

FIRST AMENDMENT TO FIRST RESTATED OPERATING AGREEMENT

THIS FIRST AMENDMENT TO FIRST RESTATED OPERATING AGREEMENT, is entered into by and between the City of Phoenix, Arizona, an Arizona municipal corporation (the "City"), and Phoenix Arena Development Limited Partnership, a Delaware limited partnership (the "Operator").

Section 1. Recitals.

Section 1.1. The City and the Operator entered into the First Restated Operating Agreement, dated as of July 19, 1989, in order to set forth the arrangements between the City, the owner of the America West Arena (the "Arena"), and the Operator with respect to the management and operation of the Arena and the duties and responsibilities of the Operator with respect to Arena Revenues (as defined in the First Restated Operating Agreement).

Section 1.2. After more than a full year of operations, the City and the Operator have reviewed the economic performance of the Arena. It is apparent that projections of Arena revenue and expense prepared in connection with negotiations between the City and the Operator for the construction and operation of the Arena, which projections formed part of the basis for the First Restated Operating Agreement, were materially inaccurate.

Section 1.3. The First Restated Operating Agreement is one of a number of related agreements entered into between the City, the

Operator and entities related to the City and the Operator (the "Arena Documents", all restated as of July 19, 1989). In addition to the Arena Documents, the City, the Operator, entities related to the City, entities related to the Operator, the Fuji Bank Limited, the Industrial Development Authority of the County of Maricopa, The Dial Corp, Restaura, Inc., and certain other parties entered into related agreements dated as of October 1, 1990 with respect to the financing of the America West Arena (the "America West Arena Financing Documents"). Most recently, the Operator, Restaura, Inc. and Bank One, Arizona, N.A. (the "Bank"), entered into related agreements in September of 1994 whereby the Bank acquired and modified Operator indebtedness to Restaura (the "Bank One Financing Documents"). The Bank One Financing Documents were approved and consented to by all parties whose consent was required by the Arena Documents and the America West Arena Financing Documents, including the City.

Section 1.4. The Arena Documents, the America West Arena Financing Documents and the Bank One Financing Documents set forth the rights of the parties thereto and require that certain consents and approvals be obtained in the event the First Restated Operating Agreement is amended (the "Required Consents").

Section 1.5. By this First Amendment, the City and the Operator intend to amend the First Restated Operating Agreement in order to provide for a sharing of certain Arena Revenues, to which

the City, the Operator and entities related to the Operator are entitled, subject to certain conditions, pursuant to the First Restated Operating Agreement.

Section 2. Amendments to First Restated Operating Agreement.

Subject to the receipt of the Required Consents, the City and the Operator agree as follows:

Section 2.1. Sections 5.1.3.2, 5.1.4.3 and 5.1.6 of the First Restated Operating Agreement are amended so that "interest at the annual rate of ten percent (10%) compounded annually", shall be deleted where it appears in such Sections and, in place of the deleted language, "simple interest at the annual rate of four percent (4%)" shall be added.

Section 2.2. Section 5.1.7 of the First Restated Operating Agreement is amended to provide, in its entirety, as follows:

"5.1.7 Priorities. After paying all Operating Expenses on a current basis (including payments to fund the Working Capital Reserve in an amount reasonably determined by the Operator, such amount to be in addition to, and shall not include, any amount deposited into the Working Capital Reserve pending the contest of any Imposition pursuant to Section 7.2), the Operator shall pay the Debt Service Payment on a current basis. After paying all Operating Expenses and the Debt Service Payment on a current basis, the Operator shall pay the Renewal and Replacement Account Payment on a current basis. After paying all Operating Expenses, the Debt Service Payment, and the Renewal and Replacement Account Payment on a current basis, the Operator shall, subject

to Section 5.1.6, pay the Priority Operating Fee Payment on a current basis. After paying on a current basis all Operating Expenses, the Debt Service Payment, the Renewal and Replacement Account Payment, the current Priority Operating Fee Payment and any accrued, unpaid Priority Operating Fee Payments (together with any accrued interest thereon), the Operator shall, subject to Sections 5.1.3.2 and 5.1.4.3 and as set forth in Sections 5.1.7.1, 5.1.7.2 and 5.1.7.3, below, pay the Suns Payments on a current basis, pay any accrued, unpaid Suns Payments (together with any accrued interest thereon) and repay the Team and the Marketer for advances to the City from payments of current and accrued, unpaid Suns Payments. If, on the Thirtieth Anniversary Date, there is any accrued, unpaid Priority Operating Fee Payment (including interest thereon), the Operator shall make equal annual payments to the City, within sixty (60) days after the end of each Fiscal Year commencing with the Fiscal Year in which the Thirtieth Anniversary Date occurs, in an amount which is sufficient to amortize over the (10) years the aggregate of all accrued, unpaid Priority Operating Fee Payments (and interest thereon accrued through the Thirtieth Anniversary Date) with simple interest at the annual rate of four percent (4%) (the "Amortized Priority Operating Fee Payment"), provided that if Current Cash Flow is not sufficient to make the Amortized Priority Operating Fee Payment after making all current payments otherwise required by this Section 5.1.7, the Amortized Priority Operating Fee Payment shall be carried forward as an obligation to pay the City and shall bear simple interest at the annual rate of four percent (4%).

5.1.7.1 Payment of Suns Payments to the Team and the Marketer and to the City. In each Fiscal Year, until the end of the Fiscal Year in which the Thirtieth Anniversary Date occurs, the Suns Payments shall be made by the Operator on a current basis ninety percent (90%) to the Team and the Marketer and ten percent (10%) to the City; except that in any Fiscal Year that Current Cash Flow exceeds the amounts necessary to make payment in full of the Suns Payments on a current basis in accordance with this Section 5.1.7.1, payment in full of all accrued, unpaid Suns Payments (together with any accrued interest thereon) in accordance with Section 5.1.7.2 and repayment of all advances to the City out of current and accrued, unpaid Suns Payments plus accrued interest on such advances in accordance with Section 5.1.7.3, the Suns Payments shall be made on a current basis 100% to the Team and to the Marketer.

5.1.7.2 Payment of Accrued, Unpaid Suns Payments to the Team and the Marketer and to the City. In each Fiscal Year, until the end of the Fiscal Year in which the Thirtieth Anniversary Date occurs, the Operator shall pay accrued, unpaid Suns Payments (together with any accrued interest thereon) ninety percent (90%) to the Team and the Marketer and ten percent (10%) to the City.

5.1.7.3 Payment in Certain Fiscal Years. In any Fiscal Year, until the end of the Fiscal Year in which the Thirtieth Anniversary Date occurs, that Current Cash Flow for such Fiscal Year exceeds the amount necessary to pay in full the Suns Payments on a current basis in accordance with Section 5.1.7.1 and to pay in full all accrued, unpaid Suns Payments (together with any accrued interest thereon) in accordance with Section 5.1.7.2, ninety percent (90%) of Current Cash Flow remaining after payment in full of the amounts payable under Sections 5.1.7.1 and 5.1.7.2, shall be paid to the Team and to the Marketer and ten percent (10%) to the City until the Team and the Marketer shall have been repaid the total amount of advances made to the City from current and accrued, unpaid Suns Payments (together with accrued interest thereon) pursuant to Sections 5.1.7.1 and 5.1.7.2 plus simple interest on such advances at the annual rate of four percent (4%) from the dates of such advances to the City.

Upon any termination of this Agreement, the City, the Team and the Marketer shall be entitled to receive payment from the Operator of all accrued, unpaid amounts hereunder in the priority set forth herein."

Section 2.3. Section 5.2 of the First Restated Operating Agreement is amended to provide, in its entirety, as follows:

"5.2 Ordinary Operating Fee/Management Fee.

5.2.1 Phase I (Prior to the Thirtieth Anniversary Date). After making all current and accrued payments (together with accrued interest thereon) required by Section 5.1.7, the amount remaining in the Facility Account(s) (Adjusted Excess Net Cash Flow) shall be paid to the City and the Operator as provided in this Section 5.2.1. Prior to the Thirtieth Anniversary Date, subject to the Team's rights pursuant to Section 6.9 of the Assurance Agreement, the Operator shall pay the City seventy percent (70%) of all Adjusted Excess Net Cash

Flow as an Ordinary Operating Fee Payment. Such payment shall be due and payable within sixty (60) days after the end of the preceding Fiscal Year (or any portion thereof) if the Current Cash Flow is sufficient to make an Ordinary Operating Fee Payment. If Current Cash Flow is not sufficient to make an Ordinary Operating Fee Payment within sixty (60) days after the end of the preceding Fiscal Year, such Ordinary Operating Fee Payment shall be due and payable within one hundred and twenty (120) days after the end of the preceding Fiscal Year. Upon such payments to the City, the Operator may pay to its own account the remaining thirty percent (30%) of Adjusted Excess Net Cash Flow as its Management Fee. If Current Cash Flow is not sufficient within one hundred and twenty (120) days after the end of the preceding Fiscal Year to make both the Ordinary Operating Fee Payment to the City and to pay the Management Fee, the Operator's failure to make all or any portion of such payments shall not be an Event of Default, provided that (a) any such partial payments shall be made to the City and the Operator in the proportion that the Ordinary Operating Fee Payment to which the City is entitled bears to the Management Fee to which the Operator is entitled and (b) the amount of any outstanding Ordinary Operating Fee Payment and the amount of any outstanding Management Fee each shall be carried forward as an obligation of the Operator to pay the City and itself, respectively, and shall bear simple interest at the annual rate of four percent (4%) from the date each was due and payable, one hundred and twenty (120) days after the end of the preceding Fiscal Year. In the event that any such payment is carried forward pursuant to this Section, all such payments paid after the date they were initially due and payable shall be allocated first to the amount of the payment then currently due and payable, second to the amount of accrued interest on any unpaid payment, and third to the amount of any prior unpaid payment. Unless the City otherwise consents, except for payments expressly authorized or permitted by this Agreement and any Related Agreement, and except as is customary in the operation of facilities comparable to the Facility, neither the Operator nor any of its Affiliates shall be entitled to charge or receive any other fee or payment of any kind whatsoever to be payable out of Facility Revenues, or to charge or receive any payments in goods or services from the Operator.

5.2.2 Phase II (After the Thirtieth Anniversary Date). After the Thirtieth Anniversary Date, subject to the Team's rights pursuant to Section 6.9 of the Assurance Agreement, after making all current and accrued payments (together with accrued interest thereon) required by Section 5.1.7 (other than payments required

by Sections 5.1.7.2 and 5.1.7.3) and until such time as there occurs payment in full to the Team and the Marketer of the amounts required by Sections 5.1.7.2 and 5.1.7.3, the Operator shall pay to the Team and the Marketer ninety percent (90%) of Current Cash Flow and ten percent (10%) to the City as an Ordinary Operating Fee Payment. Thereafter, the Operator shall pay the City sixty percent (60%) of all Adjusted Excess Net Cash Flow as an Ordinary Operating Fee Payment. Such payment shall be due and payable within sixty (60) days after the end of the preceding Fiscal Year (or any portion thereof) if Current Cash Flow is sufficient to make such Ordinary Operating Fee Payment. If Current Cash Flow is not sufficient to make such Ordinary Operating Fee Payment within sixty (60) days after the end of the preceding Fiscal Year, such Ordinary Operating Fee Payment shall be due and payable within one hundred and twenty (120) days after the end of the preceding Fiscal Year. Upon such payments to the City, the Operator may pay to its own account the remaining forty percent (40%) of Adjusted Excess Net Cash Flow as its Management Fee, provided that, during any period after the Thirtieth Anniversary Date in which the Operator is not an Affiliate of the Team, such forty percent (40%) of Adjusted Excess Net Cash Flow shall be paid to the Team and not the Operator as provided in the Suns License; notwithstanding such payment, the Team shall have no responsibility with respect to carrying out the duties of the Operator under this Agreement. If Current Cash Flow is not sufficient within one hundred and twenty (120) days after the end of the preceding Fiscal Year to make both such Ordinary Operating Fee Payment to the City and to pay the Management Fee, the Operator's failure to make all or any portion of such payments shall not be an Event of Default, provided that (a) any such partial payments shall be made to the City and the Operator (or the Team, as applicable) in the proportion that the Ordinary Operating Fee Payment to which the City is entitled bears to the Management Fee to which the Operator (or the Team, as applicable) is entitled and (b) the amount of any outstanding Ordinary Operating Fee Payment and the amount of any outstanding Management Fee each shall be carried forward as an obligation of the Operator to pay the City and itself (or the Team, as applicable), respectively, and shall bear simple interest at the annual rate of four percent (4%) from the date each was due and payable, one hundred and twenty (120) days after the end of the preceding Fiscal Year. In the event that any such payment is carried forward pursuant to this Section, all such payments paid after the date they were initially due and payable shall be allocated first to the amount of the payment then currently due and payable, second to the amount of

accrued interest on any unpaid payment, and third to the amount of any prior unpaid payment. Unless the City otherwise consents, except for payments expressly authorized or permitted by this Agreement and any Related Agreement, and except as is customary in the operation of facilities comparable to the Facility, neither the Operator nor any Affiliate shall be entitled to charge or receive any other fee or payment of any kind whatsoever to be payable out of Facility Revenues, or to charge or receive any payments in goods or services from the Operator."

Section 2.4. Exhibit 1.1 of the First Restated Operating Agreement is amended to redefine Current Cash Flow and Working Capital Reserve as follows:

"48. Current Cash Flow means cash, demand deposits and other funds earned in the current or any previous Fiscal Year and available in the current Fiscal Year. Current Cash Flow shall not include the Working Capital Reserve established by the Operator pursuant to this Agreement, nor shall Current Cash Flow include revenues collected, but not yet earned, in the Current Fiscal Year.

* * *

167. Working Capital Reserve means the amount set aside as a working capital reserve by the Operator, in the exercise of its discretion pursuant to Section 7.2 of this Agreement, as an Operating Expense. At any time the Working Capital Reserve exceeds an amount that is four (4) times the average monthly Operating Expenses as set forth in the Annual Budget for the next Fiscal Year submitted to the City by the Operator pursuant to Section 4.2.2 of this Agreement, such excess amount shall be certified by the Operator to the City, together with an explanation of the circumstances supporting the excess amount set aside."

Section 3. Miscellaneous.

Section 3.1. This First Amendment to First Restated Operating Agreement constitutes and embodies the full and complete under-

standing and agreement of the City and the Operator with respect to the subject matter hereof and supersedes all prior understandings or agreements whether oral or in writing with regard thereto.

Section 3.2. This First Amendment to First Restated Operating Agreement shall be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts made and to be performed entirely within that state.

Section 3.3. This First Amendment to First Restated Operating Agreement shall be binding upon and shall inure to the benefit of the parties hereto.

Section 3.4. This First Amendment to First Restated Operating Agreement shall be effective upon obtaining all Required Consents and failure to obtain such Required Consents on or before March 15, 1995 shall render this First Amendment void, unless otherwise extended in writing by the City and the Operator.

DATED this 7th day of December, 1994.

Operator:

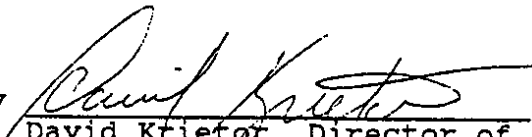
PHOENIX ARENA DEVELOPMENT
LIMITED PARTNERSHIP, a Delaware
limited partnership,

By Phoenix Arena Development
Corporation, an Arizona
corporation, its General
Partner

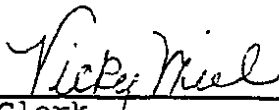
By 
Richard H. Dozer, President

City:

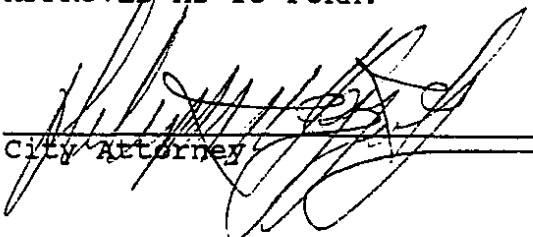
THE CITY OF PHOENIX, a municipi-
pal corporation; Frank
Fairbanks, City Manager

By 
David Krietor, Director of
Community and Economic
Development

ATTEST:


City Clerk

APPROVED AS TO FORM:


ACTING City Attorney

The undersigned Phoenix Suns Limited Partnership, a Delaware
limited partnership, and Phoenix Suns Marketing Limited Partner-

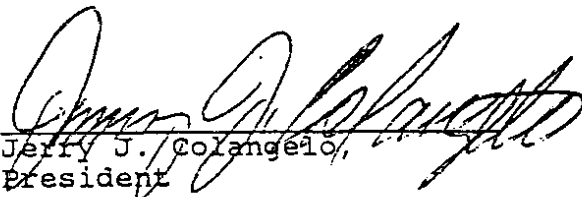
ship, a Delaware limited partnership, have read this First Amendment to First Restated Operating Agreement, and hereby consent and agree thereto.

PHOENIX SUNS LIMITED PARTNERSHIP, a Delaware limited partnership,

By JDM Sports, Inc., an Arizona corporation, its General Partner

PHOENIX SUNS MARKETING LIMITED PARTNERSHIP, a Delaware limited partnership,

By Phoenix Arena Development Corporation, an Arizona corporation, its General Partner

By 
Jerry J. Colangelo,
President

By 
Richard H. Dozer, President