

53440-003
THIRD AMENDMENT TO
FIRST RESTATED OPERATING AGREEMENT

This Third Amendment to First Restated Operating Agreement (this "Amendment") is entered into as of and shall be effective as of 6/21, 2004, between Phoenix Arena Development Limited Partnership, a Delaware limited partnership (the "Operator"), and the City of Phoenix, an Arizona municipal corporation acting by and through its City Manager (the "City"), and amends that certain First Restated Operating Agreement dated July 19, 1989 between the City and the Operator, as amended by that certain First Amendment to First Restated Operating Agreement dated December 4, 1994 and as amended by that certain Second Amendment to First Restated Operating Agreement dated July 31, 2002, between the City and the Operator (with such agreement as so amended being referred to herein as the "Operating Agreement"). All capitalized terms used in this Amendment that are not defined herein shall have the meanings assigned to them in the Operating Agreement.

RECITALS:

- A. The City is the owner of the land and improvements commonly known as the America West Arena (the "Arena").
- B. The Operator operates the Arena pursuant to the Operating Agreement.
- C. The City and the Operator have a mutual interest in the Arena's continued success and long-term viability and therefore, desire that additional renovations be made to portions of the interior of the Arena which renovations are generally described on Exhibit A attached hereto and made a part hereof (the "2004 Interior Renovations").
- D. The City intends to enter into contracts with a contractor for the design and construction of the 2004 Interior Renovations (such contracts are collectively referred to as the "Construction Contracts").
- E. The City and the Operator desire to enter into this Amendment to amend certain provisions of the Operating Agreement and to describe the manner by which the cost for the 2004 Interior Renovations will be paid.

AGREEMENT:

NOW, THEREFORE, the Operator and the City hereby agree as follows:

1. The City shall pay an amount up to \$17,000,000 for the 2004 Interior Renovations. The Operator shall reimburse the City for \$5,000,000 of the \$17,000,000 and also reimburse the City for any amounts in excess of \$17,000,000 paid to the

contractor under the Construction Contract, all in accordance with the terms set forth in this Amendment.

2. The Operator, pursuant to Section 5.3.1 of the Operating Agreement, is required to make Renewal and Replacement Account Payments to the Renewal and Replacement Account. Section 5.3.3 of the Operating Agreement, as amended by the Second Amendment, provides how the Renewal and Replacement Account shall be used. Section 5.3.3 of the Operating Agreement, as amended is hereby further amended to allow for and require that the Operator reimburse the City for the \$5,000,000 out of the Renewal and Replacement Account as follows: Commencing with the 2005 Renewal and Replacement Account Payment, the Operator shall pay to the City from the Renewal and Replacement Account the amount of \$400,000 which payment amount shall be paid annually through 2022.

3. The combined costs of the Construction Contracts are expected to exceed \$17,000,000. The City shall be responsible to the contractor to pay costs accruing under the Construction Contracts. However, the Operator shall pay the City for any amount owed by the City or paid by the City under the Construction Contracts in excess of \$17,000,000 (the "Excess Amount"). Therefore, the Operator shall, from time to time, prior to the City's execution of any Construction Contract or a change order to any Construction Contract which will result in an Excess Amount, deposit cash with the City's Finance Department for the Excess Amount provided the Operator has approved such Construction Contract or change order. Should the Operator not approve any such Construction Contract or change order the City shall have the right not to act on the Construction Contract or change order.

4. The parties to this Amendment hereby agree that all other provisions of the Agreement that do not conflict with the provisions of this Amendment shall remain in full force and effect.

5. This Amendment contains the entire agreement and understanding of the parties as to the matters contained herein, and may not be amended except by a writing signed by the City and the Operator. There are no oral or written representations, agreements, understandings or circumstances that modify any of the provisions hereof. Each individual signing this Amendment on behalf of an entity represents and warrants that he or she has the necessary power and authority to execute and deliver this Amendment and to bind such entity to the terms hereof, and that the entity which he or she represents has all necessary corporate or partnership authority and has taken all necessary action in connection with the execution and delivery of this Amendment. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute a single, binding instrument.

6. This Amendment shall be binding upon the parties hereto. Except to the extent expressly amended hereby, the Agreement shall not be amended, altered or modified in any respect, and each and every provision of the Agreement shall remain in full force and effect.

IN WITNESS WHEREFORE, the parties have executed this Amendment in triplicate originals as of the date first above written.

OPERATOR

Phoenix Arena Development Limited Partnership, a Delaware limited partnership

By: Phoenix Arena Development Corporation, an Arizona corporation and its general partner

By: Paige R. Peterson
Name: Paige R. Peterson
Title: President

CITY

City of Phoenix, a municipal corporation
Frank Fairbanks, City Manager

By: Pat Grady
Patrick Grady, Community and Economic
Development Director

ATTEST:

Vicky Miel
City Clerk

APPROVED AS TO FORM

Margaret Wilson
Acting City Attorney

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CITY CLERK DEPT.
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EXHIBIT A

America West Arena 2004 Interior Renovations

1. Upper Concourse Improvements
2. Technology Improvements
(Scoreboard, 360 degree LED, Sound Reinforcement)
3. Core Building Improvements
4. Platinum Club Expansion to "B" Level
5. Loge Suites
6. Exterior Lighting