

**DEVELOPMENT AND OPERATING AGREEMENT**

BY AND BETWEEN

SPORTS & EXHIBITION AUTHORITY  
OF PITTSBURGH AND ALLEGHENY COUNTY

AND

PITTSBURGH ASSOCIATES

EXECUTED JUNE 2, 2000

EFFECTIVE AS OF MAY 17, 1999

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## DEVELOPMENT AND OPERATING AGREEMENT

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

### **BACKGROUND**

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

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

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

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

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

## 1. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Project Coordinator** shall mean Thomas Kennedy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2. OVERVIEW

### 2.1 THE PROJECT.

(a) Project Definition.

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

(b) Ballpark Specifications.

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

(c) Ownership of Project.

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

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

## 2.2 AGENCY RELATIONSHIP DURING CONSTRUCTION PERIOD.

### (a) Appointment of Developer.

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

### (b) Responsibilities of Developer.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

(c) Trade Contracts.

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

(d) Payment Procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Owner's Approval Rights.

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

(f) Owner as Beneficiary.

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

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

(g) Construction Coordinators.

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

(h) Approval Of Construction Documents.

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

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

(i) Warranties.

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

(j) Erection of Signage.

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

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

## 2.3 SITE.

(a) Acquisition and Delivery of Site.

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

(b) Environmental Matters.

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

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

(c) Site Matters.

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

- (i) A boundary survey or other such legal description of the Site identifying new and existing confines of the site, including all easements. Such survey shall incorporate proposed road relocation and any proposed property and street vacation.
- (ii) A final report concerning the site-use assessment of historical and archaeological artifacts including any necessary surveys and investigations, together with clearance by the appropriate public agencies approving findings and recommendations identified in the final report.

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

(d) Geotechnical Matters.

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

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

(e) Street Vacation and Relocation.

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

(f) Utility Relocation.

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

(g) Transportation Management.

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



(h) Expedited Permitting.

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

(i) Sales Tax Exemption.

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

(j) Community Issues.

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

(k) Construction Staging and Storage.

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

(l) Labor and Employment Issues.

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

(m) Insurance.

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

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

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

**2.4 PROJECT BUDGET.**

(a) Approval.

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

(b) Definition.

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

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

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

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

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

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

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

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

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

## 2.5 FINANCING OF PROJECT.

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

(a) Developer Contribution.

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

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

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

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

(b) Owner Contribution.

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

(c) Commonwealth Contribution.

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

## 2.6 PROJECT ACCOUNTS.

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

## 2.7 DEVELOPER GUARANTY OF COST OVERRUNS.

(a) Definition.

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

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

(b) Guaranty.

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

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

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

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

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

(c) Security.

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

(d) Certain Costs.

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

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

(e) Additional Security.

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

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

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

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

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

### **3.2 NO CONFLICTS.**

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

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

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

### **3.4 LITIGATION.**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4.6 LITIGATION.**

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

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

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

#### **4.8 DESIGN OF BALLPARK.**

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

### **5. CONSTRUCTION MATTERS**

#### **5.1 CONSTRUCTION ADMINISTRATION.**

(a) Developer's Responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Change Orders And Ballpark Plan Changes.

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

with specificity, the reason for disapproval. The Developer shall provide to the Construction Coordinators, for informational purposes only, copies of any other Change Orders and changes to the Construction Documents not requiring the Owner's approval, promptly after such Change Orders or plan changes are made.

(d) Owner's Right To Inspect And Receive Information.

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

(ii) The Owner shall have the right to require the Work to be stopped upon the occurrence of a breach of this Article 5, without penalty or charge against the Owner for any delay caused by such requirement, if and only if such work stoppage is necessary to prevent damage to the Project and, in all such cases, such stoppage request shall be in writing and shall be specific as to the conditions giving rise to such stoppage request, the location and precise areas of Work affected by such stoppage request, the length of the stoppage and the conditions to the resumption of Work.

(e) Master Project Schedule.

The Developer shall require the DCM to prepare the Master Project Schedule setting forth the date that construction will start, and time parameters required so that the Project will be substantially complete on or before the Completion Date, subject to extensions as a result of Force Majeure. All Work shall be performed by the DCM in a good and workmanlike manner in

conformity with the Construction Documents so that on the Completion Date the Ballpark is in good working order and condition and ready for full and immediate use.

## **5.2 PERMITS AND LEGAL REQUIREMENTS.**

Except to the extent that the Developer is unable to do so due to the Owner's failure to perform its obligations under this Agreement and the Related Agreements, the Developer shall comply with and keep in effect all Permits and other approvals obtained from any Governmental Authorities, regardless of the procurer of such Permits, that relate to the construction of the Project. The Developer shall comply with all existing and future Legal Requirements, orders and requirements of all Governmental Authorities, judicial and legal authorities having jurisdiction over the Project and with all restrictions and agreements affecting the Project.

## **5.3 LISTS OF CONTRACTORS AND SUBCONTRACTORS.**

Upon the request of the Owner, the Developer shall promptly furnish to the Owner correct lists of all contractors and subcontractors employed in connection with the construction of the Project, and true and correct copies of all executed no-lien agreements, contracts and subcontracts therefor. The Owner 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 Owner.

## **5.4 PURCHASE OF MATERIALS AND CONDITIONAL SALES CONTRACTS.**

No materials, equipment, fixtures or articles of personal property placed in or on the Ballpark or Site other than equipment, furnishings, supplies and other items of personal property purchased by the Developer for use in the Developer's private offices, reception areas, or other areas on the Premises used for personal purposes by the Developer or equipment, furnishings, supplies and other items of personal property purchased by other Persons occupying portions of the Premises used for personal purposes by such Persons 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 Owner in writing.

## **5.5 RELIANCE ON CONSTRUCTION COORDINATORS.**

Notwithstanding anything herein to the contrary, at any time that the Owner's consent or approval is required, or at any time that the Owner is permitted to make a judgment or determination under the terms of this Agreement, or any other Construction Document, the Owner 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.

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

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

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

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

## **5.8 COOPERATION.**

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

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

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



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

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

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

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

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

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

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

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

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

## **7. OPERATIONS**

### **7.1 MANAGEMENT AUTHORITY, RIGHTS AND DUTIES.**

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

- (a) soliciting, negotiating and entering into leases, licenses and similar agreements regarding the use and presentation of events at the Ballpark with professional and amateur sports franchises other than the Franchise and with promoters of events in form and content which the Developer reasonably expects will maximize the use and revenues of the Ballpark by and from other professional and amateur sports franchises, lessees and other users or promoters of events;
- (b) except as otherwise agreed to between the parties, entering into licenses for the use of luxury suites and club seats and agreements with respect to promotional and advertising at the Ballpark and the Site, and engaging in any and all necessary and appropriate marketing and sales activities with respect to such licenses and agreements;
- (c) making appropriate scheduling, staffing and other arrangements with respect to the exercise by the Owner of its reserved rights to hold civic events at the Ballpark pursuant to the Lease;
- (d) entering into agreements for the right to provide technical production services for radio, TV, cable and other transmissions from the Ballpark;
- (e) negotiating and entering into agreements with agents and consultants with respect to management and marketing of the Ballpark and negotiating and entering into all other agreements with suppliers, vendors, promoters and other parties related to the operation and promotion of the Ballpark;
- (f) negotiating and entering into an agreement or agreements regarding the naming of the Ballpark;
- (g) managing, staffing and operating the Ballpark both during event and non-event periods in a manner appropriate to the operation of the Ballpark consistent with Legal Requirements and industry standards and employing all personnel, contractors and vendors necessary and appropriate to efficiently operate the Ballpark; and
- (h) subject to the terms and conditions of this Agreement, and except as may be specifically limited hereby, taking any and all other action and entering into all other agreements with respect to the marketing, management and operation of the Ballpark that the Developer determines (using its reasonable judgment) to be necessary or appropriate to the marketing, management and operation of the Ballpark.

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

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

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

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

## **7.4 AFFORDABLE SEATING PROGRAM.**

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

## **7.5 CAPITAL RESERVE FUND.**

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

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

## 7.6 ENVIRONMENTAL MATTERS.

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

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

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

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

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

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

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

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

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

## 7.7 PARKING.

### (a) General Parking Spaces.

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

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

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

## 7.8 ACCOUNTING MATTERS.

### (a) Records.

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

### (b) Financial Reporting, etc.

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

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

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

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

(c) Owner Inspection and Audit.

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

## **7.9 FISCAL RESPONSIBILITY**

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

## 7.10 ADDITIONAL COVENANTS OF DEVELOPER.

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

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

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

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

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

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



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

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

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

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

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

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

## 8. GENERAL CONDITIONS

### 8.1 OWNER'S CONDITIONS.

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

- (a) Lease.

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

- (b) URA Agreement.

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

(c) Accuracy of Representations.

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

(d) Performance.

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

(e) No Injunction.

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

(f) Delivery of Other Documents.

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

## 8.2 DEVELOPER'S CONDITIONS.

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

(a) Lease.

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

(b) URA Agreement.

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

(c) Accuracy of Representations.

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

(d) Performance.

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

(e) No Injunction.

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

(f) Delivery of Other Documents.

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

## 9. DEFAULT AND REMEDIES

### 9.1 EVENTS OF DEFAULT.

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

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

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

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

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

## **9.2 INJUNCTIVE RELIEF.**

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

## **9.3 [intentionally omitted]**

## **9.4 REMEDIES CUMULATIVE.**

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

## 9.5 RISK OF CERTAIN LOSSES.

### (a) Force Majeure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 10. INDEMNIFICATION.

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

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

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

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



## 10.2 DEFENSE OF INDEMNIFIED CLAIMS.

### (a) Notice of Claims.

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

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

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

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

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

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

(d) Jurisdiction.

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

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

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

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

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

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

## **11. MISCELLANEOUS**

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

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

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

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

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

## **11.3 GOOD FAITH.**

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

## **11.4 CHALLENGE TO ENFORCEABILITY.**

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

## **11.5 COOPERATION.**

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

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

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

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

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

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

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

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

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

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

To Developer:

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

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

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

#### **11.10 ENTIRE AGREEMENT.**

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

#### **11.11 AMENDMENT.**

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

#### **11.12 BINDING EFFECT.**

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

#### **11.13 WAIVER.**

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

#### **11.14 HEADINGS.**

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

#### **11.15 CONSTRUCTION.**

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

#### **11.16 SEVERABILITY.**

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

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

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

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

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

#### **11.19 COUNTERPARTS.**

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

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

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

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

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

Owner: Stephen G. Leeper, Executive Director

Developer: John Loyd

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

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

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

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

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

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

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

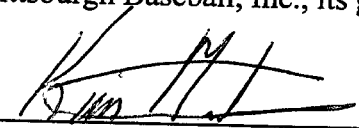


IN WITNESS WHEREOF, the parties have executed this Agreement as of the first date above written.

**DEVELOPER:**

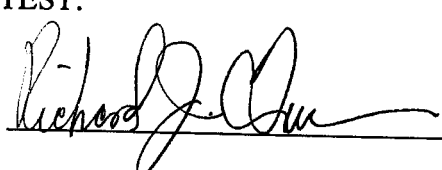
**PITTSBURGH ASSOCIATES**, a Pennsylvania limited partnership

By: Pittsburgh Baseball, Inc., its general partner

By: 

Title: MANAGING GENERAL PARTNER & CEO

ATTEST:

By: 

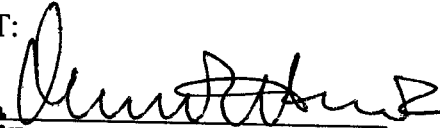
Title: VICE-PRESIDENT & COO

[SEAL]


**OWNER:**

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

ATTEST:

By: 

Title: Assistant Secretary

By: 

Title: EXECUTIVE DIRECTOR

[SEAL]