

FINANCING, DEVELOPMENT AND OPERATING AGREEMENT

BETWEEN

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

AND

PSSI STADIUM CORP.

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FINANCING, DEVELOPMENT AND OPERATING AGREEMENT

This **FINANCING, DEVELOPMENT AND OPERATING AGREEMENT** (this "**Agreement**") is made this 20th day of June, 2000, effective as of June 1, 1999 between the **SPORTS & EXHIBITION 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 "**Authority**"), and **PSSI STADIUM CORP.**, a Pennsylvania corporation (the "**Developer**").

BACKGROUND

A. The Developer is an affiliate of Pittsburgh Steelers Sports, Inc., a Pennsylvania corporation, a professional football franchise ("**PSSI**") and member of the National Football League (the "**NFL**").

B. The Authority, acting in its governmental capacity, has determined that the financing, development, construction and operation of the Stadium and the performance of this Agreement for the financing, development, construction and operation of the Stadium, are in the best interests of the Authority and will serve a paramount public purpose. Among other things, such financing, development, 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 (a) the Developer is entering into a Lease with the Authority (the "**Lease**") and the Developer is entering into a sublease with PSSI providing for PSSI to play all of its home games in the Stadium for a term of at least 29.5 years, and (b) the Developer and the Authority are entering into certain Related Agreements, which are defined herein.

D. Simultaneously with the execution of this Agreement, PSSI shall execute a Guaranty Agreement pursuant to which PSSI shall guaranty all of the Developer's obligations, duties and liabilities under the Lease and the Related Agreements.

E. This Agreement is executed in conjunction with the Related Agreements to provide for the financing, development, construction and operation of the Stadium prior to 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 Authority and the Developer covenant and agree as follows:

AGREEMENT

ARTICLE 1. DEFINITIONS

1.1 DEFINITIONS.

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

"Affiliate" of a specified person or entity means 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, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity.

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

"Applicable Laws" shall mean any applicable law (including, without limitation, any Environmental Law), enactment, statute, code, ordinance, administrative order, charter, tariff, resolution, order, rule, regulation, guideline, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any Governmental Entity, enacted, adopted, amended, promulgated, entered, or issued, whether now or in the future. Notwithstanding the foregoing, "Applicable Laws" and "applicable laws" shall expressly include, without limitation, all applicable public bidding, employment, zoning and land use requirements and regulations.

"Architect's Agreement" shall mean that certain Architect's Agreement dated as of July 1, 1999 among the Developer as Agent for the Authority, and HOK Architects, Inc.

"Architect's Consent" shall have the meaning set forth in **Section 3.2.2** hereof.

"Architect's Certificate" shall have the meaning set forth in **Section 3.2.2** hereof.

"Assumption Notice" shall have the meaning set forth in **Section 13.2.2** hereof.

"Authority Contribution" shall have the meaning set forth in **Section 5.2.2** hereof.

"Authority Debt" shall have the meaning set forth in **Section 5.2.2** hereof.

"Authority Representative" shall have the meaning set forth in **Section 14.12** hereof.

"Bidding Procedures" shall have the meaning set forth in **Section 3.2.5**.

"Business Day" means any day other than a Saturday, Sunday or legal or bank holiday in the City. 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 Facilities Act" shall mean the Capital Facilities Debt Enabling Act, Pennsylvania S.B. 10, No. 313, Act of February 9, 1999.

"Capital Reserve Fund" shall have the meaning set forth in the Lease.

"Cash Contribution" shall have the meaning set forth in **Section 5.2.1** hereof.

"Challenge" shall have the meaning set forth in **Section 14.5** hereof.

"Change Orders" shall have the meaning set forth in **Section 6.3** 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 **Section 5.2.3** hereof.

"Completion Date" means the date that the following have occurred: (i) the Project Architect has issued to the Developer and the Authority a certificate of substantial completion certifying that the Stadium has been "substantially completed," subject to the completion of minor punchlist items which do not materially affect the use or occupancy of the Stadium; and (ii) a temporary Certificate of Occupancy has been issued.

"Construction Coordinators" shall have the meaning set forth in **Section 3.4** hereof

"Construction Documents" shall mean the Construction Management Agreement, the Architect's Agreement, the schematic design drawings, specifications and narratives, the design development drawings, specifications and narratives and the construction drawings and specifications.

"Construction Management Agreement" shall have the meaning set forth in **Section 3.2.1** hereof.

"Construction Manager" shall have the meaning set forth in **Section 3.2.1** hereof.

"Construction Start Date" shall mean the date of the commencement of physical construction of the Stadium at the Site after the issuance of the appropriate permits required for the commencement of construction of the Stadium.

"Construction Team" shall have the meaning set forth in **Section 11.1.3** hereof.

"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 an adjacent piece of property), which pursuant to Environmental Laws requires notification or reporting to any Governmental Entity, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, abatement or other response to such Hazardous Materials or which otherwise constitutes a violation of Environmental Laws or could result in liability to the Developer, the Authority, or any other member of the Construction Team.

"Controlling Interest" means ownership interests representing on a fully diluted basis, at least a majority of the voting ownership interests of an entity.

"Damages" shall have the meaning set forth in **Section 13.1.1** hereof.

"Delivery Date" shall have the meaning set forth in **Section 4.1** hereof.

"Demolition" shall have the meaning set forth in **Section 4.11** hereof.

"Developer Equipment" shall mean equipment purchased by the Developer with its own funds.

"Developer Contribution" shall have the meaning set forth in **Section 5.2.1** hereof.

"Developer Cost Overrun" shall have the meaning set forth in **Section 5.3.1** hereof.

"Developer Representative" shall have the meaning set forth in **Section 14.12** hereof.

"Developer's Initial Share of Project Costs" shall have the meaning set forth in **Section 5.2.1(d)** hereof.

"Developer's Share of Project Costs" shall have the meaning set forth in **Section 5.2.1** hereof.

"Environmental Assessment" shall have the meaning set forth in **Section 4.2** hereof.

"Environmental Complaint" shall mean any written complaint by any person or Governmental Entity 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 Entity pursuant to any Environmental Law.

"Environmental Consultant" shall have the meaning set forth in **Section 4.2** hereof.

"Environmental Law" shall mean any Applicable 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.

"Environmentally Sensitive Area" shall mean (i) any wetland as defined by Environmental Laws; (ii) any area designated as a coastal zone pursuant to Applicable Laws, including Environmental Laws; (iii) any area of historic or archeological significance as defined by Applicable Laws, including Environmental Laws; (iv) habitats of endangered species or threatened species as designated by Applicable Laws, including Environmental Laws; or (v) a floodplain or other flood hazard area as defined pursuant to any Applicable Laws.

"Event of Default" shall have the meaning set forth in **Section 12.1** hereof.

"Final Report" shall have the meaning set forth in **Section 4.2** hereof.

"Force Majeure" shall have the meaning set forth in **Section 14.6.1** hereof.

"Franchise" means the Pittsburgh Steelers National Football League franchise.

"Gap Amount" shall have the meaning set forth in **Section 5.3.2** hereof.

"Geotechnical Report" shall have the meaning set forth in **Section 4.5** hereof.

"GMP" shall have the meaning set forth in **Section 3.2.4** hereof.

"Governmental Entity" 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.

"Grant Agreement" shall mean that certain Contract effective as of January 14, 2000, 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 Stadium.

"Guaranty" shall have the meaning set forth in **Section 5.3.2** hereof.

"Hard Costs" shall have the meaning set forth in **Section 5.1.1** hereof.

"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.

"Indemnified Persons" shall have the meaning set forth in **Section 13.1** hereof.

"Lease" shall mean the Lease Agreement, made and entered into as of the date hereof by and between the Authority and the Developer.

"Leased Premises" shall have the meaning set forth in the Lease.

"Legal Requirements" shall have the meaning set forth in **Section 6.8** hereof.

"Minority and Women Business Enterprise Plan" shall have the meaning set forth in **Section 6.14** hereof.

"NFL" shall mean The National Football League, or any successor or substitute association or entity of which the Developer is a member or Joint owner and which engages in professional football in a manner comparable to The National Football League.

"Off-Site Improvements" shall have the meaning set forth in **Section 4.3** hereof.

"Off-Site Plans" shall have the meaning set forth in **Section 4.3** hereof.

"Permits" means any permit, license or approval to be issued by any appropriate Governmental Entity, authority or Person, including but not limited to, applicable permits for construction, demolition, insulation, alteration, or repair of any improvements related in any manner to the Project. A schedule of Permits is attached hereto as **Exhibit L**.

"Permitted Encumbrances" shall have the meaning set forth in **Section 4.1** hereto.

"Permitted Transferee" shall have the meaning set forth in **Section 10.1.2** hereto.

"Person" shall mean any individual, partnership, corporation, trust, joint venture, unincorporated organization, joint venture, joint stock company or other entity, including without limitation any Governmental Entity.

"Phase II" shall have the meaning set forth in **Section 4.2** hereof.

"Preliminary Stadium Budget" shall have the meaning set forth in **Section 5.1.2** hereof.

"Proceeding" shall have the meaning set forth in **Section 13.2.1** hereof.

"Project" shall have the meaning set forth in **Section 2.1.1** hereof.

"Project Accounts" shall have the meaning set forth in **Section 7.8** hereof.

"Project Architect" shall have the meaning set forth in **Section 3.2.2** hereof

"Project Budget" shall have the meaning set forth in **Section 5.1** hereof.

"Project Costs" shall mean all Soft Costs and Hard Costs.

"Project Creditor" shall have the meaning set forth in **Section 5.3.2** hereof.

"Project Executive" shall mean Thomas Kennedy.

"Project Funds" shall have the meaning set forth in **Exhibit O** ["**Project Budget**"] attached hereto.

"Project Manager" shall have the meaning set forth in **Section 3.2.3** hereof.

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

"Project Schedule" shall have the meaning set forth in **Section 6.5** hereof.

"Project Statement" shall mean that description of the Project attached hereto as **Exhibit C**.

"Projected Completion Date" shall have the meaning set forth in **Section 6.5** hereof.

"PSSI Guaranty Agreement" shall mean that certain Guaranty Agreement executed as of the date hereof pursuant to which, inter alia, PSSI agrees to guaranty all of the Developer's obligations, duties and liabilities hereunder.

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

"Related Agreements" shall mean the Lease, the Construction Management Agreement, the Architect's Agreement, the PSSI Guaranty Agreement and the other ancillary agreements related thereto.

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

"Representatives" shall have the meaning set forth in **Section 14.11** 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 Leased Premises or construct, maintain, operate or occupy any Alterations or improvements.

"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 Entity must be submitted to a Governmental Entity or which otherwise must be maintained with respect to the Leased Premises (including relating to any Contamination) or the operations and activities of Tenant.

"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.

"Retainage" shall have the meaning set forth in **Section 7.2** hereof.

"SBL" shall mean the Stadium Builders Licenses sold by the Authority in connection with the Stadium.

"SBL Contribution" shall have the meaning set forth in **Section 5.2.1(a)**.

"Security" shall have the meaning set forth in **Section 5.3.4** hereof.

"Site" shall have the meaning set forth in **Section 2.1.1** hereof.

"Site Cost Overrun" shall mean the costs of acquiring and delivering the Site to the Developer which are in excess of those set forth in the Project Budget for such matters.

"Site Plan" shall refer to **Exhibit B**.

"Site Work" shall have the meaning set forth in **Section 4.1** hereof.

"Soft Costs" shall have the meaning set forth in **Section 5.1.1(a)** hereof.

"Stadium" shall have the meaning set forth in **Section 2.1.1** hereof.

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

"**Stadium Account**" shall have the meaning set forth in **Section 5.2.1(a)**.

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

"**Title Defect**" shall have the meaning set forth in **Section 8.5** hereof.

"**Visiting Team's Share Contribution**" shall have the meaning set forth in **Section 5.2.1(b)** hereof.

"**Work**" shall have the meaning set forth in **Section 6.1** hereof.

1.2 INCORPORATION OF RECITALS

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

ARTICLE 2. OVERVIEW

2.1 THE PROJECT.

2.1.1 Project Definition.

The parties hereby agree, subject to the conditions, covenants and other obligations of this Agreement, that the "**Project**" shall be defined as and consist of (i) the construction by the Developer, as agent for the Authority pursuant to this Agreement, of a public football and sports facility, designed by the Developer with the capacities and amenities listed on and depicted in the drawings prepared by the Architect, labeled Site Plan Phase II and dated June 11, 1999, as amended from time to time with the approval of the Authority (such facility to be referred to as the "**Stadium**"), (ii) on property bounded by Reedsdale Street on the North, Three Rivers Stadium on the East, Allegheny Avenue on the West and North Shore Drive 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 Exhibit is attached hereto as **Exhibit A** (such property to be referred to as the "**Site**"), and shown on the Site Plan attached hereto as **Exhibit B**, (iii) to be substantially completed and ready for occupancy and use by the Developer and the public for the opening of the 2001 NFL season on August 1, 2001 (including all "exhibition" games prior to the regular season), subject to the matters and events described in **Section 14.6.1**. The Project is further described in more detail on the Project Statement attached hereto as **Exhibit C**.

2.1.2 Stadium Specifications.

The Stadium shall contain approximately 1,500,000 square feet of space, shall contain approximately 65,000 seats, and shall be fully built-out and fitted, including, but not limited to fixtures, flooring, ceilings, lighting, all necessary mechanical, plumbing, air-handling and conditioning, electrical and other systems and finishes, substantially similar in quality to that found in facilities of similar capacity used by NFL teams within the United States which were built within five years prior to the date hereof, all as agreed to by the Authority and the Developer in accordance with the procedures outlined in **Articles 3 and 6** and the other provisions of this Agreement and the Related Agreements. The design of the Stadium by the Developer shall otherwise be subject to the terms, covenants and conditions contained herein.

2.1.3 Ownership of Project.

The Authority shall own the Stadium, 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 Authority. All equipment, furniture and other items of personal property purchased by the Developer with the Developer's own funds during the term of this Agreement, shall be owned by the Developer.

ARTICLE 3. AGENCY RELATIONSHIP DURING CONSTRUCTION PERIOD

3.1 APPOINTMENT OF DEVELOPER AS AGENT.

Subject to such terms as are set forth herein, the Authority hereby appoints the Developer as its sole and exclusive agent with respect to the design and construction of the Stadium and the Developer hereby accepts such appointment and assumes all duties and obligations relating thereto. Without limiting the foregoing, the Authority hereby delegates to the Developer the day-to-day duties that a prudent and conscientious owner of a facility such as the Stadium would exercise in enforcing the Authority's rights to contract and to interface with the Construction Manager and the Construction Team for the Project. The Developer agrees to assume those delegated duties and to be responsible to the Authority for the proper performance of the duties so delegated. The Developer shall, when acting as agent for the Authority, disclose its agency capacity hereunder. Such appointment and delegation by the Authority shall not limit or impair the Authority's rights or remedies under this Agreement or any other 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 Authority.

3.2 DESIGN AND CONSTRUCTION RESPONSIBILITIES OF THE DEVELOPER.

In its capacity as agent of the Authority, the Developer shall be responsible for all aspects of managing the design, development and construction of the Stadium, and the Developer

acknowledges its obligation and responsibility to the Authority for the proper performance of those obligations. The Developer shall cause the Stadium to be designed and constructed in conformity with (i) this Agreement, (ii) current NFL standards, and (iii) all Applicable Laws, 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 football playing field, modern telecommunications systems, a modern HVAC system, emergency generators, goalposts, event transition equipment, 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, scoreboards, exterior marquees, advertising displays, sound distribution and other features designed to provide patron, employee and tenant convenience. In its capacity as agent of the Authority:

3.2.1 Construction Manager.

The Developer has identified and selected a joint venture composed of Huber, Hunt & Nichols, Inc. ("**HHN**") and Mascaro Construction Company, L.P. ("**Mascaro**"), as the construction manager (collectively, "**Construction Manager**") for the Project. This selection is hereby approved by the Authority. The Developer has entered into the "**Construction Management Agreement**" with the Construction Manager, dated as of January __, 2000, which is attached hereto as **Exhibit D**. The Construction Manager shall provide to the Developer, and the Construction Management Agreement will so provide, a guaranteed maximum price ("**GMP**") for construction of the Stadium, which GMP shall not exceed the sum of \$231,081,104, all as provided in the Construction Management Agreement. Each of HHN and Mascaro shall at all times be jointly and severally liable for the acts, omissions and contractual obligations of the Construction Manager in connection with the Project. The Developer shall be responsible for the administration of the Construction Management Agreement, as agent for the Authority, subject to the rights of the Authority, as provided herein and shall supervise and coordinate construction on a day-to-day basis. It is the intent of the parties that except to the extent specifically set forth herein, and except for the payments to be made by the Authority with respect to the Project Budget, the Authority shall have no responsibilities, liabilities or obligations with respect to the Construction Management Agreement.

3.2.2 Selection of Project Architect.

The Developer has identified and selected HOK Architects, Inc. of Kansas City, Missouri, as the "**Project Architect**" for the Project. This selection is hereby approved by the Authority. The Developer has entered into the Architect's Agreement. It is the intent of the parties that except for the payments to be made by the Authority with respect to the Project Budget, the Authority shall have no responsibilities, liabilities or obligations with respect to the Architect's Agreement. All fees, costs and charges of the Project Architect in excess of that approved in the Project Budget will be the responsibility of the Developer. The responsibilities of the Project Architect are as set forth in the Architect's Agreement.

3.2.3 Selection of Project Manager.

The Developer has designated N.W. Getz & Associates, Inc. of Charlotte, North Carolina, as the project manager (the "**Project Manager**"). All fees, costs and charges of the Project Manager in excess of those approved on the Project Budget, will be paid by the Developer. Except for the payments to be made by the Authority with respect to the Project Budget, the Authority will have no responsibilities, liabilities or obligations with respect to the contract with the Project Manager.

3.2.4 Consultants.

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 E** hereto so as to facilitate the timely design and construction of the Project, or such other consultants or professionals as may be approved by the Authority from time to time, which approval shall not be unreasonably withheld.

3.2.5 Bidding.

The Construction Team will prepare component packages in form and content suitable for bidding, and the Developer will administer the bidding process for the selection of trade contractors, and where required, for suppliers, all in accordance with the procedures approved by the Authority and attached hereto as **Exhibit F** (the "**Bidding Procedures**"). The Developer will further negotiate and prepare trade and supply contracts in accordance with the procedures approved by the Authority, provided that all such contracts will be awarded by the Authority in compliance with Legal Requirements and assigned to the Construction Manager, which assignment will provide for the release of any claim against, or obligation of the Authority other than the obligation to make payments with respect to the Project Budget. The 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 bids on each component package of the Project. The Authority 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 as set forth the Project Budget, and all trade and supply, bid and contract documents will so provide. The cost of performing the functions described in this 3.2.7 shall be paid as part of the Project Budget. The Developer shall indemnify, defend and hold the Authority harmless from any Damages of any kind arising out of or related to or arising out of any claims or challenges by third parties relating to the bidding process.

3.2.6 Determination of Bidder Responsibility.

The 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 F** are the approved procedures for such preliminary determination. The Developer shall be responsible for selecting the contractors in accordance with the Bidding Procedures . If the Authority refuses to award the contract to the

contractor selected by the Developer in accordance with the Bidding Procedures, the Authority shall reimburse 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 and hold harmless the Developer from any Damages incurred by the Developer as a result thereof; provided, however, that notwithstanding the foregoing, in no event shall the Authority have any liability with respect thereto unless the Authority has granted its written approval of the preliminary determination criteria with respect to the applicable bid package.

3.2.7 Day-to Day Construction Activities.

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

3.2.8 Invoices.

The Developer will oversee and coordinate submission of invoices in form acceptable to the Authority for payment from the Construction Manager, trade contractors, and any subcontractors, suppliers and materialmen, pursuant to the procedures set forth on **Exhibit G** attached hereto.

3.2.9 Self-Performance.

The Construction Manager, if desired by the Developer, will not be permitted to self-perform work as a competitive bidder, either directly or through an affiliated entity, without the prior written consent of the Authority, which consent may be withheld in the Authority's sole reasonable discretion.

3.2.10 Third-Party Beneficiary.

The Authority shall be an intended third party 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 Authority shall provide for arbitration of claims thereunder without the approval of the Authority. No agreement (including this Agreement) shall allow, or result in, a lien against the Authority or any of its properties or assets.

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

3.3 ASSIGNMENT OF TRADE CONTRACTS.

The Authority and the Developer hereby agree that all trade contracts awarded by the Authority shall, immediately upon their award, be assigned by the Authority to the Construction Manager and shall be administered by the Construction Manager. The form of Assignment is

attached hereto as **Exhibit H**. The Construction Management Agreement shall provide that the Construction Manager shall perform in full all obligations under such trade contracts, and that the Authority will have no responsibilities, liabilities or obligations of any kind whatsoever thereunder other than the Authority's obligation to make payments with respect to the Project Budget. All trade bid and contract documents shall so provide, and shall provide that the trade contractors shall waive and release any liens or other claims against the Authority.

3.4 CONSTRUCTION COORDINATORS.

Thomas Kennedy has been appointed the "**Project Executive**", and a representative of Morse Diesel International, Inc. shall be appointed by the Authority, pursuant to a letter to the Developer, as the "**Project Review Coordinator**". The Authority may elect to designate an alternative Project Review Coordinator upon written notice to the Developer. Both the Project Executive and the Project Review Coordinator are authorized to act on behalf of the Authority with respect to the development and construction of the Project, and both Mr. Kennedy and the designated representative of Morse Diesel International, Inc. are collectively referred to in this Agreement as the "**Construction Coordinators**".

3.5 CONSTRUCTION DOCUMENTS.

3.5.1 Approval of Construction Documents.

The Construction Documents shall be submitted by the Developer to the Construction Coordinators as completed and may be submitted in various stages of completion as is agreed between the respective Representatives of the parties. Notwithstanding the manner of submission, all Construction Documents must be approved in writing by the Construction Coordinators, which approval shall be considered in good faith and shall not be unreasonably withheld, and no portion of the Construction Documents will be submitted for required bidding pursuant to the terms of this Agreement prior to being approved by the Construction Coordinators, subject, however, to the last sentence of this Section 3.5.1. The Developer shall cooperate with the Authority to provide the Authority with any information reasonably required by the Authority in connection with its review of the Construction Documents. In furtherance thereof, the Developer shall provide to the Authority, together with any Construction Documents submitted for the Authority's approval, a list or other manner of identification of the material changes made from the previously approved or revised drafts of the Construction Documents and, if requested by the Authority, shall cause the Developer's Representative to meet with the Authority's Project Executive to review such Construction Documents within the time periods provided to the Authority and the Developer for such approval. The Construction Coordinators will diligently and in good faith review the Construction Documents as submitted and, subject to the provisions of **Section 6.2** hereof with respect to changes to the Construction Management Agreement and the Architect's Agreement, provided that complete and accurate copies of all pertinent documents have been provided to the Construction Coordinators, the Construction Coordinators will approve or disapprove (stating reasons for disapproval) each respective submission within the time provided to the Developer in the Construction Documents for review of each 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.

3.5.2 Authority's Approval Rights.

In addition to the rights reserved to the Authority elsewhere in this Agreement, the Authority shall have the right to disapprove any actions taken hereunder by the Developer if such actions are not in compliance with this Agreement or with applicable Legal Requirements. The Developer shall cooperate with the Authority to provide the Authority with any information reasonably required by the Authority in connection with its determination as to whether to grant such approval. In furtherance thereof, in each case where the Authority's approval is required under this Agreement, the Developer shall provide written notice to the Authority of the time within which such approval is required and, if requested by the Authority, the Developer shall cause the Developer Representative to meet with the Project Executive to review any such matters requiring the Authority's approval within the time periods provided to the Authority and the Developer for such approval. In any circumstance where the Authority'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, and the Authority 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 Authority 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 Authority to grant or deny approval with respect to any matter requiring or authorizing the Authority's approval shall not be less than two (2) Business Days. Whenever the Authority's approval is required hereunder, such approval shall not be unreasonably withheld. If the Authority denies approval of any matter requiring its approval under this Agreement, the Authority shall state with specificity, in writing, its reason for such denial. If the Authority 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 Authority that it is proceeding without such approval, and the manner and direction in which the Developer is proceeding.

3.5.3 Authority as Beneficiary.

It is specifically understood and agreed that the Developer is entering into the Construction Management Agreement and the Architects Agreement as agent for the Authority and that, accordingly, the Authority is an intended beneficiary of the Construction Management Agreement and the Architects Agreement. The duties and obligations of the Architect and the Construction Manager pursuant to those agreements are to be stated therein, and expressly understood and agreed by the Developer, the Project Architect and Construction Manager, to also be due and owing to the Authority. Such duties and obligations, as well as any duties or obligations imposed by law upon the Project Architect and upon the Construction Manager may be enforced by the Authority at law or in equity. Upon the occurrence of a default by the Developer under the Architects Agreement or the Construction Management Agreement which

remains uncured and which permits the other party to such contract to exercise remedies thereunder, at the election of the Authority upon five (5) Business Days prior written notice to the Developer, the Developer shall assign all of its rights and interests in either or both of the Construction Management Agreement and/or the Architects Agreement to the Authority whereupon the Authority 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 will promptly notify the Authority in writing of the occurrence of any such default. The Architect Agreement shall require the Project Architect to carry appropriate levels of insurance coverage (including professional liability coverage) subject to approval of the Authority in performance of its contract, and such insurance policy shall name the Authority as additional insured.

3.5.4 Ownership of Construction Documents.

Notwithstanding anything contained in this Agreement to the contrary, upon approval by the Construction Coordinators, ownership of all Construction Documents relating to the Project shall be vested in the Authority, subject to (i) the right of the Project Architect, Project Manager and Construction Manager to be paid for work performed related to these documents, and (ii) the right, license and privilege of the Developer to use the Construction Documents in the development and construction of the Project. Without limiting the foregoing, the Authority will have the right to use all Construction Documents in connection with the completion of the Project, whether at the Site or elsewhere in the event of a Developer default hereunder. Additionally, the parties hereto agree that the Authority shall also have the right to use the Construction Documents in connection with (i) the marketing of the Authority, the City, the County and/or the Commonwealth, and/or (ii) the Authority's compliance with the terms of this Agreement and/or any Related Agreement.

3.6 PAYMENT PROCEDURES.

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

(ii) After the execution of this Agreement and the Related Agreements, the Authority shall not be obligated to make any disbursement of Project Funds for development of the Project until the Developer, at its expense, shall have fulfilled, to the Authority's satisfaction, all provisions of this Agreement applicable thereto, including, without limitation, the conditions set forth in Section 7.6 and 7.7 hereof.

(iii) The Authority shall not be required to release the final disbursement of Project Funds unless fulfillment of the conditions set forth in **Section 7.7** occurs.

3.7 COMMUNITY ISSUES.

The Developer agrees that the Stadium will be constructed, to the extent reasonably practicable, in a way which minimizes and mitigates to the extent reasonably practicable, the

impact of construction on nearby communities. The Authority shall cooperate with the Developer and shall use its best efforts to cause the City of Pittsburgh and other appropriate municipal authorities to cooperate with the Developer so as to mitigate the impact of construction on nearby communities.

3.8 INSURANCE.

Developer will maintain the comprehensive "owner controlled" insurance program, a summary of which is attached hereto as **Exhibit I** with respect to the Project until completion of the Project. The Developer will further maintain such other insurance as is reasonably required by the Commonwealth pursuant to the Grant Agreement.

ARTICLE 4. AUTHORITY'S COVENANTS

4.1 ACQUISITION AND DELIVERY OF SITE.

The Authority, 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 which comprise the Site and to remove all of the existing asphalt, utility poles, electric utility lines, and all concrete and other man-made structures and improvements on the surface and subsurface of the Site, including, without limitation, the Building known as the old Kaufmann's warehouse, pavements, curbs, guardrails (the "**Site Work**"), provided that the Site will be delivered to the Developer subject to the Permitted Encumbrances set forth on **Exhibit J**, on or before July 13, 1999, subject to delays caused by Force Majeure (the "**Delivery Date**"). The Site Work will also specifically include removal and/or modification of certain piles on the Site as detailed in **Section 4.5** hereof, as well as foundations and subsurface lines, and the relocation of and, where necessary to allow the Work to proceed uninterrupted and without obstruction, the removal of, the 54" sewer line which currently traverses under the surface of the Site. In the event that the Developer determines that the Site shall not have been delivered by the Authority in accordance with this **Section 4.1**, it shall notify the Authority of any deficiencies as soon as practicable, but not later than five (5) Business Days after the earlier of (a) the date the Developer first observes the conditions, or (b) the date that such conditions are reported to the Developer by the Construction Manager, or the Developer shall be deemed to have waived all claims against the Authority under this **Section 4.1**, provided, that the Authority shall remain responsible for matters described in Section 4.5.

4.2 ENVIRONMENTAL MATTERS.

After the Authority acquires all of the separate properties which comprise the Site, or contemporaneously with such acquisition, the Authority shall promptly engage an environmental consulting firm (the "**Environmental Consultant**") to perform a Phase I 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 Authority 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 Authority, 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 Authority 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 Authority 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 which pursuant to applicable Environmental Laws requires the performance of a Response Action, the Authority 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 Authority 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 Authority as to the scope and cost of the Response Action, which approval shall not be unreasonably withheld, and provided that the Authority shall reimburse the Developer for all costs and expenses incurred by the Developer in connection with the performance of the Response Action.

The Authority covenants and agrees that the Site will be delivered to the Developer free of Hazardous Materials. In addition to the foregoing procedures regarding Contamination revealed by the Environmental Assessment, if during any stage of development of the Project (prior to Substantial Completion) Hazardous Materials are discovered at the Site, in violation of applicable Environmental Laws, and such Hazardous Materials were not placed on the Site by the Developer, its agents, employees, licensees or contractors, the Authority shall, at its sole cost and expense, which shall not be deemed to be part of the Project Budget for purposes of this Agreement, remove and cleanup such Hazardous Materials in accordance with applicable Environmental Laws.

Should any Response Action be required at the Site subsequent to the Construction Start Date, then the Authority shall use commercially reasonable efforts to complete any Response Actions in such a manner so as to minimize delay or interruption with the Project. In the event the Developer and appropriate trade contractors demonstrate with specificity that such Response Actions materially delayed the performance of Developer's Work hereunder, the Authority shall reimburse the Developer for direct damages payable to such trade contractors whose work was directly and materially delayed as a result of such Response Action; provided, the Developer shall use all commercially reasonable efforts to attempt to minimize such delay or interruption.

4.3 OFF-SITE INFRASTRUCTURE.

The Authority, at its own cost which shall not be deemed to be a part of the Project Budget for purposes of this Agreement, shall pay for or otherwise cause to be delivered certain improvements to the sidewalk perimeter (back side of curbs) of the Site and certain other

improvements adjacent to the Site, each as described on **Exhibit K** attached hereto and made a part hereof (the "**Off-Site Improvements**"). Such Off-Site Improvements shall be constructed by Contractors to be selected by the Authority. The Authority shall determine the scope and budget for the Off-Site Improvements (the "**Off-Site Plan**"). Any Off-Site Improvements not specifically approved by the Authority as part of the Off-Site Plan may be made by the Developer upon application to the Authority for approval without funding; and upon such approval by the Authority, such Off-Site Improvements shall be made at the Developer's sole cost, which shall not be deemed to be a part of the Project Budget.

4.4 SITE MATTERS.

The Authority 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 to the Developer for the commencement of construction (or as soon thereafter as is reasonably practicable). Notwithstanding the foregoing, the obligation to pay the cost of the items listed below in this **Section 4.4** shall be borne by the Authority and the Developer as set forth on Schedule 4.4 hereto (it being understood that the Developer has paid all or a portion of the Authority's share of such costs, as indicated on Schedule 4.4, and is entitled to be reimbursed for the Authority's share of such costs in accordance with Section 5.2 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 including assessment of historical and archaeological artifacts and 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 all Permits listed on **Exhibit L** to be obtained by the Authority have been issued by the agencies having jurisdiction.

(d) A leasehold title insurance policy in favor of the Developer to be issued by Lawyers Title Insurance Corporation.

4.5 GEO-TECHNICAL MATTERS.

After the Authority acquires all of the separate properties which comprise the Site and performs the work required by **Sections 4.1 and 4.2** 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 Stadium shall be the responsibility of the Developer, and all evaluation and remediation in connection therewith shall be included within the Project Budget subject, however, to the Authority's obligation to repair or complete any items reported to the Authority by the Developer pursuant to the last sentence of Section 4.1

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 L. Robert Kimball & Associates dated March 17, 1999 (the "Geotechnical Report"), including without limitation the presence of sewage lines and building foundations 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 relating to the Project, then the Developer shall notify Authority immediately and before such conditions are disturbed, but in no event later than 5 Business 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 Construction Manager. The Authority 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 Authority shall authorize additional payment, to be made to the Developer to cover any increased costs incurred, which payments shall be in addition to the amounts committed in the Project Budget. If the Authority determines that the conditions do not fall within clauses (1) or (2) above, the Authority shall promptly so notify the Developer in writing, stating the reasons for such determination. If natural (as opposed to man-made) subsurface conditions are encountered at the Site 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 Construction Documents relating to the Project, then the Developer shall notify the Authority 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 Construction Manager. The Authority 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 Developer shall pay such increased cost. The Authority's share of such payments shall be in addition to the amounts committed in the Project Budget. If the Authority determines that the conditions do not fall within clauses (A) or (B) above, the Authority shall promptly so notify the Developer in writing, stating the reasons for such determination.

The Authority and the Developer acknowledge that in the vicinity of the Site where the "old Kaufmann's warehouse" stood, concrete piles exist below the surface of the ground. The Authority acknowledges and agrees that removal of the piles is the responsibility of the Authority, as part of the Site Work. Without limiting such responsibility, the Authority and the Developer have agreed that, in order to minimize the cost of the Site Work, initially the Authority will not be required to remove the piles but will remove the pile caps resting upon the piles. If, during the performance of the Work the Developer, after consultation with the Authority, discovers that certain piles need to be completely removed in order to complete the Project in accordance with the Plans, the Developer may notify the Authority of the same and the Developer may remove such piles in accordance with the procedures set forth in Exhibit M. If the cost of such removal increases the cost of, or time required for performance of any part of the Project, the Authority shall be responsible for the increased costs incurred (in addition to the amounts committed to Project Costs in the Project Budget) and shall make payment to the

Developer for the same upon demand. If, upon discovery by the Developer during performance of the Work that a pile (or piles) must be removed, the Developer then determines that as a more prudent alternative (including cost considerations), the structural plans for the Stadium could be modified to accommodate the use of the pile (or piles), then the Developer may make such structural modifications. The Authority agrees that the Authority shall be responsible for the increased costs incurred to make and complete the work required by such modifications, and the Authority shall make payment to the Developer for the same upon demand. Such payment amounts shall be in addition to the amounts committed to Project Costs in the Project Budget.

4.6 STREET VACATION, RELOCATION, AND MODIFICATION.

The Authority shall use its best efforts to work with the City of Pittsburgh to (i) vacate and relocate Stadium Drive West and (ii) modify Reedsdale Street so as to permit construction of the Stadium in accordance with agreed upon plans and specifications.

4.7 TRANSPORTATION MANAGEMENT.

The Authority shall work with the Developer and shall use its best efforts with the City of Pittsburgh and other applicable municipal authorities to develop a transportation management plan, including truck routing during construction, street and highway 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.

4.8 EXPEDITED PERMITTING.

The Authority shall cooperate with and assist the Developer in expediting the review and issuance of all Permits required for the construction of the Stadium at no increased cost to the Developer or to the Project; provided, the Authority shall not be liable to the Developer or any other Person for any failure to obtain any Permits. The Authority shall identify an individual within the Authority's organization to assist the Developer with such expedited Permit issuance.

4.9 SALES TAX EXEMPTION.

The Authority shall cooperate with and assist the Developer in obtaining such sales tax exemptions as may be available in connection with the Project; provided, however, the Developer shall manage all such efforts and shall indemnify, defend and hold the Authority harmless from any Damages arising out of the claims by the Commonwealth or the County for such sales tax exemptions and/or any violations thereof.

4.10 LABOR AND EMPLOYMENT ISSUES.

The Authority shall cooperate with and assist the Developer 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 Stadium.

4.11 DEMOLITION OF THREE RIVERS STADIUM.

The Authority will be responsible for securing a demolition and disposal contract for Three Rivers Stadium (the "**Demolition**"); provided, at the request of the Authority, the Developer will include the Demolition in the Stadium bid documents and shall attempt to obtain the lowest possible cost. In addition, the Authority shall be responsible for the demolition of Three Rivers Stadium, for clearing the site upon which Three Rivers Stadium is situated and for constructing a surface parking lot thereon.

4.12 CONSTRUCTION STAGING AND STORAGE.

Authority 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 mutually acceptable plans for construction staging, procedures and practices.

4.13 UTILITIES.

4.13.1 Water and Sewer.

The parties hereto agree that the water and sewer connections to the Project shall be completed in accordance with the drawings attached hereto as **Exhibit N**.

4.13.2 Other Utilities.

Except as specifically provided in **Section 4.13.1** above, the Developer shall be responsible for (and the Authority shall have no obligations with respect to) all other utility lines and/or related equipment in connection with the Project.

4.14 ASSIGNMENT OF SBLs BY AUTHORITY TO DEVELOPER.

Subject to **Section 5.2.1** below, the Authority hereby agrees that the Authority's right, title and interest in and to any and all SBL agreements related to SBLs sold by the Authority in connection with the Stadium, shall immediately upon completion of the Stadium, be assigned by the Authority to the Developer.

4.15 PERFORMANCE BY THE DEVELOPER; ENFORCEMENT BY THE AUTHORITY.

The Authority hereby agrees that the Developer shall have the right (but shall have no obligation) to assist the Authority in the performance of the items set forth in this **Article 4** or to perform the items set forth in this **Article 4** as the agent of the Authority 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 to the Developer and that all costs and expenses incurred by the Developer in connection therewith, following prior written approval of the Authority, shall be reimbursed to the Developer. The Developer hereby agrees that the Authority shall have the

right, but not the obligation to enforce the contracts entered into by the Developer pursuant to this Agreement in its capacity as agent for the Authority should the Developer refuse or fail to take any action reasonably requested by the Authority in connection with the enforcement of any such contract for a period of fifteen (15) days after written notice thereof to the Authority. The Authority and the Developer agree that the costs incurred by the Developer through the date hereof, as set forth on Schedule 4.4 hereto are costs that have been incurred by the Developer on the Authority's behalf with the Authority's prior consent and for which the Authority has agreed to reimburse the Developer.

ARTICLE 5. PROJECT BUDGET AND FINANCING

5.1 PROJECT BUDGET; FINANCING OF PROJECT.

5.1.1 Definition.

The Project Budget shall include, without limitation, the following (the "**Project Budget**"):

(a) 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 Stadium:

(i) All costs and expenses for architectural, engineering, surveying and design services associated with the design and construction of the Stadium, including, without limitation, all costs associated with the preparation of the Construction Documents by the Project Architect and all services provided by the Project Manager and by specialty consultants.

(ii) All costs and expenses for obtaining all Permits or approvals associated with the construction of the Stadium.

(iii) 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 Stadium.

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

(i) All costs and expenses incurred in completing the Work with respect to the Stadium, 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 Stadium and the interconnection of same to the Stadium, 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 inter connection equipment, all costs and expenses paid to the Construction Manager, with respect to the Stadium and all costs and expenses incurred in connection with constructing the Stadium, including without limitation all costs and expenses included in the GMP.

(ii) All costs and expenses, consistent with industry standards, incurred by the Developer in connection with the purchase and installation of all machinery, furniture and fixtures and equipment required for the operation of the Stadium in conformity with the criteria contained in **Articles 3 and 6**, the cost of which is paid from the Project Budget, excluding the Developer Equipment and Office Furniture.

(c) a contingency reserve, of \$10,000,000.

5.1.2 Preliminary Stadium Budget.

The initial draft of a line item preliminary estimate of the Project Budget, including a line item budget of Soft Costs and Hard Costs based upon current area, volume or other unit costs estimated by the Construction Team (the "**Preliminary Stadium Budget**"), has been provided by the Developer to the Authority and is attached hereto as **Exhibit O**. The Developer hereby represents that the Preliminary Stadium Budget takes into account the costs associated with the construction of a Stadium meeting the criteria described in **Articles 3 and 6** of this Agreement.

5.1.3 Final Project Budget.

(a) The Developer shall update the Preliminary Stadium Budget upon review by the Construction Team (the Preliminary Stadium Budget, as so updated shall constitute the "**Project Budget**"). The Developer has submitted to the Construction Coordinators, for review and approval on a line item basis, the Project Budget, which approval shall not be unreasonably withheld or delayed. The Project Budget shall take into account the costs associated with the construction of a Stadium meeting the criteria described in **Articles 3 and 6**. The Authority shall approve the Project Budget if the costs reflected in the Project Budget are reasonable in light of the complexity of construction of the Stadium in accordance with the criteria described in **Articles 3 and 6**, industry standards, the Preliminary Stadium Budget, the GMP, and reflect items permitted to be included in the Project Budget pursuant to **Section 5.1.1**. The Authority shall have twenty-one (21) Business Days from the receipt of the Project Budget to review and approve, disapprove, or request changes to, the same. If the Authority fails to respond with an approval, disapproval or request for changes, within said twenty-one (21) Business Day period, the Authority shall be deemed to have approved such Project Budget. In the event that the Authority Representative does not approve such Project Budget, the Authority Representative shall provide to the Developer, within said twenty-one (21) Business Day period, detailed comments, on a line item basis, outlining the reasons why the Authority Representative does not approve the Project Budget. In the event the Authority Representative requests modifications to the Project Budget, the Developer shall revise the Project Budget, as appropriate, to address the issues raised by the Authority, and submit the revised Project Budget to the Authority for its

further review. The Authority shall have ten (10) Business Days from the receipt of such revised Project Budget to review and approve same. The failure of the Authority to respond within ten (10) Business Days shall constitute a deemed approval. If the revised Project Budget is not then approved by the Authority, the parties will continue to negotiate in good faith to achieve a mutually acceptable Project Budget.

(b) The Authority agrees that all costs and expenses incurred by the Developer (other than the costs incurred by the Developer on the Authority's behalf pursuant to Sections 4.4 and 4.15 hereof) in accordance with the Construction Documents and the Project Budget in connection with the design, development and construction of the Stadium ("**Project Costs**") shall be paid out of the Project Budget. From time to time, Developer will submit to the Authority an itemization of all Project Costs incurred by the Developer, together with evidence reasonably satisfactory to the Authority 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 Share of Project Costs.

(c) The parties agree that during the period of construction of the Project, the Commonwealth shall have the right to inspect and audit the financial records related to the Project Costs.

5.2 FINANCING OF PROJECT.

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

5.2.1 Developer's Contribution.

The Developer shall provide financing toward the Project Budget of not less than \$80,744,090 (the "**Developer Contribution**") as follows:

(a) \$39,520,000 of proceeds from the sale of SBLS (the "**SBL Contribution**"), together with accrued interest thereon up to \$2,924,000 of interest; and provided further that all such proceeds in excess of \$39,520,000 and interest in excess of \$2,924,000 shall be applied to the Developer Cost Overruns. The parties acknowledge that installments of the SBL Contribution have been paid (December 1998 and October 1999). The third and final installment is due on or about October 31, 2000.

(b) Within five (5) days following the execution of this Agreement, the Developer shall cause the sum of \$17,000,000 in cash (the "**Visiting Team's Share Contribution**"), to be paid to the Authority and placed in a segregated account for use in connection with the Project (the "**Stadium Account**"); provided, the parties acknowledge that the terms and conditions of the Financings used to generate such sum shall be subject to the prior written approval of the Authority.

(c) Subject to the terms and conditions set forth in the financing term sheet attached as **Exhibit P** hereto, commencing on January 1, 2002 and continuing during each calendar year of the Lease Term through 2030, the sum of \$1,400,000 annually from the NFL Ticket Surcharge shall be paid to the Authority. It is estimated that a bond issue of the Authority secured by such sums will generate an estimated \$13,600,000 in net proceeds for the construction of the Stadium.

(d) \$8,880,000 in cash on June 30, 2000 (the "**Developer's Initial Share of Project Costs**"); provided, however, notwithstanding the foregoing, the Authority agrees that the Developer has already expended the sum of \$6,000,000 (as set forth in Schedule 4.4) and the Developer shall be entitled to receive a credit for such amount.

(e) The Developer shall not be entitled to excess proceeds or interest pursuant to subpart (a) above or a credit against Developer's Initial Share of Project Costs to the extent that the Developer's Contribution is (i) less than \$80,744,090, or (ii) not paid in accordance with the schedule set forth herein. To the extent the Developer fails to meet the described funding schedule the Authority shall retain an estimated portion of such amounts as compensation for forgone interest earnings to ensure a fully funded budget.

(f) Upon the execution of this Agreement, Developer shall provide the Authority with evidence reasonably satisfactory to the Authority of the availability of the funds necessary to satisfy Developer's obligations hereunder.

5.2.2 Authority Contribution.

Subject to the terms and conditions of this Agreement, the Authority shall contribute a sum not to exceed \$63,161,000, from the proceeds of a bond issuance by the Authority toward the Project Budget (the "**Authority Contribution**"). Interest accruing on the funds contributed to the Stadium Account by the Authority from the proceeds of issuance of debt (the "**Authority Debt**") may, to the extent permitted by Applicable Law, be used toward development of the Project.

5.2.3 Commonwealth Contribution.

It is anticipated that, pursuant to action to be taken by the Commonwealth of Pennsylvania and its instrumentalities (the "**Commonwealth**") and subject to suitable arrangements to be entered into by and among the Developer, the Authority and 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**"). Notwithstanding the foregoing, interest accruing on the funds contributed to the Stadium Account by the Commonwealth may, to the extent permitted by Applicable Law, be used toward development of the Project.

5.2.4 Project Accounts.

Project Funds will be maintained in such accounts (the "**Project Accounts**") as may be established by the Authority in connection with the Authority Debt, and as may be required by the Commonwealth in connection with the award of Commonwealth funds as referenced in Section 5.2.3 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.

5.3 DEVELOPER GUARANTY OF COST OVERRUNS.

5.3.1 Definition.

Any Project Costs incurred by, paid by or billed to the Authority in excess of the sum of \$212,000,000, other than Site Cost Overruns or those costs or reimbursements specifically attributed to the Authority pursuant to this Agreement and deemed not included in the Project Budget, shall be considered to be a cost overrun for purposes of this Agreement (a "**Developer Cost Overrun**"). So long as the Developer is diligently proceeding to complete the Project in accordance with the Construction Documents (including the Project Schedule) as approved by the Authority, the Authority shall not have the right to incur costs for which the Authority will not be liable or to obligate the Developer to incur costs in excess of the sum of \$212,000,000, without the prior written approval of the Developer. Notwithstanding the foregoing, the Developer acknowledges that in the event of a Developer Cost Overrun (including one resulting from a time delay), the Developer is bound to its Developer Cost Overrun obligations hereunder.

5.3.2 Guaranty.

(a) Notwithstanding anything contained herein or in any of the Related Agreements to the contrary, the Developer unconditionally and irrevocably agrees and becomes surety for (the "**Guaranty**") the amount of any Developer Cost Overrun, and agrees to pay any Developer Cost Overrun on demand at such time as any portion thereof is due to be paid with respect to the Project. The Developer agrees to secure any Developer Cost Overrun that is less than [\$42,416,386] (the "**Gap Amount**") with a letter of credit, a line of credit or a sequestered account or the Developer will otherwise demonstrate to the Authority that the cash to cover the Gap Amount is readily available. The parties hereto do hereby acknowledge that the Construction Management Agreement has a GMP of \$231,081,104 and that pursuant to the Construction Management Agreement, the Construction Manager is responsible for any costs in excess of the GMP, and the Developer further acknowledges and agrees that the Developer is responsible for enforcing the Construction Manager's obligations with respect to said overage and making any necessary payments in the event the Construction Manager fails to do so. The parties also acknowledge that pursuant to the Budget there are Developer Cost Overruns which are anticipated to be \$42,416,386. As a result, as a part of its Guaranty obligation hereunder, the Developer agrees that with respect to each monthly progress payment to be made hereunder, the Developer shall pay to the Authority within one (1) day of the request by the Authority an amount equal to twenty percent (20%) of such progress payment. The Developer agrees to pay the Developer Cost Overrun irrespective of 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 Authority; (ii) a Project Creditor has taken any action of any nature against the Authority; (iii) a Project Creditor has pursued any rights which it has against any other Person who may be liable for the Developer Cost Overrun; (iv) the Project Creditor holds or has resorted to any security for the Developer Cost Overrun; or (v) the Project Creditor has invoked any other remedy or right it has available with respect to the Developer Cost Overrun. The Developer further agrees to make full payment to the Authority 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: (x) no Project Creditor shall have any recourse against the Authority or any of its property for payment of any Developer Cost Overrun; (y) the right of the Authority to enforce this Guaranty against the Developer shall in no manner be impaired or adversely affected thereby.

(b) If any Developer Cost Overrun shall become payable, the Authority shall have the right, at any time and from time to time to the fullest extent permitted by Applicable 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 Construction Team by the Authority, all amounts which may be owed by the Authority to the Developer under any arrangement or agreement, whether related to this Agreement or otherwise. Such right shall exist whether or not the Authority shall have given notice or made any demand hereunder or under any of the Related Agreements, whether or not such debt owing to the member of the Construction Team 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 Authority. The Developer hereby consents to and confirms the foregoing arrangements, and confirms the Authority's rights of set-off against the Developer and the other members of the Construction Team.

(c) The Developer agrees that, if at any time all or any part of any payment, from whomever received, theretofore applied by the Authority 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 Authority, 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 Authority had not been made.

(d) The Developer agrees that no failure or delay on the part of the Authority 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 Authority'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 Authority in any other respect.

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

5.3.3 Security.

As security for its Guaranty of all Cost Overruns, contemporaneously with the execution of this Agreement, the Developer shall provide such security as shall be acceptable to the Authority in its sole discretion (collectively, the "**Security**"). The Developer hereby bears the sole responsibility for any costs or expenses associated with the provision and maintenance of the Security.

5.3.4 Costs Below Budget.

In the event that Project cost, incurred by, paid by or billed to the Authority are less than the sum of \$212,000,000, the amount of the remaining aggregate Developer Contribution, Authority Contribution and Commonwealth Contribution which is in excess of the final Project costs shall first be applied to Site Cost Overruns, and any excess amounts shall then be deposited in, and shall be contributed to, the Capital Reserve Fund, to be disbursed as provided in the Lease.

ARTICLE 6. CONSTRUCTION ADMINISTRATION

6.1 DEVELOPER RESPONSIBILITY

In addition to the Developers obligations contained elsewhere herein, the Developer shall be responsible, as agent for the Authority, 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 Authority, which approval shall not be unreasonably withheld or delayed. Pursuant to such terms as are set forth herein, the Developer shall manage, direct, supervise and coordinate the planning, design and construction of the Stadium, 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 Stadium in accordance with the Construction Documents and this Agreement, including, without limitation:

(a) Retaining the services of the Project Architect and the Project Manager and coordinating the design of the Stadium.

(b) Retaining the services of specialty consultants.

- (c) Designation of the Construction Manager, who shall construct the Stadium in accordance with the Construction Documents, and the Construction Management Agreement.
- (d) Preparing, or causing to be prepared, the Project Budget.
- (e) Preparing, or causing to be prepared, the Project Schedule, and thereafter updating the Project Schedule on a monthly basis and delivering a copy of same to the Authority Representatives.
- (f) Obtaining or causing to be obtained all Permits not otherwise required pursuant to Section 4.4(d) to be obtained by the Authority.
- (g) Retaining and supervising the personnel reasonably required by the Developer in order to properly perform the Work.
- (h) Maintaining complete and accurate books and records, consistent with industry standards, regarding the design and construction of the Stadium including, without limitation, records relating to the Construction Documents, shop drawings, Change Orders, as built - drawings, applications for payment, Permits, insurance policies, correspondence, bills, vouchers, receipts and lien waivers.
- (i) Taking all action reasonably required to comply with all Applicable Laws and taking all reasonable action required to cause the Project Architect and the Project Manager and the Construction Manager and all other agents and contractors engaged by, or acting on behalf of, the Developer to design and construct the Stadium in accordance with Applicable Laws.
- (j) Furnishing promptly to the Authority Representative all documents and information required to be provided pursuant to this Agreement and all other information the Authority Representative may reasonably request. The Developer shall promptly provide to the Authority Representative copies of any and all legal notices received by the Construction Team affecting in any manner the Project.
- (k) Notifying promptly the Authority Representative of any suit, proceeding or action that is initiated or threatened in connection with the Project.
- (l) Providing the Authority, upon completion of construction, with an original print and one sepia print or disk of as-built Construction Documents depicting the Stadium Project.
- (m) Supervising punchlist and warranty work after Substantial Completion of the Work.
- (n) Establishing and updating, as necessary, the schedule of dates for delivery of various design documents for review and approval of the Authority.

(o) Providing the Construction Coordinators with copies of all contracts and subcontracts and all amendments thereto, which shall be subject to approval by the Authority as hereafter provided.

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

(q) Providing the Authority with monthly progress reports in the form of **Exhibit Q**, within 10 days after the end of the preceding month, containing such financial information as the Authority may reasonably request relating to the Stadium Costs, including all expenditures by the Developer during the preceding month and a proposed monthly budget for the upcoming month.

(r) Supervising and coordinating, or causing the Construction Manager and the Project Manager to supervise and coordinate the construction of the Stadium so that the Stadium is constructed, equipped, furnished and completed in a good and workmanlike manner in accordance with the Construction Documents, lien free, by the Completion Date in accordance with all Applicable Laws.

6.2 CHANGES OF AGREEMENTS WITH PROJECT ARCHITECT AND CONSTRUCTION MANAGER.

The Authority Representative shall have the right to approve, any material change, modification or amendment to the Architect's Agreement or the Construction Management Agreement. The Developer shall submit to the Authority Representative for his review and approval any such proposed change, modification or amendment. The Authority Representative shall have ten (10) days to review and approve, or disapprove, such requested change, or the change shall be deemed to have been approved. Approval will not be unreasonably withheld, and the Authority Representative will state reasons for any disapproval in writing.

6.3 CHANGE ORDERS AND STADIUM PLAN CHANGES.

The Developer shall promptly submit to the Construction Coordinators, for their review and approval, (subject to the limitations set forth in Section 6.1 hereof) any change orders or change directives which (i) may or do result in a material change, up or down (after netting), in the total amount of the Project Budget, (ii) which materially alter the design of the Stadium or eliminate material elements from the criteria described in **Article 2**, or are inconsistent with the previously approved Construction Documents, or (iii) which alters the time required to achieve Substantial Completion (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 Construction Management Agreement to review and approve or disapprove the requested Change Order. No payment in connection therewith may be released to the Construction Manager 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 in connection with its review of any requested Change Order and to respond as diligently and expeditiously as possible to any requested Change Order. In the event that the Construction Coordinators do not approve 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 Construction Coordinators' approval, promptly after such Change Orders or plan changes are made.

6.4 AUTHORITY'S RIGHT TO INSPECT AND RECEIVE INFORMATION.

(a) The Construction Coordinators shall receive from the Developer 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 inspect the Stadium at all times. The Developer shall consult regularly with the Construction Coordinators in order to keep the Authority reasonably informed throughout the duration of the planning, design and construction of the Stadium. The Authority shall have the right, through its Representative and Construction Coordinators, to monitor and investigate compliance with the terms of this Agreement and the Related Agreements, and compliance with Applicable Laws. The right of the Authority'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, Project Schedules and contract documents, as well as all other records pertaining to the planning, development and construction of the Project pursuant to this Agreement and the Related Agreements. Any rights that the Authority has under this Section shall not be the basis for any liability to accrue to the Authority 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 Authority to inspect the progress of construction under this Section shall be solely for the benefit of the Authority, 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.

6.5 PROJECT SCHEDULE; COMPLETION OF PROJECT.

The Developer shall require the Construction Manager to prepare a critical path project schedule (the "**Project Schedule**") setting forth the Construction Start Date and time parameters required so that the Project will be Substantially Complete on or before August 1, 2001 (the "**Projected Completion Date**"). A copy of the preliminary Project Schedule is attached hereto as **Exhibit R** and will be updated in accordance with the Construction Management Agreement. The Developer shall cause the Project to be Substantially Complete on or before the Projected Completion Date, subject to extensions as a result of Force Majeure. All Work shall be

performed in a good and workmanlike manner in conformity with the Construction Documents so that on the Projected Completion Date the Stadium is Substantially Complete. In the event the Developer fails to cause the Project to be Substantially Complete on or before the Projected Completion Date, subject to delays caused by Force Majeure, the Developer shall be liable to the Authority for the actual damages incurred in connection with the delay, including without limitation (i) the costs associated with the continued management, operation and/or maintenance of Three Rivers Stadium; provided, however, such costs shall be reasonable in nature in light of the intended demolition of Three Rivers Stadium and shall be consented to by the Developer (which consent shall not be unreasonably withheld or delayed) and/or (ii) any increase in the cost of demolition of Three Rivers Stadium.

6.6 PUNCHLIST.

The Project Architect, the Project Manager and the Construction Manager, in consultation with the Developer and the Construction Coordinators, shall prepare a punchlist of items to be completed and/or corrected under the direction of the Construction Manager after substantial completion of the Project. The Developer shall use its best efforts to cause the commencement and completion of the punch list items within ninety (90)days after receipt of the punchlist.

6.7 WARRANTIES.

Promptly after the Completion Date, to the fullest extent assignable, the Authority 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 and the Construction Management Agreement, subject to the reservation by the Authority of the right to enforce such warranties during the terms of this Agreement and the Lease, pursuant to the terms of the Lease. The Developer shall not knowingly take any action limiting or negating the Construction Manager's, and any subcontractors', suppliers' and/or manufacturers' warranties, except for emergencies and matters of public safety.

6.8 PERMITS, COMPLIANCE WITH APPLICABLE LAWS AND LEGAL REQUIREMENTS.

Except for those items for which the Authority is responsible, the Developer shall comply with and keep in effect all Permits and other approvals obtained from any governmental bodies, regardless of the procurer of such Permits, that relate to the construction of the Project and shall comply with all agreements affecting the Project. The Developer shall also comply with all existing and future Applicable Laws and requirements of all governmental, judicial and legal authorities having jurisdiction over the Project, including without limitation all Applicable Laws and requirements relating to the issuance by the Authority of any bonds in connection with the financing of the Project ("**Legal Requirements**") and with all restrictions and agreements affecting the Project.

6.9 LISTS OF CONTRACTORS AND SUBCONTRACTORS.

Upon the request of the Authority, the Developer shall promptly furnish to the Authority correct lists of all contractors employed in connection with the construction of the Project, and true and correct copies of all executed contracts therefor. The Authority may contact any contractor or subcontractor to verify any facts disclosed in the lists and no such contract or subcontract shall prohibit the disclosure of its contents to the Authority.

6.10 PURCHASE OF MATERIALS AND CONDITIONAL SALES CONTRACTS.

No materials or fixtures placed in or on the Stadium or Site shall be purchased by or installed under any security agreement, financing lease or other agreement whereby the seller reserves or purports to reserve title, a lien, a security interest, the right of removal or repossession or the right to consider such items personal property after their incorporation into the Project, unless previously authorized by the Authority in writing.

6.11 INSPECTION AND RIGHT TO STOP WORK.

6.11.1. Right to Inspect.

The Authority Representative, the Construction Coordinators, and their respective agents and representatives shall have the right at any reasonable time to enter the Project and the Site and inspect the work of construction and all materials, plans, specifications and other matters relating to the construction.

6.11.2 Right to Stop Work.

If the Project Review Coordinator, reasonably and in good faith, determines that any Work or materials do not conform to the Construction Documents or sound building practice or otherwise depart from any of the requirements of this Agreement or in the event of any other breach of this Agreement by any member of the Construction Team, the Project Review Coordinator may provide written notice of such nonconformity to the Developer. If the Developer fails to take reasonable corrective action to cure such nonconformity promptly following such notice, the Project Review Coordinator may require the work to be stopped and may withhold disbursements until the matter is corrected. In such event, at the Authority's option, the Developer shall promptly correct the Work or the Authority shall correct and complete the work for the account of the Developer.

6.11.3 No Penalty.

The Authority shall have the right, pursuant to Section 6.11.2, to require the Work to be stopped upon the occurrence of a material breach by Developer of a covenant or agreement contained in this Agreement or any of the Related Agreements, without penalty or charge against the Authority for any delay caused by such requirement.

6.12 RELIANCE ON CONSTRUCTION COORDINATORS.

Notwithstanding anything herein to the contrary, at any time that the Authority's consent or approval is required, or at any time that the Authority is permitted to make a judgment or determination under the terms of this Agreement, or any other Construction Document, the Authority may, but shall not be required to, rely conclusively on the opinion of the Construction Coordinators as to matters concerning the Construction Documents, the development and construction of the Project, and the cost thereof, and changes in any of the foregoing. Notwithstanding the foregoing, the approval or disapproval of the Construction Coordinators shall be deemed for the benefit of the Authority alone and shall not inure to the benefit of the Construction Team or be deemed a waiver of any right of the Authority hereunder.

6.13 PROTECTION AGAINST LIEN CLAIMS.

The Developer shall promptly pay and discharge all charges for labor done and materials and services furnished in connection with the construction of the Project and shall promptly notify the Authority 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 Construction Management Agreement, shall expressly prohibit the filing of mechanics' liens, and all parties to any such contract shall waive the right to file mechanics' liens, and shall further agree to execute such lien waivers and releases as the Authority and the Developer may request. The Developer has caused the Construction Manager to file a "Waiver of Lien Stipulation" or "No Lien Agreement" in the Prothonotary's Office of Allegheny County in form and substance reasonably acceptable to the Authority. 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 Authority reserves the right to withhold further disbursement of Project Funds until such lien or claim shall have been so discharged.

6.14 NONDISCRIMINATION, CONTRACTOR INTEGRITY, ETC.

In its construction, development and operation of the Project and the Leased Premises, the Developer will comply with all Applicable Laws and with 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 S**; (ii) Contractor Integrity Covenants attached as **Exhibit T**; (iii) Contractor Responsibility Provision attached as **Exhibit U**; (iv) Steel Products Procurement Act Contract Clause attached as **Exhibit V**; (v) Trade Practices Act Contract Clause attached as **Exhibit W**; (vi) Pennsylvania Prevailing Wage Act Contract Clause attached as **Exhibit X**; (vii) Minority and Women Business Enterprise Plan attached as **Exhibit Y**; and (viii) Provisions Concerning the Americans with Disabilities Act attached as **Exhibit Z**. All of the foregoing Exhibits are incorporated into this Agreement by reference as if set forth in full.

6.15 COOPERATION.

The Developer will cooperate at all times with the Authority in bringing about the timely completion of the Project, and the Developer will use commercially reasonable efforts to resolve

all disputes arising during the Work in a manner which will allow the Work to proceed expeditiously in order to complete the Project on or before the Completion Date.

6.16 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 Authority, the Developer shall submit to the Authority, at such times as the Authority requires, but no more than once per month, 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. The Developer shall promptly notify the Authority of any materially adverse change in its financial condition or in the physical condition of the Site.

ARTICLE 7. DISBURSEMENT MATTERS

7.1 PROCEDURES.

To receive disbursements of the Project Funds, the Developer shall submit each disbursement request to the Authority Representative not more frequently than once monthly, using the Authority's prescribed form of Request for Disbursement or such other forms as agreed to by the Developer and the Construction Coordinators. Upon receipt of the Request, the Authority may cause its Construction Coordinators to inspect the progress of construction. If the Authority determines as a result of such inspection that construction is proceeding diligently and in accordance with the Construction Documents, and if all conditions to such disbursement shall have been fulfilled, the Authority shall be obligated to make the disbursement as provided in this Agreement and in accordance with **Exhibit G**. The Authority may also require verification of the information contained in the Request by the Contractor, the Construction Manager and the Project Architect, and may require separate lien waivers and releases from all contractors and subcontractors covering the sums requested to be disbursed and all prior disbursements for which adequate waivers and releases shall not previously have been received by the Authority. All disbursements will be made, at the Authority's option, into a non-interest-bearing special disbursement account of the Developer to be maintained at PNC Bank, or advanced directly (or jointly with the Developer, as the Authority may elect) to such party or parties as have actually supplied labor, material or services in connection with the construction of the Project. Any and all disbursements made to the Developer by the Authority shall be made to the Developer solely as agent for the Authority.

7.2 DISBURSEMENT AMOUNTS.

7.2.1 Limitation on Advances.

Aggregate advances of the Project Funds shall be limited to the maximum amount of the Project Funds and shall be further limited to the amount shown for each category on the Project Budget.

7.2.2 Disbursements.

Subject to the terms of this Agreement, the Authority will make disbursements to defray actual and reasonable costs approved by the Authority and shown on the Project Budget of (i) labor performed on the Project and equipment and materials incorporated into the Stadium Project, (ii) materials suitably stored on the Site, or such other location, as may be approved by the Authority, and (iii) other costs approved by the Authority related to development of the Project. The undisbursed balance of Project Funds, and any sums delivered and held by the Authority pursuant to **Section 7.4** shall at no time be less than the sum of (A) the amount estimated by the Authority to complete the construction, development and financing of the Project, and (B) the aggregate amount of the Retainage to date. The amount of each disbursement with respect to the direct construction costs of the Project performed by trade contractors and subcontractors shall be subject to retainage in an amount equal to ten percent (10%) of such costs, until the Work performed by each such trade contractor or subcontractor is fifty percent (50%) complete, after which Retainage shall be reduced to five (5%) ("**Retainage**"). Retainage shall be held against Work performed by the Construction Manager only if it self-performs work, and in that case in the same percentages as with respect to other construction Work performed; otherwise there shall be no Retainage on sums due to the Construction Manager.

7.3 COST INFORMATION.

If the Developer becomes aware of any change in the approved costs set forth in the Project Budget which would increase, change, or cause a reallocation of the costs as shown on the Project Budget, the Developer shall immediately notify the Authority Representative in writing and promptly submit a proposed revised Project Budget to the Authority for approval. The Authority shall have no obligation to make further disbursements, unless and until the revised Project Budget is approved by the Authority. The Authority reserves the right to withhold its approval pending the deposit of funds pursuant to **Section 7.4** of this Agreement.

7.4 DEPOSIT OF FUNDS BY THE DEVELOPER.

If the Authority, at any time and from time to time, determines that (a) the amount of the undisbursed Project Funds will not be sufficient to pay in full all costs required to complete the construction of the Project in accordance with the Construction Documents, including all financing, development and other costs to be incurred by the Developer, or that (b) any amount shown in any category on the Project Budget will not be sufficient to pay in full the items to which such amount is allocated, and such insufficiency is not the result of a matter for which the Authority is responsible (including the Authority's obligations described in **Sections 4.1, 4.2, 4.4, 4.5 and 4.13**), then the Authority may make demand on the Developer to deposit with the

Authority funds equal to the amount so determined by the Authority, and the Developer shall deposit the funds required hereby, with the Authority within ten (10) days after the date of the Authority's demand, with any funds to be held in an account to be determined by the Authority. After such demand, the Authority shall have no obligation to make further disbursements until such funds, shall have been so deposited by the Developer with the Authority. At such times that the Project Budget is revised to reflect increased costs under the Construction Management Agreement, the Developer shall cause the Construction Manager to revise all payment and performance bonds required by this Agreement to reflect construction cost increases.

7.5 ADDITIONAL SECURITY.

As additional security for the Developer obligations under this Agreement and the other Related Agreements, the Developer irrevocably assigns and grants to the Authority a security interest in: (a) all Project Funds now or hereafter held by the Authority in the Project Accounts; (b) all funds, whether under the control of the Authority or the Developer, in the Stadium Account, whether or not disbursed, (c) all funds now or hereafter deposited by the Developer with the Authority 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 Authority, 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 Authority against any of the obligations of the Construction Team to the Authority (whether or not the same be then due), in such order as the Authority 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.

7.6 FIRST DISBURSEMENT.

The Authority shall not be obligated to make the First Disbursement of Project Funds for development of the Project until the Developer shall have fulfilled, to the Authority satisfaction, all provisions of this Agreement required to be fulfilled by the Developer, including, without limitation, the following:

(a) The Authority shall have received fully executed copies of this Agreement, the Lease, and all duly executed Related Agreements and Construction Documents;

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

(c) The Authority shall have received effective lien waivers and releases from the Construction Manager and all other Contractors, and releases from all subcontractors, suppliers and other persons then under contract, and potentially having a right to file a mechanic's or materialman's lien with respect to all work, materials and services for which Project Funds are being requested and all future Work on the Project;

(d) All licenses, Permits, consents, approvals and authorizations for the construction of the Stadium Project shall be in full force and effect and no notices of violation or revocation with respect thereto shall have been received;

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

(f) The Authority shall have received evidence of the Developer's and the Construction Manager's satisfaction of their commitments to obtain insurance and payment/performance bonds required in connection with the Project.

7.7 FINAL DISBURSEMENT

The Authority shall not be required to release the final disbursement of Project Funds unless fulfillment of the following conditions occurs, provided, however, that in the event that the conditions set forth in Section 7.7(d) and (e) below have not been met within sixty [60] days after all of the other conditions set forth in Section 7.7 have been met, so long as the Developer is actively and in good faith attempting to satisfy such conditions, the Authority shall be required to release the final disbursement of Project Funds:

(a) All conditions of **Section 7.6** shall continue to be met as of the date of the release of the final disbursement of Project Funds;

(b) The Authority shall have received a certificate of the Developer, Project Architect and Construction Manager to the effect, inter alia, that the Stadium Project has been fully completed in accordance with the Construction Documents, and all Applicable Laws, and all matters in such certificate shall have been verified by the Construction Coordinators;

(c) A permanent certificate of occupancy for the Stadium and all other permits required for the use and occupancy of all aspects of the Stadium Project shall have been duly issued and the Authority shall have received copies thereof;

(d) The Authority shall have received an as-built survey, showing the location of all improvements, easements, rights-of-way and other matters affecting the Leased Site.

(e) The Authority shall have received as-built plans and specifications of the Project.

7.8 PROJECT ACCOUNTS

Project Funds will be maintained in such accounts (the "**Project Accounts**") as may be established by the Authority in connection with the debt issuance referenced in **Section 5.2.2** above, and as may be required by the Commonwealth in connection with the award of Commonwealth funds as referenced in **Section 5.2.3** above. To the extent permitted by

Applicable Law, and by the Commonwealth, interest earned on the Project Accounts will be included within the Project Accounts and available for disbursement for Project Costs.

ARTICLE 8. REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY

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

8.1 AUTHORIZATION, VALIDITY AND ENFORCEABILITY.

The Authority 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 Authority of this Agreement have been duly authorized and approved by all necessary Authority action (other than the various government approvals, licenses and permits which are required for the development, construction, use and operation of the Stadium). The Authority Representative is the individual duly authorized to execute this Agreement on behalf of the Authority and has so executed this Agreement. This Agreement and the Related Agreements, when executed, will constitute the valid and legally binding obligations of the Authority, 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).

8.2 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, any provision of any other agreements, instruments, contracts, judgments or decrees to which the Authority is a party.

8.3 NO VIOLATION OF LAWS.

Except as otherwise disclosed on Schedule 8.3 attached hereto, to the actual knowledge of the Authority, the Authority has complied in all material respects with all Applicable Laws with respect to the Site or the transactions contemplated in and by this Agreement and the Related Agreements; and the Authority is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Entity which is in any respect material to the transactions contemplated in and by this Agreement. To the actual knowledge of the Authority, neither the execution, delivery, nor performance of this Agreement by the Authority violates the Authority's charter, the enabling legislation governing the Authority, or any ordinance or resolution of the Authority.

8.4 LITIGATION

Except as set forth on Schedule 8.4, to the actual knowledge of the Authority, there is no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Entity now pending or threatened against the Authority 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 Stadium as contemplated in and by this Agreement.

8.5 SITE POSSESSION AND TITLE.

In the event 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 Authority and is not related to the acts of the Developer or their respective agents, contractors, employees and/or tenants, and which will materially diminish, impair or disturb the rights of the Developer under this Agreement with respect to the Site or the contemplated use of the Stadium as an entertainment facility (a "**Title Defect**"), the Authority shall take all reasonable actions, at its sole cost and expense, to promptly eliminate such Title Defect. Except as expressly permitted under this Agreement and/or the Related Agreements, the Authority 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 (i) rights of the Developer under this Agreement or (ii) use of the Stadium by the Developer.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER.

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

9.1 ORGANIZATION AND AUTHORITY.

The Developer is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania. The Developer has all requisite corporate power and authority to enter into this Agreement and each of the Related Agreements to which it is a party. Schedule 9.1 sets forth a correct and complete list of the officers and directors of the Developer. The issued and outstanding shares of the Developer's capital stock have been duly authorized and validly issued and are fully paid and non-assessable.

9.2 AUTHORIZATION, VALIDITY AND ENFORCEABILITY.

All corporate action 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 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).

9.3 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 Articles of Incorporation or Bylaws, nor to the Developer's knowledge, the NFL Constitution or Bylaws and any written rule, regulation or policy of the NFL. 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. Notwithstanding the foregoing, the parties hereto acknowledge that the Developer must obtain the approval of the NFL to the terms of this Agreement and the Lease. The Developer shall use all diligent efforts to obtain such approval as soon as reasonably possible after the date of execution of this Agreement.

9.4 NO VIOLATION OF LAWS.

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 Applicable Laws; and the Developer is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Entity which is in any respect material to the transactions contemplated in and by this Agreement.

9.5 LITIGATION.

Except as otherwise disclosed to the Authority in writing, there is no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Entity now pending or 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.

9.6 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.

ARTICLE 10.
ADDITIONAL COVENANTS; OPERATIONS

10.1 NON-RELOCATION; SALE OF INTERESTS.

10.1.1 Ownership and Control.

Until a date that is 29.5 years following the Commencement Date, the Developer agrees that either (i) the Developer shall be the sole owner of the Franchise or (ii) the obligations of the Developer will be guarantied by all of the entities owning the Franchise (Pittsburgh Steelers Sports, Inc.). The Developer agrees that during the Term of the Lease, except for transfers to Permitted Transferees, without written approval of the Authority allowing this provision to be waived, any change in the ownership of the capital stock of the Developer or any change in the ownership of the Franchise will be made in accordance with the financial and ownership criteria and standards of the NFL which are then in effect for the NFL as a whole, including without limitation any debt limitations (which the parties acknowledge are currently \$100,000,000, subject to future adjustment by the NFL), without any special waivers or exceptions being made by the NFL for the Developer or the Franchise. Additionally, the Developer agrees that prior to entering into any commitment to sell, transfer or relocate the Franchise, the Developer shall provide written notification of such commitment to the Commonwealth and the Authority. Any new owner of the Franchise shall be required to execute a counterpart of this Agreement and the Lease and assume the obligations of Developer hereunder and as tenant thereunder.

10.1.2 Permitted Transferees.

Nothing contained in this Article 10 is intended to limit, restrict, or require the Authority's consent for transfers of capital stock of the Developer or Pittsburgh Steelers Sports, Inc. to, between or among Permitted Transferees. For purposes of the Lease, a "Permitted Transferee" of any ownership interest in the Developer shall mean (i) the existing shareholders of the Developer, (ii) said shareholders' respective parents, grandparents, spouses, children, grandchildren or lineal descendants, and (iii) any entity controlled by any person described in the preceding clauses (i) or (ii).

10.1.3 Covenant Not to Relocate.

In consideration for the participation of the Authority and the Commonwealth in this Project, the Developer affirmatively covenants, for a period of 29.5 years after the Commencement Date, or if the Lease is extended, for the period of any extension, (i) not to relocate or attempt to relocate the Franchise outside the City of Pittsburgh, Pennsylvania, and (ii) not to initiate, entertain, solicit or participate in discussions for the sale and relocation or relocation of the Franchise with any third party. In accordance with the Developer's covenant not to initiate relocation discussions, the Developer agrees not to make an application to NFL to relocate the Franchise without the Authority's consent. Such consent may be withheld in the sole and absolute discretion of the Authority. This covenant shall expire only upon a date that is 29.5 years following the Commencement Date of the Lease. The Developer hereby agrees to request

acknowledgment of the terms hereof from the NFL and request that the NFL make its approval of any application to relocate contingent upon the consent of Authority.

10.1.5 Unique Nature of Agreement.

The Developer and the Authority agree that the rights conveyed by this **Section 10.1** are of a unique and special nature. The Developer-and the Authority agree that any violation of this **Section 10.1** will result in immediate and irreparable harm to the Authority and that in the event of any actual or threatened breach or violation of any of the provisions of this **Section 10.1**, the Authority 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 Authority from pursuing any other remedies at law or in equity available to it for such breach or violation or threatened violation.

10.2 INSURANCE; BONDS.

10.2.1 Developer's Insurance Requirements.

Prior to the commencement of any Work, the Developer shall maintain, or shall cause the Construction Manager to maintain, comprehensive public liability insurance, fire insurance with extended coverage, builder's risk insurance with respect to all construction and reconstruction, contractual liability insurance for all indemnification obligations under any contract or otherwise, and such other insurance as may be required from time to time by the Authority. The amounts, coverages and other terms and conditions of the insurance policies shall at all times be satisfactory to the Authority and shall satisfy any coinsurance requirements of the Authority. To the extent required by the insurer or by the nature of the policy, the Authority shall be named as insured or additional insured on policies of insurance. The Developer shall pay as they become due all premiums for such insurance, shall keep each policy in full force and effect, shall deliver to the Authority evidence of the payment of the full premium therefor at least twenty (20) days prior to the expiration date of each policy and shall deliver to the Authority original policies of insurance with noncontributory the Authority clauses in favor of and acceptable to the Authority. The Developer liability insurance policy shall specifically name the Authority as an additional insured and loss payee with respect to fire, extended coverage and builder's risk. Each policy shall provide for written notice to the Authority at least thirty (30) days prior to any cancellation, nonrenewal or amendment of such insurance.

10.2.2 Performance Bonds.

Prior to the commencement of any Work, the Developer shall cause the Construction Manager to obtain bonds for the Project in accordance with **Exhibit AA**.

10.2.3 Flood Insurance.

If the Stadium is located in an area which has been identified by any governmental agency, authority or body as a flood hazard area or the like, then the Developer shall maintain a flood insurance policy covering the Stadium in the maximum limit of coverage available under the federal program.

10.2.4 Compliance with Insurance and Bond Requirements.

The Developer shall promptly comply with and conform to (i) all provisions of each insurance policy and (ii) all requirements of the insurers thereunder applicable to the Developer or any of the Site or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of the Stadium.

10.2.5 Rights of Authority to Proceeds.

In the event of loss, the Authority and the Developer shall have the exclusive right to jointly adjust, collect and compromise all insurance and bond related claims, and neither party shall adjust, collect or compromise any claims under said policies and/or bonds without the prior written consent of the other party. Each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to a designated joint account of the Authority and the Developer. All insurance proceeds shall be applied to the repair and restoration of the Stadium in a manner consistent with the Construction Documents, and under such further terms and conditions as may be set forth in this Agreement, or otherwise as the Authority may impose. Notwithstanding the foregoing, the Developer shall have the right to adjust insurance claims with respect to any loss or casualty incurred during construction of the Project in amounts less than \$1,000,000 provided that the proceeds of insurance are applied to restoration of the Stadium in compliance with Applicable Laws.

10.2.6 Authority Right to Cure.

If the Developer shall not at any time comply with the terms of this **Section 10.2**, irrespective of the passage of any grace period, the Authority may cure such non-compliance and may purchase such insurance as it may elect. The Developer shall reimburse the Authority on demand for any costs incurred by the Authority in connection with any such actions. Any such actions by the Authority shall not constitute a waiver of any non-compliance of the terms of this Agreement or the Related Agreements.

10.3 MANAGEMENT AUTHORITY, RIGHTS AND DUTIES.

Until the expiration of the Term of the Lease, as long as the Developer shall not be in default beyond any applicable grace period under the terms of this Agreement and/or the Lease, the Developer shall have the right, duty and obligation, at its own cost, market, manage and operate the Stadium, subject to the terms, conditions and limitations of this Agreement, the Lease, the Related Agreements and Applicable Law. The Developer's rights and duties 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 Stadium with professional and amateur sports franchises other than the Franchise and without promoters of events in form and content which the Developer reasonably expects will maximize the use and revenues of the Stadium by and from other professional and amateur sports franchises, lessees and other users or promoters of events;
- (b) entering into licenses for the use of luxury suites and club seats and agreements with respect to promotions and advertising at the Stadium, 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 Authority and the Commonwealth of their reserved rights to hold Community Events 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 Stadium;
- (e) negotiating and entering into agreements with agents and consultants with respect to management and marketing of the Stadium and negotiating and entering into all other agreements with suppliers, vendors, promoters and other parties related to the operation and promotion of the Stadium;
- (f) negotiating and entering into an agreement or agreements regarding the naming of the Stadium;
- (g) managing, staffing and operating the Stadium both during Event and non-Event periods in a manner appropriate to the operation of the Stadium consistent with industry standards and Applicable Law, including without limitation the applicable portions of the Minority and Women Business Enterprise Plan and employing all personnel, contractors and vendors necessary and appropriate to efficiently operate the Stadium; and
- (h) subject to the terms and conditions of the Lease, 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 Stadium that the Developer determines (using

its reasonable judgment) to be necessary or appropriate to the marketing, management and operation of a first class sports and entertainment complex.

10.4 RETENTION AND DELEGATION OF MANAGEMENT AUTHORITY.

In connection with the rights and obligations of the Developer to manage, market, maintain and operate the Stadium, the Developer itself may perform marketing, management and operating rights and duties with respect to the Stadium or may from time to time, enter into contract(s) On Market Terms with either a firm or firms of national or regional repute, experience and standing in certain or all aspects of marketing, management and operation or with Affiliate(s) of the Developer. If stadium management firms are retained by the Developer, and such stadium 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 Stadium, the Developer shall disclose such relationship in writing to the Authority and shall maintain such other business relationship and the Stadium relationship entirely independent and separate from each other. Prior to entering into any agreement with a management firm or an Affiliate, the Developer shall receive the written approval of the Authority, which shall not be unreasonably withheld or delayed.

10.5 AFFILIATE RELATIONSHIPS.

Developer shall administer and enforce any and all agreements with respect to the Stadium that it may enter into with any Affiliate of Developer in accordance with its obligations under this Agreement, the Related Agreements and any other agreement to which Developer is a party in a manner consistent with a standard of conduct reasonably expected from the manager of a sports and entertainment facility meeting industry standards which is dealing with an unrelated party. If Authority believes that Developer is failing to meet this standard in its relationship with any Affiliate with which it has a contractual relationship with respect to the Stadium, it may notify Developer in writing of the specific instances of its failure to meet such standard and request that Developer remedy such alleged failures and refrain from repeating any such failures. If Developer concurs with the allegations of such notice, it shall promptly remedy any such failures and refrain from any repetition of such failures. Failure to respond to such notice shall be deemed concurrence by Developer.

10.6 ENVIRONMENTAL MATTERS.

After the Construction Start Date and until the expiration of the term of this Agreement (which the parties agree shall expire upon the expiration of the term of the Lease), the Developer for itself, and for its agents, officers, directors, independent contractors, servants employees, and invitees and their respective successors and assigns (all of which are collectively called the ("Developer Agents")) shall and shall cause Developer Agents to:

- (a) except for any permits required to be provided by the Authority pursuant to **Section 4.2** hereof, cause all Required Environmental Permits to be obtained and maintained in

full force and effect and the Developer shall comply with the terms and conditions thereof. The Developer shall submit to a Governmental Entity and/or maintain, as appropriate, all Required Environmental Reports;

(b) not permit, and shall take reasonable precautions against, the presence of Contamination, except to the extent specifically authorized by Governmental Entities, any Required Environmental Permit or pursuant to Environmental Laws, on the Leased Premises;

(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 Leased Premises;

(d) comply with applicable Environmental Laws relating to the construction, completion, use, maintenance, operation or occupancy of the Leased 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 Entities all Response Actions required to address the presence of Contamination at, in, on, under, or emanating from the Leased Premises as a result of the Developer's and/or Developer Agents' use, development and occupancy of the Leased Premises;

(f) take all reasonable precautions against and shall not permit the Leased Premises to be used to generate, manufacture, refine, treat, handle, label, distribute, collect, store, dispose of, produce, process, recycle, transport or otherwise use or manage Hazardous Materials except for those Hazardous Materials present on the Leased Premises in compliance with Environmental Laws or Required Environmental Permits 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 Authority in writing, including a detailed description, of: (i) the presence of Contamination; (ii) the receipt by the Developer or the Developer Agents of an actual or threatened Environmental Complaint; (iii) the imposition or attachment against the Leased 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 Leased Premises.

10.7 BIDDING.

In consideration of the Developer's commitment to pay the Developer Cost Overruns, the Authority hereby agrees to cooperate with the Developer in connection with the construction of the Project. All Work of construction performed with respect to the Project will be bid pursuant to such procedures as are approved in writing by the Authority, and in full compliance with all requirements of Applicable Law.

10.8 PARKING.

The parties hereto acknowledge that the (i) availability of parking for use in connection with Events at the Stadium and (ii) future development of certain land adjacent to the Site is of great importance and that such subjects are addressed in detail in Section 7.7 of the Lease. The parties agree that such provision is incorporated by reference herein and made a part hereof.

10.9 PLAYER PAYROLL TAX.

The Developer agrees that it shall use all reasonable efforts to comply with the City of Pittsburgh's Player Payroll Tax Program, as the same may be amended or modified from time to time (the "Player Payroll Tax"). The Developer shall not object to or contest the player payroll tax and it shall use all commercially reasonable efforts to secure any relevant approvals from the NFL and the NFL Players Association.

10.10 ARMS-LENGTH NEGOTIATIONS.

The Developer and the Authority agree that all marketing, vendor, employee and/or other similar or related agreements with respect to the revenues generated at the Stadium, as well as the design, construction and other expenditure items of the Project, shall be entered into on an arms length basis at commercially reasonable rates. Neither the Developer, its owners, key employees, nor Affiliates shall receive fees or profit from the design and/or construction process, without the prior written consent of the Authority. The Developer will use all commercially reasonable efforts to minimize expenses in connection with this Project.

10.11 AFFORDABLE SEATING PROGRAM.

On or before the Commencement Date, and thereafter in accordance with Applicable Law, Developer will submit to the Authority and to the Commonwealth, a plan to provide affordable seating during NFL Events (as defined in the Lease), in portions of the Stadium. This plan will comply with Applicable Law and will identify in detail the number and location(s) of seats designated as affordable and the number and dates of games in which seats designated as affordable will be available. Additionally, the Lessee shall comply with the Affordable Seating requirements set forth in Section 10 of that certain Agreement dated as of June __, 2000 among the Commonwealth, the Lessee and PSSI.

10.12 SIGNAGE

(a) The Developer will erect, or cause to be erected, signs in the area of construction of the Stadium 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."

(b) Upon the request of the Authority, the Developer will erect, or cause to be erected, such other signs in the area of the Stadium reasonably acceptable to the Authority acknowledging the financial assistance of the City, the County, the RAD, the Commonwealth and/or the Authority in connection with the development of the Stadium.

10.13. OCCUPANCY OF THE STADIUM.

The Lessee shall cause PSSI to remain and conduct NFL games at the Stadium for the duration of the Lease Term, as further set forth in this Agreement, and in the Lease. The Developer further acknowledges that if it violates this covenant, the Authority and/or the Commonwealth have the right to seek both equitable relief and damages as further agreed in the Lease, the Related Agreements and the Capital Facilities Act.

10.14. NOTICE OF SALE, ETC.

If at any time the Developer and/or PSSI enters into a commitment either orally or in writing, with any Person to sell, transfer, assign or convey any interests in PSSI and/or the Franchise or their managing entities, where the prior written consent of the Authority to the transaction is required under the Lease or any Related Agreement, in addition to the notice required under Article 8 of the Lease, the Developer will furnish written notice to the Authority and to the Commonwealth in the manner set forth in Article 14 below, within one (1) business day of the date of any such commitment.

10.15 SUCCESSORS BOUND.

If at any time during the Lease Term the Lease is assigned or the Premises sublet, or any interests in the Developer and/or PSSI or their managing entities are sold, transferred, assigned or conveyed, and the consent of the Authority to any such transaction is required under the Lease or any Related Agreement, the Developer and PSSI will, as a condition to any such transaction, undertake to ensure that any successor entity be bound by all terms, covenants and conditions of the Lease and the Related Agreements applicable to the period following such transaction, and such successor will execute and deliver to the Authority such documentation evidencing that undertaking as is reasonably requested by the Authority.

10.16 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 Stadium, as are required by the Lease, including without limitation, Article 10 thereof, and the Related Agreements.

10.17 COMMONWEALTH AND COMMUNITY EVENTS.

The Developer will make the Stadium available for Community Events and Commonwealth Events as is further set forth in Sections 5.3 and 5.4 of the Lease respectively.

10.18 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, and
- (f) The Nondiscrimination Provisions set forth in the Grant Agreement and in this Agreement.

10.19 PAYMENTS.

Developer will, at all times during the Lease Term, make all payments due under the terms of the Lease.

10.20 MISCELLANEOUS COVENANTS.

10.20.1 The Developer shall manage and operate all aspects of the Stadium, subject to the Authority's and the Commonwealth's right to utilize the Stadium for Community Events, as provided in the Lease.

10.20.2 At all times during the Lease Term, the Developer and PSSI shall operate the Stadium as a first class sports and entertainment facility comparable with similar football stadia in the United States housing NFL teams.

10.20.3 The Developer shall do all things and take all actions and expend such funds necessary or desirable for the operation of the Stadium in accordance with the Lease and this Agreement throughout the Lease Term. Without limiting the generality of the foregoing, the Developer, at all times throughout the Lease Term, shall:

- (a) Commence, defend and settle in good faith such legal actions or proceedings concerning the operation of the Stadium as are necessary or required in the reasonable opinion of the Developer; retain counsel in connection with such defense; and notify

the Authority in writing of the commencement of any legal action or proceeding and advise the Authority of the progress of any such legal action or proceeding; and maintain such insurance with respect to the obligations of the Developer set forth in the Lease as may be required by **Article 12** thereof, or as the Developer otherwise determines appropriate. Upon request, the Developer shall send to the Authority copies of all legal documentation relating to such legal actions.

(b) Employ, train, pay, supervise and discharge all personnel and/or engage such independent contractors, as the Developer determines to be necessary for the operation of the Stadium as a first class sports and entertainment facility.

(c) Maintain or cause to be maintained all necessary licenses, permits, approvals and authorizations required by any Governmental Authority, for the operation of the Leased Premises.

(d) At all times during the Lease Term, the Developer and PSSI will maintain their existence as Pennsylvania corporations or other form of Pennsylvania domiciled entity.

(e) At all times during the Lease Term, the Lessee shall cause PSSI to (i) maintain its membership and franchise in the NFL in good standing, and (ii) hold, maintain and defend its rights and franchise to play professional football in the City.

(f) The Lessee shall have no power to bind the Authority, except as specifically approved in writing in advance by the Authority.

(g) On or before the Commencement Date, and thereafter in accordance with Applicable Law, Developer will submit to the Authority and to the Commonwealth, a plan to provide affordable seating during NFL Events (as defined in the Lease), in portions of the Stadium. This plan will comply with Applicable Law and will identify in detail the number and location(s) of seats designated as affordable and the number and dates of games in which seats designated as affordable will be available.

ARTICLE 11. GENERAL CONDITIONS

11.1 AUTHORITY'S CONDITIONS.

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

11.1.1 Funding.

The Developer and the Commonwealth shall have provided the funding referred to in **Sections 5.2.1 and 5.2.3** of this Agreement, and the Authority Debt shall have been issued in the amount contemplated by **Section 5.2.2** of this Agreement.

11.1.2 Lease.

The Developer shall have executed and delivered the Lease.

11.1.3 Accuracy of Representations.

All of the representations and warranties of the Developer, the Project Architect, the Project Manager, or the Construction Manager, or any agent, subcontractor or officer thereof (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 as of the respective dates of the Authority's performance of the obligations listed in the preamble to this **Section 11.1**.

11.1.4 Performance.

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

11.1.5 No Injunction.

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

11.1.6 No Litigation.

Except as otherwise disclosed to the Authority in writing, there shall be no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against or which could have a material adverse affect upon the Developer's performance under this Agreement or the financial condition or business of the Developer.

11.1.7 Certificates; Other Documents.

(a) The Developer shall have delivered to the Authority a certificate of its President dated the Closing Date and certifying that each of the conditions specified in subsections have been met.

(b) The Developer shall have delivered to the Authority a certificate of its Secretary dated the Closing Date and certifying (i) that correct and complete copies of its charter and by-laws are attached thereto, (ii) that correct and complete copies of each resolution of its board of directors and shareholders approving this Agreement and the other Related Agreements to which it is a party and authorizing the execution hereof and thereof and the consummation of the transactions contemplated hereby and thereby are attached thereto and (iii) the incumbency and signatures of the officers of the Developer authorized to execute and deliver this Agreement and the other Related Agreements to which the Developer is a party on behalf of the Developer.

(c) The Developer shall have delivered all documents and notices required by this Agreement and any related Agreement.

11.2 DEVELOPER'S CONDITIONS.

The obligations of the Developer to perform **Article 3, and Section 5.2.1** 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):

11.2.1 Funding.

The Authority and the Commonwealth shall have provided the funding referred to in **Sections 5.2.2 and 5.2.3** of this Agreement.

11.2.2 Lease.

The Authority shall have executed and delivered the Lease.

11.2.3 Accuracy of Representations.

All of the Authority's representations and warranties in this Agreement must have been accurate in all material respects as of the date hereof and as of the respective dates of the Developer's performance of the obligations listed in the preamble to this **Section 11.2**.

11.2.4 Performance.

All of the covenants and obligations that the Authority is required to perform or to comply with pursuant to this Agreement and the Related Agreements, including the delivery of all documents and notices provided for therein, must have been performed and complied with in all material respects.

11.2.5 No Injunction.

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

11.2.6 No Litigation.

Except as otherwise disclosed to the Developer in writing, there shall be no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against or which could have a material adverse affect upon the Authority's performance under this Agreement.

11.2.7 Delivery of the Documents.

The Authority shall have delivered all documents and notices required by this Agreement and any Related Agreement.

**ARTICLE 12.
DEFAULT AND REMEDIES**

12.1 EVENTS OF DEFAULT.

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

(a) 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 Developer by Authority 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 Developer promptly advises Authority of Developer's intention duly to institute all steps necessary to cure such default and Developer promptly commences cure of such failure or violation, and diligently pursues such cure to completion;

(b) Developers 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 (it being understood that any such default or event of default shall be an additional Event of Default hereunder and shall not be construed to be in substitution of any other Events of Default);

(c) (i) The Developer 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-applicable judgment is entered against Developer for an amount in

excess of \$500,000, which final judgment is not bonded or satisfied within thirty (30) days of having become final, or (vii) Developer shall dissolve or liquidate, or shall otherwise cease to exist as a Pennsylvania corporation; or

(d) Any representation or warranty made by Developer herein, or in any Related Agreement shall prove to be incorrect, now or hereafter, in any material respect.

12.2 REMEDIES.

12.2.1 Injunctive Relief.

The Developer acknowledges that the rights conveyed by this Agreement to the Authority are of a unique and special nature, and that any violation of this Agreement will result in immediate and irreparable harm to the Authority and any third party beneficiaries of this Agreement, and that in the event of any actual or threatened breach or violation of any of the provisions of this Agreement, the Authority, 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.

12.2.2 Repayment of Commonwealth Contribution and Local Contribution.

In the event of a relocation of the Franchise to a location other than the Stadium, (a "**Repayment Event**") the Developer shall immediately pay to the Authority an amount equal to the Authority Contribution and the Commonwealth Contribution; provided, however, in no event shall the Developer be required to pay, pursuant to this **Section 12.2.2**, a sum greater than the Maximum Repayment Obligation. Nothing contained in Section 4.3.1 of the Lease shall alter the parties agreement set forth in this Section 12.2.2 and nothing contained herein shall be deemed to otherwise restrict any other rights and/or remedies of the Authority under this Agreement or the Lease.

For purposes of this Agreement, the term "**Maximum Repayment Obligation**" shall mean the sum of (i) the Commonwealth Contribution, minus any rental payments actually made pursuant to Section 504(7) of the Capital Facilities Act through the date of a Repayment Event, and (ii) such sums as are needed to provide sufficient monies to pay all principal, interest and other sums and charges on all bonds outstanding in connection with the Project in full to and including maturity or the date fixed for redemption.

12.2.3 Recourse to Security.

The Security shall at all times be available to the Authority to reimburse the Authority for any Damages sustained.

12.2.4 Remedies Cumulative.

All rights and remedies set forth in this Agreement, the Lease and the other Related Agreements shall be deemed to be a part of this Agreement as if fully set forth herein, and are cumulative and in addition to the parties' rights and remedies at law or in equity. The Authority's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. The Authority's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies or obligations. The Authority shall not be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by the Authority. If the Authority 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 13. INDEMNIFICATION

13.1 INDEMNIFICATION.

13.1.1 Indemnification and Payment of Damages by the Developer.

The Developer will indemnify and hold harmless the Authority, the City of Pittsburgh, the County of Allegheny, the Allegheny Regional Asset District, the Stadium Authority and the Commonwealth of Pennsylvania and each of their respective elected officials, appointed officials, officers, directors, employees, agents and attorneys (collectively, the "**Indemnified Persons**") for, and will pay to the Indemnified Persons the amount of, any loss, liability, claim, damage (including incidental and consequential damages), expense (including costs of investigation and defense and reasonable attorney fees, whether the action is for damages, equitable or declaratory relief), whether or not involving a third-party claim (collectively, "**Damages**"), arising, directly or indirectly, from or in connection with:

- (a) any breach of any representation or warranty made by the Developer in this Agreement, the Related Agreements, or in any schedule or exhibit attached hereto or thereto or any other certificate or document delivered by the Developer to the Authority pursuant to this Agreement;
- (b) any breach by the Developer of any covenant or obligation of in this Agreement;
- (c) any claim by any person for Damages in connection with the violation of any Permit or Applicable Laws by the Developer, the Project Architect, the Construction Manager, the Project Manager, or any agent, subcontractor or officer thereof;

(d) all amounts due and owing to Project Creditors, whether paid by the Authority or not, or otherwise due and owing pursuant to **Section 5.3.1**;

(e) otherwise arising out of 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 and/or the Related Agreements, excluding therefrom the negligence, gross negligence and intentional misconduct of any of the Indemnified Persons.

If the Developer fails to make any payment of any sums payable by the Developer to Indemnified Persons on the date due by contract, which failure shall continue for thirty (30) days, then the 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 equal to the greater of six percent (6%) above the Prime Rate, or the highest rate permitted by law, from the date such payment was due to the date of payment thereof.

13.2 DEFENSE OF INDEMNIFIED CLAIMS.

13.2.1 Notice of Claims.

Promptly after receipt by an Indemnified Person of the notice of the commencement of a claim against it for which the Indemnified Person would be entitled to receive indemnification under **Section 13.1** (a "**Proceeding**"), the 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 Indemnified Person. The Developer shall promptly give written notice to the Authority of any claim, including a claim for Damages, against any Indemnified Person.

13.2.2 Assumption of Defense by the Developer.

If any Proceeding referred to in **Section 13.2.1** is brought against an Indemnified Person and it gives notice to the Developer of the commencement of such Proceeding, the Developer will, unless the claim involves Taxes, be required to assume the defense of such Proceeding with counsel satisfactory to the Indemnified Person (unless the Developer is also a party to such Proceeding and the Indemnified Person determines in good faith that joint representation would be inappropriate), and, after written notice from the Developer to the Authority and the 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 Authority under this **Section 13** 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 Indemnified Person's consent unless (A) there is no finding or admission of any violation of Applicable Laws or any violation of the rights of any person and no effect on any other claims that may be made against an Indemnified Person, and (B) the sole relief provided is monetary damages that are paid in full by the Developer; and (iii) the 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 Indemnified Person, including the payment of money damages.

13.2.3 Indemnified Person's Defense of Claims.

Notwithstanding the foregoing, if the 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 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).

13.2.4 Jurisdiction.

The Developer hereby consents to the nonexclusive Jurisdiction of any court in which a Proceeding is brought against an Indemnified Person for purposes of any claim that the Authority may have under this Agreement with respect to such Proceeding or the matters alleged therein.

ARTICLE 14. MISCELLANEOUS

14.1 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 the design, construction, operation and leasing of the Project and shall be enforceable by the Authority during the entire term of the Lease. 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.

14.2 ADDITIONAL DOCUMENTS AND APPROVAL.

The Authority 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.

14.3 GOOD FAITH.

In exercising its rights and fulfilling its obligations under this Agreement and each of the Related Agreements, each of the Authority 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.

14.4 CHALLENGE TO ENFORCEABILITY.

Neither the Authority 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 Authority or the Developer except by the institution of a declaratory action in which the Authority and the Developer are parties.

14.5 COOPERATION.

The Authority shall have the responsibility to contest any challenge to the validity, authorization and enforceability of this Agreement, the Related Agreements and/or the Player Payroll Tax ("**Challenge**"), whether asserted by a taxpayer or any Person, except, the Authority, at its option, may elect not to contest such Challenge where to do so would be deemed by the Authority as presenting a conflict of interest or would be contrary to Applicable Law. The Authority and the Developer shall strive in good faith to agree jointly upon counsel to defend any such Challenge. 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 Authority in connection with such Challenge shall be the responsibility of the Authority. Furthermore, the Authority 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 with respect to the Authority, any such action which requires Board approval or is deemed by the Authority to present a conflict of interest or is deemed to be contrary to Applicable Law.

14.6 RISK OF CERTAIN LOSSES.

14.6.1 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 war, insurrection, riots, hurricanes, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions (except resolutions of a Governmental Entity in its proprietary capacity), unusually severe weather, inability (when both parties are without fault) of any contractor, subcontractor or supplier, acts or the failure to act, of any public or governmental agency or entity (except acts or failures to act by a Governmental Entity acting in its proprietary capacity) or any other causes beyond the control and without the fault of the party claiming an extension of time to perform (each, a "Force Majeure"), except with respect to the Authority's claim for Damages in connection with the delay in the Demolition of Three Rivers Stadium where the same Force Majeure condition has not caused a delay in the construction of the new ballpark for the Pittsburgh Pirates Major League Baseball franchise. 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 30 days after the commencement of the cause, the period shall be deemed to commence 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 Authority 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.

14.6.2 Risks of Delay in Construction Start Date.

In the event that the Construction Start Date has not occurred within two (2) years from the date of this Agreement and the Related Agreements have been executed by all parties, subject to any extensions pursuant to **Section 14.6.1**, then, in such event, the Authority and the Developer shall each have the right to terminate this Agreement and the Related Agreements at any time prior to the Construction Start Date by giving 30 days' prior written notice of cancellation to the other party, in which event, the obligations of the Developer and the Authority under this Agreement and the Related Agreements shall terminate upon the expiration of the 30 day period. The Developer and the Authority 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 Authority the payments of Project Funds, if any, made to the Developer or the Construction Manager pursuant to this Agreement.

14.6.3 Risk of Delay in Completion Date or Failure to Complete.

In the event that the Project is not completed and ready for occupancy and use for the opening of the 2001 NFL season in August 2001, the Developer shall not be obligated to cause to be played in the Stadium any of its regularly scheduled home games until the Completion Date. The Authority shall not be liable or responsible to the Developer for the failure to complete the Project for the opening of the 2001 NFL season in August 2001, except as otherwise specifically set forth herein. 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 14.6.1**, then, in such event, the Authority shall have the right to terminate this Agreement and the Related Agreements at any time prior to the Completion Date by giving 30 days' prior written notice of cancellation to the Developer, in which event, the obligations of the Developer and the Authority under this Agreement and the Related Agreements shall terminate upon the expiration of the 30 day period. The Developer and the Authority 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 in the event of a default by the Developer, the Developer shall repay to the Authority the payments, if any, made to the Developer or the Construction Manager pursuant to this Agreement. 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 Authority 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.

14.6.4 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 Applicable Laws, 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 Authority 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 such 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 Applicable Laws, ultra vires, or otherwise unenforceable.

14.7 JURISDICTION; SERVICE OF PROCESS.

Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement or the Related Agreements may be brought against any of the parties in the courts of the Commonwealth of Pennsylvania, County of Allegheny, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any

action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

14.8 NOTICE OF MATTERS,

Should the Authority or the Developer receive knowledge about any matter which may constitute a breach of any of its warranties or covenants set forth in this Section 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 Authority shall promptly inform the other of any suits referred to in **Sections 8.3 and 8.4 or 9.4, 9.5 and 9.6**, respectively, and any Challenge referred to in **Section 14.5**.

14.9 COMPLIANCE WITH LAWS.

During the term of this Agreement, the Developer, in connection with its use and the exercise of its rights with respect to the Stadium and the Site, shall comply with all Applicable Laws relating to such use and exercise and the Developer shall be responsible at all times for causing the Stadium and the Site to be in compliance with all Applicable Laws, all at the Developer's sole cost and expense, except for Applicable Laws relating to the conduct of Community Events (as defined in the Lease) which shall be the responsibility of the Authority. The Developer shall obtain and maintain all necessary permits and licenses that are required in connection with the operation and use of the Stadium.

14.10 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 Article):

To the Developer: PSSI Stadium Corp.
300 Stadium Circle
Pittsburgh, PA 15212

To the Authority: Sports & Exhibition Authority of Pittsburgh
and Allegheny County
Regional Resource Center
Suite 1410, 425 6th 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.

14.11 DESIGNATION OF REPRESENTATIVES.

The Developer and the parties have designated the following to be their representatives for purposes of overseeing and coordinating the construction and development of the Project:

Authority Representative:	Stephen G. Leeper, Executive Director
Developer Representative:	Arthur J. Rooney, II

14.12 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.

14.13 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, and as to the Authority, to the extent required by Applicable Law.

14.14 BINDING EFFECT.

This Agreement shall be binding upon the Authority and the Developer, and their respective representatives, successors and assigns.

14.15 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.

14.16 HEADINGS.

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

14.17 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.

14.18 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.

14.19 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. Notwithstanding the foregoing, the City of Pittsburgh, the County of Allegheny, the Allegheny Regional Asset District, the Commonwealth of Pennsylvania and PSSI are expressly deemed to be third-party beneficiaries of this Agreement and the Related Agreements .

14.20 GOVERNING LAW.

This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania, without regard to any jurisdiction's conflicts of law provisions. Venue for any judicial, administrative or other action to enforce or construe any term or provision of this Agreement or arising from or relating to this Agreement shall lie exclusively in Pittsburgh, Allegheny County, Pennsylvania.

14.21 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.

14.22 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 Authority and the Developer, or between the Authority and any other party, or cause the Authority to be responsible in any way for the debts or obligations of the Developer or any other party.

14.23 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 the Authority and the Developer.

14.24 RIGHTS OF THE COMMONWEALTH.

The 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 Article 10 (including without limitation Section 10.1) of this Agreement, or of any comparable provision in the Lease or any Related Agreement, or any covenant of the Developer hereunder, will result in immediate an irreparable harm to the Commonwealth, and in the event of any actual or threatened breach or violation of any of the provisions of Article 10 (including without limitation Section 10.1) of this Agreement, or of any comparable provision of the Lease or any Related Agreement prohibiting the relocation of the Franchise from the City during the Term, or any covenant or obligation of the Developer 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 14.24 shall be construed to affect or limit in any manner any rights or remedies of the Authority under this Agreement, the Lease or any Related Agreement.

* * * *

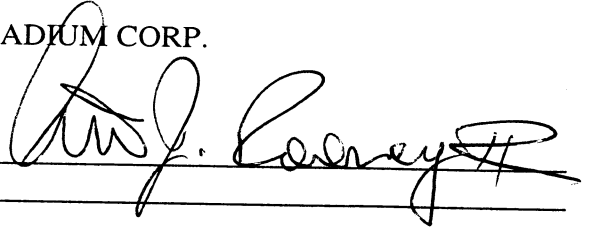
IN WITNESS WHEREOF, the parties have executed this Agreement as of the first date above written.

DEVELOPER

PSSI STADIUM CORP.

By: _____

Title: _____



AUTHORITY

SPORTS & EXHIBITION AUTHORITY OF
PITTSBURGH AND ALLEGHENY COUNTY

By: _____

Title: _____

