

FIRST AMENDMENT TO NEW ARENA DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO NEW ARENA DEVELOPMENT AGREEMENT (this "**First Amendment**") is made and entered into as of the 14th day of November 2008, by and between the **SPORTS & EXHIBITION AUTHORITY OF PITTSBURGH AND ALLEGHENY COUNTY**, a body corporate and politic, organized and existing pursuant to the Sports and Exhibition Authority Act (Act of July 28, 1953, P.L. 723, No. 230, § 2501-A, added October 30, 2000, P.L. 616, No. 85, § 6, 16 Purdon's Statutes 5501-A, et seq.) ("**Owner**") and **PITTSBURGH ARENA DEVELOPMENT LP**, a Pennsylvania limited partnership ("**Developer**").

W I T N E S S E T H:

WHEREAS, Owner and Developer are parties to the New Arena Development Agreement (the "**Development Agreement**") executed May 20, 2008, effective as of September 30, 2007, with respect to the construction and development of a new multi-purpose arena in the City of Pittsburgh, all as set forth in the Development Agreement and the Related Agreements.

WHEREAS, the parties have worked diligently and, after significant review and discussion, the Construction Manager has provided to the Developer a guaranteed maximum price ("**GMP**") for construction of the New Arena and completion of the New Arena Work of \$234,283,652, pursuant to that certain letter dated November 13, 2008 from Developer to the Owner and the Commonwealth (the "**Recommendation Letter**").

WHEREAS, in accordance with Section 2.4(d) of the Development Agreement and as recommended in the Recommendation Letter, the Developer has delivered to the Owner and the Commonwealth a revised Proposed Project Budget that includes the GMP, and the Owner and the Commonwealth have approved the recommendations contained in that letter.

WHEREAS, despite the best efforts of the parties, it has not been possible to establish a GMP in an amount that will allow development and construction of the Project to be completed within the Target Project Cost and in accordance with the Proposed Project Budget attached to the Development Agreement as Exhibit 1.

WHEREAS, the Owner has agreed to enter into this First Amendment in reliance upon the approval of the Commonwealth and in further reliance on the undertaking of Developer, Operator and Lemieux Group LP, guarantor of the obligations of Developer and Operator, to surrender the right to terminate the Lease and Development Agreement, as set forth in this First Amendment.

WHEREAS, Owner and Developer desire to amend the Development Agreement in order to accept the GMP and to establish the Final Project Budget in accordance with the Recommendation Letter, Developer has committed herein to pay the Developer's Budget Excess Share (as defined herein), and the parties have agreed to further amend the

Development Agreement as otherwise as provided in this First Amendment, all on such terms and conditions as are hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, intending to be legally bound hereby, Owner and Developer hereby covenant and agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated into this First Amendment by reference as if set forth in full.
2. Use of Capitalized Terms. Capitalized terms used in this First Amendment, unless otherwise defined in this document, shall have the meanings ascribed in the Development Agreement.
3. Approval of Final Project Budget. A revised Proposed Project Budget of \$321,000,000 has been submitted by the Developer and approved by the Commonwealth, and is attached to this First Amendment as Exhibit A. Commonwealth Oversight Expenses are not included among the Project Costs, but rather are the responsibility of the Owner. Predevelopment expenses incurred by the Developer are limited to the amounts set forth in Section 2.4(c)(i)(A) of the Development Agreement, together with interest earned thereon as provided in Section 2.4(c)(i)(A) of the Development Agreement, and will be paid by Owner to Developer with the Application for Payment for the period ending November 30, 2008 and submitted by Developer in accordance with the procedures established in the Development Agreement for disbursement of Project Funds. Owner and Developer further agree that the GMP is hereby established at \$234,283,652. The recommendation of the Developer set forth in the Recommendation Letter is accepted, the GMP and the Proposed Project Budget are hereby approved by the Owner and shall be the GMP and the Final Project Budget for all purposes under the Development Agreement. Exhibit A to this First Amendment therefore replaces Exhibit 1 to the Development Agreement.
4. Funding of Project Costs. To the extent that the procedures set forth in this Section 4 are not consistent with the procedures in Sections 2.4(d)(ii) and (iv) of the Development Agreement, the procedures set forth herein shall be applicable.

(a) The excess of the Final Project Budget over the Target Project Cost (the “**Budget Excess**”) shall mean the difference between the Target Project Cost and \$321,000,000 for all purposes under the Development Agreement. The Budget Excess shall be paid in accordance with the procedures set forth in Section 2.4(d)(ii) of the Development Agreement, subject to the following provisos:

- (i) Developer shall be responsible for a portion of the Budget Excess equal to \$15,500,000 (the “**Developer’s Budget Excess Share**”);

(ii) The Commonwealth shall be responsible for a portion of the Budget Excess equal to \$10,000,000 (the “**Commonwealth’s Budget Excess Share**”); and

(iii) Owner shall be responsible for a portion of the Budget Excess equal to \$5,500,000 (the “**Owner’s Budget Excess Share**”).

(b) In accordance with Section 2.4(d)(ii) of the Development Agreement, the Commonwealth shall be responsible to fund the Commonwealth’s Budget Excess Share no later than March 31, 2010. The Commonwealth has reaffirmed that obligation in a separate letter to Owner and Developer delivered contemporaneously with the execution and delivery of this First Amendment.

(c) Owner shall (i) obtain a binding written commitment from the Urban Redevelopment Authority of Pittsburgh (“**URA**”) to make a loan to Owner equal to 50% of the Owner’s Budget Excess Share no later than June 30, 2009, (ii) obtain a binding written commitment from the Redevelopment Authority of Allegheny County (“**RAAC**”) to make a loan to Owner equal to 50% of the Owner’s Budget Excess Share no later than June 30, 2009 and (iii) cause URA and RAAC to make available to Owner the funds required to fund the Owner’s Budget Excess Share by no later than March 31, 2010.

(d) In accordance with Section 2.4(d)(ii) of the Development Agreement, Developer hereby elects to pay the Developer’s Budget Excess Share in the form of increased Rent payments under the Lease. Developer and Owner will work together in good faith to develop a mutually acceptable financing plan to fund the Developer’s Budget Excess Share (the “**Budget Excess Financing**”) utilizing the lease/sublease bond financing arrangement utilized by the Owner and the Commonwealth with respect to the financing that provided the Bond Proceeds and in accordance with Section 10(a) of the Agreement of Sublease between the Commonwealth and the Owner dated Sept 15, 2007, as the same may be amended, or another financial mechanism. The structure of the Budget Excess Financing must be acceptable to Developer, Owner and the Commonwealth no later than June 30, 2009 (unless the parties mutually agree on an alternate date). If the structure of the Budget Excess Financing is not agreed upon by the Owner, Developer and Commonwealth by June 30, 2009 (or such alternate date as is mutually agreed upon by the parties), the Developer’s election to pay the Developer’s Budget Excess Share in the form of increased Rent may be revoked by Developer in writing no later than August 31, 2009. If such election is not revoked by Developer on or before August 31, 2009 as provided in the immediately preceding sentence, Developer shall be deemed to have agreed to the structure of the Budget Excess Financing as presented to Developer as of June 30, 2009 (or such alternate date as is mutually agreed upon by the parties) and Developer shall be

bound by the terms of the Budget Excess Financing when implemented. The Budget Excess Financing must be closed no later than March 31, 2010. Notwithstanding the foregoing, the Developer's election to pay the Developer's Budget Excess Share in the form of increased Rent may be revoked by Developer in writing at any time prior to the closing of the Budget Excess Financing. If Developer's election to pay Developer's Budget Share in the form of increased Rent is revoked at any time, (1) Developer will immediately reimburse Owner for actual, reasonable and customary out of pocket costs that were pre-approved by Owner and Developer and were incurred by Owner in connection with structuring the Budget Excess Financing, and (2) Developer shall pay the Developer's Budget Excess Share to Owner in a lump sum no later than March 31, 2010.

(e) If the parties agree on the terms of the Budget Excess Financing as provided in subsection (d) above, simultaneously with the closing of the Budget Excess Financing, Owner and the Operator will enter into an addendum to the Lease, which will set forth the increased Rent payments under the Lease necessary to support the Budget Excess Financing.

(f) Nothing set forth in this First Amendment shall affect the rights or obligations of the parties set forth in Section 2.7 of the Development Agreement.

(g) Nothing set forth in this First Amendment shall affect the rights and remedies of Owner upon the occurrence of an Event of Default or of Developer upon the occurrence of an Owner Default, as provided in Article 8 of the Development Agreement.

5. Allocation of Cost Savings. Any cost savings which exist following completion of the Project will be allocated as follows:

(a) If Project Costs are less than the amount of the Final Project Budget, but more than \$310,000,000, then any savings between \$310,000,000 and the amount of the Final Project Budget shall be returned one-half (1/2) to the Owner, and one-half (1/2) to the Developer; any such savings due to the Developer shall be returned, at the Developer's option, pursuant to one of the methods set forth in Section 2.4(d)(iii) of the Development Agreement.

(b) If Project Costs are more than the Target Project Cost (\$290,000,000), but less than \$310,000,000, then any such savings shall be allocated in accordance with the procedure set forth in clause (a) above for the first \$11,000,000 of savings and, thereafter, pursuant to the terms set forth in Section 2.4(d)(iii) of the Development Agreement.

(c) If Project Costs are less than the Target Project Cost (\$290,000,000), then any such savings shall be allocated in accordance with

the procedure set forth in clause (b) above for the first \$21,000,000 of savings and, thereafter, pursuant to the terms set forth in Section 2.4(b) of the Development Agreement.

Nothing set forth in this First Amendment shall affect the Developer's or the Operator's rights with respect to any Developer's Savings Share set forth in Section 2.4(d)(iii) of the Development Agreement.

6. Relinquishment of Right to Terminate Development Agreement. As of the date hereof, the right of the Developer to terminate the Development Agreement and Related Agreements as set forth in Section 2.4(d)(iv) of the Development Agreement, and the right of the Operator to terminate the Lease and Related Agreements under Section 17.24(a) of the Lease, are hereby surrendered and are no longer of any force and effect.

7. Insurance Matters. The Final Project Budget includes predicted loss exposure for the Workers Compensation and General Liability Insurance Policies in an amount of \$2,675,771. The Common Policy Agreement within the Owner Controlled Insurance Program indicates that the Developer as first named insured will be the payee for any return premiums. To the extent that the actual costs of construction are less than the Final Project Budget, then any excess premiums to be returned will be deemed to be savings realized against the Final Project Budget and shall be returned to the Commonwealth, the Owner and the Developer, as applicable, in accordance with Section 5 of this First Amendment and Section 2.4(b) of the Development Agreement. The Developer will cooperate with Owner to develop an Insurance Program Agreement with its insurer containing terms and conditions relating to return of premiums, including notification, which are reasonably acceptable to the Owner and the Commonwealth.

8. Amendment of Section 10.16. Section 10.16 of the Development Agreement, captioned Third Party Beneficiaries, is hereby amended by adding the following sentence:

Notwithstanding the foregoing, the Construction Manager is expressly deemed to be a third-party beneficiary of the obligations of the Developer under this Agreement, and the Lemieux Group guaranty of such obligations, specifically and exclusively with respect to Developer's indemnification obligation set forth in Section 9.4.2 of the CM Agreement, as amended by the GMP Amendment.

9. Amendment of Section 2.1(c). The second sentence of Section 2.1(c) of the Development Agreement, captioned Green Building Principles, is deleted and is replaced with the following text:

The Developer will direct the Architect, in consultation with Developer, Owner and such consultants as Owner may designate, to examine each LEED credit utilizing the appropriate Green Building Rating System Project Checklist as a template for achieving green building goals, identifying potential LEED points,

examining strategies for implementation, and determining the LEED points to be targeted, to ensure that the Project achieves LEED Certification as contemplated in the Final Project Budget, and further utilizing commercially reasonable best efforts under the circumstances to achieve not less than a LEED Silver Certification for the Project, utilizing such Project Funds as are specified therefor in the Final Project Budget; provided, however, that Developer shall not be required to utilize any other Project Funds to achieve LEED Silver Certification for the Project other than (a) Project Funds that are already allocated to achieve such certification in the GMP and (b) Developer contingency up to \$100,000, or such greater amount as may be agreed upon by Owner and Developer to be necessary to achieve LEED Silver Certification for the Project.

10. Ratification of Development Agreement. Except as specifically modified by this First Amendment, the Development Agreement remains in full force and effect. All terms, covenants and conditions of the Development Agreement, shall continue to be valid, effective and in force, and are hereby ratified and affirmed.

11. Entire Agreement. The Development Agreement, as amended hereby, is the entire agreement of the parties with respect to the subject matter thereof; there are no verbal representations, warranties and understandings, stipulations, agreements or promises pertaining to the Development Agreement not incorporated in writing therein or in this First Amendment except to the extent that this First Amendment specifically so states.

12. No Oral Modification. The Development Agreement, as amended by this First Amendment may not be altered, waived, amended, terminated or extended except by an instrument in writing signed by Owner and Developer.

13. Successors and Assigns. All rights, remedies, liabilities, covenants, conditions and agreements herein imposed upon either of the parties or imposed upon either of the parties pursuant to the provisions of the Development Agreement shall inure to and be binding upon the successors and assigns of Owner and Developer.

14. Counterparts. This First Amendment may be executed in counterparts, both of which shall constitute one and the same instrument.

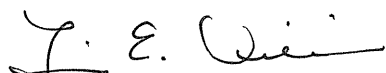
15. Consents. The consent of Lemieux Group LP, as guarantor of the obligations of Developer under the Development Agreement, and of Pittsburgh Arena Operating LP as Operator under the Lease, are attached to this First Amendment.

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[Signature page to First Amendment to Development Agreement]

EXECUTED AND DELIVERED, intending to be legally bound hereby, as of the date set forth above.


ATTEST/WITNESS:



DEVELOPER:

**PITTSBURGH ARENA DEVELOPMENT
LP**, a Pennsylvania limited partnership

By: **Pittsburgh Arena Development LLC**,
its general partner

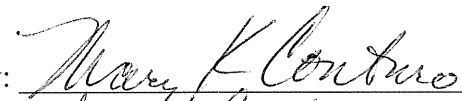
By: 
Name: *Kenneth Sawyer*
Title: *CEO*

OWNER:

**SPORTS & EXHIBITION AUTHORITY OF
PITTSBURGH AND ALLEGHENY
COUNTY**, a body corporate and politic

ATTEST/WITNESS:



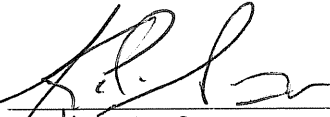
By: 
Name: *Mary K Conturo*
Title: *Executive Director*

JOINDER OF LEMIEUX GROUP:

Lemieux Group LP joins into this First Amendment for the purposes of confirming the undertakings of Developer set forth herein, including without limitation surrender of rights of Operator and Developer set forth in Section 6 hereof, and of re-affirming its guaranty of Developer's obligations set forth the Development Agreement.

LEMIEUX GROUP LP

By: **Team Lemieux LLC**, its sole general partner


By: 
Name: Kenneth Sawyer
Title: CEO

JOINDER OF OPERATOR:

Pittsburgh Arena Operating LP, as Operator under the Lease, joins into this First Amendment for the purposes of confirming the undertakings of Developer set forth herein to the extent that they pertain to the Lease, including without limitation surrender of its right to terminate the Lease as set forth in Section 6 hereof.

PITTSBURGH ARENA OPERATING LP

By: **Pittsburgh Arena Operating LLC**, its general partner

By: 
Name: Kenneth Sawyer
Title: CEO

**Pittsburgh Arena Project
Final Approved Budget**

PRE-DEVELOPMENT EXPENSES		
	SUBTOTAL	\$ 6,000,000
ARCHITECTURAL AND DESIGN SERVICES		
	SUBTOTAL	\$ 18,109,990
PERMITS, INSURANCE AND CONTRACT ADMINISTRATION		
	SUBTOTAL	\$ 12,232,899
PROGRAM MANAGEMENT AND OVERSIGHT		
	Program Management Fees and Expenses	\$ 5,350,000
	SEA Project Oversight Fees and Expenses	2,500,000
	SUBTOTAL	\$ 7,850,000
CONSTRUCTION COSTS		
	Hard Construction Cost in GMP (incl. CM Fees and Expenses)	\$ 234,283,652
	Approved Alternates	1,518,056
	Approved Value Engineering	(1,194,597)
	Preconstruction Fees and Expenses	800,000
	SUBTOTAL	\$ 235,407,111
SYSTEMS, FURNITURE, FIXTURES & EQUIPMENT		
	SUBTOTAL	\$ 31,600,000
CONTINGENCY		
	Developer Contingency	\$ 9,800,000
	SUBTOTAL	\$ 9,800,000
TOTAL PROJECT BUDGET		\$ 321,000,000