

53439-001  
**FIRST AMENDMENT TO  
TRUST AGREEMENT**

THIS FIRST AMENDMENT TO TRUST AGREEMENT (this "Amendment"), is made and entered into as of 30<sup>th</sup> day of April, 2010, among the City of Phoenix, an Arizona municipal corporation ("City"), Phoenix Arena Development Limited Partnership, a Delaware limited partnership ("Operator"), and The Bank of New York Mellon Trust Company, N.A., the successor-in-interest to Bank One, Arizona, NA ("Trustee").

**RECITALS**

WHEREAS, City and Operator have entered into a First Restated Operating Agreement dated as of July 19, 1989, as amended by (i) the First Amendment to First Restated Operating Agreement dated as of December 7, 1994 by and between City and Operator, (ii) the Second Amendment to First Restated Operating Agreement dated as of July 31, 2002 by and between City and Operator, (iii) the Third Amendment to First Restated Operating Agreement dated as of June 21, 2004 by and between City and the Operator (the "Third Amendment to Operating Agreement") and (iv) the Fourth Amendment to First Restated Operating Agreement dated as of July 28, 2005 (as so amended, the "Operating Agreement");

WHEREAS, pursuant to the Operating Agreement, the parties hereto entered into a Trust Agreement dated as of October 31, 1996 (the "Trust Agreement") establishing a Renewal and Replacement Trust Account (the "Account"); and

WHEREAS, the parties desire to amend the Trust Agreement as set forth herein.

NOW THEREFORE, in consideration of the premises and the agreements contained herein, the parties to this Amendment hereby agree as follows:

**ARTICLE I**

**AMENDMENTS TO THE TRUST AGREEMENT**

**1.1** Section 2.2.1 of the Trust Agreement is hereby amended by deleting the words "Prior to July 1, 2021" and replacing them in their entirety with the words "Prior to July 1, 2022".

**1.2** Section 2.2.2 of the Trust Agreement is hereby amended by deleting the words "From and after July 1, 2021" and replacing them in their entirety with the words "From and after July 1, 2022".

**ARTICLE II**

**ACKNOWLEDGEMENT AND AGREEMENT**

**2.1** The parties hereto acknowledge and agree that (1) Operator has heretofore contributed \$1,750,461 to the payment of certain capital expenses, \$1,304,861 of which has not yet been reimbursed to Operator and (2) subject to the prior payment to City of an annual amount of \$400,000 from the Account pursuant to the Third Amendment to Operating Agreement, the Trustee

shall disburse an aggregate amount of \$1,304,861 to Operator from amounts on deposit in the Account as and when such amounts are available for distribution from the Account.

### ARTICLE III

#### MISCELLANEOUS

3.1 Except as specifically amended hereby, all of the terms and conditions of the Trust Agreement shall remain in full force and effect.

3.2 This Amendment sets forth the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior understandings and agreements, written or oral.

3.3 This Amendment may be executed in any number of counterparts and by separate parties hereto on separate counterparts, each of which when executed shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or transmitted electronically in either Tagged Image File Format ("TIFF") or Portable Document Format ("PDF") shall be equally effective as delivery of a manually executed counterpart hereof. Any party delivering an executed counterpart of this Agreement by facsimile, TIFF or PDF shall also deliver a manually executed counterpart hereof, but failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement.

3.4 The validity, performance and enforcement of this Amendment shall be governed by the laws of the State of Arizona, without giving effect to the principles of conflicts of law thereof.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

CITY OF PHOENIX

By: Jeff DeWitt  
Name: Jeff DeWitt  
Title: Finance Director

ATTEST:

Mario Piniagu  
City Clerk



APPROVED AS TO FORM:

[Signature]  
City Attorney

**PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP**, a Delaware limited partnership

By: Phoenix Arena GP, LLC, a Delaware limited liability company, General Partner

By: Suns Legacy Partners, LLC, a Delaware limited liability company, Managing Member

By: \_\_\_\_\_  
Name: James R. Pitman  
Title: Executive Vice President

CITY CLERK DEPT.

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**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, the successor-in-interest Bank One, Arizona, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**RECITALS**

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**ACKNOWLEDGEMENT AND AGREEMENT**

2.1 The parties hereto acknowledge and agree that (1) Operator has heretofore contributed \$1,750,461 to the payment of certain capital expenses, \$1,304,861 of which has not yet been reimbursed to Operator and (2) subject to the prior payment to City of an annual amount of \$400,000 from the Account pursuant to the Third Amendment to Operating Agreement, the City and General Manager of the Operator shall jointly direct the Trustee in writing, pursuant to Section

2.2 of the Trust Agreement, to disburse an aggregate amount of \$1,304,861 to the Operator from amounts on deposit in the Account.

### ARTICLE III

#### MISCELLANEOUS

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CITY OF PHOENIX

By: Jeff DeWitt  
Name: Jeff DeWitt  
Title: Finance Director

ATTEST:  
Mario Piniago  
City Clerk



APPROVED AS TO FORM:

[Signature]  
City Attorney

**PHOENIX ARENA DEVELOPMENT  
LIMITED PARTNERSHIP**, a Delaware limited  
partnership

By: Phoenix Arena GP, LLC, a Delaware  
limited liability company, General  
Partner

By: Suns Legacy Partners, LLC, a  
Delaware limited liability  
company, Managing Member

By: \_\_\_\_\_  
Name: James R. Pitman  
Title: Executive Vice President

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.**, the successor-in-  
interest Bank One, Arizona, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY CLERK DEPT.

200 APR 28 11 12: 46

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**CITY OF PHOENIX**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

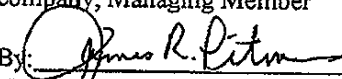
APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**PHOENIX ARENA DEVELOPMENT  
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partnership

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Partner

By: Suns Legacy Partners, LLC, a  
Delaware limited liability  
company, Managing Member

By:   
Name: James R. Pitman  
Title: Executive Vice President

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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
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Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
City Attorney

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By: Suns Legacy Partners, LLC, a  
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By: \_\_\_\_\_  
Name: James R. Pitman  
Title: Executive Vice President

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., the successor-in-  
interest Bank One, Arizona, N.A.**

By: \_\_\_\_\_  
Name: Gregory G. Cross  
Title: Vice President