

53439-TA-002  
SECOND AMENDMENT TO  
TRUST AGREEMENT

THIS SECOND AMENDMENT TO TRUST AGREEMENT (this "Amendment"), is made and entered into as of July 10, 2012, 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, (iv) the Fourth Amendment to First Restated Operating Agreement dated as of July 28, 2005 and (v) the Fifth Amendment to the First Restated Operating Agreement, dated July 9, 2012 (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, as amended by that certain First Amendment to Trust Agreement dated April 30, 2010 (the "First Amendment") (collectively, the "Trust Agreement") establishing a Renewal and Replacement Trust Account (the "Account");

WHEREAS, in order to provide funding for certain US Airways Center improvement and maintenance projects as generally described on Exhibit "A" attached hereto (collectively, the "Improvements"), the City has agreed to deposit \$7,000,000 into the Account (the "City R&R Contribution") and the Operator has agreed to deposit \$3,000,000 into the Account (the "Operator R&R Contribution") and, with the City R&R Contribution, the "Improvement Project Contributions")

WHEREAS, the parties desire to further 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 The last sentence of Section 1.2 of the Trust Agreement is hereby deleted in its entirety and replaced with the following:

"The Trustee hereby agrees to accept as additional Trust Deposits all sums delivered to it by the Operator or the City which are designated as R&R payments pursuant to the provisions of the Operating Agreement."

1.2 The Trust Agreement is hereby amended to insert the following language at the beginning of Section 2.2.1:

“Except as provided in Section 2.2.3,”

1.3 New Section 2.2.3 is hereby added to the Trust Agreement as follows:

“Disbursements for Improvements. Trustee shall make disbursements of Improvement Project Contributions upon receipt of a joint written authorization from the City and the Operator which includes the following information:

- a) the amount or amounts to be disbursed by the Trustee;
- b) the payee(s) for such disbursements, who may be the Operator or the third party vendors, contractors or subcontractors installing, constructing, or supplying the Improvements;
- c) the aggregate amount of the Improvement Project Contributions disbursed under this Amendment including the proposed disbursement will not exceed \$10,000,000; and
- d) a certification that the individual(s) requesting the disbursement is/are authorized to do so.”

1.4 Section 3.1.2 of the Trust Agreement is hereby amended to delete the address and contact for person for the City and substitute the following in lieu thereof:

City of Phoenix  
Finance Department  
251 West Washington Street, 9<sup>th</sup> Floor  
Phoenix, Arizona 85004  
Attention Finance Director

1.5 Section 5.1 of the Trust Agreement is hereby amended to delete the name, title and signature of the authorized signature for the City and in lieu thereof state that: “The City’s Finance Director by his or her signature is authorized to issue the certificates of the City.”

### MISCELLANEOUS

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

2.2 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.

**2.3** 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.

**2.4** 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**, a municipal corporation  
DAVID CAVAZOS, City Manager

By: Jeff DeWitt  
Jeff DeWitt  
Its: Finance Director

ATTEST:

C. Meyer  
City Clerk



2012 JUL 11 PM 2:58

CITY CLERK DEPT

APPROVED AS TO FORM:

Margaret Wilson  
ACTING 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: James R. Pitman  
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: Nancy Wakefield  
Name: NANCY WAKEFIELD  
Title: Senior Trust Associate

## EXHIBIT A

### IMPROVEMENTS

#### PRIORITY IMPROVEMENTS (in alphabetical order):

- ADA Improvements
- Boilers
- Boiler Storage Tank
- Elevator Improvements
- Escalator Improvements
- Fire System Sprinklers
- Glass – Exterior Fixed – gas seals
- Level A Renovations – Suites/Theater Boxes (to be funded by Operator's contribution)
- Phone System Replacement
- Rigging Grid Improvements
- Seating – Bowl and Suites, including decks and undercarriage (50% to be funded by Operator's contribution)
- Wiring Infrastructure Replacement

#### SECONDARY IMPROVEMENTS (in alphabetical order):

- Expansion Joints/Caulking
- Fork Lifts
- Pallet Jacks
- Roof Repairs
- Security Radios
- Show Power
- Transformers (phase 1)

#### RESIDUAL IMPROVEMENTS (in alphabetical order):

- Ad Panel Renovations/Grid Weight Reduction
- Glass – Exterior Fixed – silicone seals
- Sports Lighting
- Transformers (phase 2)
- Television Broadcast Interconnect Infrastructure