

96732-004

**FOURTH AMENDMENT TO
FIRST RESTATED OPERATING AGREEMENT**

This Fourth Amendment to First Restated Operating Agreement (this "Amendment") is entered into as of and shall be effective as of July 28, 2005, 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, as amended by that certain Second Amendment to First Restated Operating Agreement dated July 31, 2002, and as amended by that certain Third Amendment to First Restated Operating Agreement dated June 21, 2004 (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. Operator desires to develop a Class A boutique hotel (the "Hotel") and associated restaurant, retail, entertainment and residential uses (the "Project") on a portion of the City-owned Arena site at the southwest corner of 3rd Street and Jefferson (the "Hotel Pad") as stated in the Third Amendment to Renovation and Development Agreement of even date herewith between the Operator and the City, as depicted in the Site Map attached hereto as Attachment 1 and incorporated herein by this reference.
- D. Operator and the City desire to amend the Operating Agreement to immediately remove the Hotel Pad from the Arena site to allow for the development of the Project on the Hotel Pad, so that Operator shall have no further rights, title, interest, obligations, liabilities or duties with respect to the Hotel Pad, and to further amend the Operating Agreement to update the insurance requirements.

AGREEMENT

NOW, THEREFORE, the City and the Operator agree to amend the Operating Agreement as follows:

1. Exhibit 1.1 Definitions. The definition of "Site" in Exhibit 1.1 as item number 144 is amended in its entirety to read as follows:

"144. Site means that portion of the Redevelopment Area described as Blocks 37 and 38 and portions of Blocks 33 and 34, Original Townsite of Phoenix and such other real property described in the DDA, except that parcel of land located along Third Street between Jefferson Street and Jackson Street, having the legal description attached as Attachment 2 to the Fourth Amendment to this First Restated Operating Agreement, which is incorporated herein by this reference."

2. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Arizona.

3. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which combined shall constitute one and the same instrument.

4. Successors and Assigns. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

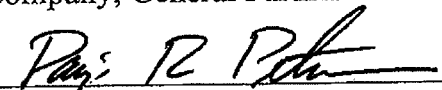
5. Amendments Limited. Except as expressly amended by the provisions of this Amendment, the Operating Agreement shall remain in effect without amendment or modification.

IN WITNESS WHEREOF, the parties hereto 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: Legacy GP, LLC, a Delaware limited liability
company, General Partner

By: 

Name: PAIGE R. PETERSON

Title: VICE PRESIDENT

CITY

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



By: _____

Name: John Chan

Title: Acting DDO Director

ATTEST:

Vicky Miel
City Clerk

APPROVED AS TO FORM

Margaret Wilson
Acting City Attorney *MB*

2011 FEB 25 11 24 AM
CITY OF PHOENIX
OFFICE OF THE CITY CLERK

Attachment 1
Hotel Pad Site Map

Attachment 2
Legal Description of Arena Site

[if not available prior to execution, to be attached as soon as possible thereafter]

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