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DOWNTOWN MULTIPURPOSE ARENA

FIRST RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

DATED as of JULY 19, 1989

By and Between

CITY OF PHOENIX, ARIZONA,

City,

and

PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP,

Operator.

VOLUME I OF III

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FIRST RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

THIS FIRST RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is dated as of July 19, 1989 and entered into by and between the CITY OF PHOENIX, ARIZONA, a municipal corporation ("City"), and the PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP, a Delaware limited partnership ("Operator").

RECITALS:

A. Pursuant to Resolution No. 15143 issued on March 13, 1979, as amended by Resolution No. 15376 on May 20, 1980, acting in its governmental capacity, the City adopted the Downtown Area Redevelopment and Improvement Plan, thereby establishing the Redevelopment Area.

B. Thereafter, the City issued a Request for Proposals for the development and operation of a multipurpose arena in the Redevelopment Area. This Agreement confirms the selection of the Operator as the developer and operator of the Facility and constitutes a specific implementation of such Redevelopment Plan.

C. Acting in its governmental capacity, the Phoenix City Council has determined that the development of the Site, the completion of the Facility, and the performance of this Agreement are in the vital and best interests of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements. Specifically, but without limitation, such development, completion and performance support the redevelopment and revitalization of the City's downtown area, the convention industry and local economy and encourage the growth of cultural and entertainment opportunities.

D. Notwithstanding any contrary interpretation of the provisions of this Agreement, the actions required to be taken by the City pursuant to this Agreement are not the exercise of the City's governmental, legislative, executive, judicial or regulatory powers. Nothing in this Agreement shall be construed as a limitation on the exercise by the City of its governmental, legislative, judicial or regulatory powers.

E. The Operator's undertakings pursuant to this Agreement are, and will be, the redevelopment of the Site and construction of the Facility. In view of: (a) the importance of the redevelopment of the Site and the construction of the

Facility to the general welfare of the community; (b) the substantial public financing and other public funds that have been made available by law and by the government for several purposes including that of making such redevelopment and operation possible; and (c) the fact that a significant change (as defined in Section 6.3.5 hereof) in ownership of the Operator, the General Partner or the Team (whether such change is direct or indirect through one or more tiers of partnerships, corporate subsidiaries or other ownership entities), or any other act or transaction involving or resulting in a significant change (as defined in Section 6.3.5 hereof) in the ownership of the Operator, is for practical purposes a transfer or disposition of control of the Facility, the qualifications and identity of the Operator and its partners and principals are of particular concern to the City. The City is entering into this Agreement with the Operator because of such qualifications and identity.

F. In view of: (a) the importance of the availability of the Facility to the Operator and the Team, (b) the substantial financing that the Operator has made available for the purpose of construction of the Facility, (c) the commitment of the Team to the Facility pursuant to the Suns License, and (d) the fact that ownership of the Facility

by the City is an important consideration, the continuous ownership of the Facility by the City is of particular concern to the Operator.

G. In reliance upon and in consideration of the Operator's obligations under this Agreement, the City has (a) authorized the increase of certain excise taxes and has provided for the administration of the licensing, collection, accounting and distribution of such taxes, (b) initiated action to issue not less than \$35,000,000 in City of Phoenix Civic Improvement Corporation bonds to be redeemed as to both principal and interest through the proceeds of such taxes, (c) initiated action to acquire by purchase or the exercise of eminent domain certain real property, and (d) undertaken its other obligations under this Agreement and the Related Agreements. Upon execution hereof, the City will take additional action to accomplish the preceding objectives, among others.

H. In reliance upon and in consideration of the City's obligations under this Agreement, the Operator has incurred costs and expenses in excess of \$750,000 and hired employees, independent contractors and consultants for the development and operation of the Facility. Upon execution hereof, the Operator will begin incurring additional costs,

liabilities and expenses in excess of \$36,000,000 and will begin hiring additional employees, independent contractors and consultants in anticipation of construction.

THEREFORE, intending to be legally bound, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

AGREEMENTS:

ARTICLE 1. SUBJECT OF AGREEMENT.

1.1 Definitions. As used in this Agreement, capitalized terms shall have the respective meanings set forth in Exhibit 1.1, unless otherwise provided herein.

1.2 Applicable Laws. This Agreement is made in accordance with and subject to the provisions of all federal, state and local laws and requirements including, without limitation, the Redevelopment Plan. The actions by the City under this Agreement are the exercise of proprietary powers for, among other purposes, the redevelopment purposes identified in this Agreement and are not the exercise of the City's governmental, legislative, executive, judicial or regulatory powers. The City and the Operator shall comply with

land use regulations, codes and laws affecting the acquisition, ownership, use, improvement and development of the Site, and the vacation and abandonment of public rights-of-way and easements located within the Site. In order to complete the Facility as soon as practicable, the City shall use its best efforts to expedite, facilitate and encourage prompt action in the exercise of its independent governmental, legislative, executive, judicial and regulatory powers, provided that Operator acknowledges that the City cannot and is not contracting to exercise such powers in any particular manner.

1.3 Restatement. This Agreement is a clarification and restatement of the original Disposition and Development Agreement between the parties dated as of July 19, 1989 (the "Initial DDA"), and each of the Related Agreements is a clarification and restatement of each of the respective original Related Agreements dated as of July 19, 1989 (the "Initial Related Agreements"), all of which shall remain effective as restated. The Initial DDA and the Initial Related Agreements contained inadvertent definitional, typographical, textual and other errors, omissions and inconsistencies. This Agreement and the Related Agreements have been prepared and executed so as to correct and eliminate such unintended errors, omissions and inconsistencies and thereby clarify and restate the intention of the parties. All references to this Agreement

and to the Related Agreements shall refer to the initial instruments dated as of July 19, 1989, as clarified by this restatement and the restatements of the Related Agreements. Each of the parties warrants to the other, effective upon this restatement, that: (a) each of its authorizations, consents and approvals contained or referred to in the Initial DDA and the Initial Related Agreements is valid and effective, and each of its warranties contained in the Initial DDA and the Initial Related Agreements is correct and effective, and each of its covenants contained in the Initial DDA and the Initial Related Agreements is binding and effective, all as restated in this Agreement and the Related Agreements to the same extent as if this restatement and the restatements of the Related Agreements had been executed on July 19, 1989; (b) it agrees with, approves of and consents to all of the terms of the restatements of this Agreement and the Related Agreements; and (c) no further actions or proceedings are required to be taken by it to authorize this Agreement and the Related Agreements as restated.

ARTICLE 2. SITE ACQUISITION.

2.1 Acquisition of Land.

2.1.1 By Purchase or Eminent Domain. The City shall use its best efforts to obtain as quickly as practicable any Acquired Property. The Acquired Property may be obtained by negotiated purchase or pursuant to eminent domain. The City's best efforts shall not include paying more for any Acquired Property than the fair market value of such Acquired Property as determined by the City if the purchase is negotiated or by the Maricopa County Superior Court or a court of appellate jurisdiction if condemnation is completed.

2.1.2 Condition of Site.

2.1.2.1 City Obligations. Subject to all laws and regulations (including without limitation historic preservation requirements), the City shall remove all buildings, above ground structures and above ground utilities from the Site; provided, however, that the City shall have no duty to excavate any portion of the Site, except as needed to conduct tests and to determine the scope of any work required to comply with Environmental Laws, and except for excavation which may be required under this Section 2.1.2.1 solely for the

purpose of compliance with Environmental Laws and not for construction of the Facility. The City shall use its best efforts to cause all public and private utility lines located on the Site to be abandoned. The City shall take such steps as are reasonable to place the Site in a state that complies with all Environmental Laws; provided, however, that the City shall have no obligation to pay more than \$200,000 to place the Site in a state that complies with all Environmental Laws. If the cost to cause the Site to comply with all Environmental Laws exceeds \$200,000, the City shall provide written notice to the Operator that the City has reached or is about to reach the \$200,000 limit, and the Operator shall have the right, but not the obligation, to expend not more than \$1,000,000 to cause the Site to comply with all Environmental Laws. The Operator shall have thirty (30) days from receipt of the foregoing notice to elect, by delivery of written notice of election to the City during such notice period, to expend such additional funds or to terminate this Agreement effective thirty (30) days after delivery to the City of such written notice. In the event the Operator notifies the City of the Operator's election to terminate this Agreement or fails to notify the City of the Operator's election to expend such additional funds pursuant to the preceding sentence, then notwithstanding such election, the City shall have thirty (30) days to elect, by delivery of written notice of election to the Operator during such notice

period, to provide such additional funds, and in such event, within thirty (30) days after its written notice, the City shall deposit the additional funds in the Construction Trust Account, whereupon the Operator's termination election shall be null, void and of no further effect. If the City does not issue such notice or deposit the additional funds within the time stated, then the Operator's termination election shall be controlling. Termination pursuant to this Section shall not be deemed a breach of this Agreement. The costs incurred by the Operator pursuant to this Section 2.1.2.1 shall be included as Construction Costs. All costs incurred in connection with disposal of asbestos located on the Site shall be borne solely by the City and shall not be included as a Construction Cost and shall not be counted towards the \$200,000 limit on the obligation of the City to incur costs to cause the Site to comply with all Environmental Laws. In the event the Operator elects to expend funds from the Construction Budget to cause the Site to comply with all Environmental Laws, Section 3.7.3 shall be deemed satisfied provided such expenditures do not exceed in the aggregate \$1,000,000 (exclusive of the City's \$200,000 payment). The costs incurred by the City in discharging its obligations under this Section 2.1.2.1 shall be borne solely by the City and shall not be included as a Construction Cost.

2.1.2.2 Other Obligations. The

Construction Management Team shall oversee and the Operator shall direct the removal or re-routing of all below-grade public and private utility lines located on the Site and, to the extent the City has not removed above-grade lines, all above-grade lines. The cost of removal or re-routing of below-grade lines shall be included as a Construction Cost; provided, however, that the cost in excess of \$750,000 to reroute that certain Arizona Public Service 230,000 volt utility line that traverses the Site under Madison Street shall not be included as a Construction Cost and shall be paid directly by the City. The cost of removal and rerouting of above-grade lines shall be paid by the City and shall not be a Construction Cost.

2.1.3 Zoning of the Site; Variances; and Vacation and Abandonment of Public Rights-of-Way.

2.1.3.1 City Obligations. The City shall use its best efforts to obtain all re-zoning, use permits and variances and all other approvals, consents, authorizations and endorsements necessary or appropriate for the development, construction, use, operation, and maintenance of the Facility, provided that the Operator submits site plans and other documentation customarily submitted with re-zoning, use permit,

and variance applications and other approvals, consents, authorizations and endorsements. Any and all costs incurred in discharging obligations under this Section 2.1.3.1 shall be included as a Construction Cost.

2.1.3.2 Compliance with Stipulations and Conditions. Except for obligations imposed on the City by Section 2.1.2.1 that are solely obligations of the City, the Construction Management Team shall oversee and the Operator shall direct the construction of the Facility in a manner that complies with those stipulations and conditions required in order to secure the vacation, abandonment, or closure of public rights-of-way that are mutually agreed upon by the parties. Any and all costs incurred in discharging obligations under this Section 2.1.3.2 shall be included as a Construction Cost.

ARTICLE 3. PROJECT FUNDING

3.1 Facility Changes. In addition to satisfying requirements imposed by standard City procedures, the Operator shall submit for City approval (a) any Request for Change Order that causes the projected or actual aggregate Project Costs to exceed the sum of (i) \$71,000,000, (ii) the costs incurred by the Operator pursuant to Section 2.1.2.1 and (iii) the costs incurred by the Operator pursuant to Section 2.1.2.2 to reroute

that certain Arizona Public Service utility line referred to in Section 2.1.2.2; (b) any Request for Change Order containing at least one line item for costs in excess of \$25,000 for services, labor, materials, machinery, equipment, fixtures or tools that are not included in the initial Construction Budget, (c) any Request for Change Order containing one or more line items for Work that is included in the initial Construction Budget when the projected cost of such Work (as set forth in the Request for Change Order) exceeds the projected cost of such Work (as set forth in the initial Construction Budget) by a percentage that is greater than the General Contingency Percentage, and (d) any Request for Change Order containing one or more items that reduce the cost of such Work by an amount greater than \$25,000. In the event the City disapproves any Request for Change Order described in the foregoing clause (d), the City shall, within ten (10) working days of such disapproval, submit to the Operator a Request for Change Order that reduces the cost of such Work by an amount equal to or greater than the amount of the reduction contained in such disapproved Request for Change Order. In the event the Operator and the City are unable to agree on a Request for Change Order that reduces the cost of such Work by an amount equal to or greater than the amount of the reduction contained in such disapproved Request for Change Order, such dispute shall be submitted to dispute resolution procedures agreed upon by the parties.

3.2 Free From Encumbrances. Except as may be required by the lease between the City and the City of Phoenix Civic Improvement Corporation, neither the City nor the Operator shall cause the Facility to become encumbered by any mortgage, deed of trust, assignment, collateral assignment or any other financing interest, encumbrance or lien whether by voluntary act or otherwise. In order to obtain the Construction Financing, any or all of the Operator, the Team, or the Marketer shall have the right to execute the Loan Documents so as to pledge its/their rights and interests under this Agreement, the Operating Agreement and any and all other Related Agreements and other documents subject to prior written City approval. The financing terms and conditions, and the Loan Documents, shall be subject to approval by the City, which shall not be unreasonably withheld or delayed. The failure of the City to object to the Loan Documents within ten (10) working days after their receipt shall be deemed approval by the City.

3.3 Nonrecourse Liability of the Operator Personnel. Notwithstanding and prevailing over any contrary provision or implication in this Agreement, except for their criminal acts with respect hereto (i.e., acts which would constitute crimes were they prosecuted therefor and convicted thereof), the

officers, directors, shareholders, employees, agents and limited partners of the Operator (the "Operator Personnel") shall not in any way be liable with respect to a breach or violation of the terms of this Agreement; no deficiency or other monetary or personal judgment of any kind shall be sought or entered against any of the Operator Personnel with respect to a breach or violation of the terms of this Agreement; no judgment with respect to a breach or violation of the terms of this Agreement shall give rise to any right of execution or levy against the assets of any of the Operator Personnel other than their interest in this Agreement; and the liability of the Operator with respect to a breach or violation of the terms of this Agreement shall be limited to the assets of the Operator and the General Partner. The limitations of this Section 3.3 shall in no way limit the City's rights (a) to specific performance of each and every provision of this Agreement or in any other instrument or document executed in connection herewith (provided that specific performance shall in no event require the Team or the shareholders of the General Partner to make additional capital contributions), (b) to recover damages against the Operator for any breaches of this Agreement (provided that collection of damages is subject to the restrictions of this provision), or (c) to enforce remedies against all assets of the Operator; nor shall this Section 3.3 in any way limit the City's right under the Assurance Agreement

(i) to specific performance of each and every provision of the Assurance Agreement, (ii) to damages against the Team for any breaches of the Assurance Agreement, or (iii) to enforce remedies against all assets of the Team pursuant to the Assurance Agreement.

3.4 Non-Liability of City Personnel. Notwithstanding and prevailing over any contrary provision or implication in this Agreement or in any other instrument or document executed in connection herewith, except for their criminal acts with respect hereto (i.e., acts which would constitute crimes were they prosecuted therefor and convicted thereof), the City, and its elected officials, officers, employees, agents, independent contractors and consultants ("City Personnel") shall not in any way be liable under the Loan Documents or Refinancing Documents, or for any of the Operator's obligations under this Agreement or any instrument or document executed in connection herewith. Neither the Loan Documents, the Refinancing Documents, this Agreement nor any other instrument or document executed in connection herewith grants or shall be deemed to grant a mortgage, deed of trust, security interest, or any other kind of lien, encumbrance or other interest in any property owned by the City. Except for their criminal acts with respect hereto (i.e., acts which would constitute crimes were they prosecuted therefor and convicted thereof), no City

Personnel shall be liable to the Operator, or any successor in interest to the Operator, for any amount which may become due to the Operator or any successor in interest to the Operator, or for any obligation under the terms of this Agreement. The limitations of this Section 3.4 shall in no way limit the Operator's rights (a) to specific performance of each and every provision of this Agreement or in any other instrument or document executed in connection herewith, (b) to damages against the City for any breaches of this Agreement (provided that collection of damages is subject to the restrictions of this provision), or (c) to enforce remedies against the City; nor shall this Section 3.4 in any way limit the Operator's right under the Assurance Agreement (i) to specific performance of each and every provision of the Assurance Agreement, (ii) to damages against the City for any breaches of the Assurance Agreement, or (iii) to enforce remedies against all assets of the City pursuant to the Assurance Agreement.

3.5 Real Estate Commissions. Except for consideration due and owing from the Operator to the Marketer and to any broker or salesperson employed by the Marketer pursuant to the Suite Marketing Agreement and the Listing Agreement, and any fees payable by the Operator in connection with its financing, as to all of which the City shall have no obligation, the City and the Operator each represent that it

has engaged no real estate broker, agent, salesperson or finder (collectively "Broker") in connection with the development and construction of the Facility. If any Broker claims a fee or any other sum in connection with the Facility as a result of the contacts, contracts or acts of either the City or the Operator, the party who is alleged to have committed the acts or made the contacts or contracts from which the claim to a commission arises shall indemnify and hold the other party harmless with respect to the commission and all claims, demands, costs and expenses in connection therewith including, without limitation, reasonable attorneys' fees and costs.

3.6 Conditions Precedent to Funding by City of Preopening Soft Costs. The obligation of the City to commence and to continue funding required by Section 4.5.3 is conditioned (a) upon there being no existing Event of Default attributable to the Operator, and no event occurring or condition existing which, with the passage of time or giving of notice, or both, would constitute an Event of Default attributable to the Operator under this Agreement or any agreement to which the City is a party executed in connection herewith, and (b) upon the satisfaction or written waiver of all of the following conditions:

3.6.1 Architect Design Agreement. Execution by the Operator after approval by the City of the Architect Design Agreement, in form and substance agreed upon by the Operator and the City, and delivery of such executed Architect Design Agreement to the City.

3.6.2 Project Management Agreement. Approval by the Operator of the Project Management Agreement.

3.6.3 Facility Drawings and Plans to Date. Approval by the City of all such Facility Drawings as are in existence on September 30, 1989.

3.7 Conditions Precedent to Funding by the City of Construction Costs. The obligation of the City to commence and continue the funding required by Sections 4.5.2 and 4.5.4 is conditioned (a) upon there being no existing Event of Default attributable to the Operator, and there being no event occurring or condition existing which, with the passage of time or giving of notice, or both, would constitute an Event of Default attributable to the Operator under this Agreement or any agreement to which the City is a party executed in connection herewith, and (b) upon the satisfaction or written waiver by the City of the following conditions:

3.7.1 Acquisition or Possession of all Acquired Property. Acquisition of or court-awarded possession to the City of all Acquired Property.

3.7.2 Required Zoning. Approval, issuance or completion by the Phoenix City Council acting in its legislative capacity of all then required re-zoning, use permits, variances, abandonments and closing of public rights-of-way necessary for the development, construction, use, operation, and maintenance of the Facility.

3.7.3 Acceptable Costs to Meet Environmental and Historical Requirements. The actual or projected aggregate costs to place the Site in a state that complies with all Environmental Laws shall be no greater than \$200,000.

3.7.4 Satisfactory Condition of Site. The obligations under Section 2.1.2 shall have been satisfied.

3.7.5 Architect Construction Administration Agreement. Approval by the Operator of the Architect Construction Administration Agreement, in form and substance agreed upon by the Operator and the City.

3.7.6 Insurance Policies. Delivery to the City of the duplicate originals or certificates of insurance policies required by Section 4.9.

3.7.7 Submission of Evidence of Financing Commitments and Letter of Credit or Cash. The Operator shall have submitted to the City evidence that the Operator has obtained firm and binding commitments for Construction Financing in an amount not less than \$35,000,000, to be repayable on terms and conditions, and pursuant to documentation, to be approved by the City as provided in Section 3.2, and (a) the Operator shall have delivered to the City the Letter of Credit (and the City shall have received payment under the Letter of Credit of the draw in respect to which payment by the City pursuant to Section 4.5.4(c) is to be made), or (b) the Operator shall have delivered or made available to the City \$35,000,000 in readily available funds on a one-time basis for deposit into the Construction Trust Account.

3.7.8 Execution of Suns License Agreement. Execution by the Team and the Operator, after approval by the City, of the Suns License attached as Exhibit 3.7.8, and delivery of a copy of such executed Suns License to the City.

3.7.9 Execution of Assurance Agreement.

Execution by the Team and delivery to the City of the Assurance Agreement attached as Exhibit 3.7.9.

3.7.10 Operator and General Partner Balance Sheets. Delivery to the City of current balance sheets of the Operator and the General Partner in form reasonably acceptable to the City, each certified by the General Partner to be true, correct and complete as of the date thereof.

3.7.11 Marketing of Bonds. Receipt on or before September 30, 1989, by the City of at least \$35,000,000 in net proceeds from the offering and sale by the City of Phoenix Civic Improvement Corporation of its bonds for the express purpose of funding the City's obligations under this Agreement.

3.7.12 Legal Opinion. The City shall have received an opinion from counsel to the City in form and substance acceptable to counsel for the Operator and counsel for the City relating to the transactions between Phoenix Civic Improvement Corporation and the City in connection with the transactions contemplated in this Agreement.

3.7.13 Appointment of Neutral. The Operator and the City shall have appointed the Neutral, who shall have agreed to serve as such, or any successor Neutral, and the Operator, the City and the Neutral shall have agreed upon dispute resolution procedures for expeditiously resolving disputes during the construction of the Facility.

3.8 Conditions Precedent to Funding by the Operator of Construction Costs. The obligation of the Operator to commence and continue the funding required by Sections 4.5.1 and 4.5.4 is conditioned (a) upon there being no existing Event of Default attributable to the City, and there being no event occurring or condition existing which, with the passage of time or giving of notice, or both, would constitute an Event of Default attributable to the City under this Agreement or any agreement to which the Operator or the Team is a party executed in connection herewith, and (b) upon the satisfaction or written waiver of the following conditions:

3.8.1 Acquisition or Possession of all Acquired Property. Acquisition of or court-awarded possession to the City of all Acquired Property.

3.8.2 Required Zoning. Approval, issuance or completion by the Phoenix City Council acting in its legislative capacity of all then required re-zoning, use permits, variances, abandonments and closing of public rights-of-way necessary for the development, construction, use, operation, and maintenance of the Facility.

3.8.3 Satisfactory Condition of Site. The obligations under Section 2.1.2 shall have been satisfied.

3.8.4 Architect Construction Administration Agreement. Execution by the City of the Architect Construction Administration Agreement, in form and substance agreed upon by the Operator and the City.

3.8.5 Execution of Suns License. Execution by the Team and the City of the Suns License, and delivery of a copy of such executed Suns License to the Team.

3.8.6 Execution of Assurance Agreement. Execution by the Team and the City of the Assurance Agreement and delivery of a copy of such executed Assurance Agreement to the Team.

3.8.7 Marketing of Bonds. Receipt on or before September 30, 1989, by the City of at least \$35,000,000 in net proceeds from the offering and sale by the City of Phoenix Civic Improvement Corporation of its bonds for the express purpose of funding the City's obligations under this Agreement and evidence satisfactory to the Operator, the Lender and the Contractors that the City has deposited such proceeds in an account in trust for the City's share of Project Costs of the Facility.

3.8.8 Lender Conditions. Satisfaction of such other conditions as the Lender shall reasonably request.

3.8.9 Legal Opinion. The Operator and the Team shall have received an opinion from counsel to the City in form and substance acceptable to counsel for the Operator and counsel for the City relating to the transactions between the City of Phoenix Civic Improvement Corporation and the City in connection with the transaction contemplated in this Agreement.

3.8.10 Appointment of Neutral. The Operator and the City shall have appointed the Neutral, who shall have agreed to serve as such, or any successor Neutral, and the Operator, the City and the Neutral shall have agreed upon

procedures for expeditiously resolving disputes during the construction process pursuant to dispute resolution procedures agreed upon by the parties.

ARTICLE 4. DEVELOPMENT OF THE FACILITY.

4.1 Construction Management. The Construction Management Team shall consist of a person designated by the City, a person designated by the Operator, a person designated by the Project Manager and a person designated by the Architect. In the event the City and the Operator fail to agree on any matter concerning the design or construction of the Facility, the decision of the Construction Management Team shall control. Each member of the Construction Management Team shall have one vote, and any decision of the Construction Management Team shall require the affirmative vote of three of the Construction Management Team members. In the event the Construction Management Team is unable to make a decision, the decision of the Operator shall control. The Construction Management Team shall oversee the City's construction of the Facility and shall oversee the prompt beginning and completion of the Facility, all in accordance with and within the requirements and limitations established therefor in this Agreement, the Facility Schedule, the Scope of Development, and any Facility Drawings approved by the City pursuant hereto.

The Facility Schedule, the Scope of Development and any Facility Drawings approved by the City pursuant hereto shall be subject to revision from time to time as mutually agreed upon in writing between the City and the Operator.

4.1.1 Architectural Control. The City shall contract directly with the Architect for the preparation of drawings for all architectural services concerning the construction and administration of the Facility.

4.1.2 Construction Management. The City and the Operator shall jointly select a Project Manager. In the event the City and the Operator fail to agree on the selection of a Project Manager, the decision of the Operator shall control. The final terms of any contract with the Project Manager shall be subject to approval by the City. The City shall administer the Project Management Agreement, and the Operator shall direct all matters relating to the duties and functions of the Project Manager, including (without limitation) providing Site security after the Construction Start Date.

4.1.3 Dealings with Contractors. As soon as practicable after approval by the City of the Architect's phased Construction Documents, the City and the City's Engineering Department, in consultation with the Operator,

shall implement the Construction Contract(s) award process in accordance with normal City public works contract award procedures within the time parameters as determined by the Construction Management Team and as permitted by law. The City shall send all required bid advertisements and related bid solicitation materials for publication. The City shall require the submission of bids within the minimum bid time established by ordinance or such extended period as determined by the Construction Management Team. The City shall cause all Construction Contracts to contain provisions requiring Contractors to insure adequately against violations of Environmental Laws and shall administer all Construction Contracts, and the Operator shall direct all matters relating to performance under any such contracts.

4.1.4 Changes in Agreements with Architect, Project Manager and Contractors. The City and the Operator shall have the right to approve any changes in agreements with the Architect, the Project Manager or the Contractors.

4.1.5 City's Right to Inspect and Receive Information. The City shall have the right to receive from the Operator timely information regarding the progress of the Facility through each design phase and construction of the Facility. During construction, the City shall have the right

to inspect every phase of Facility construction. The Construction Management Team shall consult regularly with the City staff in order to keep the City staff informed throughout the duration of Facility design and construction.

4.1.6 City's Obligation to Assist in Development. The City shall use its best efforts during all design and construction phases of the Facility to assist the Construction Management Team so that all phases of design and construction of the Facility proceed as expeditiously as possible. The City's obligation shall include (as a Preopening Soft Cost):

(a) During design, the assignment of an experienced plans reviewer by the Development Services Department of the City;

(b) During construction, the assignment of a full-time inspector by Development Services Department of the City; and

(c) The assignment of a full-time senior project manager by the Community and Economic Development Department.

4.2 Facility Drawings. The Construction Management Team shall oversee, and the Operator shall direct, the preparation and submission of Facility Drawings to the City for review and written approval. Such review shall include review and advisory comment by the Central City Architectural Design Review Panel. The Facility shall be developed as established in the Facility Drawings, except as changes may be mutually agreed upon between the Operator and the City. Any such changes shall be consistent with the Scope of Development. The drawings and documents required by this Section 4.2 shall be prepared and submitted to the City within the times established in the Facility Schedule. In the event the City disapproves any Facility Drawings, the Operator shall be notified of any disapproval in writing within the time periods included in the Facility Schedule, and such notification shall set forth the reasons for disapproval and the changes that the City requests to be made. Such reasons and such changes must be consistent with the Scope of Development. The Operator, upon receipt of a disapproval, shall cause revisions to be made to the affected Facility Drawings and shall cause such revisions (or partial revisions) to be submitted within the time period set forth in the Facility Schedule. In the event the City fails to approve such revisions to the affected Facility Drawings, the parties shall submit such dispute to dispute resolution procedures agreed upon by the parties. The approval by the City of any

drawings or documents required by this Section 4.2 for redevelopment purposes shall not constitute the approval by the City (acting in a capacity other than proprietary) for compliance with land use regulations, construction codes and applicable zoning or abandonment stipulations required prior to the commencement of construction pursuant to a building permit.

4.3 Approval of Facility Drawings. Facility Drawings approved in writing by the City pursuant to Section 4.2 shall not be subject to subsequent disapproval. During the preparation of the Facility Drawings, upon request by either the City or the Operator, the Construction Management Team shall meet to coordinate the preparation, submission, and review of all Facility Drawings required by Section 4.2.

4.4 Construction Contract. Each Construction Contract shall be awarded through competitive bidding in accordance with Title 34 of the Arizona Revised Statutes, the City Charter and other applicable state laws and the City of Phoenix ordinances. Each Construction Contract shall be prepared by the City Engineer under the supervision of the City Attorney and shall be executed by the City and the City of Phoenix Civic Improvement Corporation.

4.5 Project Costs.

4.5.1 The Operator's Obligation to Fund. The Operator shall pay the sum of (i) 50% of the first \$70,000,000 of Project Costs and (ii) all Project Costs in excess of \$70,000,000.

4.5.2 The City's Obligation to Fund. The City shall pay 50% of the first \$70,000,000 of Project Costs and shall have no obligation to pay more than 50% of the first \$70,000,000 of Project Costs in the event such costs exceed \$70,000,000.

4.5.3 Preopening Soft Costs Payments.

4.5.3.1 Budget. On or before October 15, 1989, the parties shall exchange Preopening Soft Cost Budgets. The obligation of each party to commence and continue payment to the other party pursuant to this Section 4.5.3 is conditioned upon each party's approval of the other party's Preopening Soft Cost Budget and any amendments thereto.

4.5.3.2 Payments. All Preopening Soft Costs shall be paid by the party incurring such costs as such costs become due. Commencing on October 1, 1989 and continuing

on the first day of each month thereafter until and including the first month after the Operations Start Date, each party shall submit to the other its Request for Reimbursement of Preopening Soft Costs. A party's Request for Reimbursement of Preopening Soft Costs required to be submitted on October 1, 1989, shall not include any amounts incurred prior to November 15, 1988 and shall not include any amounts incurred for the period November 15, 1988 to July 19, 1989 in excess of \$500,000. Within ten (10) days after receipt of each monthly Request for Reimbursement of Preopening Soft Costs, each party shall provide to the other party a schedule of Approved Preopening Soft Costs of the other party. Not later than the fifteenth day of each month, the parties shall hold a meeting to attempt in good faith to agree upon the schedules of Approved Preopening Soft Costs of each party for such month. If the parties fail to agree by the twentieth day of such month, the parties shall submit to dispute resolution procedures agreed upon by the parties all disputes over (a) whether to include in the schedule of Approved Preopening Soft Costs of each party any item in the Request for Reimbursement of Preopening Soft Costs submitted by the other party and (b) the amount of any item to be included in such schedule. The Neutral shall make such determination within five (5) days, and its decision shall be binding upon the parties. Within five (5) days after the parties agree upon

both schedules of Approved Preopening Soft Costs, or the Neutral has resolved all disputes over both schedules, (i) prior to the Construction Start Date, the party who has the lesser amount of Approved Preopening Soft Costs (as reflected on the current schedule of Approved Preopening Soft Costs approved by the other party or the Neutral) shall pay the other party an amount equal to fifty percent (50%) of the difference between the aggregate amounts reflected on the parties' then current schedules of Approved Preopening Soft Costs; and (ii) after the Construction Start Date, each party shall be authorized to draw from the Construction Trust Account an amount equal to all of its Approved Preopening Soft Costs approved by the other party or the Neutral, provided that on the first such draw after the Construction Start Date each party shall be entitled to draw an additional amount equal to one-half of all Approved Preopening Soft Costs previously paid by both parties hereunder.

4.5.4 Project Costs Funding and Payment Procedures. The obligations of the Operator and the City to fund Project Costs pursuant to Sections 4.5.1 and 4.5.2 shall be met by them, and such funds shall be disbursed, as follows:

(a) Within thirty (30) days after satisfaction or written waiver of all conditions set forth in

Sections 3.7 and 3.8, funding of Construction Costs shall commence as provided in this Section 4.5.4.

(b) The City's Director of Finance shall establish the Construction Trust Account with Valley National Bank, or such other national bank as the parties agree upon (the "Trustee"), pursuant to such written instructions as the Trustee and the parties agree upon. Such instructions shall specify, among other things, that funds deposited in the Construction Trust Account shall bear interest, which shall accrue for the benefit of, and be paid from time to time to, the party for whom such funds were deposited.

(c) Until such time as the City has deposited in the Construction Trust Account an aggregate \$35,000,000, which shall satisfy in full the City's obligations under Section 4.5.2, the City shall deposit into the Construction Trust Account one-half (1/2) of the amount of any Funding Request, provided that such funds shall not be released and be available for payment of Project Costs unless and until a payment in like amount into the Construction Trust Account has been made by or for the Operator. If a Letter of Credit has been delivered to the City pursuant to Section 3.7.7, the Operator's payments pursuant to this Section 4.5.4(c) shall be made from draws on the Letter of Credit by the City until a

draw under the Letter of Credit is dishonored or \$35,000,000 have been deposited into the Construction Trust Account by or for the Operator. Notwithstanding any provision herein to the contrary, the Operator is not relieved from its obligation to make payments under Section 4.5.1 and this Section on a timely basis in the event the issuer of the Letter of Credit fails for any reason to honor a draw under the Letter of Credit, and in the event any draw under the Letter of Credit is dishonored, the Operator shall promptly pay into the Construction Trust Account an amount equal to the amount of the dishonored draw. The City is hereby authorized to draw upon the Letter of Credit in accordance with its terms.

(d) Unless the Lender establishes procedures approved by the City pursuant to which Project Cost overruns in excess of \$70,000,000 are to be funded, which procedures shall supersede the requirement for a Completion Letter of Credit, if at any time and from time to time the City determines, and the Project Manager agrees, that there is a reasonable likelihood that Project Costs will exceed \$70,000,000, the City shall deliver to the Operator written notice thereof, which notice shall contain the estimated amount of the excess as approved by the Project Manager; within ten (10) working days of its receipt of such notice, the Operator shall obtain and deliver to the City a Completion Letter of

Credit, or readily available funds in the amount of the estimated excess. The Operator's payments pursuant to this Section 4.5.4(d) shall be made from (i) funds deposited by the Operator or (ii) draws on the Completion Letter of Credit by the City until a draw under the Completion Letter of Credit is dishonored or the Facility is completed on a lien-free basis. Notwithstanding any provision herein to the contrary, the Operator is not relieved from its obligation to make payments under Section 4.5.1 and this Section 4.5.4 on a timely basis in the event the issuer of the Completion Letter of Credit fails for any reason to honor a draw under the Completion Letter of Credit, and in such event the Operator shall promptly pay into the Construction Trust Account an amount equal to one hundred percent (100%) of the Funding Request giving rise to the dishonored draw on the Completion Letter of Credit. The City is hereby authorized to draw upon the Completion Letter of Credit in accordance with its terms.

4.5.5 Landscaping. The costs of all Ordinary Landscaping on the Site shall be included as a Construction Cost. The Operator shall have no obligation to landscape the Site with Special Landscaping. In the event the City requires Special Landscaping on the Site to comply with themes established for redevelopment projects adjacent to the Site, the costs of any Special Landscaping in excess of the costs of

Ordinary Landscaping (as set forth in the Construction Budget) replaced by or in addition to such Special Landscaping shall not be the obligation of the Operator and shall not be included as a Construction Cost.

4.6 City and Other Governmental Agency Permits.

Before the Construction Start Date, the Operator shall secure, or cause to be secured, any and all permits which may be required by the City (acting in a capacity other than proprietary) or any other governmental agency with jurisdiction over the construction or development of the Facility. Except for the costs to place the Site in a state that complies with all Environmental Laws that in the aggregate do not exceed \$200,000, the costs of securing any and all permits which may be required by the City (acting in a capacity other than proprietary) or any other governmental agency with jurisdiction over the construction or development of the Facility shall be included as a Construction Cost.

4.7 Local, State and Federal Laws. The Construction Management Team shall oversee and the Operator shall direct the construction of the Facility in conformity with all applicable laws, rules and regulations (including without limitation all Environmental Laws and all applicable fair employment laws, rules and regulations) of the United States, the State of

Arizona, and all other governmental bodies having jurisdiction over the construction or development of the Facility.

4.8 Equal Employment Opportunity. The City and the Operator for themselves and their successors and assigns, shall cause the following clause to appear in all contracts for services and supplies concerning the Facility. "Any supplier in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, creed, ancestry, color, religion, sex, marital status, or national origin, nor otherwise commit an unfair employment practice. The supplier will take affirmative action to ensure that the applicants are employed, and that employees are dealt with during employment without regard to their race, creed, color, ancestry, religion, sex, marital status or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract."

4.9 Insurance Requirements. Prior to the commencement of construction of the Facility, the Operator shall cause to be furnished to the City, duplicate originals or appropriate certificates of insurance policies providing coverage, and amounts of coverage, as shall be agreed upon by the City and the Operator. Such policies shall name the Operator, the City and the Lender as insureds, as their interests appear, and shall be maintained and kept in force until the City has issued its Certificate of Occupancy for the entire Facility. All insurance policies required by this Section 4.9 shall provide that coverage shall not be reduced or cancelled until after thirty (30) days' prior written notice of cancellation or reduction to the City. All insurance policies required by this Section 4.9 shall be obtained from a financially sound insurance company rated not less than B + XII by Best & Co. and authorized to do business in Arizona. Any and all costs incurred by the Operator or the City in discharging obligations under this Section 4.9 shall be included as a Construction Cost.

4.10 Completion. The Operator and the City shall proceed in good faith and diligently to perform their respective obligations hereunder and under the Construction Contract(s) so as to cause the Facility to be completed and the Operations Start Date to occur as promptly as practicable. The

"Completion Date" is the date when the last of the following has occurred: (a) the Architect has issued to the Operator and the City a certificate of substantial completion (which may be issued subject to "punch list" items which are yet to be completed by one or more Contractors) certifying that the Facility has been "substantially completed" (as shall be defined in and provided by the Construction Contract); (b) the Facility has been accepted as being substantially complete by the Construction Management Team and it has issued a certificate to the Operator and the City so stating; or (c) a final and unconditional Certificate of Occupancy has been issued. The Construction Management Team shall cause each such Contractor to commence and to complete the punch list items within sixty (60) days after such Contractor's receipt of the punch list. All Work shall be performed by the Architect and the Contractors in a good and workmanlike manner in conformity with the Construction Contract, the Facility Drawings, the City Building Code and all applicable governmental permits, laws, ordinances and regulations so that on the Completion Date, the Facility shall be in good working order and condition free from damage and defects and ready for full and immediate use.

4.11 Destruction or Condemnation Prior to Completion.

4.11.1 Insured Destruction. Subject to the provisions of Section 4.11.2 and Section 4.11.3, if the Facility is damaged or otherwise destroyed after the Construction Start Date and prior to the Completion Date and such damage or destruction was caused by a casualty covered and proceeds paid under any insurance policy maintained by the Operator as required by Section 4.9 (the "Insurance Proceeds"), the Insurance Proceeds shall be deposited into the Construction Trust Account and shall be used by the Operator to repair such damage or destruction as soon as reasonably possible, and this Agreement shall continue in full force and effect. Such repair shall be in accordance with plans approved by the City and in compliance with applicable governmental requirements. All such repair shall be performed pursuant to this Article 4.

4.11.2 Insurance Deficiency, Restoration and Termination. Subject to the provisions of Sections 4.11.3 and 4.11.4, if the Facility is damaged or otherwise destroyed after the Construction Start Date and prior to the Completion Date (the date such damage or destruction occurred shall be referred to herein as the "Destruction Date") by a casualty not covered under insurance required by Section 4.9 or, if so covered, the Insurance Proceeds are insufficient to pay the costs of

repairing such damage or destruction to restore the Facility to the state in which it existed prior to such damage or destruction, the Operator shall provide the City written notice of the Operator's election either (a) to utilize the Insurance Proceeds and such funds as are available under the Letter of Credit plus the Operator's own funds to pay the costs to repair such damage or destruction that exceed the Insurance Proceeds ("the Insurance Deficiency"), or (b) to terminate this Agreement. In the event the Operator is entitled to and does elect to terminate this Agreement, the City shall have the right (within thirty (30) days after receipt of such notice of the Operator's election to terminate) to issue notice to the Operator of the City's intention to pay the Insurance Deficiency and to deposit the amount of the Insurance Deficiency into the Construction Trust Account. Thereafter the Operator's election to terminate shall be deemed rescinded and void, and the Operator shall effect the repair of such damage or destruction as provided in Section 4.11.1. All such repair shall be performed pursuant to this Article 4. If the City does not issue such notice of its intention to pay the Insurance Deficiency or does not deposit the Insurance Deficiency within thirty (30) days after receipt of the Operator's election to terminate, this Agreement shall be terminated at the expiration of such thirty-day period, and the Insurance Proceeds, if any, shall be divided equally between

the Operator and the City. If the Facility is repaired pursuant to this Section 4.11.2, the length of time required for such repair shall be deemed (irrespective of the cause of the damage or destruction requiring such repair) an Abatement Period and subject to the provisions of Section 9.5. If the repair of damage and destruction pursuant to this Section 4.11.2 is not completed within that number of days after the Destruction Date which is the lesser of (i) thirty-six (36) months or (ii) the product of 1.5 times the number of months which have elapsed since the Construction Start Date to the Destruction Date, the Operator shall have the option to terminate this Agreement upon thirty (30) days' prior written notice to the City of such election to terminate, and the Insurance Proceeds, if any, shall be divided equally between the Operator and the City after first paying all costs of restoration undertaken pursuant to this Section 4.11.2.

4.11.3 Underinsured. If the Facility is destroyed after the Construction Start Date and prior to the Completion Date by a casualty which should have been covered by insurance required by Section 4.9 and was not so insured in the amounts required pursuant to Section 4.9, the Operator (a) shall have no right to terminate under Section 4.11.2, (b) shall be required to restore the Facility as provided in

Section 4.11.1, and (c) shall be required to pay any Insurance Deficiency from its own funds.

4.11.4 Termination After Substantial Condemnation. If after the Construction Start Date and prior to the Completion Date all or a "substantial portion" of the Facility is taken by right of eminent domain, with or without litigation, or transferred in lieu of or under threat of such action (any such action to be referred to herein as a "Taking"), the Operator and the City each shall have the right, at their respective options, exercisable at any time within ninety (90) days after the official written notice of the Taking and its scope is issued by the condemnor and received by the Operator and the City (the "Taking Date"), to terminate this Agreement as of the Taking Date, in which event, the parties shall be released from all future liability hereunder; provided, however, that no party shall be released from any liability hereunder that has accrued on or before the date of such termination. If this Agreement terminates pursuant to this Section 4.11.4, that portion of the award from the condemnor attributable to the value of any improvements on the Site (the "Award") shall be deposited in the Construction Trust Account, and all funds in such account shall be divided equally between the City and the Operator. As used in this

Section 4.11.4, the term "substantial portion" means the Taking of twenty-five percent (25%) or more of the value of the Facility based upon the replacement cost thereof.

4.11.5 Restoration After Substantial or Partial Condemnation. If less than a "substantial portion" of the Facility is the subject of a Taking, or if a substantial portion or more is the subject of a Taking but neither party terminates this Agreement as provided in Section 4.11.4, and if the Award is sufficient to pay the costs of restoring the Facility to the state that existed immediately prior to the Taking Date, then the Operator promptly shall restore the remainder of the Facility to the state that existed immediately prior to the Taking Date. If the Facility is restored pursuant to this Section 4.11.5, the length of time required for such restoration shall be deemed an Abatement Period and subject to the provisions of Section 9.5. If the Award is insufficient to restore the Facility to the state that existed immediately prior to the Taking Date, within ninety (90) days after the Taking Date, the Operator shall provide the City written notice of the Operator's election either (a) to utilize the Award and such funds as are available in the Construction Trust Account plus the Operator's own funds to pay the costs of such restoration that exceed the Award (the "Condemnation Deficiency"), or (b) to terminate this Agreement. In the event

the Operator is entitled to and does elect to terminate this Agreement, the City shall have the right (within ten (10) days after receipt of such notice of the Operator's election to terminate) to issue notice to the Operator of the City's intention to pay the Condemnation Deficiency and deposit the amount of the Condemnation Deficiency into the Construction Trust Account. Thereafter the Operator's election to terminate shall be deemed rescinded and void, and the Operator shall effect the restoration as provided in this Section 4.11.5. All restoration pursuant to this Section 4.11.5 shall be performed pursuant to this Article 4. If the City does not give such notice of its intention to pay such Condemnation Deficiency or does not deposit the Condemnation Deficiency within ten (10) days after receipt of the Operator's election to terminate, this Agreement shall be terminated at the expiration of such ten-day period, and the Award shall be deposited in the Construction Trust Account, and all funds in such account shall be divided equally between the Operator and the City. If restoration pursuant to this Section 4.11.5 is not completed within that number of days after the Taking Date which is the lesser of (i) thirty-six (36) months or (ii) the product of 1.5 times the number of months which have elapsed since the Construction Start Date to the Taking Date, the Operator shall have the option to terminate this Agreement after thirty (30)

days' prior written notice to the City of such election to terminate, and the Award shall be deposited in the Construction Account and all funds in such account shall be divided equally between the Operator and the City.

ARTICLE 5. THE OPERATING AGREEMENT.

5.1 Execution and Delivery. On the date hereof, the City and the Operator shall execute and deliver to each other fully executed duplicate originals of the Operating Agreement, which is attached as Exhibit 5.1.

ARTICLE 6. PROHIBITION AGAINST TRANSFER, CHANGES OF OWNERSHIP, AND CONTROL.

6.1 Definition of Transfer. As used in this Article 6, the verb "transfer," in whatever form, number or tense, shall mean, as the case may be, to assign, sell, convey, transfer, pledge, encumber or in any manner use as collateral, or otherwise to dispose of voluntarily or involuntarily, but shall not include liens and other pledges permitted by Section 3.2.

6.2 Prohibition Against Assignment of Agreement by the Operator. Except as otherwise permitted by Section 3.2, the Operator shall not transfer, or attempt to transfer, this Agreement, or any right herein, until the Operations Start Date, after which the Operator may transfer this Agreement, or any right herein, but only pursuant to the procedures set forth in the Operating Agreement for transfer of the Operating Agreement and only to a transferee of the Operating Agreement (or rights therein) in connection with a permitted transfer of the Operating Agreement (or rights therein). Any transfer or attempted transfer of this Agreement in violation of the preceding sentence shall be void. No voluntary or involuntary successor-in-interest to any Interest in the Operator, the General Partner, the Team or any other Person who acquires an Interest in the Operator, the General Partner or the Team in violation of the prohibitions of this Article 6 shall acquire any rights or powers under this Agreement.

6.3 Prohibition Against Transfers of Interest in the Operator.

6.3.1 The Operator shall not permit any Investor in the Operator to transfer any portion of such Investor's Interest in the Operator, without the express prior written consent of the City, other than the following permitted transfers:

(a) a direct or indirect transfer by one or more Investors of all or a portion of their respective Interests in the Operator to an existing Investor in the Operator;

(b) a transfer of an Investor's Interest in the Operator occasioned by death, legal incapacity, bankruptcy or divorce of such Investor;

(c) a transfer of all or a portion of an Investor's Interest in the Operator when the relative amount of such Interest to be transferred is less than five percent (5%) of the total Interest in the Operator immediately prior to such transfer, provided that no Investor may pursuant to this subparagraph (c) transfer in the aggregate more than ten percent (10%) of the total Interest in the Operator as such total Interest existed on the date of execution of this Agreement;

(d) a transfer to any employee of the Operator, the General Partner or the Team of any Interest in the General Partner or the Team, provided that in the aggregate not more than ten percent (10%) of the total Interest in the General Partner (as such total Interest existed on the date of

execution of this Agreement) and not more than ten percent (10%) of the total Interest in the Team (as such total Interest existed on the date of execution of this Agreement) is transferred pursuant to this subparagraph (d);

(e) a transfer of any Investor's Interest in the Operator made in connection with an NBA-approved transfer of such Investor's Interest in the Team, provided that the transferee of such Interest in the Operator is the transferee approved by the NBA for the transfer of such Interest in the Team;

(f) any public offering by the Team, or the Operator or both of any equity security of the Team or the Operator pursuant to an effective registration statement under the Securities Act of 1933, as amended; provided, that immediately after such offering (and assuming the exercise, conversion or exchange of all outstanding options, warrants and convertible or exchangeable securities of each issuer in such offering), the owners of each such issuer as of the date of execution of this Agreement shall own legally or beneficially more than fifty percent (50%) of the outstanding equity securities of each such respective issuer and shall hold more than fifty percent (50%) of the voting rights of each class of all such equity securities;

(g) any redemption of an Investor's Interest in the Operator, including without limitation a redemption of an Interest in the General Partner or in the Team;

(h) any transfer by an individual Investor of any or all of such Investor's Interest in the Operator to any revocable or irrevocable trust of which such Investor, or his or her spouse or issue, or any of the foregoing, are the sole beneficiaries, and any transfer by such a trust Investor of any and all Interests in the Operator held by it to any of the trust beneficiaries;

(i) any involuntary assignment, conveyance, transfer, or disposition pursuant to the terms of, or in the exercise of rights under, any collateral assignment, pledge, security interest, lien or encumbrance, provided that any transferee of an Interest in the Operator pursuant to this Section 6.3.1(i) may not transfer any portion of such Interest in the Operator without the prior written approval of the City, which shall not be unreasonably withheld; and

(j) any involuntary transfer by operation of law.

6.3.2 The City shall act in good faith in exercising its rights (pursuant to Sections 6.2, 6.3.1 and 6.3.5(b)) to approve any transfer and shall not unreasonably withhold such approval.

6.3.3 The Operator has prior to the execution hereof identified and disclosed to the City the persons and entities comprising the General Partner and the Team, and shall, prior to any proposed transfer hereafter, identify and disclose the identities of every other person or entity who would pursuant to such proposed transfer become an Investor in the Operator and the nature and the extent of the Interest in the Operator to be acquired by such person or entity. The Operator shall submit to the City instruments and legal documents necessary to disclose any such identity and the nature and the extent of any such Interest.

6.3.4 Subject to the notice and cure periods of Section 8.1.4, this Agreement may, at the election of the City, be terminated by the City if a significant transfer or change in ownership not expressly authorized by this Agreement (including voluntary and involuntary changes in ownership) occurs in the ownership of the Operator, the General Partner or the Team, without the prior written approval of the City.

6.3.5 A significant transfer or change in the ownership of the Operator, the General Partner or the Team shall be deemed to occur if (a) any Investor in the Operator transfers such Investor's Interest in the Operator, unless such transfer is a permitted transfer under Section 6.3.1; (b) any Investor in the Operator transfers such Investor's Interest in the Operator and such transfer results in a change in the control of the General Partner, except for any involuntary transfer by operation of law or any transfer of such an Interest occasioned by the death, legal incapacity, bankruptcy or divorce of Jerry Colangelo if such Interest is acquired within one hundred eighty (180) days after such involuntary transfer by a Person approved by the City; or (c) any additional equity security (including without limitation securities convertible or exchangeable into equity securities, and warrants and options; collectively, "Additional Equity") in the General Partner is issued and such issuance of Additional Equity results or will result, assuming full conversion, exchange and exercise, in a change in the control of the General Partner. For the purposes of the preceding sentence, a change in the control of the General Partner shall occur if the legal or beneficial ownership of more than 50% of each class of equity securities in the General Partner, assuming exercise, exchange and conversion of all Additional Equity, is held by anyone other than Jerry J. Colangelo.

6.3.6 The Operator shall indemnify and hold the City and its elected officials, officers, employees, agents, consultants and independent contractors harmless (irrespective of the termination of this Agreement) on a current basis, for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including reasonable attorneys' fees and costs) asserted by or for any party claiming a right, interest or ownership in this Agreement through or with the Operator and its partners arising out of or in connection with relationships entered into by the Operator or its partners with such other party.

6.4 Prohibition Against Assignment of Agreement or Transfer of the Facility by the City. The City shall not transfer or attempt to transfer this Agreement, any rights herein, the Facility, or any rights therein, and any such transfer or attempted transfer shall be void; provided, that this Section shall not act as a prohibition against any transfer by and between the City and the City of Phoenix Civic Improvement Corporation, or any successor in interest to such corporation, nor against any formal transfer to a financial institution, trustee or fiduciary in furtherance of any debt financing or refinancing by the City or the City of Phoenix Civic Improvement Corporation; provided, however, that such transfer does not increase the Impositions with respect to the Facility, the Operator, the Team or any Affiliate thereof.

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS.

7.1 City Representations, Warranties and Covenants.

The City represents, warrants and covenants to the Operator the following:

7.1.1 Authority. The City has full municipal power and authority to enter into this Agreement, and the execution, delivery, and consummation of this Agreement by the City have been duly authorized by all necessary municipal action. The Community and Economic Development Director is the person duly authorized to execute this Agreement on behalf of the City and has so executed this Agreement. All necessary municipal action has been taken to duly authorize the execution, delivery and performance by the Operator pursuant to the Operating Agreement of the Suns License , the Suns Office Lease, the Listing Agreement, the Advertising Agreement, the Suite Marketing Agreement and the form of Suite License. The City and the Phoenix Civic Plaza Building Corporation have taken all actions and proceedings required to be taken by them to authorize the construction of the Jefferson and Third Street Parking Garage (which shall contain 1500 spaces, expandable at the City's option to 2000 spaces).

7.1.2 No Conflicts. Except as disclosed to the Operator in writing by outside counsel for the City prior to December 31, 1989, the execution, delivery and performance of this Agreement by the City is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the City is a party or is otherwise subject.

7.1.3 No Violation of Laws. Neither the execution, delivery nor performance of this Agreement by the City violates or will violate the City Charter, the City Code or any ordinance or resolution of the City of Phoenix. The City has received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the City with applicable statutes, rules and regulations of the United States of America, the State of Arizona, the City, or of any other state or municipality or agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement; and the City is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby.

7.1.4 Redevelopment Project. The construction of the Facility is a redevelopment project authorized by A.R.S. § 36-1471 et seq. The City will not utilize any federal funds in the construction of the Facility pursuant to this Agreement.

7.1.5 Litigation. No suit is pending before or by any court or governmental body seeking to restrain or prohibit, or seeking damages or other relief in connection with, the execution and delivery of this Agreement or the consummation of the transactions contemplated thereby or which might materially and adversely affect the use and operation of the Facility as contemplated therein. No outstanding judgment against the City materially and adversely affects the use and operation of the Facility as contemplated herein.

7.1.6 THIS SECTION INTENTIONALLY OMITTED.

7.1.7 Limited Recourse. All payment obligations of the City pursuant to this Agreement shall be payable only from excise taxes validly imposed by the City, revenues, if any, from Facility operations and activities and proceeds of bonds issued by the City of Phoenix Civic Improvement Corporation. Notwithstanding the foregoing, the City shall not be obligated to pay more than \$35,000,000 for Project Costs.

Such obligations shall under no circumstances constitute a general obligation of the City or be payable from the proceeds of ad valorem taxes or from any general funds of the City.

7.1.8 Site Possession and Title. The rights of the Operator pursuant to this Agreement, and the Operator's peaceful use and quiet enjoyment of the Facility as provided in this Agreement, shall not be diminished, impaired or disturbed in any way by any lien, encumbrance, easement, right-of-way, covenant, condition, restriction, defect, invalidity or any other matter adversely affecting the City's rights of possession in, or title to, the Site, or by any other insufficiency, limitation, restriction or defect in the rights of the City to possess the Site or its ownership or title thereto (collectively "Title Exceptions"). The City shall pay and be responsible for all liabilities, losses, damages, costs, expenses and charges including, without limitation, reasonable attorneys' fees and costs, that may be incurred or suffered by the Operator as a result of any Title Exceptions, none of which shall be treated as Construction Costs.

7.1.9 Environmental and Historical Laws. To the best of the City's knowledge, except as disclosed in the Dames & Moore Phase I Environmental Assessment dated July 17, 1989 (the "Assessment"), a true copy of which has been furnished to

the Operator, no condition at, on or under the Site violates or may violate any federal, state, county or local law, statute, code, ordinance, rule, regulation or judicial or administrative decision, order or directive relating to environmental matters, historic preservation matters, or industrial health or safety matters, including, without limitation, any of the foregoing regulating or applying to any toxic or hazardous substance or waste or any environmental pollutant, as those terms are defined in any of the foregoing (collectively, "Environmental Laws"). The City shall use its best efforts to cure and correct not later than the Construction Start Date, and shall pay and be liable for all costs, expenses, liabilities and claims necessary to cure and correct at any time now and in the future, any condition at, on or under the Site which violates or may violate any Environmental Law and which (a) is disclosed in the Assessment or (b) (i) is not disclosed in the Assessment and (ii) existed as of July 19, 1989 and was not known to the City as of the date of this Agreement; provided that liability of the City pursuant to this sentence shall be limited to \$200,000 (as provided in Section 2.1.2.1) with respect to conditions existing at, on or under the Site as of July 19, 1989. All costs, expenses, liabilities and claims related to and necessary for curing and correcting at any time now and in the future any condition at, on or under the Site which did not exist as of July 19, 1989 and which violates or may violate any

Environmental Law shall be Construction Costs subject to the limitations of Section 2.1.2.1; provided, however, that the City shall use its best efforts to cure and correct not later than the Construction Start Date, and shall pay and be liable for all expenses, liabilities and claims necessary to cure and correct at any time now and in the future, any condition at, on or under the Site which violates or may violate any Environmental law, to the extent that such condition did not exist as of July 19, 1989, and to the extent that such condition was directly or indirectly caused by the acts or omissions of the City in the discharge of its duties pursuant to Section 2.1.2.1. The City agrees to disclose promptly to the Operator all information within its actual knowledge relating to the foregoing matters. Until the Operations Start Date, and subject to the \$200,000 limitation as provided in Section 2.1.2.1 with respect to conditions existing at, on or under the Site as of the July 19, 1989, (i) the City shall maintain, keep current and comply in full with any and all permits, consents and approvals required by the Environmental Laws and (ii) the City shall comply with all Environmental Laws and shall not conduct or allow any use of or activity on or under the Site that will violate or threaten to violate any Environmental Law, provided that this Section 7.1.9 shall (A) apply only to the conduct of the City in its use of the Site and to its affirmative acts in the construction of the

Facility, (B) not increase the \$200,000 limitation on the cost to cause the Site to comply with all Environmental Laws as provided in Section 2.1.2.1 with respect to conditions existing on the Site as of July 19, 1989, (C) not apply to any uses or activities permitted by the Operator, and (D) not release the Operator from obligations otherwise required by Section 4.6, 4.7, 7.2.7 and 7.3.5. The City shall promptly notify the Operator if the City has actual knowledge of any material noncompliance or potential material noncompliance with any Environmental Law or if the City receives any written or oral notification from any governmental authority or any third party regarding any material noncompliance or threatened or potential material noncompliance with or any request for information pursuant to any Environmental Law.

7.1.10 Jefferson and Third Street Garage. The City shall use its best efforts to obtain as quickly as practicable, by negotiated purchase or pursuant to eminent domain, any property required for the construction of the Jefferson and Third Street Garage. The City's best efforts shall not include paying more than the fair market value of such property as determined by the City if the purchase is negotiated or by the Maricopa County Superior Court or a court of appellate jurisdiction if condemnation is completed. If such property is acquired no later than fifteen (15) months

before the Completion Date of the Facility, such garage shall be completed not later than the Completion Date of the Facility. If such property is not acquired by such date and such garage is not completed by the Completion Date, the City shall use its best efforts to provide substitute parking within a reasonable distance for use by the Facility by the Completion Date and shall diligently proceed with the construction of such garage.

7.2 Operator Representations, Warranties and Covenants. The Operator represents, warrants and covenants to the City the following:

7.2.1 Organization. The Operator is a limited partnership, duly organized and validly existing under the laws of the State of Delaware and is qualified as a foreign limited partnership in Arizona; and it has all requisite partnership power and authority to enter into this Agreement.

7.2.2 Authorization; No Violation. The execution, delivery and performance by the Operator of this Agreement have been duly authorized by all necessary partnership action and will not violate its limited partnership agreement, or result in the breach of or constitute a default under any loan or credit agreement, or other agreement or

instrument to which the Operator is a party or by which the Operator or its assets may be bound or affected. All consents and approvals of any person (including partners of the Operator) required in connection with this Agreement have been obtained.

7.2.3 Litigation. No suit is pending against or affects the Operator which could have a material adverse affect upon the Operator's performance under this Agreement or the financial condition or business of the Operator. There are no outstanding judgments against the Operator.

7.2.4 No Conflicts. Except as disclosed to the City in writing by outside counsel for the Operator prior to December 31, 1989, the execution, delivery and performance of this Agreement by the Operator is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the Operator is a party or is otherwise subject.

7.2.5 No Violation of Laws. The Operator has received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the Operator with applicable statutes, rules and regulations of the United States

of America, the State of Arizona or of any other state or municipality (other than the City) or agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement; and the Operator is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby.

7.2.6 THIS SECTION INTENTIONALLY OMITTED.

7.2.7 Environmental and Historical Laws. Until the Operations Start Date, (a) the Operator shall maintain, keep current and comply in full with any and all permits, consents and approvals required by the Environmental Laws and (b) the Operator shall comply with all Environmental Laws and shall not conduct or allow any use of or activity on or under the Site that will violate or threaten to violate any Environmental Law; provided, however, that the Operator's obligations pursuant to this Section 7.2.7 shall only apply to uses or activities authorized by the Operator. The Operator shall promptly notify the City if the Operator has actual knowledge of any material noncompliance or potential material noncompliance with any Environmental Law or if the Operator receives any written or oral notification from any governmental

authority or any third party regarding any material noncompliance or threatened or potential material noncompliance with or any request for information pursuant to any Environmental Law.

7.2.8 No Payments. The Operator has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

7.3 Mutual Covenants. The Operator and the City each agree to the other as follows:

7.3.1 Additional Documents and Approval. The City and the Operator will, whenever and as often as each shall be reasonably requested to do so by the other party or by the Team, execute or cause to be executed any further documents, including such reasonable documents or reasonable changes in documents as requested by a Lender, take any further actions and grant any further approvals as may be necessary or expedient in order to consummate the transactions provided for in this Agreement and to carry out the purpose and intent of this Agreement. Without limiting the foregoing, the City and

the Operator agree to deliver to the Lender the City's and the Operator's agreement, in form and substance satisfactory to the City, the Operator and the Lender, with respect to

(a) completing the Facility in the event the Lender fully funds the Construction Financing (recognizing that the limitations on the City's funding obligations set forth in Section 4.5.2 shall not be directly or indirectly increased), (b) providing the Lender with notice and the opportunity to cure material defaults by the Operator hereunder and under the Related Agreements, (c) providing the Lender the opportunity to expressly assume the Operator's obligations hereunder and under the Related Agreements, and (d) providing the Lender the joint right with the City and the Team to select a Replacement Operator and to transfer the rights of the Operator hereunder and under the Related Agreements to such Replacement Operator as provided in the Assurance Agreement.

7.3.2 Good Faith. In exercising its rights and fulfilling its obligations under this Agreement, each of the City and the Operator shall act in good faith. Each party acknowledges that this Agreement and all Related Agreements together contemplate cooperation between the Operator and the City. The City is acting in its proprietary capacity hereunder and has certain governmental powers not susceptible to contractual limitation. Each party further acknowledges that

the terms and conditions of this Agreement and the Related Agreements have been negotiated on the basis of certain projections and assumptions, including the assumption that the City, the Operator, and the Team will act to advance, and not unreasonably interfere with, the public and private purposes to be served by the Facility and by the City's overall downtown redevelopment and revitalization program. Therefore, each party agrees that in meeting its obligations under this Agreement, it will take into account all relevant facts at the time of performance.

7.3.3 No Termination. Neither the City nor the Operator shall terminate this Agreement on the ground of ultra vires act or for any illegality or on the basis of any challenge to the enforceability of this Agreement. Subject to the foregoing, no such challenge may be asserted by the City or the Operator except by the institution of a declaratory judgment action in which the Operator, the City, the Team, the Marketer and, to the extent required by the Loan Documents, the Lender are named as parties.

7.3.4 Cooperation. The City and the Operator mutually agree to contest any challenge to the validity, authorization and enforceability of this Agreement ("Challenge"), whether asserted by a taxpayer or any party.

The City and the Operator shall each strive in good faith to agree jointly upon counsel to defend any such Challenge, and any legal fees, costs and other expenses in connection with such Challenge shall be treated as a Construction Cost.

Furthermore, the City and the Operator shall take all ministerial actions and proceedings necessary or appropriate to remedy any apparent invalidity, lack or defect in authorization, or illegality, or to cure any other defect, which has been asserted or threatened.

7.3.5 Compliance With Laws. During the term of this Agreement, the City and the Operator each shall, in connection with its own use of (and, in the case of the City, its ownership of) and the exercise of its rights with respect to the Facility, comply with all applicable laws, ordinances, rules and regulations relating thereto. The City shall obtain and maintain all necessary permits and licenses that are required of an owner of the Facility or that are required of City Events at the Facility. The Operator shall obtain and maintain all necessary permits and licenses that are required in connection with the operation of the Facility. The terms of this covenant shall apply to all actions by the City taken in its proprietary capacity.

7.3.6 Notice of Matters. Should the City or the Operator receive knowledge about any matter which may constitute a breach of any of its warranties or covenants set forth in this Article 7 which arises after the date hereof, it shall promptly notify the other party of the same in writing. Specifically, without limitation, the City and the Operator shall promptly inform the other of any suit referred to in Sections 7.1.5 and 7.2.3 and any Challenge referred to in Section 7.3.4.

7.3.7 Survival of Covenants and Warranties. All covenants, representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement. No action taken pursuant to or related to this Agreement, including, without limitation, any investigation by or on behalf of a party shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, condition or agreement herein.

ARTICLE 8. DEFAULTS, REMEDIES AND TERMINATION.

8.1 Events of Default. Each of the following events shall constitute an Event of Default; provided, however, that no Event of Default shall be deemed to have been caused or permitted by the Operator unless the City shall have given

written notice to the Lender of such Event of Default and the Lender shall not have cured the breach within the later of thirty (30) days after receipt of such notice or the date which is ten (10) days after the expiration of the cure period to which the Operator is entitled pursuant to this Section 8.1:

8.1.1 If any representation or warranty made by the City or by the Operator herein or in any document referred to herein shall at any time prove to have been incorrect in any material respect as of the time made, and if the party making such representation or warranty fails to cause such representation or warranty to become correct within thirty (30) days after written notice that such representation and warranty was incorrect; provided, however, that if it is not reasonably possible to cause such representation or warranty to become correct within such thirty-day period, such cure period shall be for an unlimited period of time if within thirty (30) days after such written notice the curing party commences diligently and thereafter continues to cause such representation and warranty to become correct.

8.1.2 If the City shall fail to observe or perform any of the covenants, agreements or provisions of Section 4.5 and such failure is not cured within ten (10) days after written notice by the Operator to the City.

8.1.3 If the Operator shall fail to observe or perform any of the provisions of Section 4.5 and such failure is not cured within ten (10) days after written notice by the City to the Operator.

8.1.4 If the City or the Operator shall fail to observe or perform any of the other covenants, agreements or provisions in this Agreement other than as referred to in Sections 8.1.2 and 8.1.3 and such failure is not cured within thirty (30) days after written notice; provided, however, that if it is not reasonably possible to cure such failure within such thirty-day cure period, such cure period shall be for an unlimited period of time if within thirty (30) days after such written notice the curing party commences diligently and thereafter continues to cure such failure.

8.2 Institution of Litigation. Subject to any dispute resolution procedures agreed upon by the parties, in addition to any other rights or remedies, either party may institute litigation to cure, correct or remedy any Event of Default, to recover damages for any default, or to obtain any other remedy (including specific performance and any other equitable remedy) consistent with the purpose of this Agreement; provided that specific performance shall in no event require the Team, or any shareholder of the general partner of

the Operator, to make additional capital contributions. The parties further agree that neither shall seek or be entitled to receive damages for loss of future revenues; provided, however, that this Section 8.2 shall in no way limit the City's or the Team's rights pursuant to the Assurance Agreement. Litigation pursuant to this Section 8.2 shall only be instituted in the Superior Court of Arizona for Maricopa County, or in the Federal District Court in the District of Arizona. The Operator and the City consent to the jurisdiction of such courts.

8.3 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Event of Default or any other Event of Default by the other party.

8.4 Costs, Expenses and Fees. If any litigation is instituted pursuant to this Agreement, the prevailing party in such litigation shall be reimbursed by the other party for all costs and expenses of such litigation, including reasonable attorneys' fees as may be fixed by the court having jurisdiction thereof. Any amount paid pursuant to this Section 8.4 shall not be included as a Construction Cost.

8.5 Applicable Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement.

8.6 Acceptance of Legal Process.

8.6.1 Service on City. In the event that any legal or equitable action is commenced by the Operator against the City, service of process on the City shall be made by personal service upon the Office of the City Clerk of the City of Phoenix, or in such other manner as may be provided by law.

8.6.2 Service on the Operator. In the event any legal or equitable action is commenced by the City against the Operator, service of process on the Operator shall be made by personal service upon a statutory agent appointed by the General Partner, or in such other manner as may be provided by law, and shall be valid whether made within or without the State of Arizona.

8.7 Remedies and Rights of Termination.

8.7.1 Termination by the Operator. The Operator at its option may terminate this Agreement after fifteen (15) days written notice to the City, provided there is then no

existing Event of Default attributable to the Operator and no event occurring or condition existing which, with the passage of time or giving of notice, or both, would constitute an Event of Default attributable to the Operator under this Agreement or any agreement to which this Operator is a party executed in connection herewith, and provided further that the failure of any applicable condition is not due to the act or omission of the Operator, if:

(a) The City has caused an Event of Default to occur;

(b) Any of the conditions precedent set forth in Sections 3.6, 3.7 or 3.8 are not waived or satisfied as required by Sections 3.6, 3.7 or 3.8 prior to September 30, 1990; or

(c) The Construction Start Date has not occurred prior to September 30, 1990.

In the event (and only in the event) the Operator terminates this Agreement pursuant to paragraphs (b) or (c) of this Section 8.7.1, the Operator and the City shall have no further rights against or liabilities to each other under this

Agreement. In the event of any other termination of this Agreement, each party shall have available to it all of its rights and remedies under this Agreement and in law and equity.

8.7.2 Termination by the City. The City at its option may terminate this Agreement after fifteen (15) days written notice to the Operator, provided there is then no existing Event of Default attributable to the City and no event occurring or condition existing which, with the passage of time or giving of notice or both, would constitute an Event of Default attributable to the City under this Agreement or any agreement to which the City is a party executed in connection herewith, and provided further that the failure of any applicable condition is not due to the act or omission of the City, if:

(a) The Operator has caused an Event of Default to occur; or

(b) Any of the conditions precedent set forth in Sections 3.6, 3.7 or 3.8 are not waived or satisfied as required by Sections 3.6, 3.7 or 3.8 prior to September 30, 1990; or

(c) The Construction Start Date has not occurred prior to September 30, 1990; or

(d) The Operator (or its general partner) shall have commenced any case, proceeding or other action (i) under the Federal Bankruptcy Code, as amended from time to time, or under any other existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to the Operator (or its general partner), seeking to adjudicate the Operator (or its general partner) a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, discharge, composition or other relief with respect to the Operator (or its general partner) or the debts of the Operator (or its general partner) or (ii) seeking appointment of a receiver, custodian or other similar official for the Operator (or its general partner) for all or any substantial part of the Operator's (or its general partner's) assets, or the Operator (or its general partner) shall make a general assignment for the benefit of the Operator's (or its general partner's) creditors; or

(e) There shall be commenced against the Operator (or its general partner) any case, proceeding or other action of a nature referred to in clause (d) which (i) results in the entry of an order for relief or any such adjudication or appointment or (ii) which is not stayed or dismissed within a period of sixty (60) days; or

(f) There shall be commenced against the Operator (or its general partner) any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of the Operator's (or its general partner's) assets, which results in the entry of an order for any such relief which shall not have been vacated, discharged or stayed or bonded pending appeal within sixty (60) days from the entry thereof.

In the event (and only in the event) the City terminates this Agreement pursuant to paragraphs (b) or (c) of this Section 8.7.2, the City and the Operator shall have no further rights against or liabilities to each other under this Agreement; provided, however, that no party shall be released from any liability hereunder that has accrued on or before such termination. In the event of any other termination of this Agreement, each party shall have available to it all of its rights and remedies under this Agreement and in law and equity.

8.7.3 Termination by Either Party. Either party may terminate this Agreement as provided in Section 2.1.2.1 in accordance with its terms. In such event, the City and the Operator shall have no further rights against or liabilities to each other under this Agreement; provided, however, that no party shall be released from any liability hereunder that has accrued on or before such termination.

8.7.4 Termination of Other Agreements. The parties acknowledge and agree that any termination of this Agreement by a party prior to the Operations Start Date (if the Operator is an Affiliate of the Team) shall, without the necessity of any additional notice, be deemed to be a termination of the Operating Agreement, the Assurance Agreement and the Suns License by such party.

ARTICLE 9. GENERAL PROVISIONS.

9.1 Notices, Demands and Communications Between the Parties. All notices and other communications pursuant to this Agreement shall be in writing to the City c/o the City Designate or to the Operator c/o the Operator Designate, as applicable, and shall be deemed properly given if sent by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed as follows:

Operator Designate:

Phoenix Arena Development
Limited Partnership
2800 North Central Avenue
Phoenix, Arizona 85012
Attention: Arena Manager

With a copy to:

Jay S. Ruffner, Esq.
R.A. Hillhouse, Esq.
Lewis and Roca
100 West Washington Street
Phoenix, Arizona 85003

City Designate:

Phoenix Community and Economic
Development Department
One North First Street
Seventh Floor
Phoenix, Arizona 85004
Attention: Director

With a copy to:

City Attorney
Law Department
City of Phoenix
251 West Washington
Suite 8000
Phoenix, Arizona 85003

Each party may by notice to the other specify a different address for subsequent notice purposes. Notice shall be deemed effective on the date of actual receipt or three days after the date of mailing, whichever is earlier.

9.2 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

9.3 Conflict of Interests. The Operator and the City acknowledge that this Agreement is subject to Arizona Revised Statutes Section 38-511.

9.4 Relationship of Parties. No partnership, joint venture or other business relationship is established between the City and the Operator under this Agreement or any other

agreement referred to in this Agreement other than the relationship of the City as the owner of the Facility and the Operator as an independent contractor of the City. Except as expressly provided in the Operating Agreement, the Operator, its employees, agents, independent contractors and consultants shall not be considered employees or agents of the City or to have been authorized to incur any expense on behalf of the City or to act for or to bind the City. The City, its elected officials, officers, employees, agents, independent contractors and consultants shall not be considered employees or agents of the Operator or to have been authorized to incur any expense on behalf of the Operator or to act for or to bind the Operator. Neither the City nor the Operator shall be liable for any acts, omissions or negligence on the part of the other party, its employees, agents, independent contractors, licensees and invitees resulting in either personal injury or property damages. The relationship created hereby is solely that of owner-independent contractor, not that of landlord-tenant. The Operator has no possessory or other title or interest in the Facility.

9.5 Force Majeure and Abatement Periods. Failure in performance by either party hereunder shall not be deemed an Event of Default, and the nonoccurrence of any condition hereunder shall not give rise to any right otherwise provided

herein, when such failure or nonoccurrence is due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; unusually severe weather; inability (when both parties are faultless) of any Contractor, subcontractor or supplier; acts or the failure to act, of any public or governmental agency or entity (except acts or failures to act by the City acting in its proprietary capacity); any restoration required or permitted by Sections 4.11.2 or 4.11.5; or any other causes beyond the control and without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be limited to the period of the delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause; provided that, if notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the period of the delay shall be deemed to commence thirty (30) days prior to the giving of such notice. The period of delay due to any such cause shall be referred to herein as an Abatement Period. Times of performance under this Agreement may also be extended as mutually agreed upon in writing by the City and the Operator. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure a default hereunder.

9.6 Inspection of Books and Records. The City has the right (at the Operator's office in the City of Phoenix, upon not less than seventy-two (72) hours' notice, and at all reasonable times) to inspect the books, records and documents of the Operator of all kinds possessed by or under the control of the Operator, its accountants or agents in any way related to the Operator's rights and obligations under this Agreement. The Operator agrees to keep and maintain all books, records and documents of all kinds in any way related to the Operator's rights and obligations under this Agreement separate and identifiable from its other books, records, and documents.

9.7 Approvals by the City and the Operator. Wherever this Agreement requires the City and the Operator to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld or delayed.

9.8 Plans and Data. If this Agreement is terminated for any reason, the Operator shall deliver to the City complete and accurate copies of all Facility Drawings and related data which are the joint property of the Operator and the City; provided that the cost of such copies shall be allocated fifty percent (50%) to the City and fifty percent (50%) to the

Operator, and each party shall be entitled to full use and enjoyment of such Facility Drawings without claim or interference by the other party.

9.9 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect, provided that this Agreement shall be construed to give effect to the parties' intent.

9.10 Captions. Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Agreement.

9.11 Interpretations. To the extent permitted by the context in which used, (a) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa, and (b) reference to "persons" or "parties" in this Agreement shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and other entities.

9.12 Entire Agreement, Waivers and Amendments.

9.12.1 This Agreement is executed in twelve (12) duplicates each of which is deemed to be an original. This Agreement (which includes 115 pages of text (including a table of contents and a signature page) and the referenced exhibits, each of which is incorporated herein) constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Agreement.

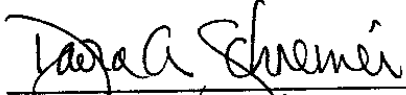
9.12.2 This Agreement (including all Related Agreements) integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof except as provided in Section 1.3.

9.12.3 All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and the Operator, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Operator.

DATED as of the 19th day of July, 1989.

CITY:

CITY OF PHOENIX, a municipal corporation; MARVIN A. ANDREWS, City Manager




David A. Schreiner
Assistant Director
Community and Economic
Development

OPERATOR:

PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP, a Delaware limited partnership

By PHOENIX ARENA DEVELOPMENT CORPORATION, INC., an Arizona corporation, its general partner

By: 
Richard H. Dozer
President

ATTEST:


DEPUTY City Clerk

APPROVED AS TO FORM:

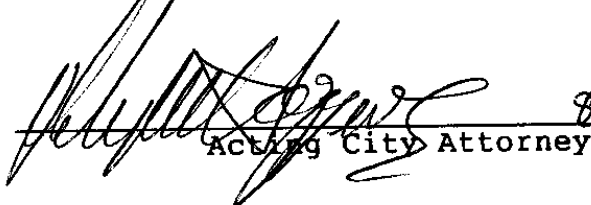

Acting City Attorney

EXHIBIT 1.1

FIRST RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT
DEFINITIONS

Unless otherwise provided herein, all Section and Article numbers shall refer to the Sections and Articles of this Agreement.

1. Abatement Period means any period of time for which time for performance or the deadline for a condition is extended as a result of events described in and pursuant to (a) Section 9.4 of the Assurance Agreement, (b) Article 10 of the Operating Agreement or Section 16 of the Suns License, (c) Article 11 of the Operating Agreement or Section 17 of the Suns License, (d) Section 19.6 of the Operating Agreement, (e) Section 22.4 of the Suns License, and (f) Sections 4.11.2, 4.11.5 or 9.5 hereof. Any Abatement Period under any of the foregoing agreements shall be deemed to be an Abatement Period for every other such agreement.

2. Acquired Property means any real property not owned by the City that is included within the Site as of the date of this Agreement.

3. Additional Equity has the meaning set forth in Section 6.3.5.

4. Advertising Agreement means the Advertising Agreement between the Operator and the Team dated as of July 19, 1989, attached as Exhibit D-4, as and if amended or restated.

5. Affiliate of any Person ("Subject Person") means any other Person (the "Affiliated Person") who (a) is Directly or Indirectly Controlled by, or under common Control with, the Subject Person; (b) owns Directly or Indirectly five percent (5%) or more of any class of the outstanding debt or equity of the Subject Person; (c) is a general partner, officer, director, agent, non-financial institution trustee or fiduciary of the Subject Person or of any Person described in (a) or (b); or (d) is a member of the Immediate Family of the Subject Person or of any Person described in (a) through (c); provided, however, that a Person shall not be an Affiliated Person solely by reason of being indebted to another Person who, by virtue of owning outstanding debt of such Subject Person, Controls such Subject Person.

6. Approved Preopening Soft Costs means any Preopening Soft Cost that the parties have agreed or an arbitrator has determined is a cost for which a party is entitled to compensation pursuant to Section 4.5.3.

7. Architect means Ellerbe Becket, Inc., or any alternative architect agreed upon by the Operator and the City.

8. Architect Construction Administration Agreement means the contract described in Section 3.8.4.

9. Architect Design Agreement means an agreement with the Architect for the preparation of the Facility Drawings.

10. Arena means an approximately 18,000 seat multipurpose facility that is included as an integral part of the Facility and is described more fully in the Facility Drawings.

11. Arena Garage means an approximately 1,000 car parking garage that is included as an integral part of the Facility and is described more fully in the Facility Drawings.

11.1 Assessment has the meaning set forth in Section 7.1.9.

12. Assurance Agreement means the Assurance Agreement between the City, the Team and the Marketer dated as of July 19, 1989 attached as Exhibit 3.7.9, as and if amended or restated.

13. Award has the meaning set forth in Section 4.11.4.

14. Broker has the meaning set forth in Section 3.5.

15. Certificate of Occupancy means a certificate issued by the City's building inspector permitting occupancy and use of the Facility or portion thereof.

16. Challenge has the meaning set forth in Section 7.3.4.

17. City means the City of Phoenix, a municipal corporation of the State of Arizona, any of its administrative departments, divisions and functions, and its successors and assigns.

18. City Event means any Event conducted sponsored or co-sponsored by the City or its designee pursuant to its rights and obligations established in Section 3.2 and Exhibit 4.5 of the Operating Agreement.

19. City Personnel has the meaning set forth in Section 3.4.

20. Completion Date has the meaning set forth in Section 4.10.

21. Completion Letter of Credit means an irrevocable payment letter of credit in the stated amount equal to the City's estimate, if approved by Project Manager, from time to time pursuant to Section 4.5.4 that the final Construction Costs will exceed \$70,000,000, in form and substance satisfactory to the City, issued by a bank satisfactory to the City in its sole discretion (the City agrees hereby that Fuji Bank is satisfactory to it), issued in favor of the City, and each renewal or replacement of such letter of credit. Such letter of credit, and each renewal or replacement thereof, shall provide that each draw thereunder shall be paid upon the issuer's receipt of a written statement by Kevin Keogh or another authorized City representative of the amount of the draw requested. Each such letter of credit, and each renewal

or replacement thereof, shall also provide that the full principal amount of the letter of credit available to be drawn for all remaining payments may be drawn by the City in the event the letter of credit is not renewed or replaced, and the renewal or replacement letter of credit is not delivered to the City, at least 30 days prior to the expiration date of such letter of credit.

22. Condemnation Deficiency has the meaning set forth in Section 4.11.5.

23. Construction Budget means the budget agreed upon by the Operator and the City for the construction of the Facility as revised from time to time.

24. Construction Contract(s) means the agreement(s) between the City and the Contractor(s) for the construction of the Facility.

25. Construction Costs means those costs incurred in the design or construction of the Facility and included in the Construction Budget as revised from time to time and those costs incurred (whether or not included in the Construction Budget) as permitted by Sections 2.1.2.1, 2.1.2.2 and 3.1.

26. Construction Documents means drawings and specifications setting forth in detail the requirements for the construction of the Facility.

27. Construction Financing means the loan(s) obtained to fund the Operator's obligations under Section 4.5.1.

28. Construction Management Team means the team described in Section 4.1.

29. Construction Start Date means the date the City issues a "notice to proceed" to any Contractor to proceed with the first phase of construction of the Facility after the City has completed its Site clearance obligation under Section 2.1.2.

30. Construction Trust Account means a joint account established pursuant to Section 4.5.4(b).

31. Contractors means any person or entity contracted to provide services, labor, materials, machinery, equipment, fixtures or tools to or at the Site for the construction of the Facility.

32. Control, Controlled or Controlling means (a) with respect to a corporation, owning legally, beneficially or in combination at least twenty percent (20%) of any class of issued and outstanding debt or equity of such corporation, (b) with respect to a partnership, being a general partner or being entitled to receive at least twenty percent (20%) of the income, losses or distributions from such partnership, and (c) with respect to a trust or other entity or association not described in clauses (a) or (b), being the trustee or other person entitled to direct the management of such trust's, entity's or association's assets, or being entitled to receive at least twenty percent (20%) of the income, losses or distributions from such trust, entity or association.

33. Design Development Drawings means drawings and other documents which fix and describe the size and character of the entire Facility as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

34. Destruction Date has the meaning set forth in Section 4.11.2.

35. Direct or Indirect and Directly or Indirectly mean through one or more tiers of subsidiaries, partnerships, or other tiered ownership entities.

36. Environmental Laws has the meaning set forth in Section 7.1.9.

37. Event means any revenue or nonrevenue producing sports, entertainment, cultural, civic and other activity or event which is conducted at the Facility, including any City Event and any Operator Event.

38. Event of Default means any event described in Section 8.1 as an Event of Default.

39. Facility means the Site, the Arena, the Arena Garage, any other improvements constructed on the Site and Ordinary Landscaping.

40. Facility Drawings means the schematic design drawings (which shall consist of drawings and other documents illustrating the scale and relationship of Facility components), Design Development Drawings, Construction Documents and related documents as may be revised by mutual agreement from time to time.

41. Facility Schedule means the initial schedule of design and construction to be agreed upon by the Operator and the City as may be revised from time to time by mutual agreement of the parties.

42. Funding Request means (a) a written request from a Contractor (including without limitation the Project Manager) for payment of Construction Costs, after approval by each of the Architect, the Project Manager, the Operator and the City, or (b) any joint written request by the Operator and the City for payment of Preopening Soft Costs.

43. General Contingency Percentage means the percentage of (a) the amount in the Construction Budget used to budget for general contingencies divided by (b) the amount of the Construction Budget as a whole.

44. General Partner means the Phoenix Arena Development Corporation, an Arizona corporation, and its successors and assigns.

45. Immediate Family means any spouse, any son, daughter or parent of any individual (by blood or marriage), or any trust, estate, partnership, joint venture, company,

corporation, operation or any other legal entity or business or investment enterprise Directly or Indirectly Controlled by such spouse, son, daughter or parent.

46. Impositions means all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, general and special, ordinary and extraordinary, of every kind and nature whatsoever (irrespective of the nature thereof, including, without limitation, all such charges based on the fact of a transaction, irrespective of how measured) which at any time during the term hereof may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on: (a) all or any part of the Facility; (b) any payments received from any holders of a leasehold interest or license in or to the Facility, from any guests or from any others using or occupying all or any part of the Facility; or (c) this transaction or any document to which the Operator or the Team is a party which creates or transfers rights with respect to all or any part of the Facility.

47. Initial DDA has the meaning set forth in Section 1.3.

48. Initial Related Agreements has the meaning set forth in Section 1.3.

49. Insurance Deficiency has the meaning set forth in Section 4.11.2.

50. Insurance Proceeds has the meaning set forth in Section 4.11.1.

51. Interest means with respect to the Operator, the General Partner or the Team, any legal or beneficial interest in the Operator, the General Partner or the Team (as the case may be), including without limitation any right or option to purchase, or any interest convertible into or exchangeable for any interest which has voting rights in the issuer thereof, whether such interest is Direct or Indirect. A percentage Interest in the Operator, the General Partner or the Team shall be calculated as follows: (a) with respect to any such entity which is a corporation, the percentage of all outstanding equity securities (on a fully-diluted basis assuming the conversion of all securities convertible into or exchangeable for equity securities) represented by such Interest; (b) with respect to any such entity which is a partnership, the greatest percentage of income, losses or distributions of such partnership to which the holder of such Interest is entitled or

(c) with respect to a trust or other entity or association not described in clauses (a) or (b), the greatest percentage of income, losses or distributions of such trust, entity or association to which the holder of such Interest is entitled; provided that, if an Investor in the Operator, the General Partner or the Team owns an Indirect Interest therein through one or more tiers of ownership entities (the "Tiered Entities"), such Investor's percentage Interest in the Operator shall be determined by multiplying (a) the percentage Interest directly held by such Investor in a Tiered Entity times (b) the percentage Interests directly held by each Tiered Entity of another Tiered Entity times (c) the percentage Interest in the Operator directly held by a Tiered Entity.

52. Investor means any owner of an Interest.

53. Jefferson and Third Street Parking Garage means a parking garage, which shall contain 1,500 spaces expandable at the City's option to 2,000 spaces, to be located and constructed within the block bounded by Jefferson, Jackson, Third Street and Fourth Street as provided in this Agreement.

54. Lender means each lender providing Construction Financing.

55. Letter of Credit means an irrevocable payment letter of credit in the initial stated amount of \$35,000,000, in form and substance satisfactory to the City, issued by a bank satisfactory to the City in its sole discretion (the City agrees hereby that Fuji Bank is satisfactory to it), and each renewal or replacement of such letter of credit. Such letter of credit, and each renewal or replacement thereof, shall provide that each draw thereunder shall be paid upon the issuer's receipt of a written statement by Kevin Keogh, or another authorized City representative of the amount of the draw requested. Each letter of credit, and each renewal or replacement thereof, shall also provide that the full principal amount of the letter of credit available to be drawn for all remaining payments may be drawn by the City in the event the letter of credit is not renewed or replaced, and the renewal or replacement letter of credit is not delivered to the City, at least thirty (30) days prior to the expiration date of such letter of credit.

56. Listing Agreement means the Listing Agreement between the Operator and the Marketer dated as of July 19, 1989 attached as Exhibit D-56, as and if amended or restated.

57. Loan Documents means the definitive documentation which evidences the Construction Financing, including without limitation, loan agreements, promissory notes, security agreements and guaranties, pursuant to which funds are borrowed to fund the Operator's obligations under Section 4.5.1.

58. Marketer means the Phoenix Suns Marketing Limited Partnership, a Delaware limited partnership, and its successors and assigns.

59. NBA means the National Basketball Association and any successor or substitute association or other entity of which the Team is a member or joint owner and which engages in professional basketball competition in a manner comparable to the NBA.

60. Neutral means the person jointly selected by the Operator and the City in accordance with Sections 3.7.13 and 3.8.10, or in accordance with dispute resolution procedures agreed upon by the parties pursuant to Section 3.1, 4.2 or 4.5.3.2.

61. Operating Agreement means the Operating Agreement between the City and the Operator dated as of July 19, 1989 attached as Exhibit 5.1, as and if amended or restated.

62. Operations Start Date means the earlier of (a) the date of issuance of a Certificate of Occupancy permitting permanent, unconditional occupancy and use of the entire Facility or (b) if requested by the Operator, the date of issuance of any temporary Certificate of Occupancy permitting any Event to be conducted.

63. Operator means the Phoenix Arena Development Limited Partnership, a Delaware limited partnership, its successors and assigns.

64. Operator Personnel has the meaning set forth in Section 3.3.

65. Ordinary Landscaping means all landscaping of the general type and scale typical of projects comparable to the Facility, but excluding landscaping required by the City to comply with themes established for redevelopment projects adjacent to the Site.

66. Person means any individual, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business or investment enterprise.

67. Preopening Soft Costs means those costs and expenses relating to the Project incurred by the City and the Operator separately, from November 15, 1988, to the Operations Start Date, provided such costs and expenses are for services within any of the following categories: employee expenses, related office expenses, marketing expenses, professional fees (accountants, architects, engineers, lawyers, arena consultants, and investment bankers), and other related and incidental expenses.

68. Preopening Soft Costs Budget(s) means the budget to be submitted by each party pursuant to Section 4.5.3 and which shall set forth each such party's planned budget for Preopening Soft Costs.

69. Project means the Arena and the Arena Garage.

70. Project Costs means all Preopening Soft Costs and all Construction Costs.

71. Project Management Agreement means a Project Management Agreement to be agreed upon by the Project Manager, the City and the Operator.

72. Project Manager means the construction manager who is a party to the Project Management Agreement.

73. Redevelopment Area means the geographic area established by the Redevelopment Plan for redevelopment and improvement pursuant thereto.

74. Redevelopment Plan means the Downtown Area Redevelopment and Improvement Plan that was approved and adopted by the City Council of the City of Phoenix by Resolution No. 15143 on March 13, 1979 and amended by Resolution No. 15376 on May 20, 1980.

75. Refinancing Documents means any document required to effectuate the refinancing of the Construction Financing as permitted by the Operating Agreement.

76. Related Agreements means the Operating Agreement, the Assurance Agreement, the Suns License, the Suite Marketing Agreement, the Advertising Agreement, the Listing Agreement, the Suns Office Lease and the Suite Licenses.

77. Replacement Operator means the person or entity selected pursuant to Article 5 of the Assurance Agreement to operate the Facility.

78. Request for Change Order means a written request by the Operator pursuant to Section 3.1, which request shall include all reasonable detail required by the City, for services, labor, materials, machinery, equipment, fixtures or tools that are not included in the Construction Budget or that are included therein and as to which the Operator desires to reduce the cost of the Work.

79. Request for Reimbursement of Preopening Soft Costs means the monthly request for reimbursement of Preopening Soft Costs required by Section 4.5.3.2.

80. THIS SECTION INTENTIONALLY OMITTED.

81. Scope of Development means the description set forth on Exhibit D-81 attached hereto as may be modified from time to time by mutual agreement of the parties.

82. 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 as shown on the "Site Maps" which are attached hereto as Exhibit D-82(a). The Site is legally described in the "Legal Description of the Site" which is attached hereto as Exhibit D-82(b).

83. Special Landscaping means landscaping on the Site other than Ordinary Landscaping.

84. Suite License means the form of that certain Suite License Agreement for execution by suite licensees and the Operator, attached hereto as Exhibit D-84 and all such other forms of agreement as are executed and in effect from time to time.

85. Suite Marketing Agreement means the Suite Marketing Agreement between the Operator and the Marketer dated as of July 19, 1989, attached as Exhibit D-85, as and if amended or restated.

86. Suns License means the License Agreement between the Operator and the Team dated as of July 19, 1989 attached as Exhibit 3.7.8, as and if amended or restated.

87. Suns Office Lease means that certain Office and Store Lease Agreement between the Operator and the Team as of July 19, 1989, attached as Exhibit D-87, as and if amended or restated.

88. Taking has the meaning set forth in Section 4.11.4.

89. Taking Date has the meaning set forth in Section 4.11.4.

90. Team means the limited partner of the Operator, the Phoenix Suns Limited Partnership, a Delaware limited partnership, and its successors and assigns.

91. Title Exceptions has the meaning set forth in Section 7.1.8.

92. Trustee has the meaning set forth in Section 4.5.4.

93. Work means the completed construction required by the Contract Documents, including all labor necessary to produce such construction, and all fixtures, materials, tools and equipment incorporated or to be incorporated in such construction.

EXHIBIT D-81

ARENA FACILITY

SCOPE OF DEVELOPMENT

The new multipurpose Arena will be located between First and Third Streets and Jefferson and Jackson Streets in downtown Phoenix.

Included on site will be the Arena, a connecting 1000 car parking facility located to the west of the Arena (which will have a foundation and design that will accommodate expansion by 500 additional parking spaces), truck staging areas, development and shell space for a restaurant and club, offices, and a downtown athletic club. Potential exists for the addition of small retail and service related developments in the Arena and on site. A 1500 car parking facility is planned adjacent to and to the east of the Arena site by the City.

The Arena will have a maximum capacity of approximately 18,000 to 20,000 seats and will accommodate a variety of events including basketball, ice hockey, ice shows, circus and center and end stage events such as boxing, wrestling and concerts. The facility will feature both fixed and retractable/moveable seating sections to allow for various configurations.

Public access to the Arena will be from the Jefferson Street entry plaza where the Arena box offices will be located. Services for the facility will access from Jackson Street and ramp down to a large service bay adjacent to the Arena floor level, which will be 20 feet below grade.

The Arena will be comprised of upper and lower seating decks separated by a maximum of 112 private suites on two levels. The upper and lower seating decks will each be served by a public concourse. Each level of suites will also be served by a smaller concourse. The parking facility will have direct access to the Arena at all levels except the upper level public concourse.

The public concourses (serving the upper and lower seating decks) will include ample space allocation for concessions and restrooms. A food court will be located on the north side of the Arena at the lower concourse (street) level. The restaurant and private club (200-275 seats) will be located

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above the food court on the north side of the arena at the suite levels. The area allocated for the athletic club will consist of approximately 50,000 useable square feet on the northwest side of the Arena and will be directly accessed from the Jefferson Street entry plaza. The athletic club will be approximately 20 feet below grade and will be served by a pro shop - Suns store located at the street level. Located above the athletic club at street level will be space for approximately 20,000 square feet of offices with lobby access from the Jefferson Street entry plaza.

The Arena will be an animated facility to integrate and accommodate tasteful advertising both inside and outside the Arena. On the concourses there will be large back-lit advertising panels (called spectaculars) together with reader boards and informational graphics. Within the Arena, space will be designed at every level to permit back-lit advertising and informational graphics. At each entry to the Arena from the parking facility there will be small lobby areas which will be designed to accommodate advertising. The exterior of the Arena will be designed to integrate and accommodate back-lit advertising, reader boards and informational graphics.

Potential miscellaneous retail development and/or a shuttle reservation center may occur along all bases of the Arena.