agreement and the Related Agreements ("**Challenge**"), whether asserted by a taxpayer or any Person, except, either party, at its option, may elect not to contest such Challenge where to do so would be contrary to applicable Law. The Developer shall select counsel to defend any such Challenge, subject to the reasonable approval of the Owner. Any legal fees, costs and other expenses of the Developer in connection with any such Challenge shall be the responsibility of the Developer. Any legal fees, costs and other expenses of the Owner in connection with such Challenge shall be the responsibility of the Owner. Furthermore, the Owner and the Developer shall take all ministerial actions and proceedings

reasonably necessary or appropriate to remedy any apparent invalidity, lack or defect in authorization, or illegality, or to cure any other defect, which has been asserted or threatened, except any such action which requires Board approval by the Owner or is contrary to applicable Law.

#### **11.6 NOTICE OF MATTERS.**

Should the Owner or the Developer receive knowledge about any matter which may constitute a breach of any of its warranties or covenants set forth in this Article which arises after the date of this Agreement, it shall promptly notify the other party of the same in writing. Specifically, without limitation, the Developer and the Owner shall promptly inform the other of any claims, proceedings or suits referred to in Sections 3.3 and 3.4 or 4.5 and 4.6, respectively, and any Challenge referred to in Section 11.5.

#### **11.7 COMPLIANCE WITH LAWS - OWNER.**

During the term of this Agreement, the Owner shall comply with all Legal Requirements relating in any manner to its interests in the Ballpark and the Site.

#### **11.8 COMPLIANCE WITH LAWS - DEVELOPER.**

During the term of this Agreement, the Developer, in connection with its use and the exercise of its rights with respect to the Ballpark and the Site, shall comply with all Legal Requirements relating to such use and exercise and the Developer shall be responsible at all times for causing the Ballpark and the Site to be in compliance with all Legal Requirements, all at the Developer's sole cost and expense, except for Legal Requirements relating to the conduct of Community Events which shall be the responsibility of the Owner. The Developer shall obtain and maintain all necessary Permits and licenses that are required in connection with the operation and use of the Ballpark.

#### **11.9 FORM OF NOTICES; ADDRESSES.**

All notices, requests, consents or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally, or if sent by United States registered or certified mail, telefax or overnight delivery service to the parties as follows (or at such other address as a party may from time to time designate by notice given pursuant to this Section):

To Developer:	Pittsburgh Associates, LP Attention: Richard J. Freeman 600 Stadium Circle Pittsburgh, PA 15212
---------------	--

To Owner:

Sports & Exhibition Authority of Pittsburgh  
and Allegheny County  
Attention: Stephen G. Leeper  
Regional Resource Center  
425 Sixth Avenue  
Pittsburgh, PA 15219

Each notice shall be deemed given and received one (1) Business Day after its delivery to the address for the respective party, as provided in this Article, except that with respect to the notices pertaining to matters which are to be accomplished within less than three (3) Business Days (e.g., requests for consent when the Person whose consent is sought has one Business Day to respond in the granting or denying of such consent), notice shall be deemed given simultaneously with its delivery.

**11.10 ENTIRE AGREEMENT.**

This Agreement and the Related Agreements contain the sole and entire agreement between the parties with respect to their subject matter and supersede any and all other prior written or oral agreements between them with respect to such subject matter.

**11.11 AMENDMENT.**

No amendment, modification or termination of this Agreement shall be valid unless in writing and duly executed by the party affected by the amendment, modification or termination. The parties acknowledge that, in accordance with Baseball Rules and Regulations, the Developer is required to obtain the consent of MLB in connection with any amendment or modification of this Agreement.

**11.12 BINDING EFFECT.**

This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereof. As a condition precedent to any sale of all or substantially all of the assets of the Developer, or a merger or consolidation of the Developer in which the Developer is not the surviving entity, the Developer shall and hereby agrees to secure the agreement of the surviving or acquiring entity which would then own the Franchise to be bound by the obligations of this Agreement and the Related Agreements.

**11.13 WAIVER.**

Waiver by either party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

#### **11.14 HEADINGS.**

The headings contained in this Agreement are for convenience of reference only, and shall not limit, extend or otherwise affect the meaning hereof.

#### **11.15 CONSTRUCTION.**

In the construction of this Agreement, whether or not so expressed, words used in the singular or in the plural, respectively, include both the plural and the singular and the masculine, feminine and neuter genders include all other genders.

#### **11.16 SEVERABILITY.**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it was held invalid or unenforceable, shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law.

#### **11.17 THIRD PARTY BENEFICIARIES.**

Nothing in this Agreement or any of the Related Agreements, express or implied, is intended to (a) confer upon any entity or person other than the parties and their permitted successor(s) and assigns any rights or remedies under or by reason of this Agreement or any of the Related Agreements as a third-party beneficiary or otherwise except as specifically provided in this Agreement or the Related Agreements; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement or the Related Agreements; provided, however, that the City, the County, the Stadium Authority, the URA, the RAD and the Commonwealth are expressly deemed to be third-party beneficiaries of the obligations of the Developer under this Agreement and all Related Agreements.

#### **11.18 GOVERNING LAW AND VENUE.**

This Agreement shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, notwithstanding its conflicts of law or choice of law provisions. Any claim or action hereunder shall, at the sole election of the Owner, be litigated or resolved, only in the Court of Common Pleas of Allegheny County, Pennsylvania, or the United States District Court for the Western District of Pennsylvania. The Developer is not authorized to agree (on behalf of the Owner) to arbitration of any dispute relating to the Project without the express specific authorization of the Owner.



#### **11.19 COUNTERPARTS.**

This Agreement may be executed and delivered in two counterparts, each of which shall be deemed to be an original and both of which, taken together, shall be deemed to be one Agreement.

#### **11.20 RELATIONSHIP OF PARTIES.**

It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the Owner and the Developer, or between the Owner and any other party, or cause the Owner to be responsible in any way for the debts or obligations of the Developer or any other party.

#### **11.21 DESIGNATION OF REPRESENTATIVES.**

The following persons are hereby designated as the current representatives (the "**Representatives**") of the parties:

Owner: Stephen G. Leeper, Executive Director

Developer: John Loyd

#### **11.22 MEDIATION; DISPUTE RESOLUTION.**

Any controversy or claim arising out of or relating to this Agreement or any of the Related Agreements shall, prior to adjudication, be first submitted to mediation administered by a mediator mutually acceptable to the Owner and the Developer.

#### **11.23 DEVELOPER SUBJECT TO MLB.**

The parties hereby acknowledge that Developer is a constituent member of MLB, and as such, is, or may be, subject to (a) certain present or future agreements or arrangements entered into with third parties by, or on behalf of, Major League Baseball, Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., Major League Baseball Properties Canada, Inc. and/or Baseball Television, Inc. (collectively, the "MLB Entities"), either on its own behalf or on behalf of the Major League Baseball clubs; (b) certain present or future agreements or arrangements entered into between the Developer and any of the MLB Entities (the Developer hereby agrees that it will not consent to an agreement or arrangement inconsistent with this Agreement); and (c) the applicable rules, regulations, guidelines, policies, agreements, bulletins or directives issued by any of the MLB Entities. The Developer represents that, as of the date of this Agreement, and to its knowledge, this Agreement is not inconsistent with any such terms.

#### **11.24 RIGHTS OF THE COMMONWEALTH.**

Developer acknowledges that its rights and duties established in this Agreement and the Related Agreements are of a unique and special nature. Any violation of either Article 6, or

Sections 7.4 or 7.10 of this Agreement, or of any comparable provision in any Related Agreement, will result in immediate and irreparable harm to the Commonwealth, and in the event of any actual or threatened breach or violation of any of the provisions of Article 6, or Sections 7.4 or 7.10 of this Agreement, or of any comparable provision of any Related Agreement prohibiting the relocation of the Franchise from the City during the Initial Term (as defined in the Lease), or any covenant or obligation of the Developer under either Section 7.4 or Section 7.10 of this Agreement, or under the Capital Facilities Act, the Commonwealth will be entitled as a matter of right to (i) an injunction or a decree of specific performance without bond from any court of competent jurisdiction, including without limitation the Commonwealth Court of Pennsylvania, (ii) such monetary damages as are authorized under Section 504 of the Capital Facilities Act, and (iii) such other and further relief as is available. Nothing contained in this Section 11.24 shall be construed to affect or limit in any manner any rights or remedies of the Owner under this Agreement or any Related Agreement.


IN WITNESS WHEREOF, the parties have executed this Agreement as of the first date above written.

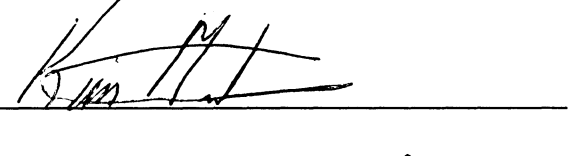
**DEVELOPER:**

**PITTSBURGH ASSOCIATES**, a Pennsylvania limited partnership

By: Pittsburgh Baseball, Inc., its general partner

ATTEST:

By: 

By: 

Title: VICE-PRESIDENT + COO

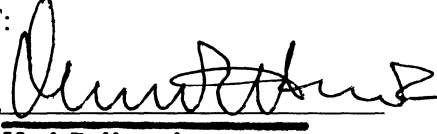
Title: MANAGING GENERAL PARTNER & CEO

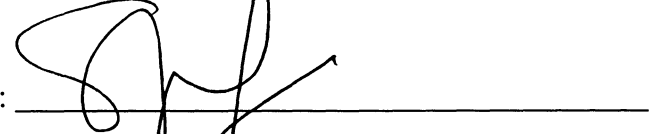
[SEAL]

**OWNER:**

**SPORTS & EXHIBITION AUTHORITY OF PITTSBURGH AND ALLEGHENY COUNTY**

ATTEST:

By:   
**ATTEST:**  
**Mark R. Hornak**  
Title: Assistant Secretary

By:   
Title: EXECUTIVE DIRECTOR

[SEAL]

**EXHIBIT 1**

**Project Budget**

## EXHIBIT 1

## PROJECT BUDGET

**CONSTRUCTION**

GENERAL CONDITIONS	8,572,569
DIRECT TRADE WORK:	153,217,279
ARCHITECT OF RECORD AND ENGINEERING SERVICES + REIMB.:	
ARCHITECT OF RECORD	5,761,220
MECHANICAL AND ELECTRICAL ENGINEER	1,063,000
STRUCTURAL ENGINEER	1,093,000
CIVIL ENGINEERING	200,643
FOOD SERVICE DESIGN	43,000
VERTICAL TRANSPORTATION ENGINEERING	42,700
AUDIO / VISUAL SYSTEMS ENGINEERING	96,000
CODE REVIEW	21,125
WIND / AIRFLOW / NOISE ANALYSIS	106,000
GEOTECHNICAL ENGINEERING	75,000
VOICE / DATA SYSTEMS ENGINEERING	174,130
FF&E PROCUREMENT	125,000
DESIGN CONSTRUCTION MANAGER CONTINGENCY	8,684,533
DESIGN CONSTRUCTION MANAGER FEE	7,659,758
PRECONSTRUCTION SERVICES	575,000
CITY OF PITTSBURGH B&O TAXES	1,151,761
BUILDING PERMITS	475,000
<b>SUBTOTAL CONSTRUCTION (GMP)</b>	<b>\$ 189,136,718</b>

**DEVELOPMENT COSTS**

DEVELOPER'S CONTINGENCY	6,743,888
PROJECT INSURANCE & SURETY PROGRAM	
OWNER'S CONTROLLED INSURANCE PROGRAM	2,688,000
OWNER DIRECTED SURETY PROGRAM	875,000
DEDUCTIBLE CONTINGENCY	1,850,000
TESTING AND INSPECTIONS PROGRAM	1,417,000
DESIGN ARCHITECT AND CONSULTANTS FEE + REIMB.:	
DESIGN ARCHITECT	5,100,500
STRUCTURAL DESIGN	720,000
MECHANICAL AND ELECTRICAL DESIGN	572,000
CIVIL ENGINEERING	261,410
VERTICAL TRANSPORTATION DESIGN	8,800
AUDIO / VISUAL SYSTEMS DESIGN	131,000
CODE REVIEW	25,256
WIND / AIRFLOW / NOISE ANALYSIS	16,500
GRAPHICS AND ADVERTISING	109,315
PEER REVIEW SERVICES	250,000
DEVELOPER'S OVERHEAD	
PROJECT MANAGEMENT STAFF	2,127,340
PROJECT OFFICE, SUPPLIES, PRINTING, TRAVEL	408,327
MISCELLANEOUS PROFESSIONAL SERVICE CONSULTANTS:	
SURVEY	32,000
LEGAL	877,341
LOBBYIST	62,528
TRAFFIC AND PARKING STUDY	125,740
TRANSPORTATION MANAGEMENT PLAN	45,000
GEOTECHNICAL PRELIMINARY REPORT & SITE REVIEW	66,751
PROJECT MANAGEMENT CONSULTANT	425,000
ESTIMATING & CONSTRUCTABILITY	464,489
FOOD SERVICE DESIGN	117,280
ACCESSIBILITY REVIEW	22,453
MBE/WBE PROGRAM	127,388
PROJECT ACCOUNTING	286,000
TURF SELECTION & INSPECTION	70,000
MISC. UNASSIGNED SERVICES	524,885
MODEL SUITE	317,398
LOT 4 TRAILER AND PARKING AREA	180,000
<b>SUBTOTAL DEVELOPMENT COSTS</b>	<b>\$ 27,048,679</b>

<b>TOTAL: PROJECT BUDGET</b>	<b>\$ 216,185,297</b>
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**EXHIBIT 2**

**Interim Agency Agreement**

**INTERIM AGENCY AGREEMENT**

INTERIM AGENCY AGREEMENT dated May 17, 1999, between PUBLIC AUDITORIUM AUTHORITY OF PITTSBURGH AND ALLEGHENY COUNTY ("Owner"), with an address c/o Stephen G. Leeper, Regional Resource Center, 425 Sixth Avenue, Pittsburgh, Pennsylvania 15219, and PITTSBURGH ASSOCIATES, a Pennsylvania limited partnership, having an address c/o Steve Greenberg, 600 Stadium Circle, Pittsburgh, Pennsylvania 15212 ("Developer").

**W I T N E S S E T H**

WHEREAS, Owner and Developer intend to construct a new Major League open-air baseball park to be located on the North Shore of the City of Pittsburgh, Pennsylvania (the "Ballpark");

WHEREAS, Owner intends to lease the Ballpark to Developer pursuant to a long-term lease (the "Lease") to be executed by Owner and Developer;

WHEREAS, Owner and Developer have agreed that Developer will be responsible for managing the direction, control and oversight of the design and construction of the Ballpark, subject to certain approval and disapproval rights of Owner as more particularly set forth herein and in Definitive Documents (as hereinafter defined) to be executed by Owner and Developer; and

WHEREAS, Owner and Developer desire to enter into this interim Agreement to govern certain aspects of the Project pending negotiation, execution and delivery of Definitive Documents and to enable Developer to proceed with completion of the Project by its scheduled completion date of April 1, 2001 (the "Completion Date").

NOW, THEREFORE; in consideration of the mutual covenants herein contained and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto do hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

1.01 Certain Definitions. In addition to other words and terms defined elsewhere in this Agreement, as used herein the following words and terms shall have the following meanings, respectively:

"Agreement" shall mean this Interim Agency Agreement as the same may be amended, modified or supplemented from time to time.

"Astorino" shall mean L. D. Astorino & Associates.

"Ballpark" shall have the meaning set forth in the preamble above.

"Business Day" shall mean any day other than a Saturday, Sunday or legal or bank holiday.

"Completion Date" shall mean April 1, 2001.

"Construction Coordinators" shall have the meaning set forth in Section 2.09.

"Construction Documents" shall mean the DCM Contract, the HOK Contract, the schematic design drawings, specifications and narratives, the design development drawings, specifications and narratives and the construction drawings and specifications.

"Construction Team" shall mean Developer, Design and Construction Manager, HOK, Astorino and any consultants retained by Developer.

"Contamination" shall mean the presence or release or threat of release of Hazardous Materials in, on, under or emanating to or from the Site (but not including a threatened release of hazardous materials onto the site from another piece of real property), which pursuant to Environmental Laws requires notification or reporting to any governmental agency or authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, contamination, abatement or other response to such Hazardous Materials or which otherwise constitutes a violation of Environmental Laws or which could otherwise result in liability to Developer, the Authority or any other member of the Construction Team.

"Damages" shall mean any loss, liability, claim, damage (including incidental and consequential damages) and expense (including costs of investigation and defense and reasonable attorneys fees, whether the action is for money damages, equitable or declaratory relief).

"DCM Contract" shall mean the contract to be entered into by Developer, as agent for Owner, with the Design and Construction Manager, as the same may be amended, modified or supplemented from time to time with the prior written consent of Owner, which consent shall not be unreasonably withheld.

"Definitive Documents" shall have the meaning set forth in Section 2.01.

"Design and Construction Manager", or "DCM", shall have the meaning set forth in Section 2.02.

"Developer's Share of Project Costs" shall have the meaning set forth in Article III.

"Environmental Law" shall mean any Law, whether now existing or subsequently enacted or amended, relating to (a) pollution or protection of the environment, including natural resources, (b) exposure of Persons, including but not limited to employees, to Hazardous Materials, (c) protection of the public health or welfare from the effects of products, by-products, wastes, emissions, discharges or releases of Hazardous Materials or (d) regulation of the manufacture, use or introduction into commerce of Hazardous Materials including their manufacture, formulation, packaging, labeling, distribution, transportation, handling, storage or disposal.



"Force Majeure" shall mean an act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, embargos, civil disturbance, unusually severe weather or labor strikes.

"HOK" shall mean HOK Architects, Inc., an architectural and engineering firm based in Kansas City, MO.

"HOK Contract" shall mean the contract to be entered into by Developer, as agent for Owner, with HOK, as the same may be amended, modified or supplemented from time to time, with the prior written consent of Owner, which consent shall not be unreasonably withheld.

"Hazardous Materials" shall mean (a) any flammable substance, explosive, radioactive material, hazardous material, hazardous waste, toxic substance, solid waste, pollutant, contaminant or any related material, raw material, substance, product or by-product of any substance specified in or regulated or otherwise affected by any Environmental Law (including but not limited to any "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time, or any similar state Law), (b) any toxic chemical or other substance from or related to industrial, commercial or institutional activities, and (c) asbestos, gasoline, diesel fuel, motor oil, waste and used oil, heating oil and other petroleum products or compounds, polychlorinated biphenyls, radon and urea formaldehyde.

"Law" shall mean any law (including common law), constitution, statute, treaty, convention, regulation, rule, ordinance, order, injunction, writ, decree or award of any official body.

"Legal Requirements" shall mean all present and future Laws (including but not limited to Environmental Laws) applicable to Owner and Developer in connection with the design, development, construction, equipping, use, occupancy, possession, operation, maintenance and management of the Ballpark, including without limitation all Laws relating to the issuance by the Owner of any bonds in connection with the financing of the Project.

"Master Project Schedule" shall mean the master Project schedule to be prepared by the DCM for the Project pursuant to the DCM Contract. A copy of the preliminary Master Project Schedule is attached as Exhibit G, which shall be updated in accordance with the DCM Contract.

"Owner Predevelopment Costs" shall have the meaning set forth in Article III.

"Permitted Encumbrances" shall mean utility easements and other similar matters of record which do not interfere with the Project or the operation of the Ballpark and which are listed on Exhibit F hereto.

"Permits" shall mean any permit, license or approval to be issued by any governmental agency or authority, or Person, including but not limited to required permits for construction, demolition, installation, alteration or repair of any improvements related in any manner to the Project. A Schedule of Permits is attached hereto as Exhibit E.

"Person" shall mean an individual, corporation, partnership, trust, unincorporated association, joint venture, joint-stock company, government (including political subdivisions), governmental authority or agency, or any other entity.

"Predevelopment Costs" shall have the meaning set forth in Article III.

"Preliminary Project Budget" shall have the meaning set forth in Section 2.06, as further set forth on Exhibit A attached hereto and incorporated herein by this reference.

"Project" shall mean the design, development, construction and equipping of the Ballpark.

"Project Budget" shall mean the final detailed development budget for the development and construction of the Project, approved by Owner, as further referenced in Section 2.06.

"Project Costs" shall have the meaning set forth in Article III.

"Representatives", with respect to each of Owner and Developer, shall have the meaning set forth in Section 8.08 hereof.

"Response Action" shall mean the investigation, cleanup, removal, remediation, containment, control (including but not limited to the installation or construction of institutional or engineering controls) or any other response action to the presence of Contamination required pursuant to Environmental Laws.

"Site" shall have the meaning set forth in Section 4.02 hereof.

"Work" shall have the meaning set forth in Section 5.01 hereof.

1.02 Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference as if set forth in full.

## **ARTICLE II** **AGENCY RELATIONSHIP**

2.01 Purpose. It is agreed between the parties that the purpose of this Agreement is to govern the relationship of the parties until such time as definitive documentation governing the development, construction and leasing of the Ballpark shall have been executed and delivered by the parties (the "Definitive Documents"). The Definitive Documents will include a Development and Operating Agreement further relating to the development, construction and operation of the Ballpark, and a Lease having a term of not less than 29 1/2 years, an Amended URA Loan Agreement which will contain non-relocation covenants, such other documents as may be reasonably required by the Allegheny County Regional Asset District and the Commonwealth of Pennsylvania as conditions to the provision of funding to the Project, and such other time and cost overrun guarantees and other documents covering such matters as Owner may reasonably require. This Agreement will remain in effect until execution and delivery of the Definitive Documents. Unless Developer and Owner shall have executed the Definitive Documents on a date that is not later than sixty (60) days after receipt by Developer of the first drafts of all of the Definitive Documents, either party, at its election, may suspend further performance hereunder, and shall be excused from its further performance of its obligations hereunder during such suspension.

2.02 Appointment of Developer. For the duration of this Agreement, and subject to such terms as are set forth herein, Owner hereby appoints Developer as its sole and exclusive agent with respect to the design and construction of the Ballpark and Developer hereby accepts such appointment. The Owner hereby delegates to the Developer the day-to-day duties that a prudent and conscientious owner of a facility such as the Ballpark would exercise in enforcing the Owner's rights to contract and to interface with the DCM for the project. Developer agrees to assume those delegated duties and to be responsible to Owner for the proper

performance of the duties so delegated. Developer shall, when acting as agent for Owner, disclose its agency capacity hereunder. Such appointment and delegation by Owner shall not limit or impair Owner's right to enforce remedies under any agreement to which it is a party or of which it is a beneficiary, nor shall it relieve any person from any obligation to Owner.

2.03 Responsibilities of Developer. In its capacity as agent of Owner, Developer shall be responsible for all aspects of managing the design, development and construction of the Ballpark, and acknowledges its obligation and responsibility to Owner for the proper performance of those obligations. In such capacity:

(a) Developer is hereby authorized to identify, select and contract directly with a "bridging" architect for the Project (it being understood that HOK is hereby approved by Owner in such capacity), which will prepare conceptual, schematic design and design development drawings relating to the Ballpark, and which will review construction drawings. The HOK Contract will provide and acknowledge that Owner and Developer shall have a nonexclusive license to use all materials created by HOK for the Project including, but not limited to, all drawing, specifications, and other project documents in connection with the design, construction and maintenance of the Project. Other than Owner's obligation to make payments with respect to the Project Budget and except as otherwise set forth herein, Owner will have no responsibilities, liabilities or obligations with respect to the HOK Contract.

(b) Developer is hereby further authorized to identify and select, and has identified and selected, Dick Corporation/Barton Malow, a joint venture comprised of Dick Corporation, Large, PA, and Barton Malow Company, Baltimore, MD, as the Design and Construction Manager (the "Design and Construction Manager" or the "DCM"), which joint venture is hereby approved by Owner as Design and Construction Manager. Dick Corporation and Barton Malow Company shall at all times be jointly and severally liable for the acts, omissions and contractual obligations of the Design and Construction Manager in connection with the Project and the DCM Contract. The Design and Construction Manager will, in conjunction with consultants retained by Developer and the Design and Construction Manager (including the architect to be retained by the Design and Construction Manager, Astorino being hereby approved by Owner as such architect), develop plans and specifications for the Ballpark. Other than Owner's obligation to make payments with respect to the Project Budget and except as otherwise set forth herein, Owner will have no responsibilities, liabilities or obligations with respect to the DCM Contract. The DCM Contract will provide and acknowledge that Owner and Developer shall have a nonexclusive license to use all materials created by the DCM and its consultants (including Astorino) for the Project, including, but not limited to, all drawings, specifications, and other Project documents in connection with the design, construction and maintenance of the Project.

(c) Subject to the approval of all terms by the Owner, which approval shall not be unreasonably withheld, delayed or conditioned, Developer is authorized to enter into the DCM Contract, as agent for the Owner. The Design and Construction Manager shall provide to Developer, and the DCM Contract will so provide, a guaranteed maximum price ("GMP") for design and construction of the Ballpark, which GMP shall not exceed the sum of \$189,136,718.

(d) Developer shall be responsible for the administration of the DCM Contract, as agent for Owner, subject to the rights of Owner, as provided herein and in the Definitive Documents.

(e) Subject to such cost limitations as will be set forth on the Project Budget, Developer is further authorized to select and retain the consultants and professionals identified on Exhibit B hereto so as to facilitate the timely design and construction of the Project.

(f) The Construction Team will prepare component packages in form and content suitable for competitive bidding, and Developer will administer the bidding processes for the selection of trade contractors, and where required, for suppliers. Developer will further negotiate and prepare trade and supply contracts, provided that all such contracts will be awarded by Owner in compliance with Legal Requirements and assigned to the DCM, which assignment will provide for the release of any claim against, or obligation of, Owner other than the obligation to make payments with respect to the Project Budget. Developer will prepare the necessary advertisements, the cost of which shall be paid as part of the Project Budget, and will cause such advertisements to be made for competitive bids on each component package of the Project. Developer will further develop and administer, subject to the approval of Owner, which approval shall not be unreasonably withheld, delayed or conditioned, a "bid challenge" process. Owner will have no liabilities, responsibilities or obligations of any kind with respect to any trade or supply contracts other than the obligation to make payments with respect to the Project Budget, and all trade and supply, bid and contract documents will so provide. The cost of performing the functions described in this paragraph (f) shall be paid as part of the Project Budget.

(g) Developer intends to provide for the preliminary determination of bidder responsibility, so that bids will be awarded only to those bidders previously determined as having been responsible bidders. Attached hereto as Exhibit H are the procedures for such preliminary determination. Owner hereby approves such procedures. If a trade contractor is determined to be responsible pursuant to the procedures set forth in Exhibit H and is the low bidder, the Owner will award the contract to such contractor. If the Owner refuses to award the contract to such contractor, Owner shall reimburse Developer for any additional costs incurred by Developer or the Project as a result thereof (which reimbursement shall be outside of the Project Budget) and shall indemnify defend and hold harmless Developer from any Damages (as defined in Section 7.01) incurred by Developer as a result thereof.

(h) Developer will supervise and coordinate construction on a day-to-day basis.

(i) Developer will oversee and coordinate submission of invoices in form suitable to Owner for payment from the DCM, trade contractors, and any subcontractors, suppliers and materialmen, pursuant to the procedures set forth on Exhibit C attached hereto.

(j) The Design and Construction Manager will be permitted to self-perform work as a competitive bidder, either directly or through an affiliated entity, but only in accordance with the procedures and restrictions set forth on Exhibit D attached hereto.

(k) Owner shall be an intended beneficiary of any agreement entered into by Developer in the role as agent hereunder and each such agreement shall so provide. Further, no agreement entered into by Developer as agent for owner shall provide for arbitration of claims thereunder without the approval of Owner. No agreement (including this Agreement) shall allow, or result in, a lien against Owner.

Notwithstanding the foregoing, Developer shall not have the right, without Owner's consent, to incur debt or other obligations for which Developer will not be liable or to delegate its rights or obligations hereunder, in its capacity as agent for the Owner, to any third party.

2.04 Assignment of Trade Contracts. Owner and Developer hereby agree that all trade contracts awarded by Owner shall, immediately upon their award, be assigned by Owner to the Design and Construction Manager. The DCM Contract shall provide that the Design and Construction Manager shall perform in full all obligations applicable to Owner under such trade

contracts, and that Owner will have no responsibilities, liabilities or obligations of any kind whatsoever thereunder other than Owner's obligation to make payments with respect to the Project Budget and except as otherwise set forth herein. All trade bid and contract documents shall so provide, and shall provide that the trade contractors shall waive and release any claims against Owner.

2.05 Payment Procedures. Attached hereto as Exhibit C is a description of the payment procedures that will be implemented in connection with payments to be made from the Project Budget (as hereinafter defined) to Developer, to the Design and Construction Manager and to all trade contractors.

2.06 Project Budget. Owner hereby approves the preliminary project budget (the "Preliminary Project Budget") attached as Exhibit A. On or before June 1, 1999, Developer will prepare and submit to Owner a final budget, setting forth the sources and uses of all funds required for development and construction of the Ballpark in a form similar to the Preliminary Project Budget (the "Project Budget"). The Project Budget must be approved by Owner prior to the execution and delivery of Definitive Documents. Owner and Developer hereby agree that any construction savings realized throughout the construction of the Ballpark, whether from value engineering, contingency funds or otherwise, will be used first to upgrade and enhance the Ballpark (subject to the approval of the Authority, as set forth in Section 5.03 hereof) and then, to the extent of any excess, to fund the capital improvement reserve fund to be maintained by Owner.

2.07 Owner's Approval Rights. In addition to the rights reserved to Owner elsewhere in this Agreement, Owner shall have the right to disapprove any actions taken hereunder by Developer if Owner determines that such actions are not in compliance with this Agreement or with applicable Legal Requirements. Developer shall cooperate with Owner to provide Owner with any information reasonably required by Owner in connection with its determination as to whether to grant such approval. In furtherance thereof, in each case where Owner's approval is required or authorized under this Agreement, Developer shall provide written notice to Owner of the time within which such approval is required and, if requested by Owner, Developer shall cause the Developer's Representative to meet with Owner's Project Coordinator to review any such matters requiring Owner's approval within the time periods provided to Owner and Developer for such approval. In any circumstance where Owner's approval is required hereunder, provided that all documents and materials reasonably necessary to determine whether such approval should be given have been delivered, Owner fails to grant or deny such approval within such period as may be required by any Construction Document, or if no such period is specified, within ten (10) days, Owner shall be deemed to have granted its approval. Notwithstanding anything to the contrary contained in this Agreement (or any other agreement), Developer hereby agrees that, except in the event of an emergency, the period of time provided to Owner to grant or deny approval with respect to any matter requiring or authorizing Owner's approval shall not be less than two (2) Business Days. Whenever Owner's approval is required hereunder, such approval shall not be unreasonably withheld. If Owner denies approval of any matter requiring its approval under this Agreement, Owner shall state with specificity, in writing, its reason for such denial. If Owner shall fail to give a timely approval with respect to any matter for which its approval is required hereunder, Developer shall have the right to proceed without such approval. In such case, Developer shall provide written notice to Owner that it is proceeding without such approval, and the manner and direction in which Developer is proceeding.

2.08 Owner as Beneficiary. It is specifically understood and agreed that the Developer is entering into the DCM Contract and the HOK Contract as agent for Owner and that, accordingly, Owner is an intended beneficiary of HOK Contract and the DCM Contract. The duties and obligations of HOK and the DCM pursuant to those agreements are to be stated

therein, and expressly understood and agreed by Developer, HOK and DCM, to also be due and owing to the Owner. Such duties and obligations, as well as any duties or obligations imposed by law upon HOK and upon DCM may be enforced by the Owner at law or in equity. Upon the occurrence of a default by Developer under the HOK Contract or the DCM Contract which remains uncured and which permits the other party to such contract to exercise remedies thereunder, at the election of the Owner upon five (5) Business Days prior written notice to Developer, Developer shall assign either or both of the HOK Contract and the DCM Contract to the Owner whereupon the Owner shall be the primary contracting party and Developer shall be a third party beneficiary with respect to each such agreement so assigned. Developer will promptly notify Owner in writing of the occurrence of any such default. HOK shall be required to carry appropriate levels of insurance coverage (including professional liability coverage) subject to approval of the Owner in performance of its contract, and such insurance policy shall name the Owner as additional insured.

2.09 Construction Coordinators. Owner has appointed Thomas Kennedy as the Project Coordinator, and Morse Diesel, Inc., Cleveland, Ohio, as the Project Review Coordinator. Each (and their respective successors as may be designated by Owner) is authorized to act on behalf of the Owner with respect to the development and construction of the Project, and both Mr. Kennedy and Morse Diesel, Inc. are sometimes collectively referred to in this Agreement as the "Construction Coordinators".

2.10 Approval Of Construction Documents. The Construction Documents shall be submitted to the Construction Coordinators as completed and at the same time that they are delivered to the Developer, and may be submitted in various stages of completion as is agreed between the respective Representatives of the parties. Notwithstanding the manner or timing of submission, each portion of all Construction Documents must be approved in writing by the Construction Coordinators, which approval shall not be unreasonably withheld, and no portion of the Construction Documents will be submitted for required public bidding prior to being approved by the Construction Coordinators, subject, however, to the last sentence of this Section 2.10, Developer shall cooperate with Owner to provide Owner with any information reasonably required by Owner in connection with its review of the Construction Documents. In furtherance thereof, Developer shall provide to Owner, together with any Construction Documents submitted for Owner's approval, a list or other manner of identification of the changes made from the previously approved Construction Documents and, if requested by Owner, shall cause the Developer's Representative to meet with Owner's Project Coordinator to review such Construction Documents within the time periods provided to Owner and Developer for such approval. The Construction Coordinators will diligently review the Construction Documents as submitted and, subject to the provisions of Section 5.02 hereof with respect to changes to the DCM Contract and the HOK Contract, provided that complete and accurate copies of all pertinent documents have been provided to Owner, Owner will approve or disapprove each respective submission within the time provided to Developer in the Construction Documents for review of each such submission. If the Construction Coordinators do not either approve the Construction Documents submitted or disapprove the Construction Documents submitted within such period, the Construction Documents as submitted shall be deemed to have been approved.

### **ARTICLE III** **PAYMENT OF PROJECT COSTS**

Owner agrees that all costs and expenses incurred by Developer (other than the costs incurred by Developer on Owner's behalf pursuant to Section 4.03 or Section 4.14 hereof) in connection with the design, development and construction of the Ballpark ("Project Costs") shall be paid out of the Project Budget, and that the first \$8,500,000 of Project Costs incurred by Developer shall be applied against Developer's initial \$8,500,000 payment ("Developer's Initial Payment"), as required by the Memorandum of Intent among Allegheny County, the City of

Pittsburgh and the Pittsburgh Pirates (the "Memorandum"). Except with respect to \$31,500,000, which shall be paid by Developer pursuant to the Memorandum and as provided in the Definitive Documents, and except as otherwise provided in Article VI of, or elsewhere in, this Agreement, any Project Costs incurred by Developer in excess of Developer's Initial Payment, provided that such Project Costs do not exceed the total amount of the Project Budget as approved by Owner, shall promptly be reimbursed to Developer by Owner. From time to time, Developer will submit to Owner an itemization of all Project Costs incurred by Developer, together with evidence reasonably satisfactory to Owner supporting each item of Project Costs incurred by Developer, and together with a request for reimbursement for any Project Costs incurred by Developer in excess of Developer's Initial Payment. Any costs that are within the scope of the Construction Documents or the agreements with the consultants and professionals listed in Exhibit B hereto, and all other costs included within the categories set forth in the Project Budget, are deemed to be approved Project Costs.

#### **ARTICLE IV OWNER'S COVENANTS**

4.01 Acquisition and Delivery of Site. The Owner, at its own cost, which shall not be deemed to be a part of the Project Budget for purposes of this Agreement, shall take all necessary action to acquire the separate properties comprising the Site and to remove all of the existing asphalt, utility poles, utility lines, and all concrete, foundations and other man-made structures, conditions or materials on and under the Site (the "Site Work"), provided that the Site will be delivered to the Developer, subject to the Permitted Encumbrances, on or before April 4, 1999 (except for the portion of the site on which the GE Building is situate, which shall be delivered to the Developer on or before April 24, 1999). In the event that the Developer determines that the Site shall not have been delivered by the Owner in the condition required by this Section 4.01, Developer shall notify the Owner of any deficiencies as soon as practicable, but not later than five (5) Business Days after either (a) the date that Developer first observes the conditions or (b) the date that such conditions are reported to the Developer by the Design and Construction Manager, or Developer shall be deemed to have waived all claims against the Owner under this Section 4.01.

4.02 Environmental Matters. After the Owner acquires all of the separate properties which comprise the land on which the Ballpark is to be constructed (the "Site"), or contemporaneously with such acquisition, the Owner shall promptly engage an environmental consulting firm (the "Environmental Consultant") to perform an environmental assessment of the Site (the "Environmental Assessment") to determine whether any Contamination is present at the Site. The final report of the results of the Environmental Assessment (the "Final Report") shall be addressed by the Environmental Consultant to the Developer and the Owner to enable each to rely on such Final Report. In the event the Final Report includes any recommendations for further environmental assessment to determine the extent and nature of any Contamination (a "Phase II"), the Owner, in consultation with the Developer, shall cause such Phase II to be performed if such Phase II is either required pursuant to applicable Environmental Laws or is otherwise determined to be reasonably necessary by the Owner and the Developer. The cost of the Environmental Assessment (including the cost to prepare the Final Report) and the Phase II (including the cost to prepare any report of the results thereof, if any) shall be paid by the Owner, but shall not be treated as part of the Project Budget. In the event the results of the Environmental Assessment or the Phase II indicate the presence of Contamination or if any Contamination is discovered during the course of construction which, pursuant to applicable Environmental Laws, requires the performance of a Response Action, the Owner shall, at its sole cost and expense, cause such Response Action to be performed as expeditiously as is reasonably possible. Any costs incurred by the Owner with respect to the performance of a Response Action shall not be part of the Project Budget. At the election of Developer, Developer shall have the right (but not the obligation) to perform the Response Action, provided that the Response Action

shall have been approved by Owner as to the scope and cost of the Response Action, which approval shall not be unreasonably withheld, and provided that Owner shall reimburse Developer for all costs and expenses incurred by Developer in connection with the performance of the Response Action.

4.03 Site Matters. Owner shall perform and deliver the following in order to establish the nature and condition of the Site and to provide evidence that the Site is clean and sound, all of which shall be delivered to Developer upon or prior to delivery of the Site (or as soon thereafter as is reasonably practicable) to Developer for the commencement of construction. Notwithstanding the foregoing, the obligation to pay the cost of the items listed below in this Section 4.03 shall be borne by Owner and Developer as set forth on Schedule I hereto (it being understood that Developer has paid all or a portion of Owner's share of such costs, as indicated on Schedule I, and is entitled to be reimbursed for Owner's share of such costs in accordance with Section 4.14 hereof).

(a) A boundary survey or other such legal description of the Site identifying new and existing confines of the site, including all easements. Such survey shall incorporate proposed road relocation and any proposed property and street vacation.

(b) A final report concerning the Site-use assessment of historical and archaeological artifacts including any necessary surveys and investigations, together with clearance by the appropriate public agencies approving findings and recommendations identified in the final report.

(c) Evidence that the Permits listed on Exhibit E to be obtained by Owner have been issued by the agencies having jurisdiction.

4.04 Geo-Technical Matters. After the Owner acquires all of the separate properties which comprise the Site and performs the work required by Sections 4.01 and 4.02 above, all matters relating to evaluation of the soil conditions, floodplain and other geo-technical attributes of the Site and whether such attributes are adequate to support the construction of the Ballpark shall be the responsibility of the Construction Team, and all evaluation and remediation in connection therewith shall be included within the Project Budget, subject, however, to Owner's obligation to repair or complete any items reported to Owner by Developer pursuant to the last sentence of Section 4.01 hereof. Notwithstanding the foregoing, if conditions are encountered at the Site that are (1) man-made (as opposed to naturally existing) subsurface structures or otherwise man-made physical conditions or materials that differ materially from those indicated in the Geotechnical Report, prepared by GeoMechanics Incorporated, dated February 3, 1999 (the "Geotechnical Report"), or (2) unknown man-made physical conditions that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents relating to the Project, then Developer shall notify Owner immediately and before such conditions are disturbed, but in no event later than 5 days after either (a) the date Developer first observes the conditions or (b) the date that such conditions are reported to Developer by the Design and Construction Manager. Owner shall promptly investigate such conditions. If such conditions fall within clauses (1) or (2) above and cause an increase in the cost of, or time required for, performance of any part of the Project, the Owner shall authorize additional payment to be made to Developer to cover any increased costs incurred, which payments shall be in addition to the amounts committed in the Project Budget. If Owner determines that the conditions do not fall within clauses (1) or (2) above, the Owner shall promptly so notify Developer in writing, stating the reasons for such determination. In addition to the foregoing, Owner and Developer have agreed to purchase a \$10,000,000 insurance policy (the "Policy") which will cover, among other things, the potential risk of natural (as opposed to man-made) subsurface conditions that (A) differ materially from those indicated in the Geotechnical Report or (B) differ from those



ordinarily found to exist and generally recognized as inherent on construction activities of the character provided in the Contract Documents relating to the Project. The actual purchase decision with respect to such insurance shall be deferred until the receipt and evaluation of the "auger cast piles" bid response; provided, however, that a decision not to then purchase such insurance must be agreed to by both Developer and Owner and absent such agreement, such insurance shall be purchased in accordance with the foregoing terms. Owner and Developer shall share equally the portion of the premium charged under such policy for the risks described in clauses (A) and (B) above. If such conditions are encountered at the Site, then Developer shall notify Owner immediately, and before such conditions are disturbed, but in no event later than 10 days after either (a) the date Developer first observes the conditions or (b) the date that such conditions are reported to Developer by the Design and Construction Manager. Owner shall promptly investigate such conditions. If such conditions fall within clauses (A) or (B) above and cause an increase in the cost of, or time required for, performance of any part of the Project, Owner and Developer shall share equally in such increased cost up to the amount of the deductible of \$500,000 under the Policy. Owner's share of such payments shall be in addition to the amounts committed in the Project Budget. If Owner determines that the conditions do not fall within clauses (A) or (B) above, the Owner shall promptly so notify Developer in writing, stating the reasons for such determination.

4.05 Street Vacation and Relocation. Owner shall use its best efforts to work with the City of Pittsburgh to vacate and relocate West General Robinson Street and Stadium Drive East so as to permit construction of the Ballpark in accordance with agreed upon plans and specifications.

4.06 Utility Relocation. Owner shall be responsible for the removal and relocation of the public and private utilities on the Site, the upgrade of existing water and sewer lines on the Site, and the installation of all water and sewer lines to the site of the Ballpark so as to permit construction of the Ballpark in accordance with agreed upon plans and specifications and to provide sufficient services for the operation of the Ballpark, in accordance with the schedule for the construction of the Ballpark. Notwithstanding the foregoing, Owner shall not be required to remove or relocate the ten (10) foot sewer line or the five (5) foot sewer line located under the site for the Ballpark or the 30 inch sewer line located in East Stadium Drive so long as (i) such sewer lines will not interfere with the construction and operation of the Ballpark, (ii) Owner shall have caused such sewer lines to be inspected and, if necessary, properly repaired so that they are in good and operating condition, and (iii) Owner shall have provided or will, following execution of this Agreement, diligently work to provide for emergency access to such sewer lines at a location sufficiently distant from the Ballpark so as to avoid any interference with operations at the Ballpark in the event emergency access is necessary, which access locations shall be subject to the reasonable prior approval of Developer. In furtherance of the foregoing, if any work is required to be done with respect to such sewer lines or with respect to the Alcosan structures connected with such sewer lines in order to avoid relocation of such lines, or if such sewer lines or structures are required to be relocated, or if any modifications are required to be made to the Ballpark or to the bulkhead wall to be constructed along the river line adjacent to the site in order to accommodate such lines or structures, such work, relocation and/or modifications shall be made at the sole cost and expense of Owner and at no additional cost to the Project or to the Developer.

4.07 Transportation Management. Owner shall work with Developer and shall use its best efforts to work with the City of Pittsburgh and other applicable municipal authorities to develop a transportation management plan, including truck routing during construction, street signage during and after construction, public transportation routing changes, signage on buses, subway access, parking meters and such other matters as shall be reasonably necessary or desirable.

4.08 Expedited Permitting. Owner shall cooperate with and assist Developer in expediting the review and issuance of all Permits required for the construction of the Ballpark at no increased cost to Developer or to the Project. Notwithstanding the foregoing, Developer shall pay, as a part of the Project Budget, the \$24,000 in fees payable to GAI Consultants in connection with the engineering work required to obtain certain of the Permits. Subject to the foregoing, Owner shall be responsible for taking out and fulfilling the requirements of the Permits for which Owner is responsible, as set forth on Exhibit E. Owner shall identify an individual within Owner's organization to assist Developer with such expedited permit issuance.

4.09 Sales Tax Exemption. Owner shall cooperate with and assist Developer in obtaining such sales tax exemptions as may be available in connection with the Project.

4.10 Community Issues. The parties agree that the Ballpark will be constructed in a way which minimizes and mitigates, to the maximum extent practicable, the impact of construction on nearby communities. Owner shall cooperate with Developer and shall use its best efforts to cause the City of Pittsburgh and other appropriate municipal authorities to cooperate with Developer so as to mitigate the impact of construction on nearby communities.

4.11 Construction Staging and Storage. Owner shall work with Developer and shall use its best efforts to cause the City of Pittsburgh and other appropriate municipal authorities to work with Developer to develop and implement, prior to April 8, 1999, mutually acceptable plans for construction staging, procedures and practices.

4.12 Labor and Employment Issues. Developer shall cooperate with and assist Owner in obtaining a project stabilization agreement with the applicable trade unions so as to promote continuous and harmonious relationships and to promote the uninterrupted construction of the Ballpark.

4.13 Insurance. Owner and Developer will cooperate to develop a mutually acceptable comprehensive insurance program, "owner controlled" or otherwise, with respect to the Project. All elements of this program, including the identity of insurers, scope of coverage, deductible limits, cost, parties subject to coverage, including without limitation, any parties that are "additional insureds", coverage limits, replacement cost endorsements, waivers of subrogation, and other terms, must be approved by both Owner and Developer, provided, however, that Owner's approval shall not be unreasonably withheld. All policies of insurance shall also contain a provision to the effect that any cancellation of or material amendment to such insurance, including any reduction in the scope or limits of coverage, shall not be effective as to Developer or Owner without at least 30 days' prior written notice to Developer or Owner, as the case may be.

4.14. Performance By Developer; Enforcement by Owner. Owner hereby agrees that Developer shall have the right (but shall have no obligation) to assist Owner in the performance of the items set forth in this Article IV or to perform the items set forth in this Article IV as the agent of Owner to the extent necessary in Developer's reasonable judgment to expedite the performance and completion thereof and to cause the timely delivery of the Site and the timely completion of construction of the Ballpark to Developer and that all costs and expenses incurred by Developer in connection therewith, following prior written approval of Owner, shall be reimbursed to Developer. Developer hereby agrees that Owner shall have the right, but not the obligation, to enforce the contracts entered into by Developer hereunder in its capacity as agent for Owner if Developer refuses or fails to take any action reasonably requested by Owner in connection with the enforcement of any such contract for a period of fifteen (15) days after written notice thereof to Owner. Owner and Developer hereby agree that the costs incurred by Developer through the date hereof, as set forth on Schedule II hereto (in addition to

the costs set forth on Schedule I hereto), are costs incurred by Developer on Owner's behalf with Owner's prior consent and Owner shall reimburse Developer for such costs.

## ARTICLE V CONSTRUCTION ADMINISTRATION.

5.01 Developer's Responsibilities. The Developer shall be responsible for managing, directing, supervising and coordinating the planning, design and construction of the Project in accordance with the Construction Documents, the Project Schedule and the Project Budget, all as approved by the Owner, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the approval rights granted to Owner in the foregoing sentence or elsewhere herein, after Owner's approval of the initial Design Development Documents, so long as any such matter is consistent with the initial Design Development Documents approved by Owner, Owner hereby agrees that Owner shall not have the right to withhold its approval to the extent that any such withholding of approval is based on aesthetic considerations or with respect to matters involving forms or finishes of the Ballpark, and that any withholding of such approval shall be deemed to be unreasonable. Owner hereby confirms that it has approved the Design Development Documents dated February 2, 1999, as supplemented by Addenda 1 through 5. The Developer shall manage, direct, supervise and coordinate the planning, design and construction of the Ballpark, and coordinate the work of all parties involved therein (collectively, the "Work"). The Developer shall be responsible for the continuous, orderly and uninterrupted performance of all aspects of the Work required in connection with the construction of the Ballpark in accordance with the Construction Documents and this Agreement, including, without limitation, those matters set forth above, and:

- (a) Retaining the services of specialty consultants.
- (b) Preparing, or causing to be prepared, the Project Budget.
- (c) Preparing, or causing to be prepared, the Master Project Schedule, and thereafter updating the Master Project Schedule on a monthly basis and delivering a copy of same to the Owner Representative and the Construction Coordinators.
- (d) Obtaining or causing to be obtained all Permits not otherwise required to be obtained by Owner.
- (e) Retaining and supervising the personnel reasonably required by the Developer in order to properly perform the Work.
- (f) Maintaining complete and accurate books and records, consistent with industry standards, regarding the design and construction of the Ballpark including, without limitation, records relating to the Construction Documents, shop drawings, Change Orders (as defined in Section 5.03), as built drawings, applications for payment, Permits, insurance policies, correspondence, bills, vouchers, receipts and lien waivers.
- (g) Taking all action reasonably required to comply with all Legal Requirements and taking all reasonable action required to cause Astorino, HOK and the DCM and all other agents and contractors engaged by, or acting on behalf of, the Developer to design and construct the Ballpark in accordance with Legal Requirements.
- (h) Furnishing promptly to the Owner Representative and the Construction Coordinators all documents and information required to be provided pursuant to this Agreement and all other information the Owner Representative and Construction Coordinators may

reasonably request. Developer shall promptly provide to the Owner Representative copies of any and all legal notices received by the Developer affecting in any manner the Project.

- (i) Notifying promptly the Owner Representatives of any suit, proceeding or action that is initiated or threatened in connection with the Project.
- (j) Providing the Owner, upon completion of construction, with an original print and one sepia print or disk of as-built Construction Documents depicting the Project.
- (k) Supervising punchlist and warranty work after substantial completion of the Work. A post-completion warranty inspection shall occur under the supervision of Developer.
- (l) Establishing and updating, as necessary, the schedule of dates for delivery of various design documents for review and approval of the Owner.
- (m) Preparing minutes for all Project meetings and providing a copy of same to the Construction Coordinators and Owner Representative.
- (n) Providing the Owner Representative with copies of all contracts and subcontracts and all amendments thereto, which shall be subject to approval by the Owner as provided in this Agreement.
- (o) Causing the completion of the Project in accordance with the Master Project Schedule and the Construction Documents, subject to Force Majeure; provided that Owner shall have the right to approve any grant by Developer of an extension of time pursuant to Section 6.3.1 of the DCM Contract, which approval right shall be subject to the terms of this Agreement.
- (p) Providing the Owner with monthly progress reports containing such financial information as the Owner may reasonably request relating to Project Costs, including all expenditures by the Developer during the preceding month and a proposed monthly budget for the upcoming month.
- (q) Supervising and coordinating, or causing the DCM to supervise and coordinate, the construction of the Ballpark so that the Ballpark is constructed, equipped, furnished and completed in a good and workmanlike manner in accordance with the Construction Documents, lien free, by the Completion Date (subject to Force Majeure) in accordance with all Legal Requirements and shall employ such consultants as may be reasonably required to insure that quality control appraisals of the Ballpark are conducted throughout the construction period in a manner consistent with industry standards.

5.02 Changes Of Agreements With Bridging Consultant and DCM. The Owner Representative shall have the right to approve any material change, modification or amendment to the HOK Contract or the DCM Contract. The Developer shall submit to the Owner Representative for his review and approval any such proposed change, modification or amendment. The Owner Representative shall have ten (10) days to approve or disapprove such change. If Owner's Representative shall fail to approve or disapprove such change within ten (10) days, the change shall be deemed to have been approved. Approval will not be unreasonably withheld and the Owner Representative will state reasons for any disapproval in writing.

5.03 Change Orders And Ballpark Plan Changes. The Developer shall promptly submit to the Construction Coordinators, for their review and approval (subject to the

limitations set forth in Section 5.01 hereof): any change orders or change directives (i) which may or do result in a change, up or down (before netting), in the total amount of the Project Budget, or (ii) which materially alter the design of the Ballpark or eliminate material elements from the Ballpark criteria described in the previously approved Construction Documents (collectively, "Change Orders"). Provided that all pertinent documents have been provided, the Construction Coordinators shall have such period of time as is provided in the DCM Contract to review and approve or disapprove the requested Change Order. No payment in conjunction with a change to a trade contract may be released to the DCM or to any trade contractor without a properly approved and documented Change Order in place. The failure of the Construction Coordinators to respond within such period shall constitute a deemed approval. The Construction Coordinators shall exercise good faith efforts to respond as diligently and expeditiously as possible to any requested Change Order. In the event that the Construction Coordinators disapprove a Change Order, the Construction Coordinators shall state, with specificity, the reason for disapproval. The Developer shall provide to the Construction Coordinators, for informational purposes only, copies of any other Change Orders and changes to the Construction Documents not requiring the Owner's approval, promptly after such Change Orders or plan changes are made.

5.04 Owner's Right To Inspect And Receive Information. The Construction Coordinators shall receive from the Developer advance notice of all Project meetings and, on a regular basis, information regarding the progress of the Project through each design phase and construction. During the term of this Agreement, the Construction Coordinators shall have the right to attend all Project meetings and inspect the Ballpark at all times. The Developer shall consult regularly with the Construction Coordinators in order to keep the Owner reasonably informed throughout the duration of the planning, design and construction of the Ballpark. Owner shall have the right, through its Representative and Construction Coordinators, to monitor and investigate compliance by the Developer with this Agreement, and compliance with Legal Requirements. The right of the Owner's Representative and the Construction Coordinators to investigate, monitor, inspect, copy, review, verify and check operations and records of the Developer relating to the Project shall include, but not be limited to, all of its employees, consultants, agents or authorized subcontractors, as well as to all administrative and operational facilities used by the Developer in connection with all matters arising under this Agreement. Records include, but are not limited to, construction, financial, correspondence, instructions, memoranda, bids and contract documents, as well as all other records pertaining to the planning, development and construction of the Project pursuant to this Agreement. Any rights that the Owner has under this Section shall not be the basis for any liability to accrue to the Owner from the Developer, or third parties for such monitoring or investigation or for the failure to have conducted such monitoring or investigation. The right of the Owner to inspect records and the progress of construction under this Section shall be solely for the benefit of the Owner, and no rights or remedies in favor of the Developer, or any other member of the Construction Team, shall accrue as the result of any such inspection.

5.05 Project Schedule. The Developer shall require the DCM to prepare the Master Project Schedule setting forth the date that construction will start, and time parameters required so that the Project will be substantially complete on or before the Completion Date, subject to extensions as a result of Force Majeure. All Work shall be performed by the DCM in a good and workmanlike manner in conformity with the Construction Documents so that on the Completion Date the Ballpark is in good working order and condition and ready for full and immediate use.

5.06 River Rescue. In connection with the development of the design and the construction of the Ballpark, Developer shall provide approximately 2,000 square feet of contiguous usable space (the "River Rescue Space") at a location proximate, and with convenient and unobstructed vehicular and pedestrian access, to the existing docks and boathouse on the

Allegheny River presently used by the river rescue unit (which location shall be mutually agreed upon by Owner and Developer), together with one (1) parking space for use by the river rescue unit at a location immediately adjacent, and four (4) additional spaces in reasonable proximity, to the River Rescue Space. Developer shall cause the River Rescue Space to be constructed in accordance with plans and specifications approved by Owner.

## **ARTICLE VI DEVELOPER GUARANTY OF COST AND TIME OVERRUNS.**

### 6.01 Definition.

Any Project Costs incurred by, paid by or billed to the Owner or Developer in excess of the sum of \$209,174,184, other than those costs specifically attributed to Owner pursuant to this Agreement and deemed not to be included in the Project Budget and other than costs resulting from changes to the Project requested or required by Owner or otherwise arising out of actions or omissions of Owner, shall be considered to be a cost overrun for purposes of this Agreement (a "Cost Overrun"). So long as Developer is diligently proceeding to complete the Project in accordance with the Construction Documents (including the Project schedule) as approved by Owner, Owner shall not have the right to incur costs for which the Owner will not be liable or to obligate Developer to incur costs in excess of the sum of \$209,174,184 without the prior written approval of Developer. Notwithstanding the foregoing, Developer acknowledges that in the event of a Cost Overrun (including one resulting from a time delay), the Developer is bound to its Cost Overrun obligations hereunder.

### 6.02 Guaranty.

(a) The Developer unconditionally and irrevocably agrees and becomes surety for the amount of any Cost Overrun, and agrees to pay any Cost Overrun on demand at such time as any portion thereof is legally required to be paid with respect to the Project. The Developer agrees to cause such full payment to be made whether or not any one or more of the following events has occurred: (i) any Person which is owed money in connection with its Work (a "Project Creditor") has made any demand on the Owner; (ii) a Project Creditor has taken any action of any nature against the Owner; (iii) a Project Creditor has pursued any rights which it has against any other Person who may be liable for the Cost Overrun; (iv) the Project Creditor holds or has resorted to any security for the Cost Overrun; or (v) the Project Creditor has invoked any other remedy or right it has available with respect to the Cost Overrun. The Developer further agrees to cause such full payment to be made to the Owner even if circumstances exist which otherwise constitute a legal or equitable discharge of the Developer as surety or guarantor. The Developer acknowledges and agrees that: (i) no Project Creditor shall have any recourse against the Owner or any of its property for payment of any Cost Overrun; (ii) the right of the Owner to enforce this Guaranty against the Developer shall in no manner be impaired or adversely affected thereby; and (iii) that the sole source of repayment of Cost Overruns shall be from the resources of the Developer.

(b) If any Cost Overrun shall become payable, the Owner shall have the right, at any time and from time to time to the fullest extent permitted by Law, in addition to all other rights and remedies available to it, without prior notice to the Developer, to set-off against and to appropriate and apply to such due and payable amounts any debt owing to, and any other funds held in any manner for the account of the Developer by the Owner and any amounts which may be owed by the Owner to the Developer under any arrangement or agreement, whether related to this Agreement or otherwise. Such right shall exist whether or not the Owner shall have given notice or made any demand hereunder, whether or not such debt owing to the Developer is or are matured or unmatured, and regardless of the existence or adequacy of any collateral, guarantee or any other security, right or remedy available to the Owner. The Developer hereby consents to

and confirms the foregoing arrangements, and confirms the Owner's rights of set-off against the Developer.

(c) The Developer agrees that, if at any time all or any part of any payment, from whomever received, theretofore applied by the Owner to any of the Cost Overruns is or must be rescinded or returned for any reason whatsoever including, without limitation, the insolvency, bankruptcy or reorganization of the Developer, such liability shall, for the purposes of this Guaranty, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by the Owner, and this Guaranty shall continue to be effective or be reinstated, as the case may be, as to such liabilities, all as though such application by the Owner had not been made.

(d) The Developer agrees that no failure or delay on the part of the Owner to exercise any of its rights, powers or privileges under this Guaranty shall be a waiver of such rights, powers or privileges or a waiver of any default, nor shall any single or partial exercise of any of the Owner's rights, powers or privileges preclude other or further exercise thereof or the exercise of any other right, power or privilege or be construed as a waiver of any default. The Developer further agrees that each written waiver shall extend only to the specific instance actually recited in such written waiver and shall not impair the rights of the Owner in any other respect.

(e) The Developer unconditionally agrees to pay all costs and expenses, including reasonable attorney's fees, incurred by the Owner in enforcing this Guaranty against the Developer.

### 6.03 Security.

As security for its Guaranty of all Cost Overruns, the Developer shall maintain (i) a \$5,000,000 letter of credit issued to the Owner by Fleet National Bank, in form and substance reasonably acceptable to Owner and which shall permit Owner to make draws thereunder upon presentment of a certification in form substantially similar to the form attached hereto as Exhibit I, with all blanks appropriately completed and (ii) a cost overrun insurance policy in the amount of \$10,000,000 (the "Security"). Any payments from the cost overrun insurance policy shall be applied first to costs of completing the Project and then to any other costs incurred by Owner and/or Developer. The Developer hereby bears the sole responsibility for any costs or expenses associated with the provision and maintenance of the Security.

6.04 Certain Costs. Notwithstanding anything contained in the foregoing sections of this Article VI, Owner and Developer hereby agree that the Project Budget includes approximately \$7,500,000 for construction of the riverfront park and for construction of certain portions of the infrastructure around the Ballpark. Owner has committed to Developer to use reasonable efforts to obtain additional sources of funds to pay the cost of such riverfront park and infrastructure and that, if Owner succeeds in obtaining such additional sources of funds, such funds will be applied by Owner to pay the cost of such riverfront park and infrastructure and such items shall not be deemed to be Cost Overruns, as defined herein. If the Owner is unable to obtain commitments for additional funds for construction of such riverfront park and infrastructure, then nothing contained in this Section 6.04 shall be construed in any manner to affect the obligations of Developer that are set forth above in this Article VI with respect to Cost Overruns.



## **ARTICLE VII** **INDEMNIFICATION**

7.01 Indemnification and Payment of Damages by Developer. Developer will indemnify, defend and hold harmless the Owner, the City of Pittsburgh and the County of Allegheny and each of their respective elected officials, appointed officials, board members, officers, employees, agents and attorneys (collectively, the "Owner Indemnified Persons") for, and will pay to the Owner Indemnified Persons the amount of any Damages, whether or not involving a third-party claim (arising, directly or indirectly, from or in connection with:

(i) any breach of any representation or warranty made by Developer in this Agreement or in any schedule or exhibit attached hereto or any other certificate or document delivered by the Developer to the Owner pursuant to this Agreement;

(ii) any breach by the Developer of any covenant or obligation of Developer in this Agreement;

(iii) any claim by any Person for Damages in connection with the violation by the Developer, HOK, Astorino, the Design and Construction Manager, or any agent, subcontractor or officer thereof of any Permit or Legal Requirements;

(iv) all amounts due and owing to Project Creditors, whether paid by the Owner or not; or

(v) otherwise arising in any manner out of, or related to the Project, including without limitation, challenges to funding or bidding procedures, construction, the Work, the use of public funds, and any other costs, expenses, claims, actions and damages of any kind related to the transactions contemplated by this Agreement (except as set forth in Section 7.05 hereof).

If Developer fails to make any payment of any sums payable by Developer to Owner Indemnified Persons on the date due by contract, which failure shall continue for thirty (30) days, then Developer shall pay, together with such payment, a late charge of five percent (5%) of the amount of such payment and such payment shall bear interest at a rate of interest equal to the greater of six percent (6%) above the rate announced from time to time by PNC Bank, National Association, as its then "prime rate", or the highest rate permitted by law, payable from the date such payment was due to the date of payment thereof.

### 7.02 Defense Of Indemnified Claims.

(a) Notice of Claims. Promptly after receipt by an Owner Indemnified Person of the notice of the commencement of a claim against it for which the Owner Indemnified Person would be entitled to receive indemnification under Section 7.01 (a "Proceeding"), the Owner Indemnified Person will give notice to the Developer of the commencement of such claim, but the failure to notify the Developer will not relieve the Developer of any liability that it may have to the Owner Indemnified Person. Developer shall promptly give written notice to Owner of any claim, including a claim for damages, against an Owner Indemnified Person.

(b) Assumption of Defense by Developer. If any Proceeding referred to in Section 7.01 is brought against an Owner Indemnified Person and it gives notice to the Developer of the commencement of such Proceeding, the Developer will, unless the claim involves taxes or a matter described in Section 7.05 hereof, be required to assume the defense of such Proceeding with counsel reasonably satisfactory to the Owner Indemnified Person (unless the Developer is also a party to such Proceeding and the Owner Indemnified Person



determines in good faith that joint representation would be inappropriate), and, after written notice from the Developer to the Owner and the Owner Indemnified Person that it has undertaken to assume the defense of such Proceeding (the "Assumption Notice"), the Developer will not, as long as it diligently conducts such defense, be liable to the Owner under this Article 7 for any fees of other counsel or any other expenses with respect to the defense of such Proceeding, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Proceeding, other than reasonable costs of investigation. After the Developer delivers its Assumption Notice (i) it will be conclusively established for purposes of this Agreement that the claims made in that Proceeding are within the scope of and subject to indemnification; (ii) no compromise or settlement of such claims may be effected by the Developer without the Owner Indemnified Person's consent unless (A) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any person and no effect on any other claims that may be made against an Owner Indemnified Person, and (B) the sole relief provided is monetary damages that are paid in full by the Developer; and (iii) the Owner Indemnified Persons will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to the Developer of the commencement of any Proceeding and the Developer does not, within ten days after the indemnified party's notice is given, deliver the Assumption Notice, the Developer will be bound by any determination made in such Proceeding or any compromise or settlement effected by the Owner Indemnified Person, including the payment of money damages.

(c) Owner Indemnified Person's Defense of Claims. Notwithstanding the foregoing, if the Owner Indemnified Person determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Owner Indemnified Person may, by notice to the Developer, assume the exclusive right to defend, compromise, or settle such Proceeding, but the Developer will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

(d) Jurisdiction. Developer hereby consents to the nonexclusive jurisdiction of any court in which a Proceeding is brought against an Owner Indemnified Person for purposes of any claim that the Owner may have under this Agreement with respect to such Proceeding or the matters alleged therein, and agree that process may be served on the Developer with respect to such a claim anywhere in the world.

7.03 Injunctive Relief. Developer acknowledges that the rights conveyed by this Agreement to the Owner are of a unique and special nature, and that any violation of this Agreement will result in immediate and irreparable harm to the Owner and any third party beneficiaries of this Agreement (including without limitation any Owner Indemnified Person), and that in the event of any actual or threatened breach or violation of any of the provisions of this Agreement, the Owner, and any third party beneficiaries of this Agreement, shall be entitled as a matter of right to an injunction or a decree of specific performance without bond from any equity court of competent jurisdiction. The Developer waives the right to assert the defense that such breach or violation can be compensated adequately in damages in an action at law.

7.04 Recourse to Security. The Security shall at all times be available to Owner to reimburse Owner for any Damages sustained.

7.05 Indemnification and Payment of Damages by Owner. To the extent permitted by Law and without causing Owner to waive its rights of sovereign immunity (it being understood that Owner does not hereby waive its rights of sovereign immunity, to the extent available to Owner), Owner will indemnify, defend and hold harmless the Developer and its officers, employees and agents (collectively, the "Developer Indemnified Persons") for, and will

pay to the Developer Indemnified Persons the amount of Damages arising, directly or indirectly, from or in connection with:

(i) any breach of any representation or warranty made by Owner in this Agreement or in any schedule or exhibit attached hereto or any other certificate or document delivered by Owner to the Developer pursuant to this Agreement; and

(ii) any breach by Owner of any covenant or obligation of Owner in this Agreement.

If Owner fails to make any payment of any sums payable by Owner to Developer Indemnified Persons on the date due by contract, which failure shall continue for thirty (30) days, then Owner shall pay, together with such payment, a late charge of five percent (5%) of the amount of such payment and such payment shall bear interest at a rate of interest equal to the greater of six percent (6%) above the rate announced from time to time by PNC Bank, National Association, as its then "prime rate", or the highest rate permitted by law, payable from the date such payment was due to the date of payment thereof.

7.06 Remedies Cumulative. All rights and remedies set forth in this Agreement are cumulative and in addition to the parties' rights and remedies at law or in equity. A party's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies or obligations. Neither party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such party. If a party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other party may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy.

## **ARTICLE VIII** **MISCELLANEOUS**

8.01 Notices. All notices, requests, demands, directions and other communications (collectively "notices") under the provisions of this Agreement shall be in writing unless otherwise expressly permitted hereunder and shall be sent by first-class or first-class express mail, or by fax with confirmation in writing mailed first-class, in all cases with postage or charges prepaid, and any such properly given notice shall be effective when received. All notices shall be sent to the applicable party at the address set forth above, or in accordance with the last unrevoked written direction from any party to the other party hereto.

8.02 Amendments; Entire Agreement. This Agreement may not be modified or amended except by a written agreement duly executed by the parties hereto. There are no oral agreements with respect to the subject matter of this Agreement.

8.03 No Third Party Rights. Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto, the City of Pittsburgh, the County of Allegheny, the Regional Asset District and the Urban Redevelopment Authority of Pittsburgh, any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto, and the public interest as represented by the Owner, the City of Pittsburgh, the County of Allegheny, the Regional Asset District and the Urban Redevelopment Authority of Pittsburgh.

8.04 Governing Law. This Agreement shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, notwithstanding its conflicts of law or choice of law provisions. Any claim or action hereunder shall, at the sole election of Owner, be litigated or resolved, only in the Court of Common Pleas of Allegheny County, Pennsylvania or the United States District Court for the Western District of Pennsylvania. Developer is not authorized to agree (on behalf of Owner) to arbitration of any dispute relating to the Project without the express specific authorization of Owner.

8.05 Successors and Assigns, Joint and Several. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns. Notwithstanding the foregoing, Developer shall not have the right to assign its rights or obligations, as agent for Owner hereunder, without the prior written approval of Owner.

8.06 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

8.07 Severability. The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part, such provision shall be ineffective to the extent of any such invalidity or enforceability thereof.

8.08 Designation of Representatives. The following persons are hereby designated as the current representatives (the "Representatives") of the parties:

Owner: Stephen G. Leeper, Executive Director

Developer: John Loyd

8.09 Contingencies. The obligations and duties of the parties are expressly subject to Legal Requirements, including any law, rule, decision, regulation or other provision which may be enacted or become effective on or after the date hereof. The obligations of Owner under this Agreement are further contingent upon the closing of the Regional Finance Plan as approved by Public Auditorium Authority of Pittsburgh and Allegheny County Resolution 2240, which is anticipated to occur on or about May 27, 1999.

8.10 No Personal Liability. No elected official, director, officer, employee, agent, attorney or other person affiliated with Owner, nor with the City of Pittsburgh, nor Allegheny County, shall be charged personally or held liable to Developer or any member of the Construction Team under any terms or provisions of this Agreement or because of any breach hereof, or because of their execution of this Agreement. No director, partner, officer, employee, agent, attorney or other person affiliated with Developer shall be charged personally or held liable to Owner, the City of Pittsburgh or Allegheny County under any terms or provisions of this Agreement or because of any breach hereof, or because of their execution of this Agreement.

8.11 Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall, prior to adjudication, be first submitted to mediation administered by a mediator mutually acceptable to Owner and Developer.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date first above written.

OWNER:

PUBLIC AUDITORIUM AUTHORITY OF  
PITTSBURGH AND ALLEGHENY  
COUNTY

By: \_\_\_\_\_

Title: \_\_\_\_\_

DEVELOPER:

PITTSBURGH ASSOCIATES,  
a Pennsylvania limited partnership

By: Pittsburgh Baseball, Inc.,  
its general partner

By:  \_\_\_\_\_


Title: Executive V.P.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date first above written.

OWNER:

PUBLIC AUDITORIUM AUTHORITY OF  
PITTSBURGH AND ALLEGHENY  
COUNTY

ATTEST:

  
ASSISTANT SECRETARY

By: 

Title: Executive Director

DEVELOPER:

PITTSBURGH ASSOCIATES,  
a Pennsylvania limited partnership

By: Pittsburgh Baseball, Inc.,  
its general partner

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**PROJECT BUDGET**

**CONSTRUCTION**

GENERAL CONDITIONS	8,572,569
DIRECT TRADE WORK:	153,217,279
ARCHITECT OF RECORD AND ENGINEERING SERVICES + REIMB.:	
ARCHITECT OF RECORD	5,761,220
MECHANICAL AND ELECTRICAL ENGINEER	1,063,000
STRUCTURAL ENGINEER	1,093,000
CIVIL ENGINEERING	200,643
FOOD SERVICE DESIGN	43,000
VERTICAL TRANSPORTATION ENGINEERING	42,700
AUDIO / VISUAL SYSTEMS ENGINEERING	96,000
CODE REVIEW	21,125
WIND / AIRFLOW / NOISE ANALYSIS	106,000
GEOTECHNICAL ENGINEERING	75,000
VOICE / DATA SYSTEMS ENGINEERING	174,130
FF&E PROCUREMENT	125,000
DESIGN CONSTRUCTION MANAGER CONTINGENCY	8,684,533
DESIGN CONSTRUCTION MANAGER FEE	7,659,758
PRECONSTRUCTION SERVICES	575,000
CITY OF PITTSBURGH B&O TAXES	1,151,761
BUILDING PERMITS	475,000
<b>SUBTOTAL CONSTRUCTION (GMP)</b>	<b>\$ 189,136,718</b>

**DEVELOPMENT COSTS**

DEVELOPER'S CONTINGENCY	6,743,888
PROJECT INSURANCE & SURETY PROGRAM	
OWNER'S CONTROLLED INSURANCE PROGRAM	2,688,000
OWNER DIRECTED SURETY PROGRAM	875,000
DEDUCTIBLE CONTINGENCY	1,850,000
TESTING AND INSPECTIONS PROGRAM	1,417,000
DESIGN ARCHITECT AND CONSULTANTS FEE + REIMB.:	
DESIGN ARCHITECT	5,100,500
STRUCTURAL DESIGN	720,000
MECHANICAL AND ELECTRICAL DESIGN	572,000
CIVIL ENGINEERING	261,410
VERTICAL TRANSPORTATION DESIGN	8,800
AUDIO / VISUAL SYSTEMS DESIGN	131,000
CODE REVIEW	25,256
WIND / AIRFLOW / NOISE ANALYSIS	16,500
GRAPHICS AND ADVERTISING	109,315
PEER REVIEW SERVICES	250,000
DEVELOPER'S OVERHEAD	
PROJECT MANAGEMENT STAFF	2,127,340
PROJECT OFFICE, SUPPLIES, PRINTING, TRAVEL	408,327
MISCELLANEOUS PROFESSIONAL SERVICE CONSULTANTS:	
SURVEY	32,000
LEGAL	877,341
LOBBYIST	62,528
TRAFFIC AND PARKING STUDY	125,740
TRANSPORTATION MANAGEMENT PLAN	45,000
GEOTECHNICAL PRELIMINARY REPORT & SITE REVIEW	66,751
PROJECT MANAGEMENT CONSULTANT	425,000
ESTIMATING & CONSTRUCTABILITY	464,489
FOOD SERVICE DESIGN	117,290
ACCESSIBILITY REVIEW	22,453
MBE/WBE PROGRAM	127,388
PROJECT ACCOUNTING	286,000
TURF SELECTION & INSPECTION	70,000
MISC. UNASSIGNED SERVICES	524,865
MODEL SUITE	317,398
LOT 4 TRAILER AND PARKING AREA	180,000
<b>SUBTOTAL DEVELOPMENT COSTS</b>	<b>\$ 27,048,579</b>

<b>TOTAL: PROJECT BUDGET</b>	<b>\$ 216,185,297</b>
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Exhibit B

Consultants and Professionals

Firm:	Scope:
PNC Park Project Office 100 Stanwix Street Pittsburgh, PA 15222	Developers project management staff and office overhead.
Reed, Smith, Shaw & McClay 435 Sixth Avenue Pittsburgh, PA 15219	Developer's general legal counsel
Project Management Consultants 3900 Key Center 127 Public Square Cleveland, OH 44114	Project delivery method, contract negotiations, coordination and solicitation of insurance program.
HOK Sport 323 West 8 <sup>th</sup> Street, Suite 700 Kansas City, MO 64105	Design architect; site planning, and programming. "Bridging consultant" during construction for conformance to design intent.
Morse Diesel International 1111 Superior Avenue, Suite 1111 Cleveland, OH 44114	Preconstruction estimating services and constructability review.
Contract Management Services 2604 Middletown Road Pittsburgh, PA 15205	Minority and Women Business Enterprise program coordinator and Compliance Officer.
Dick Corporation 1900 Route 51 Large, PA 15025	Joint venture partners of Design/Construction Management team, provide preconstruction services.
Barton Malow 323 W. Camden Street Suite 600 Baltimore, MD 21201	Joint venture partners of Design/Construction Management team, provide preconstruction services.
L.D. Astorino Companies 227 Fort Pitt Boulevard Pittsburgh, PA 15222	Architect of record and provide preconstruction services as subconsultants to Design/Construction Manager.
Thornton-Tomasetti, Inc. 641 Avenue of the Americas Now York, NY 10011	Structural engineering services. Subconsultants to HOK and L.D. Astorino.
ME Engineers 4251 Kipling Street, Suite 400 Wheat Ridge, CO 80033	Mechanical and electrical engineering services. Subconsultants to HOK and L.D. Astorino.
Whrightson, Johnson, Haddon & Willia 13714 Gamma Road, Suite 110 Dallas, TX 75244	Low voltage systems; audio-video, broadcasting, scoreboard systems engineering services. Subconsultants to HOK and L.D. Astorino.

Firm:	Scope:
GAI Consultants, Inc. 570 Beatty Road Monroeville, PA 15146	Site civil engineering, hydrologic engineering, Subconsultants to HOK and L.D. Astorino.
Lerch Bates, North America, Inc. 8089 South Lincoln, Suite 300 Littleton, CO 80122	Vertical circulation design services. Subconsultants to HOK and L.D. Astorino.
Code Consultants Inc. 760 Office Parkway St. Louis, MO 63141	Building code review services. Subconsultants to HOK and L.D. Astorino.
Accessibility Development Associates, Inc. Three Gateway Center 5 <sup>th</sup> Floor Pittsburgh, PA 15222	Disabled access review and outreach services.
William Caruso & Assoc. Inc. Panorama Point 9200 East Mineral Avenue, Suite 100 Englewood, CO 80122	Food service and retail concession design services. Subconsultants to Developer and L.D. Astorino.
Rowan Williams Davies & Irwin, Inc. 650 Woodlawn Road West Guelph Ontario, Canada N1K 1B8	Wind tunnel and microclimate studies. Subconsultants to HOK and L.D. Astorino.
Walt Heintzelman 1525 Vallimont Street Pittsburgh, PA 15234	Traffic and parking demand analysis.
To be determined	Transportation management plan.
Klett Lieber Rooney & Schorling One Oxford Center, 40 <sup>th</sup> Floor Pittsburgh, PA 15219	Project lobbyist.
Douglas-Gallagher 1420 K Street, NW Suite 300 Washington, DC 20005	Graphic advertising and signage design. Joint venture with Kerestes Martin Associates. Subconsultants to HOK and L.D. Astorino.
PrimeNet LLC 2340 Monumental Avenue Baltimore, MD 21227	Communication systems design services. Subconsultants to Dick/Barton-Malow
Geo-Mechanics 800 Munir Road Elizabeth, PA 15037	Site geotechnical-engineering services.
J&H Marsh & McLennan, Inc. 6 PPG Place, Suite 300 Pittsburgh, PA 15222	Insurance and surety brokers for Owner Controlled Insurance Program.
Aramark Three Rivers Stadium 100 Stadium Circle Pittsburgh, PA 15212	Concession area design and coordination. Concession operators.



Firm:	Scope:
The Levy Restaurants 980 North Michigan Avenue Suite 400 Chicago, IL 60611	Fine dining and club area design. Fine dining and club area operators.
To be determined	Furnishings, fixtures and equipment purchasing. Subconsultants to Dick/Barton-Malow.
Ed Mangan 4981 Glenwhite Drive Duluth, GA 30096	Turf specification services.
H. J. Russell Company 504 Fair Street SW Atlanta, GA 30313	Project accounting and cost management services.

Exhibit D

Restrictions On Self-Performance

The Design and Construction Manager ("DCM") or its partners or affiliates (any such party submitting a bid being called a "DCM Bidder") may, on the restricted basis described in this provision, self-perform certain portions of the Project (the "Self-Performed Work") as follows:

1. The DCM Bidder may submit on the same terms and at the same time with all other bidders, a sealed bid for the Self-Performed Work in accordance with the established and prevailing bidding procedures established for the Project.

2. To the extent permitted by law, a DCM Bidder may bid on Self-Performed Work only as to the following "components" of the Project: earthwork, site utilities, finish site work, site improvements, concrete foundations and concrete superstructure. The foregoing list may be expanded only with Owner's and Developer's prior written approval. With respect to any work for which a DCM Bidder has the option to self perform, the DCM shall submit its proposed packaging for the bidding of such work to the Developer and Owner for their prior written approval.

3. If less than two (2) competitive bids from responsible bidders (in addition to the bid from the DCM Bidder) are submitted for the Self-Performed Work, or if the amount of the bid submitted by the DCM Bidder exceeds the amount of the cost calculation for such component of the Project as adjusted to the day prior to bidding, which cost calculation shall have been independently verified by Morse Diesel, Developer shall have the right, but not the obligation, to disqualify the DCM Bidder from performance of the Self-Performed Work (even if it is the low bidder), and to then either cause the Self-Performed Work to be re-bid, or to recommend that the bid be awarded to the low responsible bidder other than the DCM Bidder. Such an award shall not result in the adjustment of the Project GMP. In addition to the foregoing, Owner shall have the unilateral right (without the concurrence of Developer) to disqualify the DCM Bidder from performance of the Self-Performed Work (even if it is the low bidder) and to then either cause the Self-Performed Work to be rebid or to award the contract to the low responsible bidder other than the DCM Bidder, at the exclusive election of Owner if, with respect to all components identified in Paragraph 2 above other than concrete superstructure, (i) there are less than two (2) other responsible bidders with respect to such Self-Performed Work and (ii) the amount of the bid submitted by the DCM Bidder is the lowest responsible bid, but is more than ten percent (10%) greater than the independently verified cost calculation for such Self-Performed Work. With respect to concrete superstructure, Owner shall have the unilateral right (without the concurrence of Developer) to disqualify the DCM Bidder from performance of the Self-Performed Work (even if it is the low bidder) and to then either cause the Self-Performed Work to be rebid to award the contract to the low responsible bidder other than the DCM bidder, at the exclusive election of Owner if (i) there are less than two (2) other responsible bidders with respect to such Self-Performed Work or (ii) the amount of the bid submitted by the DCM Bidder is the lowest responsible bid, but is more than ten percent (10%) greater than the independently verified cost calculation for such Self-Performed Work. Prior to Owner's exercise of its right to cause the Self-Performed Work to rebid or to award the contract to the low responsible bidder other than the DCM Bidder, the DCM Bidder shall have the opportunity to demonstrate to Owner that the independently verified cost calculation was erroneous.

4. For purposes hereof, Self-Performed Work shall mean Work in which more than 50% of the labor component is performed directly by the DCM's own forces or the forces of

any affiliate of the DCM (including the joint venture partners of the DCM), and not through trade contracts, subcontracts or purchase orders with third party contractors or suppliers.

5. The DCM contract shall specifically provide that in the event a DCM Bidder elects to submit a bid for Self-Performed Work, the DCM shall not in any way participate in the predetermination of responsibility review or tabulation or award of bids, or the recommendation for award of the contract for Self-Performed Work. In addition, HOK and/or Morse Diesel shall participate in the predetermination of responsibility review, the tabulation and award of bids and the recommendation for award of the contract for Self-Performed Work and, during the bidding process, all questions from potential bidders shall be directed to HOK or Morse Diesel (at Developer's election) rather than to the DCM and shall be answered in writing by addendum to the bid package. The functions performed by HOK and/or Morse Diesel hereunder shall be paid for as part of the Project Budget. The DCM shall cause there to be, and shall enforce, a strict separation between personnel involved in the bidding for any Self-Performed Work and the performance by the DCM of its obligations under the DCM Contract. No person involved in the performance by the DCM of its obligations under the DCM Contract shall participate in the bidding for, or performance of, Self-Performed Work, or vice versa.

6. If the DCM Bidder is determined to be the low responsible bidder for Self-Performed Work and is awarded the contract pursuant to that bid, the amount of the contingency line item (to the extent then available) shown in the Project Budget available to the DCM in conjunction with the Self-Performed Work shall be limited to an amount equal to the percentage thereof that the cost of the Self-Performed Work bears to the Cost of the Work (as defined in the DCM Contract) and such portion of the contingency may only be used to pay Cost of the Work approved by Owner and Developer. Further, the DCM shall not be permitted to use the "General Conditions" budget to support the Self-Performed Work or to use "General Conditions" on terms different from the terms on which they are made available to all other bidders. The cost of Business Privilege Tax applicable to Self-Performed Work shall be accounted for in the bid for Self-Performed Work, and not in the Project's General Conditions.

7. All bidders shall be informed in the advertisement and specifications of the DCM's right to submit a bid to self-perform on the designated components of the Project for which self-performance is permitted.

8. In event a DCM Bidder is awarded a contract for Self-Performed Work, it is understood that the construction management services as further described in the DCM Contract shall remain the responsibility of the DCM; provided, however, that all such construction management services shall be subject to the independent review, revision and final approval of the Owner or its designee, and the cost thereof shall be paid as a part of the Project Budget.

PNC PARK PROJECT  
PERMITS AND APPROVALS

PERMIT/APPROVAL	JURISDICTIONAL AGENCY	PURPOSE	RESPONSIBILITY	COMMENT
<b>FEDERAL</b>				
Section 404 (10) permit	US Army Corps of Engineers	Indicate disturbance of wetlands. Identify construction activities in navigable waterways.	OWNER	Joint 404/105 Permit
Section 7 Consultation	US Fish and Wildlife Service	Endangered and threatened species clearance	OWNER	
Submerged Lands License Agreement	US Army Corps of Engineers	Use of submerged lands for fill and dredging	OWNER	Joint 404/105 Permit
<b>STATE</b>				
Section 105 Permit	PA Department of Environmental Protection	Indicate disturbance of wetlands. Identify stream encroachment activities.	OWNER	Joint 404/105 Permit
Act 537 Base Plan	PA Department of Environmental Protection	Coordinates with county Sewage Facility Planning Module	OWNER	Joint 404/105 Permit
Sewage Facilities Planning Module	PA Department of Environmental Protection	Construction of sanitary sewers	OWNER	
Endangered/Threatened Species Clearance	PA Department of Environmental Protection	Assessment of impacts to endangered or threatened species	OWNER	
Endangered/Threatened Species Clearance	PA Game Commission	Assessment of impacts to endangered or threatened species	OWNER	
Endangered/Threatened Species Clearance	PA Fish and Boat Commission	Assessment of impacts to endangered or threatened species	OWNER	
Section 106 Permit	PA Historical and Museum Commission	Cultural resources consultation and clearance	OWNER	
Submerged Lands License Agreement	PA Department of Environmental Protection	Use of submerged lands for fill and dredging	OWNER	Joint 404/105 Permit
Submerged Lands License Agreement	PA Bureau of Dams, Waterways and Wetlands	Use of submerged lands for fill and dredging	OWNER	Joint 404/105 Permit
General NPDES Permit for Construction Activities	PA Department of Environmental Protection	Demolition Phase activities	OWNER	
General NPDES Permit for Construction Activities	PA Department of Environmental Protection	Construction Phase activities	DEVELOPER	
General NPDES Permit for Construction Activities	PA Department of Conservation and Natural Resources	Demolition Phase activities	OWNER	
General NPDES Permit for Construction Activities	PA Department of Conservation and Natural Resources	Construction Phase activities	DEVELOPER	
<b>ALLEGHENY COUNTY</b>				
General NPDES Permit for Construction Activities	Allegheny County Conservation District	Demolition Phase activities	OWNER	
General NPDES Permit for Construction Activities	Allegheny County Conservation District	Construction Phase activities	DEVELOPER	
Erosion and Sedimentation Control Plan	Allegheny County Conservation District	Demolition Phase activities	OWNER	
Erosion and Sedimentation Control Plan	Allegheny County Conservation District	Construction Phase activities	DEVELOPER	
Bureau of Dams and Waterways Management, General Permit 4	Allegheny County Conservation District	New stormwater outfalls	DEVELOPER	
<b>CITY OF PITTSBURGH</b>				
Zoning Clearance	Department of City Planning	Zoning approval for ballpark use and street vacation and dedication.	OWNER	
Project Development Plan	Department of City Planning	Design, traffic, parking and construction management approval	DEVELOPER	
Riverfront Planning Approval	Department of City Planning: Riverfront Planning	Design and construction of riverfront improvements	DEVELOPER	
Sewage Facilities Planning Module	Water and Sewer Authority	Construction of sanitary sewers and domestic water supply.	OWNER	
Land Operations Permit	Bureau of Building Inspections	Site development permit	NOT REQUIRED	
Demolition Permit (s)	Bureau of Building Inspections	Permit for demolition of existing structures	OWNER	
Building Permit(s)	Bureau of Building Inspections	Permits for construction	DEVELOPER	
Street Closure Permit (?)	Department of Engineering and Construction (?)	Construction phase sidewalk and lane closures	DEVELOPER	Public Works (?)

EXHIBIT E

## Exhibit F

### Permitted Encumbrances

1. Matters shown on Subdivision Plan consolidating the lots comprising the Site, to be recorded.
2. Ten foot sewer line crossing the Site, as evidenced by instruments of record, subject to restrictions contained in the foregoing Interim Agency Agreement.
3. Five foot sewer line crossing the Site, as evidenced by instruments of record, subject to restrictions contained in the foregoing Interim Agency Agreement.
4. Easements and rights of way for water, sewer, electric, gas and communication facilities and services, necessary to the construction and operation of the Ballpark, subject to joint approval of Developer and Owner.
5. Rights of the City of Pittsburgh River Rescue Unit pursuant to a Sublease, to be executed.
6. Terms and conditions of Lease and Related Agreements, to be executed.
7. Rights of the public in streets and sidewalks adjoining the Site to the extent such streets and sidewalks remain either during or after construction of the Ballpark.
8. Applicable zoning, subdivision and land use requirements.
9. Rights of the public, and public authorities, relating to use of the Allegheny River, adjoining the Site, subject to rights granted to Developer pursuant to the Definitive Documents.

Exhibit G

Preliminary Master Project Schedule