

53440

DOWNTOWN MULTIPURPOSE ARENA

FIRST RESTATED  
OPERATING AGREEMENT

DATED as of JULY 19, 1989

By and Between  
CITY OF PHOENIX, ARIZONA,

City,

and

PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP,

Operator.

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Exhibit List.

Exhibit 4.5	Date Reservation and Scheduling Procedures
Exhibit 1.1	Definitions

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FIRST RESTATED OPERATING AGREEMENT

THIS FIRST RESTATED OPERATING AGREEMENT ("Agreement") is dated as of July 19, 1989 and entered into by and between the CITY OF PHOENIX, ARIZONA, an Arizona 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, 1988, acting in its governmental capacity, the City adopted the Downtown Area Redevelopment and Improvement Plan ("Redevelopment Plan"), thereby establishing the Redevelopment Area.

B. Thereafter, the City issued a Request for Proposals for the development and operation in the Redevelopment Area of the Facility, including a multipurpose arena. The selection of the Operator as the operator of the Facility was confirmed by the Disposition and Development Agreement ("DDA") of even date herewith between the City and the Operator.

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C. Certain aspects of the DDA constitute a specific implementation of the Redevelopment Plan. This Agreement is executed in conjunction with the DDA so as to provide for the operation of the Facility by the Operator once the Facility has been developed by the City and the Operator as provided in the DDA.

D. Acting in its governmental capacity, the Phoenix City Council has determined that the operation 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 operation supports the redevelopment and revitalization of downtown Phoenix, the convention industry and the local economy and encourages the growth of cultural and entertainment opportunities.

E. Notwithstanding any contrary interpretation of the provisions of this Agreement, the actions by the City under this Operating Agreement are the exercise of its proprietary powers and not its 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, executive, judicial or regulatory powers.

F. As the owner of the Facility, the City hereby is granting to the Operator the right to manage and operate the Facility together with limited, non-exclusive rights to use and permit the use of the Facility. The City is retaining the ownership of the Facility and reserving for its own benefit the right to use the Facility at such times as it is not used by others as herein provided.

G. The Operator acknowledges that the qualifications and identity of the Operator and its partners and principals are of particular concern to the City in view of (a) the importance of the operation 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 the purpose of making such operation possible, and (c) the fact that a significant change (as defined in Section 13.3.5) in ownership of the Operator (whether such change is Direct or Indirect), or any other act or transaction involving or resulting in a significant change (as defined in Section 13.3.5) in the ownership of the Operator (whether such change is Direct or Indirect), is for practical

purposes, an assignment of this Agreement. The City is entering into this Agreement because of such qualifications and identity.

H. The City acknowledges that the continuous ownership of the Facility by the City is of particular concern to the Operator 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.

I. The City and the Operator acknowledge that their obligations to pay amounts and to otherwise perform pursuant to this Agreement are absolute and unconditional except where specifically provided to the contrary herein.

J. 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 hereunder and under the DDA and the Assurance Agreement. Upon execution hereof, the City will take additional action to accomplish the preceding objectives, among others.

K. 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 DEFINITIONS AND RESTATEMENT.

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

1.2 Restatement. This Agreement is a clarification and restatement of the original Operating Agreement between the parties dated as of July 19, 1989 (the "Initial Operating Agreement"), and each of the Related Agreements is a clarification and restatement of the respective original Related Agreements dated as of July 19, 1989 (the "Initial Related Agreements"), which shall remain effective as restated. The Initial Operating Agreement 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 Operating Agreement and the Initial Related Agreements is valid and effective, and each of its warranties contained in the Initial Operating Agreement and the Initial Related Agreements is correct and effective, and each of its covenants contained in the Initial Operating Agreement 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 TERM.

2.1 Commencement and Term. The term of this Agreement shall be effective as of July 19, 1989. The Thirtieth Anniversary Date shall be the date thirty (30) years

after the July 1 immediately prior to the License Commencement Date. The date upon which this Agreement shall expire ("Expiration Date") shall be the date forty (40) years after the July 1 immediately prior to the License Commencement Date; provided, however, that the Thirtieth Anniversary Date and the Expiration Date shall be extended for a period (subject to the requirement of rounding in the following sentence) equal to the aggregate of (a) every Abatement Period or portion thereof commencing after the License Commencement Date and having a duration of at least ninety (90) days, and (b) the period of time during which any portion of the City's Ordinary Operating Fee Payment has been paid to the Team in satisfaction of any Restoration Loss Amount pursuant to Section 6.9 of the Assurance Agreement. Each time the Thirtieth Anniversary Date and the Expiration Date are extended pursuant to the preceding sentence, the period of time giving rise to such extension shall be rounded to the nearest half-year so that the Thirtieth Anniversary Date and the Expiration Date always occur either on July 1 or January 1. The parties acknowledge that, as defined in this Agreement, an Abatement Period includes any period during which the Thirtieth Anniversary Date and the Expiration Date are extended as provided in this Agreement, the Assurance Agreement, the DDA or the Suns License. Within ten (10) days after the License Commencement Date, the parties shall confirm in writing the License Commencement Date, the Thirtieth

Anniversary Date and the Expiration Date, which confirmation shall be attached hereto so as to become a part hereof. Within fifteen (15) days after the conclusion of any Abatement Period the parties shall confirm in writing the date of commencement and the date of conclusion of such Abatement Period and the extended Thirtieth Anniversary Date and the extended Expiration Date due to such Abatement Period if the duration of such Abatement Period was at least ninety (90) days. Each confirmation required by the preceding sentence shall be attached hereto so as to become a part hereof.

2.2 Master Abatement of Obligations. During any Abatement Period, to the extent the cause of such Abatement Period reduces Facility Revenue, the Operator's obligations to make Renewal and Replacement Account Payments and Priority Operating Fee Payments shall abate for the duration of such Abatement Period (but only to the extent there is not sufficient Facility Revenue to make any Renewal and Replacement Account Payment or any Priority Operating Fee Payment), and the Operator's obligation to make Debt Service Payments shall also abate for the duration of such Abatement Period (but only to the extent there is not sufficient Facility Revenue to make any Debt Service Payment) if the Lender has not elected to pursue any remedy available to the Lender under the Loan Documents in connection with the Operator's failure to make such Debt

Service Payments. To the extent that the performance of any other obligation of any party is rendered impossible by the cause of an Abatement Period, such obligation shall abate and be forgiven. Within fifteen (15) days after the commencement of any Abatement Period, the party claiming the right to abate any obligation hereunder due to the cause of such Abatement Period shall notify the other party of such claim and upon such notification may commence abating such obligation. If the party receiving such notice disputes such claim, such dispute shall be submitted to ADR within ten (10) days after receipt of such notice.

2.3 Operator Pre-Operations Start Date Duties. Prior to the Operations Start Date, the Operator shall have such rights and discharge such duties as are reasonable and necessary to ensure that the Facility is equipped, staffed and managed to commence operations upon the Operations Start Date.

### ARTICLE 3 OWNERSHIP.

3.1 Ownership. The Site has been or is being acquired by the City and, together with other portions of the Facility, is or shall be owned by the City. Neither the Operator, the Team (except, as provided in the Suns Office Lease) nor their Affiliates own or have any possessory or other

right, title or interest in the Facility. This Agreement does not create or grant any possessory interest or other right, title or interest in or to the Operator, the Team or any of their Affiliates. Equipment, furniture and other items of personal property purchased during the term of this Agreement shall be owned by the City if purchased with funds from the Renewal and Replacement Account or the Interest Account and shall be owned by the Operator if purchased from the Facility Account. Upon the termination or expiration of this Agreement, or if the Operator is terminated, the City shall have the option to purchase any personal property located at or used in the Arena and owned by the Operator at thirty percent (30%) of depreciated book value as of the date of termination or expiration.

3.2 City Use. Except as provided in this Agreement, the City reserves the exclusive right to use the Facility. Subject to the provisions of Exhibit 4.5, the City reserves the exclusive right to use the Facility for City Events on any day not scheduled for an Operator Event. In addition, during each Schedule Year, the City reserves the exclusive right to use the Facility for City Events on 50 priority reserved dates. The City and the Operator shall agree upon the City's priority reserved dates and the dates of the Operator Events in accordance with the procedures for allocating Event Days in

form and substance substantially the same as set forth on Exhibit 4.5. All revenue received in connection with City Events from parking, Soft Concessions and permitted Commercial Advertising shall be included in Facility Revenue. All other revenue derived from City Events shall not be included in Facility Revenue and shall be the sole property of the City. The Operator shall be reimbursed for direct operating expenses attributable to the use of the Facility for each City Event as specified in any applicable use agreement between the Operator and the City Event sponsor. For the purposes of the preceding sentence, direct operating expenses shall include expenses that would not be incurred but for the City Event; such expenses shall include without limitation, the cost of utilities, insurance and security and maintenance personnel. Other direct operating expenses attributable to the use of the Facility for City Events but not reimbursed pursuant to a use agreement between the Operator and the City Event sponsor shall be reimbursed by the City to the Operator, provided that the Operator demonstrates to the satisfaction of the City that such costs are directly and solely related to the use of the Facility for City Events. In the event that the City and the Operator are unable to agree that such costs are directly and solely related to the use of the Facility for City Events, such dispute shall be submitted to ADR. Payments by the City to the Operator for such other direct operating expenses shall be made

within thirty (30) days after the latter of the date the Operator notifies the City of the nature and amount of such expenses or the date that ADR determines that such costs are directly and solely related to the use of the Facility for City Events.

3.2.1 Reimbursement. The Operator shall have the right to impose appropriate and reasonable terms and conditions on the use of the Facility for City Events to ensure appropriate provision for expense reimbursement.

3.3 City Access. The City reserves the right to enter the Facility at any time provided (a) the City shall not interfere with the operations of the Facility and (b) the City shall not enter those portions of the Facility which have been exclusively leased, licensed or otherwise committed to use by others except in compliance with the terms of any lease, license or other agreement applicable thereto. Notwithstanding the preceding sentence, the City reserves the right (pursuant to procedures set forth in the following sentence) to enter the Facility to maintain or repair the Facility when such activities are not being performed by the Operator as herein required. Except in emergencies, when only such advance notice as is reasonable under the circumstances shall be required, the City shall not enter to maintain or repair the Facility unless



and until the Operator fails to rectify the maintenance or repair failure within thirty (30) days after written notice by the City (or such longer period as is necessary for the Operator to rectify within a reasonable time in the exercise of due diligence). The City shall not be liable in connection with such entry other than for its negligence and shall be reimbursed by the Operator from the Facility Account for all reasonable costs incurred by the City in so maintaining or repairing the Facility plus interest at the Premium Rate computed from the date on which the City requested reimbursement in writing. The cost of any such reimbursement to the City pursuant to this Section 3.3 shall, for the purposes of Section 5.1.7, be treated as an Operating Expense.

3.4 Announcements. Subject to Section 15.1.8.4 and to the terms of any applicable use agreement between the Operator and an Event sponsor, which agreement may, for any Operator Event other than a Home Game, prohibit the City's use of the Communication System, the City shall have the right at least once during each Operator Event to use at no cost the Communication System for disseminating public service announcements and announcements concerning future City Events at times permitted by the Operator, and the Operator shall, at the request of the City, use its best efforts to permit the City's use of the Communication System as many times and at

such times as may be practicable during Operator Events. During City Events, the City shall have the right to use the Communication System for any purpose except as prohibited by Section 15.1.8.4. Subject to the terms of any applicable use agreement between the Operator and a City Event sponsor, which agreement may prohibit the Operator's use of the Communication System, the Operator shall have the right to use the Communication System at least once during each City Event solely for disseminating announcements concerning future Operator Events at times permitted by the City Event sponsor, and the City shall, at the request of the Operator, use its best efforts to permit the Operator's use of the Communication System as many times as is practicable during City Events.

3.5 Signage. The City shall include the full Arena Name on all directional signs controlled by the City that refer to the Arena; provided, however, that the City shall have no obligation to use signs other than standard City signs customarily used by the City.

3.6 Security and Traffic Control. The Operator shall provide all security and traffic control on the Site and such other traffic control off the Site as is reasonably necessary to direct traffic to and from events at the Facility. The City and the Operator shall cooperate in good faith to develop a

traffic management plan to facilitate the ingress and egress of traffic to and from events at the Facility; provided, however, that the parties are under no obligation under the preceding clause to incur any costs in excess of costs otherwise required by this Agreement.

3.7 Mass Transit. The City and the Operator shall cooperate in good faith to integrate the use of the Facility into the City's mass transit plans; provided, however, that the parties are under no obligation under the preceding clause to incur any costs in excess of costs required pursuant to Section 3.6.

#### ARTICLE 4 OPERATIONS.

4.1 General. The Operator shall be the manager and operator of the Facility during the term hereof with sole responsibility and full control and discretion in the operation, direction, management and supervision of the Facility and its staff, subject to the terms of this Agreement.

4.2 Management. The Operator shall do all things and take all actions necessary for the operation of the Facility in accordance with this Agreement. Without limiting the generality of the foregoing, the Operator is authorized to and shall:

4.2.1 pay all Operating Expenses;

4.2.2 prepare and submit to the City on or before the first day of each Fiscal Year an Annual Budget for review and informational purposes only, projecting the estimated revenues and expenses of the Facility during the next Fiscal Year;

4.2.3 collect all Facility Revenue and, in connection therewith, use all reasonable efforts to obtain all fees, rents and other amounts due from tenants, licensees, concessionaires and other users of the Facility; shall cause notices to be served upon such users to quit and surrender space occupied or used by such users where desirable or necessary in the opinion of the Operator; and shall ask for, demand, collect and give receipts for all amounts which at any time may be due from any such user;

4.2.4 commence, defend and settle in good faith such legal actions or proceedings concerning the operation of the Facility (other than defense of the City in legal actions or proceedings in which the City is a defendant) as are necessary or required in the opinion of the Operator; shall

retain counsel in connection therewith; and shall advise the City of the commencement and progress of any such legal action or proceeding;

4.2.5 employ, pay, supervise and discharge all personnel the Operator determines to be necessary for the operation of the Facility, including such personnel as shall be necessary to maintain and ensure public order and safety in and around the Facility (such personnel, during the course of such employment, shall be employees of the Operator and shall not be employees of the City); and may at its option establish employee benefit plans and training and motivational programs; determine all matters with regard to such personnel, including, without limitation, compensation, bonuses, fringe benefits, hiring and replacement; and shall prepare, on its own behalf and file when due, all forms, reports and returns required by law relating to the employment of such personnel;

4.2.6 maintain and make available to the public a schedule of basic event use charges and services;

4.2.7 purchase and maintain all materials, tools, machinery, equipment and supplies necessary for the operation of the Facility;

4.2.8 maintain the Facility in good, clean, sanitary order and repair, not destroy or demolish any part thereof and, during the term of the Suns License, maintain and operate the Facility in compliance with all NBA requirements in effect from time to time;

4.2.9 coordinate and administer a preventative maintenance program for the Facility and its machinery and equipment;

4.2.10 arrange for all utility and other services for the Facility and pay or cause to be paid when due all charges for water, sewer, gas, light, heat, telephone, electricity and other utilities and services rendered to or used on or about the Facility;

4.2.11 maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Facility; and

4.2.12 furnish to the City such reports and other information concerning the Facility and operation thereof as may be reasonably requested from time to time by the City.

4.3 Promotion. From and after the execution hereof the Operator shall plan, prepare, implement, coordinate and supervise all advertising, public relations and other promotional programs for the Facility and shall negotiate, execute (in its own name and not the name of the City) and perform all contracts for Facility promotions. All such contracts shall contain Exculpatory Language. The Operator's plans for such promotions shall be submitted to the City with each Annual Budget and at such other times as the Operator may deem appropriate.

4.4 Advertising. From and after the execution hereof, the Operator shall have the duty and sole right (albeit assignable in part as provided herein) to negotiate, execute (in its own name and not the name of the City) and perform all contracts concerning (a) advertising (including without limitation Commercial Advertising), (b) the sale, promotion, marketing and use of all names, trademarks, tradenames, logos and similar intellectual property rights relating to the Facility, (c) the operation of concessions for the sale of food, beverages, souvenirs, novelties or programs at the Facility and (d) the naming of all or any portion of the Facility, provided that the City shall have the right to approve in writing the naming of all or any portion of the Facility. All contracts negotiated and executed pursuant to

the preceding sentence shall contain Exculpatory Language. The Operator is authorized to grant to licensees the right to market Temporary Commercial Advertising in connection with and during Events conducted by such licensees ("Licensee Advertising"). The Operator is authorized to grant to the Team the sole and exclusive right, and to assign to the Team the obligation, to market all Commercial Advertising during Operator Events other than Licensee Advertising displayed or broadcast by a licensee other than the Team and the right to market permitted Commercial Advertising in connection with City Events. Upon execution hereof, the Operator shall execute the Advertising Agreement and thereafter shall perform the Operator's obligations as provided in the Advertising Agreement. The Operator shall not, directly or indirectly, modify, amend or waive any provision of the Advertising Agreement without prior written City approval.

4.5 Booking. From and after the execution hereof, the Operator shall have the duty and sole right to (a) arrange for and otherwise to book Events in the Facility in accordance with the Date Reservation and Scheduling Priorities in form and substance substantially the same as set forth on Exhibit 4.5, as may be further amended from time to time by agreement between the Operator, the City and the Team, and (b) to negotiate and execute (in its own name and not the name of the



City) and perform all use agreements for the conduct of Events. All such use agreements shall contain Exculpatory Language and may provide that any Event sponsor may require any Fixed and Permanent Advertising to be covered during such Event.

4.6 Suns License. From and after the execution hereof, the Operator shall execute (in its own name and not the name of the City) the Suns License and thereafter shall perform the Operator's obligations as provided in the Suns License. The Operator shall not, directly or indirectly, modify, amend or waive any provisions of the Suns License without prior written City approval.

4.7 Suite Marketing. Upon the execution hereof, the Operator shall execute (in its own name and not the name of the City) and thereafter shall perform the Operator's obligations as provided in the Suite Marketing Agreement. Through and with the assistance of the Marketer as provided in the Suite Marketing Agreement, from and after the execution hereof, the Operator shall have the duty and sole right (albeit assignable in part as provided herein) to perform the Operator's obligations as provided in the Suite Licenses. The Operator shall not, directly or indirectly, modify, amend or waive any provision of the Suite Marketing Agreement. The Operator shall

not, directly or indirectly, modify, amend or waive any provision in any Suite License without prior written City approval, except for insubstantial amendments or amendments to the license fee or term.

4.8 Suns Office Lease. Upon the execution hereof, the Operator shall execute (in its own name and not the name of the City) the Suns Office Lease and thereafter shall perform the Operator's obligations as provided in the Suns Office Lease. From and after this date, the Operator shall have the sole right and duty to perform the Operator's obligations as provided in the Suns Office Lease. The Operator shall not, directly or indirectly, modify, amend or waive any provision of the Suns Office Lease without prior written City approval.

4.9 Listing Agreement. Upon the execution hereof, the Operator shall execute (in its own name and not the name of the City) the Listing Agreement and thereafter shall perform the Operator's obligations as provided in the Listing Agreement. Through and with the assistance of the Marketer pursuant to the Listing Agreement, from and after this date, the Operator shall have the sole right and duty to negotiate, execute (after City approval) and perform each agreement for a restaurant and athletic club on the Site and such other agreements as may be added to the Listing Agreement by the

Operator with the prior written approval of the City. The Operator shall not, directly or indirectly, modify, amend or waive any provision of the Listing Agreement without prior written City approval.

4.10 Facility Contracts. Upon execution of this Agreement, the Operator shall have the sole right to negotiate and execute (in its name and not the name of the City) and perform Facility Contracts. Every Facility Contract shall contain Exculpatory Language.

4.10.1 Procedure. Every Facility Contract which, when aggregated with all other Facility Contracts with the same party executed reasonably contemporaneously with such contract, provides for payments or other forms of consideration with an aggregate value in excess of \$25,000 shall be accompanied by a sworn affidavit from the Operator. Such affidavit shall attest that, to the best of the Operator's knowledge, the other party either is or is not an Affiliate and that no consideration has been furnished to such party except as expressly disclosed in such contract or in the affidavit or as is customary in the operation of facilities comparable to the Facility. The foregoing affidavit requirements shall not apply to Facility Contracts with performers or promoters who book fewer than thirty (30) events per Schedule Year.

4.10.2 Affiliate Contracts. The Operator shall provide the City with a copy of each Affiliate Contract prior to or within ten (10) Business Days after execution. The City shall have fifteen (15) Business Days after receipt either (a) to agree that the aggregate consideration paid or to be paid (whether in money, services, goods or other value) to or by the Operator under the Affiliate Contract is commercially reasonable or (b) to submit such determination to ADR. If the City has not notified the Operator within such fifteen-day period that the consideration under the Affiliate Contract is not commercially reasonable, such Affiliate Contract shall be deemed commercially reasonable. If the parties agree upon or ADR determines an amount by which the aggregate consideration paid or to be paid (whether in money, services, goods or other value) to or by the Operator under such Affiliate Contract is in excess of a commercially reasonable amount (if paid by the Operator) or is less than a commercially reasonable amount (if paid to the Operator), as the case may be, (the "Affiliate Contract Excess Consideration"), the Operator shall pay to the Facility Account from its own funds and not from Facility Revenue on or before the due date of the next Priority Operating Fee Payment and on each subsequent due date until fully paid the sum of (i) the quotient of (A) the Excess Consideration plus the cost of such ADR divided by (B) the

number of years (rounded to the nearest one-half (1/2) year) remaining in the term of such Affiliate Contract, or, if there is no remaining term, by two (2), plus (ii) accrued and unpaid interest on the unpaid Excess Consideration at the Premium Rate from the date paid by, or the date it should have been paid to, the Operator until paid in full by the Operator.

4.11 Vendor Contracts. Upon execution of this Agreement, the Operator shall have the sole right to negotiate and execute (in its name and not the name of the City) and perform Vendor Contracts. Every Vendor Contract shall contain Exculpatory Language.

4.11.1 Procedure. On or before the first day of the third month of each Fiscal Year after the Operations Start Date, or more frequently if the Operator elects, the Operator shall provide the City with (a) a list of all parties to whom the Operator paid, during the preceding Fiscal Year, any amount in excess of \$25,000 pursuant to a Vendor Contract and (b) a reasonably detailed description of the goods and services provided thereunder, accompanied by a sworn affidavit from the Operator attesting that, to the best knowledge of the Operator, such party either is or is not an Affiliate and that no consideration has been furnished to such party except as

expressly disclosed in such contract or in such affidavit or as is customary in the operation of facilities comparable to the Facility. Upon request from the City within seven (7) Business Days after receipt of such list, the Operator shall promptly provide copies of all documents related to such Vendor Contracts. As to any such Affiliate listed by the Operator, the City shall have fifteen (15) Business Days after receipt of such list and all documents related to any submitted Vendor Contract either to agree that the aggregate consideration paid (whether in money, services or goods) to or by the Operator under the submitted Vendor Contract is commercially reasonable or to submit such determination to ADR. If the City has not notified the Operator within such fifteen-day period that the consideration paid to or by the Operator under the submitted Vendor Contract is in excess of a commercially reasonable amount (if paid by the Operator), or is less than a commercially reasonable amount (if paid to the Operator), such submitted Vendor Contract shall be deemed commercially reasonable. If the parties agree upon or ADR determines an amount by which the aggregate consideration paid (whether in money, services or goods) to or by the Operator under the submitted Vendor Contract is in excess of a commercially reasonable amount (if paid by the Operator), or is less than a commercially reasonable amount (if paid to the Operator) (such amount less than or in excess of a commercially reasonable

amount shall be referred to herein as the "Vendor Contract Excess Consideration) the Operator shall pay to the Facility Account from its own funds (and not from Facility Revenue) within thirty (30) days after such agreement or such determination by ADR (i) the amount of Vendor Contract Excess Consideration, plus (ii) accrued and unpaid interest on the Vendor Contract Excess Consideration computed at the Premium Rate from the date paid by the Operator under the submitted Vendor Contract plus (iii) the cost of such ADR.

4.12 Dividends and Distributions. The Operator shall not from Facility Revenue or Facility Accounts (a) declare or pay any dividend or distribution, (b) purchase, redeem or otherwise acquire, directly or indirectly, for value any interest in the Operator now or hereafter outstanding, (c) make any distribution to any Investor or (d) make any other kind of payment (including loans) in cash, goods, services or any other thing of value to any Investor; provided, however, that the provisions of this Section 4.12 shall not apply to Facility Revenue that has been paid (i) to any Investor as expressly permitted in this Agreement or the Related Agreements, (ii) to the Operator as its Management Fee and distributed to any Investor, (iii) to any Investor pursuant to contracts or agreements with Affiliates in compliance with

Section 5.1.3.2, all annual Suite Payments paid after the date that any unpaid annual Suite Payment was initially due and payable and prior to the Thirtieth Anniversary Date shall be allocated first to the amount of the annual Suite Payment then currently due and payable, second to the amount of any accrued interest on any prior unpaid annual Suite Payment, and third to the amount of any prior unpaid annual Suite Payment. Payments by the Operator after the Thirtieth Anniversary Date for accrued Suite Payments and interest thereon shall be controlled by Section 5.1.7.

5.1.4 Advertising Costs and Revenues. Upon execution hereof, the Operator shall use its best efforts to sell, and shall be responsible for the sale of, all Commercial Advertising in the Facility (including permitted Commercial Advertising in connection with City Events), and all revenue received from such Commercial Advertising (other than revenue earned by a licensee pursuant to Section 5.1.4.1 for the sale of Licensee Advertising) shall be Facility Revenue.

5.1.4.1 Temporary Commercial Advertising. The Operator shall use its best efforts to sell Temporary Commercial Advertising in connection with and during any Event conducted in the Facility; provided, however, that the Operator may grant to any licensee of the Facility the right to display



and broadcast Temporary Commercial Advertising during an Event or Events conducted by such licensee in the Facility. Any licensee granted the right to display and broadcast Temporary Commercial Advertising during an Event or Events conducted by such licensee shall be responsible for the removal from the Facility or the cessation of display or broadcast in the Facility of all Temporary Commercial Advertising upon the conclusion of such licensee's Event or Events. Temporary Commercial Advertising shall not interfere with any Fixed and Permanent Commercial Advertising in the Facility. A licensee granted the right to display and broadcast Licensee Advertising shall be entitled to retain all revenue derived from such activity; provided, however, that any fees paid by such licensee for such right to display and broadcast Temporary Commercial Advertising shall be included in Facility Revenue.

#### 5.1.4.2 Team Obligations and Revenues.

Pursuant to the Advertising Agreement, the Team shall market all Fixed and Permanent Commercial Advertising in the Facility and all Temporary Commercial Advertising for Operator Events (other than Licensee Advertising displayed or broadcast by a licensee other than the Team) and may market Temporary Commercial Advertising for City Events where permitted. The Operator shall require the Team to use an Independent Advertising Agent who shall be compensated solely on the basis

of a negotiated percentage of gross revenue from the sale of Fixed and Permanent Commercial Advertising in the Facility (all such revenue collected during each of the Operator's Fiscal Years shall be referred to herein as "Fixed and Permanent Commercial Advertising Revenue") and shall not receive any compensation for the sales of any Temporary Commercial Advertising in the Facility. The contract between the Team and the Independent Advertising Agent shall be subject to prior approval by the City, provided that the amount of compensation payable to the Independent Advertising Agent shall be determined solely by the Team and the Independent Advertising Agent. The gross revenue from Fixed and Permanent Commercial Advertising shall be collected by the Team, on behalf of the Operator. From collected amounts, the Team shall pay the Independent Advertising Agent a fee equal to a percentage of Fixed and Permanent Commercial Advertising Revenue and shall reimburse the Independent Advertising Agent for the reasonable costs and expenses of such agent associated with the sale of Fixed and Permanent Commercial Advertising by such agent (the amount of such fees and reimbursed costs during each of the Operator's Fiscal Years shall be referred to herein as the "Independent Advertising Agent's Fees"). After paying the Independent Advertising Agent's Fee, the Team shall remit the balance of such collected revenue from Fixed and Permanent Commercial Advertising to the Operator. Subject to the

priorities established in Section 5.1.7, and provided that (a) the Team has not committed, and has caused no event to occur or condition to exist which with the passage of time or the giving of notice, or both, would constitute, an Event of Default (as such term is defined in the Assurance Agreement), and (b) the Team has not committed, and has caused no event to occur or condition to exist which with the passage of time or the giving of notice, or both, would constitute, an Event of Default (as such term is defined in the Suns License), during each Fiscal Year (or any portion thereof) prior to the Thirtieth Anniversary Date, the Operator shall pay to the Team an amount deducted from Excess Net Cash Flow equal to sixty percent (60%) of the remainder of Fixed and Permanent Commercial Advertising Revenue (net of any Impositions applicable to such revenue) minus the Independent Advertising Agent's Fee. Any payment required by the preceding sentence (the "Advertising Payment") shall be made within sixty (60) days after the end of each Fiscal Year (or any portion thereof), if Current Cash Flow is sufficient to make a current Advertising Payment. If Current Cash Flow is not sufficient to make a current Advertising Payment within sixty (60) days after the end of the preceding Fiscal Year, such Advertising Payment shall be due and payable within one hundred and twenty (120) days after the end of the Operator's preceding Fiscal Year. The Advertising Payment for any portion of the Fiscal Year in

which the Thirtieth Anniversary Date occurs or this Agreement otherwise expires or is terminated shall be paid to the Team within sixty (60) days after the Thirtieth Anniversary Date or the date of expiration or termination of this Agreement if Current Cash Flow is sufficient to make such payment; if Current Cash Flow is not sufficient to make such payment within sixty (60) days after the Thirtieth Anniversary Date or the date of expiration or termination of this Agreement, such payment shall be due and payable within one hundred and twenty (120) days after the Thirtieth Anniversary Date or the date of expiration or termination of this Agreement. No Advertising Payments shall accrue after the due date established by the preceding sentence, provided that Advertising Payments not paid when due shall accrue pursuant to Section 5.1.4.3 and 5.1.7.

5.1.4.3 Accrual of Unpaid Advertising

Payment. If Current Cash Flow is not sufficient to make an Advertising Payment within one hundred and twenty (120) days after the end of the preceding Fiscal Year, the Operator's failure to make such payment shall not be an Event of Default, provided that the amount of any outstanding Advertising Payment shall be carried forward as an obligation of the Operator to pay the Team and shall bear interest at the annual rate of ten percent compounded annually and computed from the date each annual Advertising Payment was due and payable one hundred and

Sections 4.10 and 4.11 or (iv) to any Investor pursuant to any procedures substantially equivalent to those established in Section 4.11.

ARTICLE 5 FINANCIAL OBLIGATIONS.

5.1 Payments. All Facility Revenues will be collected and deposited by the Operator into the Facility Account and funds in the Facility Account shall be distributed only as provided herein. The Operator shall pay all Operating Expenses and make all payments described in this Article 5.

5.1.1 Debt Service. The Operator shall make all Debt Service Payments to the Lender pursuant to the terms of the Loan Documents.

5.1.2 Renewal and Replacement Account. The Operator shall make payments to fund the Renewal and Replacement Account as specified in Section 5.3.1.

5.1.3 Arena Suite Costs and Revenues.

5.1.3.1 Obligations and Revenues. Subject to the priorities established in Section 5.1.7, and provided that (a) the Team has not committed, and has caused no event to

occur or condition to exist which with the passage of time or the giving of notice, or both, would constitute, an Event of Default (as such term is defined in the Assurance Agreement), and (b) the Marketer has not committed, and has caused no event to occur or condition to exist which with the passage of time or the giving of notice, or both, would constitute, an Event of Default (as such term is defined in the Assurance Agreement), during each Fiscal Year (or any portion thereof) prior to the Thirtieth Anniversary Date, the Operator shall pay to the Marketer an amount deducted from Excess Net Cash Flow equal to sixty percent (60%) of the gross revenues derived from the licensing of the Suites, net of any Impositions applicable to such gross revenues. Any payment required by the preceding sentence (the "Suite Payment") shall be made within sixty (60) days after the end of each Fiscal Year if the Current Cash Flow is sufficient to make a current Suite Payment. If Current Cash Flow is not sufficient to make a current Suite Payment within sixty (60) days after the end of the preceding Fiscal Year, such Suite Payment shall be due and payable within one hundred and twenty (120) days after the end of the preceding Fiscal Year. The Suite Payment for any portion of the Fiscal Year in which the Thirtieth Anniversary Date occurs or this Agreement otherwise expires or is terminated, shall be paid to the Marketer within sixty (60) days after the Thirtieth Anniversary Date or the date of expiration or termination of this Agreement

if Current Cash Flow is sufficient to make such payment; if Current Cash Flow is not sufficient to make such payment within sixty (60) days after the Thirtieth Anniversary Date or the date of expiration or termination of this Agreement, such payment shall be due and payable within one hundred and twenty (120) days after the Thirtieth Anniversary Date or the date of expiration or termination of this Agreement. No Suite Payments shall accrue after the due date established by the preceding sentence, provided that Suite Payments not paid when due shall accrue pursuant to Sections 5.1.3.2 and 5.1.7.

5.1.3.2 Accrual of Unpaid Suite Payments.

If Current Cash Flow is not sufficient to make a Suite Payment within one hundred and twenty (120) days after the end of the preceding Fiscal Year, the Operator's failure to make such payment shall not be an Event of Default, provided that the amount of any outstanding Suite Payment shall be carried forward as an obligation of the Operator to pay the Marketer and shall bear interest at the annual rate of ten percent (10%) compounded annually and computed from the date each annual Suite Payment was due and payable (one hundred and twenty (120) days after the end of the preceding Fiscal Year, the Thirtieth Anniversary Date or the date of expiration or termination of this Agreement, as applicable). In the event that any annual Suite Payment is carried forward pursuant to this

twenty (120) days after the end of the preceding Fiscal Year, the Thirtieth Anniversary Date or the date of expiration or termination of this Agreement, as applicable. In the event that any annual Advertising Payment is carried forward pursuant to this 5.1.4.3, all annual Advertising Payments paid after the date that any unpaid annual Advertising Payment was due and payable and prior to the Thirtieth Anniversary Date shall be allocated first to the amount of the annual Advertising Payment then currently due and payable, second to the amount of any accrued interest on any prior unpaid annual Advertising Payment, and third to the amount of any prior unpaid annual Advertising Payment. Payments by the Operator after the Thirtieth Anniversary Date for accrued Advertising Payments and interest thereon shall be controlled by Section 5.1.7.

5.1.5 Priority Operating Fee Payments. Except as provided in Section 5.1.6, commencing on the Operations Start Date, during each Fiscal Year (or any portion thereof) prior to the Thirtieth Anniversary Date, the Operator shall make Priority Operating Fee Payments to the City in the amount of \$500,000 per year, increased effective the first day of each Fiscal Year at the annual rate of three percent (3%) compounded annually. Priority Operating Fee Payments shall be due and payable within sixty (60) days after the end of each Fiscal Year if Current Cash Flow is sufficient to make a current



Priority Operating Fee Payment. If Current Cash Flow is not sufficient to make a current Priority Operating Fee Payment within sixty (60) days after the end of the preceding Fiscal Year, such Priority Operating Fee Payment shall be due and payable within one hundred and twenty (120) days after the end of the preceding Fiscal Year.

5.1.6 Priority Operating Fee Payment Moratorium and Accrual. If during the moratorium period determined by the following sentence Current Cash Flow is not sufficient to make any Priority Operating Fee Payment on a current basis, the Operator's failure to make such a Priority Operating Fee Payment shall not be an Event of Default; provided that the amount of any outstanding Priority Operating Fee Payment shall be carried forward as an obligation of the Operator to pay the City and shall bear interest at the annual rate of ten percent (10%) compounded annually and computed as of the date each Priority Operating Fee Payment was due and payable one hundred and twenty (120) days after the end of the preceding Fiscal Year. For the purposes of the preceding sentence, the moratorium period shall be the portion of the Operations Start Year after the Operations Start Date plus (a) two Fiscal Years thereafter if the Operations Start Date occurs in the first three (3) months of the Fiscal Year, or (b) three Fiscal Years thereafter if the Operations Start Date occurs in any other

month. In the event that any Priority Operating Fee Payment is carried forward pursuant to this Section 5.1.6, all Priority Operating Fee Payments paid after the date that any unpaid Priority Operating Fee Payment was due and payable and prior to the Thirtieth Anniversary Date shall be allocated first to the amount of the Priority Operating Fee Payment then currently due and payable, second to the amount of accrued interest on any prior unpaid Priority Operating Fee Payment, and third to the amount of any prior unpaid Priority Operating Fee Payment. The Operator's failure to pay immediately after the end of such moratorium period all prior unpaid Priority Operating Fee Payments as of the end of such moratorium period shall not be an Event of Default.

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

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

forward as an obligation to pay the City and shall bear interest at ten percent (10%) compounded annually. If, on the Thirtieth Anniversary Date, there is any accrued, unpaid Suns Payment (including accrued interest thereon), then, after making all current and accrued payments otherwise required by this Section 5.1.7, the Operator shall make equal annual payments to the Team (in favor of both the Team and the Marketer), within sixty (60) days after the end of each Fiscal Year commencing with the Fiscal Year in which the Thirtieth Anniversary Date occurs, in an amount which is sufficient to amortize over ten (10) years the aggregate unpaid Suns Payments (and interest thereon accrued through the Thirtieth Anniversary Date) with interest at the rate of ten percent (10%) (the "Amortized Suns Payment"), provided that if Current Cash Flow is not sufficient to make an Amortized Suns Payment after making all payments otherwise required by this Section 5.1.7, the Amortized Suns Payment shall be carried forward as an obligation to pay the Team (in favor of both the Team and the Marketer) and shall bear interest at ten percent (10%) compounded annually. Upon any termination of this Agreement, the City, the Team and the Marketer shall be entitled to receive payment from the Operator of all accrued, unpaid amounts hereunder in the priority set forth herein.

5.2 Ordinary Operating Fee/Management Fee. After making all current and accrued payments required by Section 5.1.7, the amount remaining in the Facility Account(s) (Adjusted Excess Net Cash Flow) shall be paid to the City and the Operator as provided in this Section 5.2.

5.2.1 Phase I. Prior to the Thirtieth Anniversary Date, subject to the Team's rights pursuant to Section 6.9 of the Assurance Agreement, the Operator shall pay the City seventy percent (70%) of all Adjusted Excess Net Cash Flow as an Ordinary Operating Fee Payment. Such payment shall be due and payable within sixty (60) days after the end of the preceding Fiscal Year (or any portion thereof) if the Current Cash Flow is sufficient to make an Ordinary Operating Fee Payment. If Current Cash Flow is not sufficient to make an Ordinary Operating Fee Payment within sixty (60) days after the end of the preceding Fiscal Year, such Ordinary Operating Fee Payment shall be due and payable within one hundred and twenty (120) days after the end of the preceding Fiscal Year. Upon such payments to the City, the Operator may pay to its own account the remaining thirty percent (30%) of Adjusted Excess Net Cash Flow as its Management Fee. If Current Cash Flow is not sufficient within one hundred and twenty (120) days after the end of the preceding Fiscal Year to make both the Ordinary Operating Fee Payment to the City and to pay the Management

Fee, the Operator's failure to make all or any portion of such payments shall not be an Event of Default, provided that (a) any such partial payments shall be made to the City and the Operator in the proportion that the Ordinary Operating Fee Payment to which the City is entitled bears to the Management Fee to which the Operator is entitled and (b) the amount of any outstanding Ordinary Operating Fee Payment and the amount of any outstanding Management Fee each shall be carried forward as an obligation of the Operator to pay the City and itself, respectively, and shall bear interest at the annual rate of ten percent (10%) compounded annually from the date each was due and payable, one hundred and twenty (120) days after the end of the preceding Fiscal Year. In the event that any such payment is carried forward pursuant to this Section, all such payments paid after the date they were initially due and payable shall be allocated first to the amount of the payment then currently due and payable, second to the amount of accrued interest on any unpaid payment, and third to the amount of any prior unpaid payment. Unless the City otherwise consents, except for payments expressly authorized or permitted by this Agreement and any Related Agreement, and except as is customary in the operation of facilities comparable to the Facility, neither the Operator nor any of its Affiliates shall be entitled to charge or receive any other fee or payment of any kind whatsoever to be payable out of Facility Revenues, or to charge or receive any payments in goods or services from the Operator.

5.2.2 Phase II. After the Thirtieth Anniversary Date, subject to the Team's rights pursuant to Section 6.9 of the Assurance Agreement, the Operator shall pay the City sixty percent (60%) of all Adjusted Excess Net Cash Flow as an Ordinary Operating Fee Payment. Such payment shall be due and payable within sixty (60) days after the end of the preceding Fiscal Year (or any portion thereof) if Current Cash Flow is sufficient to make an Ordinary Operating Fee Payment. If Current Cash Flow is not sufficient to make an Ordinary Operating Fee Payment within sixty (60) days after the end of the preceding Fiscal Year, such Ordinary Operating Fee Payment shall be due and payable within one hundred and twenty (120) days after the end of the preceding Fiscal Year. Upon such payments to the City, the Operator may pay to its own account the remaining forty percent (40%) of Adjusted Excess Net Cash Flow as its Management Fee, provided that, during any period after the Thirtieth Anniversary Date in which the Operator is not an Affiliate of the Team, such forty percent (40%) of Adjusted Excess Net Cash Flow shall be paid to the Team and not the Operator as provided in the Suns License; notwithstanding such payment, the Team shall have no responsibility with respect to carrying out the duties of the Operator under this Agreement. If Current Cash Flow is not sufficient within one hundred and twenty (120) days after the end of the preceding

Fiscal Year to make both the Ordinary Operating Fee Payment to the City and to pay the Management Fee, the Operator's failure to make all or any portion of such payments shall not be an Event of Default, provided that (a) any such partial payments shall be made to the City and the Operator (or the Team, as applicable) in the proportion that the Ordinary Operating Fee Payment to which the City is entitled bears to the Management Fee to which the Operator (or the Team, as applicable) is entitled and (b) the amount of any outstanding Ordinary Operating Fee Payment and the amount of any outstanding Management Fee each shall be carried forward as an obligation of the Operator to pay the City and itself (or the Team, as applicable), respectively, and shall bear interest at the annual rate of ten percent (10%) compounded annually from the date each was due and payable, one hundred and twenty (120) days after the end of the preceding Fiscal Year. In the event that any such payment is carried forward pursuant to this Section, all such payments paid after the date they were initially due and payable shall be allocated first to the amount of the payment then currently due and payable, second to the amount of accrued interest on any unpaid payment, and third to the amount of any prior unpaid payment. Unless the City otherwise consents, except for payments expressly authorized or permitted by this Agreement and any Related Agreement, and except as is customary in the operation of facilities



comparable to the Facility, neither the Operator nor any Affiliate shall be entitled to charge or receive any other fee or payment of any kind whatsoever to be payable out of Facility Revenues, or to charge or receive any payments in goods or services from the Operator.

5.3 Renewal and Replacement Account.

5.3.1 Schedule of Payments. Commencing with (a) the third full Fiscal Year after the Operations Start Date if the Operations Start Date occurs in the first three months of the Fiscal Year, or (b) the fourth full Fiscal Year after the Operations Start Date if the Operations Start Date occurs in any other month, the Operator shall make Renewal and Replacement Account Payments to the Renewal and Replacement Account in the amount of \$343,000 per year, increased effective the first day of each Fiscal Year at the annual rate of three percent (3%) (compounded annually and calculated without regard for when during the year the payment is made). Payments required by the preceding sentence shall be made (a) within sixty (60) days after the end of the preceding Fiscal Year if Current Cash Flow is sufficient to make a Renewal and Replacement Account Payment; or (b) within one hundred and twenty (120) days after the end of the preceding Fiscal Year if

Current Cash Flow is not sufficient to make a Renewal and Replacement Account Payment within sixty (60) days after the end of the preceding Fiscal Year.

5.3.2 Fund Investment. All payments by the Operator pursuant to 5.3.1 shall be deposited in an account at Valley National Bank, or such other bank as the parties shall mutually agree, pursuant to a trust agreement containing terms and conditions approved by the Operator and the City designated the "Renewal and Replacement Trust Account," which shall be referred to herein as the Renewal and Replacement Account. Funds in such account shall bear interest, and all interest earned thereon shall be segregated in a separate account designated the "Interest Account." Funds in the Interest Account shall also bear interest.

5.3.3 Use of Renewal and Replacement Account. The Renewal and Replacement Account shall be used for Capital Improvements intended to maintain and maximize the Facility's revenue generating capacity during and at the conclusion of the term of the Operating Agreement. Either party may propose to the other suggested Capital Improvements intended to maintain and maximize the Facility's revenue generating capacity. Except for Emergency Capital Improvements, all expenditures from the Renewal and Replacement Account shall be authorized

jointly by the City Designee and the General Manager of the Operator. Expenditures for Emergency Capital Improvements may be authorized by the General Manager of the Operator. The Operator shall notify the City in writing within five days after authorizing an expenditure from the Renewal and Replacement Account for an Emergency Capital Improvement. If the City disputes whether such expenditure was for an Emergency Capital Improvement, such dispute shall be subject to ADR. If the parties agree or if it is determined pursuant to ADR that an expenditure from the Renewal and Replacement Account was not for an Emergency Capital Improvement, the amount expended from the Renewal and Replacement Account for the putative Emergency Capital Improvement shall be paid by the Operator from the Facility Account into the Renewal and Replacement Account within thirty (30) days after the parties agree or ADR determines that such expenditure was not for an Emergency Capital Improvement. Prior to the Thirtieth Anniversary Date, the Operator and the City shall exercise their reasonable business judgment when deciding whether to direct the expenditure of funds from the Renewal and Replacement Account for Capital Improvements intended to maintain and maximize the Facility's revenue generating capacity. After the Thirtieth Anniversary Date the City shall exercise its reasonable business judgment when deciding whether to direct the expenditure of funds from the Renewal and Replacement Account

for Capital Improvements intended to maximize the Facility's revenue generating capacity. After the appropriate party has exercised its reasonable business judgment and has determined that funds from the Renewal and Replacement Account should or should not be expended for a Capital Improvement intended to maximize the Facility's revenue generating capacity, the party making such determination shall notify the other party in writing of such determination. If the party receiving such notice agrees that the proposed expenditure is for a Capital Improvement and agrees with the proposed amount of such expenditure, the parties shall jointly authorize the expenditure. If the party receiving such notice disputes (a) the determination not to expend funds for the proposed Capital Improvements, (b) the amount of the proposed expenditure, or (c) whether such proposed expenditure is for a Capital Improvement, the party receiving such notice shall notify the other party of the dispute within fifteen (15) days after receiving such notice, and such dispute shall be submitted to ADR.

5.3.4 Use of Interest Account. Prior to the date five (5) years after the Thirtieth Anniversary Date, the Operator shall be entitled to use, without prior City approval, all funds in the Interest Account, including interest thereon, for Interest-Funded Capital Improvements. If the City disputes

whether an expenditure was for an Interest-Funded Capital Improvement, such dispute shall be submitted to ADR. On and after the date five (5) years after the Thirtieth Anniversary Date, either the Operator or the City may determine that funds from the Interest Account should be expended. If a party determines that funds from the Interest Account should be expended pursuant to the preceding sentence, such party shall notify the other party of such determination prior to any expenditure of funds. Within fifteen (15) days after receiving notice of the other party's determination to expend funds from the Interest Account, the party receiving such notice may dispute whether such determination expenditure is for an Interest-Funded Capital Improvement by submitting such dispute to ADR.

5.4 Account Termination. Except as provided in Section 10.4 or Section 11.4, upon termination of this Agreement, any amounts remaining in the Renewal and Replacement Account shall be treated as Adjusted Excess Net Cash Flow and shall be paid to the City and the Operator pursuant to Section 5.2.

5.5 Late Payment Charge. Except as provided in Section 5.3.1, the Operator shall pay to the Renewal and Replacement Account a Late Payment Charge for any Renewal and

Replacement Account Payment not paid from Net Cash Flow, and except as provided in Sections 5.1.6 and 5.2, the Operator shall pay to the City a Late Payment Charge for any Priority Operating Fee Payment or Ordinary Operating Fee Payment not paid from Net Cash Flow or Adjusted Excess Net Cash Flow after three (3) days' prior written notice by the City to the Operator of any amount past due. The Late Payment Charge shall be calculated as an interest charge computed at the Premium Rate from the date such payment was due until paid. The Late Payment Charge shall be compounded annually.

#### 5.6 Records and Audits.

5.6.1 Records. For a period of five years after the end of the Fiscal Year to which they pertain, the Operator shall keep and maintain complete and accurate Records for the Facility and for the Operator separate and identifiable from its other records. The City (including accountants and attorneys designated by the City) shall be entitled to inspect the Records during the term of this Agreement and five years thereafter (at the Operator's office, upon not less than 72 hours' notice, and at all reasonable times).

5.6.2 Facility Audit. The Operator shall furnish to the City within one hundred and twenty (120) days after the close of each of the Operator's Fiscal Years, (a) its balance sheet at the close of such Fiscal Year, (b) its statement of operations for such Fiscal Year, (c) its statement of cash flows for such Fiscal Year, and (d) its statement of changes in partnership equity for such Fiscal Year, each prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year or containing disclosure of the effect on financial position or results of operations of any change in the application of accounting principles during the year, and accompanied by the unqualified report thereon of certified public accountants ("Accountants") approved by the City, such approval not to be unreasonably withheld, which may also be the accountant of the Team. Each such report shall state that such financial statements fairly present, in all material respects, the financial position of the Operator for the year then ended, have been prepared in accordance with generally accepted accounting principles and that the examination of such Accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards.

5.6.2.1 Concurrent with the delivery of the financial statements discussed in the preceding paragraph, the Operator shall provide to the City (a) a schedule setting forth the computation of Facility Revenue, Net Cash Flow, Excess Net Cash Flow, Adjusted Net Cash Flow, Debt Service Payments, Renewal and Replacement Account Payments, Priority Operating Fee Payments, Adjusted Excess Net Cash Flow Payments, Suite Payments and Advertising Payments and (b) a schedule setting forth all Shared Expenses, together with a report from the Accountants stating that such schedules are fairly stated in all material respects in relation to the basic financial statements taken as a whole.

5.6.2.2 Within thirty (30) days after the end of each Fiscal Year of the Operator, the Accountants shall perform certain procedures agreed upon by both the Operator and the City, for the purpose of verifying that (a) no material Facility Revenue has been expended during the prior Fiscal Year for purposes other than usual and ordinary expenses of the Facility or for other purposes authorized by this Agreement, and (b) that the affidavit requirements of Sections 4.10 and 4.11 hereof have been satisfied and no material Facility Revenue has been paid or distributed, directly or indirectly, to or for the benefit of the Operator or an Affiliate except as authorized by this Agreement. The procedures to be performed shall include, but shall not be limited to, the following:



(a) Examination of supporting documentation for all disbursements made by the Operator in excess of \$10,000 (Adjusted Annually) during the prior fiscal year to determine compliance with Section 5.6.2.2.

(b) Obtaining a statistically valid sample of disbursements in amounts less than \$10,000 (Adjusted Annually) made by the Operator during the prior fiscal year for review to determine compliance with Section 5.6.2.2. The parameters to be utilized in determining the scope of the statistical sampling application shall be agreed upon by the Operator and the City.

Within one hundred and twenty (120) days after the end of each Fiscal Year of the Operator, the Accountants shall furnish to the City and the Operator a copy of its report indicating that the procedures discussed in Section 5.6.2.2 have been performed and the results of such procedures.

5.6.2.3 Within one hundred and twenty (120) days after the end of each Fiscal Year of the Operator, the Operator shall provide to the City a statement from the Accountants which states that in the conduct of their audit

performed under Section 5.6.2, nothing came to their attention which caused the Accountants to believe that the Operator was not in compliance with the covenants of Article 5 of this Agreement insofar as they relate to accounting or auditing matters.

5.6.2.4 Within 120 days after the end of each Fiscal Year of the Operator, the Operator shall furnish a schedule setting forth the Facility Revenue along with a report from the Accountants stating the following:

"We have audited the accompanying schedule of Facility Revenue (as defined in the Operating Agreement, dated July 19, 1989, between the City of Phoenix (the City) and the Phoenix Arena Development Limited Partnership (the Operator)) for the fiscal year ending \_\_\_\_\_. This schedule is the responsibility of the Operator's management. Our responsibility is to express an opinion on this schedule based on our audit.

"We conducted our audit of the schedule in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable

assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

"In our opinion, the affidavit requirements of the Operating Agreement have been complied with and the schedule of Facility Revenue referred to above presents fairly, in all material respects, the Facility Revenue of the Operator for the fiscal year ending \_\_\_\_\_, as defined in the agreement referred to above.

"This report is intended solely for the information and use of the General Partner of the Operator and the City Council and Management of the City."

5.6.3 City Audit. The City shall be entitled at its expense, once every third Fiscal Year and once after the expiration or termination of this Agreement, to conduct an independent audit of the Records by a certified public accountant selected by the City. Any such audit shall be conducted during usual business hours. If the audit shows that the City has not been paid timely any sums due the City pursuant to this Agreement, the City shall notify the Operator of the amount of such underpayment. If the Operator disputes the amount of such underpayment, the certified public accountant selected by the City and the Accountants shall be directed to meet, and if they have not reached agreement as to the amount, if any, of such underpayment within thirty (30) days after the Operator received notice of underpayment, such dispute shall be submitted to ADR. The amount of any underpayment determined by the arbitrator or agreed upon by the parties shall become immediately due and payable to the City by the Operator plus interest computed at the Premium Rate from the date the sum was initially due and payable. If such underpayment exceeds \$50,000 (Adjusted Annually), the Operator shall reimburse the City from the Operator's own funds and not from the Facility Account for the full cost of the audit. If the audit reveals an overpayment to the City, such overpayment shall become immediately due and payable to the Operator by the City plus interest computed at the Premium Rate from the date the sum was initially due and payable.

ARTICLE 6 IMPROVEMENTS.

6.1 City. The City shall not construct any Additions which are prohibited by any license permitted by Section 4.5 or lease permitted by Section 4.9. Without the prior consent of the Operator (which shall not be unreasonably withheld), the City shall not construct any Additions if (a) the construction or the Additions would unreasonably interfere with Operator Events, or (b) the Additions would affect adversely the structural integrity, size, utility or value of the Facility.

6.2 Operator. The Operator shall have the right to make Additions to the Facility if (a) necessary to comply with governmental requirements; (b) requisite for the safe operation of the Facility or its maintenance or repair; (c) required by any agreement approved by the City; or (d) any other Additions to the Facility if the Operator obtains the prior written approval of the City. The Operator may not make or permit Additions to the Facility if (i) the construction of the Additions would unreasonably interfere with City Events, or (ii) the Additions would affect adversely the structural integrity, size, utility or value of the Facility. Upon installation, the Additions shall become a part of the Facility and the property of the City. The Operator shall keep the

Facility free from, and shall indemnify the City with respect to all Liens incurred or permitted by the Operator or incurred or permitted by any licensee or lessee, except that such indemnification shall not apply in the case of Additions constructed by the City. If within sixty (60) days following the filing or other assertion of any such Lien, the Operator does not cause such Lien to be released in a manner satisfactory to the City (such as by posting a bond or other acceptable security), the City shall have the right but not the obligation to cause the Lien to be released by any means the City deems proper including, without limitation, payment of the Lien. All reasonable sums paid and expenses incurred by the City in connection therewith including, without limitation, reasonable attorneys' fees and costs, shall be Operating Expenses payable by the Operator to the City upon demand plus interest at the Premium Rate computed from the date any such sum was paid by the City.

ARTICLE 7 IMPOSITIONS.

7.1 General. The Operator shall pay or cause to be paid any and all Impositions that accrue during the term of this Agreement, as and when they become due and payable, and before any fine, penalty, interest or cost may be added thereto or become due or be imposed by operation of law for the

nonpayment thereof. Any Imposition that includes a period of time after the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Facility, or shall become payable, during the term hereof) shall be prorated between the City and the Operator so that the City shall pay the Imposition applicable to the period after the Expiration Date, and the Imposition applicable during the term of this Agreement shall be paid by the City and the Operator in accordance with their respective shares of Adjusted Excess Net Cash Flow in effect immediately prior to the Expiration Date.

7.2 Permitted Contests. The Operator may contest the legal validity or amount of any Imposition for which the Operator is wholly or partially responsible hereunder and may institute such proceedings as it considers necessary therefor without undue delay and shall prosecute such proceedings to a final determination with reasonable dispatch. If the Operator contests any Imposition, the Operator shall notify the City and may withhold or defer payment or make payment of the Imposition under protest so long as such withholdings or deferral do not subject the Facility to a noncurable forfeiture or sale without right of redemption. If the Operator defers payment, the contest shall not be undertaken without there being withdrawn from the Facility Account and deposited into the Working

Capital Reserve Account, a sum of money equal to the amount of the applicable Imposition to be held as an indemnity to pay such Imposition upon conclusion of the contest and all interest, fines and penalties thereon and costs thereof which may be imposed upon the Operator, the City or the Facility. The City shall cooperate reasonably in any permitted contest and shall execute any documents or pleadings reasonably required for such purpose. Any proceedings to contest the validity or amount of an Imposition or to recover any Imposition paid by the Operator shall be prosecuted by the Operator.

ARTICLE 8 INDEMNIFICATION.

8.1 General. The Operator shall indemnify and save the City and its elected officials, officers, employees and agents, independent contractors and consultants 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) which may be imposed upon, incurred by or asserted against the City or its elected officials, officers, employees, agents, independent contractors and consultants by third parties and caused by any of the following occurring during the term hereof



except to the extent caused by the negligence of the City, its elected officials, officers, employees, agents, independent contractors or consultants:

8.1.1 from and after the Operations Start Date, construction of Additions or any other work done in, on or about the Facility by the Operator, its agents, independent contractors or licensees;

8.1.2 from and after the Operations Start Date, any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Facility or any nuisance made or suffered thereon or any failure by the Operator to keep any part of the Facility in a safe condition;

8.1.3 from and after the date hereof, any acts or omissions of the Operator or its employees, agents, licensee, independent contractors, or invitees, including without limitation, any failure on the part of the Operator to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement;

8.1.4 from and after the date hereof, any failure on the part of the Operator to keep, observe, comply with and timely perform any of the terms, covenants, agreements,

provisions, conditions or limitations contained in any contracts affecting any part of the Facility;

8.1.5 from and after the Operations Start Date, any fire, accident, injury (including death) or damage to any person or property occurring in, on or about any part of the Facility which is caused by the Operator, its employees, agents, licensees, independent contractors or invitees; and

8.1.6 from and after the Operations Start Date, any lien, claim or other encumbrance caused, created or permitted by the Operator, its employees, agents, licensees or independent contractors which may be alleged to have arisen against the Facility or any of the assets of, or funds to be paid to the City or any liability which may be asserted against the City with respect thereto.

8.2 Insurance. The obligations of the Operator under this Article 8 shall not be affected in any way by the Operator's failure to maintain any insurance required by Article 9.

8.3 Claims. If any claim, action or proceeding is made or brought against the City as to which the Operator is to indemnify the City as required by this Article 8, then upon

demand by the City, the Operator shall resist or defend such claim, action or proceeding in the City's name, if necessary, by the attorneys for the Operator's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as the City shall approve, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, after notice to the Operator, the City may engage its own attorneys to defend it or to assist in its defense, and the Operator shall pay the reasonable fees and disbursements of such attorneys. Any and all costs and expenses incurred by the Operator to discharge its obligations under this Article 8 shall be included as an Operating Expense; provided, however, that any expenses resulting from an Event of Default by the Operator shall not be included as an Operating Expense and shall be paid by the Operator from its own funds; and provided, further, that any expenses resulting from an Event of Default by the City shall not be included as an Operating Expense and shall be paid or reimbursed by the City from its own funds into the Facility Account.

ARTICLE 9 INSURANCE.

During the term of this Agreement, the Operator shall maintain the following insurance:

9.1 Casualty. Insurance against loss or damage to the Facility resulting from fire, earthquake, windstorm, hail, lightning, vandalism, malicious mischief, flood and such other perils ordinarily included in special all-risk extended coverage insurance policies. Such insurance shall be maintained in an amount not less than the then full replacement cost of the Facility including any costs which may be required to comply with applicable governmental requirements. Full replacement cost shall be determined at reasonable intervals at the request of the City by appraisal by the Operator's insurer or other appraiser mutually acceptable to the Operator and the City.

9.2 Business Interruption. Use and occupancy or business interruption or lost income insurance against the perils of fire, earthquake, windstorm, hail, lightning, vandalism, malicious mischief, flood and such other perils ordinarily included in "special all-risk extended coverage" insurance policies, in an amount equal to not less than \$8,000,000 (for the portion of the Operations Start Year after the Operations Start Date and the first full Fiscal Year thereafter), and for all succeeding Fiscal Years of this Agreement, in an amount equal to not less than the sum of all Debt Service Payments, Renewal and Replacement Account Payments, Priority Operating Fee Payments, Sums Payments and

Ordinary Operating Fee Payments and the Management Fee for the preceding Fiscal Year; provided, however, that the Operator shall be entitled to maintain a lesser amount if such lesser amount is maintained in comparable facilities at which NBA teams play and the City is notified of such lesser amount and fails within twenty (20) Business Days after receipt of such notice to object and submit to ADR the adequacy of such lesser amount.

9.3 Liability. Extended coverage commercial general liability insurance (including dram shop coverage) with a broad form general liability endorsement which shall provide coverage against claims for personal injury, death and property damage resulting directly or indirectly from any act or activities (in connection with the Facility) of the City, the Operator, any of their respective invitees, employees, agents, independent contractors or any other person acting for the City or the Operator or under their respective control or direction. Such insurance also shall provide for and protect the City against any attorneys fees and other costs in defending claims for alleged loss. Such insurance shall be maintained in full force and effect during the term of this Agreement in an amount of at least Twenty-five Million Dollars (\$25,000,000) (provided that the Operator shall be entitled to maintain a lesser amount if such lesser amount is maintained in comparable facilities at

which NBA teams play and the City is notified of such lesser amount and fails within twenty (20) Business Days after receipt of such notice to object and submit to ADR the adequacy of such lesser amount) combined single limit, naming the City, the Operator, and their respective invitees, licensees, employees, agents, independent contractors or any other person acting for the City or the Operator or under their respective control or direction, as additional insureds. This Section 9.3 shall not limit in any way the extent to which the Operator may be held responsible for the payment of damages to persons or property resulting from the Operator's activities, the activities of its invitees, employees, licensees, agents or independent contractors, or the activities of any other person or persons for whom the Operator otherwise is legally responsible.

9.4 Worker's Compensation. Worker's compensation insurance complying with the statutory limits of the State of Arizona to insure all persons or entities employed by the Operator in connection with the Facility.

9.5 Builder's Risk. During construction of Additions, in addition to (but not in duplication of) the other insurance coverages required under this Article 9, standard "all risk" builder's risk insurance (including coverage against collapse), written on a completed value basis and including

comprehensive liability insurance, in an amount not less than the projected total cost of construction of the Additions as reasonably estimated by the Operator not more than sixty (60) days prior to commencement of construction and as thereafter revised from time to time by the Operator during the course of such construction.

9.6 Other. Such other insurance coverages and in such amounts as from time to time may be reasonably required by the City to insure against such other insurable hazards as, at the time of the City's request, customarily are insured against in the case of similar multipurpose sports and entertainment facilities.

9.7 Provisions.

9.7.1 All required insurance shall be primary coverage and shall be for the benefit of the Operator and the City.

9.7.2 All required insurance shall be reviewed periodically by the City and the Operator, and in any event at least every three years, for the purpose of mutually agreeing to increase or decrease the minimum limits and deductibles of such insurance to amounts which may be reasonable and customary for facilities of like size and operation to the Facility.

9.7.3 All required insurance shall be obtained from a financially sound insurance company, rated not less than B+ XII in Best's Rating Guide, authorized to do business in the State of Arizona.

9.7.4 All required insurance shall provide that the waiver of recovery (subrogation) provided in Section 9.8 shall not invalidate or have any adverse effect on the liability of the insurer.

9.7.5 All required insurance shall provide that such policies or certificates shall not be cancelled or materially changed without at least thirty (30) days' prior written notice to the City.

9.7.6 Prior to the Operations Start Date, the Operator shall provide the City with a copy of such policies together with certificates from the companies issuing such policies that insurance coverage provided by such policies is in place. At least thirty (30) days prior to the expiration of any such policy, a copy of the renewal policy shall be provided to the City.



9.8 Waiver of Recovery. Neither the Operator nor the City shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to property or injury to persons, or any resulting loss of income, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees, if and to the extent any such loss or damage is covered by insurance benefiting the party suffering such loss or damage.

9.9 Failure to Maintain Insurance. If the Operator fails or refuses to procure or maintain the insurance required by this Article 9, after notice to the Operator, the City shall have the right, at its election, to procure and maintain such insurance, in which event, any reasonable premium paid by the City, plus interest at the Premium Rate computed from the date such premium is paid by the City, shall be due and payable by the Operator to the City on the first day of the month following the date on which such premium was paid. The City shall give prompt notice of the payment of any premium stating the amount paid.

9.10 Proceeds Disposition. All insurance proceeds with respect to loss or damage to the Facility shall be payable, under the provisions of the policy of insurance, into

the Facility Account to be used for the repair and restoration of the Facility in accordance with plans and specifications approved by the City, the Operator and the Lender. To the extent that such proceeds exceed the costs of such repair or restoration, such excess shall be Facility Revenue to be distributed as provided in Article 5. If the insurance proceeds are less than the costs of such repair and restoration, the provisions of Article 10 shall control.

ARTICLE 10 DAMAGE OR DESTRUCTION.

10.1 Adequately Insured Damage. Subject to the provisions of Section 10.2 and Section 10.3, if the Facility is damaged or otherwise destroyed and such damage or destruction was caused by a casualty covered and proceeds paid under an insurance policy maintained by the Operator as required by Article 9, such insurance proceeds ("Insurance Proceeds") shall be deposited into the Facility 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 restoration shall be in accordance with plans approved by the City and in compliance with applicable governmental requirements. All such restoration shall be performed under the joint supervision of the City and the Operator, and the DDA Construction Procedures shall apply to any restoration that is subject to competitive bidding as

required by Title 34 of the Arizona Revised Statutes, the City Charter and other applicable State laws and City ordinances, as any of such statutes, laws and ordinances may be amended from time to time.

10.2 Insurance Deficiency and Termination. Subject to the provisions of Sections 10.3 and 10.4, if the Facility is damaged or otherwise destroyed by a casualty not covered under insurance required by Article 9 or, if so covered, the Insurance Proceeds are insufficient to pay the costs of restoration, if there are funds in the Renewal and Replacement Account and/or in the Facility Account (collectively, the "FR Accounts") in an amount sufficient to pay the costs of restoration that exceed the Insurance Proceeds (the "Insurance Deficiency"), the Operator shall repair the damage or destruction as provided in Section 10.1. If the FR Accounts are insufficient to pay the Insurance Deficiency, within thirty (30) days after the date such damage or destruction occurred (the "Destruction Date") 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 in the FR Accounts plus the Operator's own funds (and not Facility Revenue) to pay the costs of restoration, or (b) to terminate this Agreement. In the event the Operator elects to utilize Insurance Proceeds, funds as are available in the FR Accounts and its own funds to restore the Facility to the state in which

it existed prior to such damage or destruction, the term of this Agreement shall be suspended during such restoration, as provided in Section 10.6. 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, in which event, the City shall commit in writing to deposit the amount of the Insurance Deficiency into the Facility Account. Thereafter the Operator's election to terminate shall be deemed rescinded and void, and the Operator shall effect the restoration of the Facility as provided in Section 10.1. All such restoration shall be performed under the joint supervision of the City and the Operator, and the DDA Construction Procedures shall apply to any restoration that is subject to competitive bidding as required by Title 34 of the Arizona Revised Statutes, the City Charter and other applicable State laws and City ordinances, as any of such statutes, laws and ordinances may be amended from time to time. If the City does not issue such notice of its intention to pay such 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 deposited into the Facility Account for distribution as provided in Section 10.4. If any restoration pursuant to this

provision is not committed to or is not completed within the time required by Section 6.4.4 of the Assurance Agreement, the Operator shall be entitled (if the Operator is the Phoenix Arena Development Limited Partnership or an Affiliate of the Team) to terminate this Agreement.

10.3 End of Term. If the Facility is destroyed during the last two Fiscal Years of the term hereof, then notwithstanding any contrary provision of this Article 10, by notice to the City within thirty (30) days after the Destruction Date, the Operator may terminate this Agreement, whereupon the Insurance Proceeds, if any, shall be deposited into the Facility Account and shall be distributed pursuant to Section 10.4; provided, however, that if the Facility is destroyed by a casualty which was required to have been insured by Article 9 but was not so insured in the amounts required by Article 9, the Operator may terminate this Agreement by notice to the City within thirty (30) days after the Destruction Date, such termination to be effective the date the Operator deposits an amount equal to the Insurance Deficiency (from the Operator's own funds and not from Facility Revenue) into the Facility Account for distribution pursuant to Section 10.4.

10.4 Distribution. In the event this Agreement is terminated pursuant to Section 10.2 or 10.3, and notwithstanding any provisions of Article 5 to the contrary,

any funds in the FR Accounts after the deposit of any Insurance Proceeds in the FR Accounts pursuant to this Article 10 shall be distributed according to the following priorities. If the funds in the FR Accounts are sufficient to pay all Operator Debt and all City Debt, such funds shall first pay all such debt. If funds in the FR Accounts are not sufficient to pay all Operator Debt and all City Debt, such funds shall be prorated between the City and the Operator based on the relative amount of Operator Debt to Total Outstanding Debt and the relative amount of City Debt to Total Outstanding Debt. Any funds remaining in the FR Accounts after paying all Operator Debt and all City Debt (the "Excess FR Account Amount") shall be prorated between the City and the Operator so that the City receives an amount equal to the product of multiplying the Excess FR Account Amount by a fraction, the denominator of which is the sum of the City Lost Revenue Present Value plus the Operator Lost Revenue Present Value and the numerator of which is the City Lost Revenue Present Value. The Operator shall receive the amount remaining in the FR Accounts after subtracting the amount paid to the City according to the preceding sentence.

10.5 Underinsured. If the Facility is destroyed by a casualty which was required to have been insured by Article 9 but was not so insured in the amounts required by Article 9, the Operator (a) shall have no right to terminate under

Section 10.2, (b) shall be required to restore the Facility as provided in Section 10.1, and (c) shall be required to pay any Insurance Deficiency from its own funds, and not from Facility Revenue; provided, however, that if such destruction occurs during the last two Fiscal Years of the term hereof, the Operator may terminate this Agreement effective the date the Operator deposits an amount equal to the Insurance Deficiency (from the Operator's own funds and not from Facility Revenue) into the Facility Account for distribution pursuant to Section 10.4.

10.6 Payment Abatement. In the event of any restoration required or permitted by this Article 10, the period of such restoration shall, for the purposes of Section 2.1, be an Abatement Period.

ARTICLE 11 EMINENT DOMAIN.

11.1 Substantial. If 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

Taking and its scope is issued by the condemnor and received by the Operator and the City (the "Taking Date"), to terminate this Agreement, in which event, the parties shall be released from all future liability hereunder (such release to be effective upon the termination of this Agreement pursuant to this Section 11.1); provided, however, that no party shall be released from any liability hereunder that has accrued on or before such termination. The payment or other award from the condemnor attributable to the value of any improvements on the Site ("Award") shall be deposited into the Facility Account and shall be distributed pursuant to Section 11.4. As used in this Section 11.1, 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. In the event the Operator elects to utilize the Award and, if necessary, its own funds to restore the Facility to a state comparable to that which existed prior to the Taking, the term of this Agreement shall be suspended during such restoration as provided in Section 11.5. If any restoration pursuant to this provision is not committed to or completed within the time required by Section 6.4.4 of the Assurance Agreement, the Operator shall be entitled (if the Operator is the Phoenix Arena Development Limited Partnership or an Affiliate of the Team) to terminate this Agreement.



11.2 Partial.

11.2.1 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 11.1, then as an Operating Expense, the Operator promptly shall restore the remainder of the Facility to a state comparable to that which existed immediately prior to the Taking Date, and this Agreement shall continue in effect. Such restoration shall be in accordance with plans approved by the City and in compliance with then applicable governmental requirements. All such, restoration shall be performed under the joint supervision of the City and the Operator, and the DDA Construction Procedures shall apply to any restoration that is subject to competitive bidding as required by Title 34 of the Arizona Revised Statutes, the City Charter and other applicable state laws and City ordinances, as any of such statutes, laws and ordinances may be amended from time to time.

11.2.2 If (a) the Facility is to be restored as provided in Section 11.2.1, (b) the Award is insufficient to pay the costs of such restoration, and (c) funds in the FR Accounts are sufficient to pay the amount by which such costs of restoration exceed the Award ("Condemnation Deficiency"),

the Operator shall restore the Facility as provided in Section 11.2.1. If the FR Accounts are insufficient to pay the Condemnation Deficiency, 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 FR Accounts plus the Operator's own funds (and not Facility Revenue) to pay the costs of such restoration, 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, in which event, the City shall deposit the amount of the Condemnation Deficiency into the Facility Account, and thereafter the Operator's election to terminate shall be deemed rescinded and void, and the Operator shall effect the restoration as provided in Section 11.2.1. All such restoration shall be performed under the joint supervision of the City and the Operator, and the DDA Construction Procedures shall apply to any restoration that is subject to competitive bidding as required by Title 34 of the Arizona Revised Statutes, the City Charter and other applicable State laws and City ordinances, as any of such statutes, laws and ordinances may be amended from time to time. If the City does not give such notice of its intention

to pay such 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 into the Facility Account for distribution pursuant to Section 11.4.

11.3 End of Term. If a substantial Taking occurs during the last two Fiscal Years of the term hereof, then notwithstanding any provision of this Article to the contrary, by notice to the City within thirty (30) days after the date of the Taking, the Operator may terminate this Agreement whereupon the Award shall be deposited into the Facility Account and shall be distributed pursuant to Section 11.4.

11.4 Distribution. In the event this Agreement is terminated pursuant to Section 11.2 or 11.3, and notwithstanding any provision of Article 5 to the contrary, any funds in the FR Accounts after the deposit of the Award pursuant to this Article 11 shall be distributed according to the following priorities. If the funds in the FR Accounts are sufficient to pay all Operator Debt and all City Debt, such funds shall first pay all such debt. If funds in the FR Accounts are not sufficient to pay all Operator Debt and all City Debt, such funds shall be prorated between the City and the Operator based on the relative amount of Operator Debt to

Total Outstanding Debt and the relative amount of City Debt to Total Outstanding Debt. Any funds remaining in the FR Accounts after paying all Operator Debt and all City Debt (the "Excess FR Account Amount") shall be prorated between the City and the Operator so that the City receives an amount equal to the product of multiplying the Excess FR Account Amount by a fraction, the denominator of which is the sum of the City Lost Revenue Present Value plus the Operator Lost Revenue Present Value and the numerator of which is the City Lost Revenue Present Value. The Operator shall receive the amount remaining in the FR Accounts after subtracting the amount paid to the City according to the preceding sentence.

11.5 Suspension and Payment Abatement. In the event of any restoration required or permitted by this Article 11, the period of such restoration shall, for the purposes of Section 2.1, be an Abatement Period.

## ARTICLE 12 SECURITY INTERESTS.

12.1 Initial Financing. The Operator shall have the right to pledge its rights and interest under this Agreement to secure Construction Financing pursuant to Section 3.2 of the DDA.

12.2 Refinancing. The Operator shall have the right to assign this Agreement and to renew, modify, consolidate, replace, extend and otherwise refinance any Construction Financing and the applicable Permitted Security Interest from time to time prior to the Thirtieth Anniversary Date if (a) notwithstanding such refinancing, the term of any Permitted Security Interest does not extend beyond the Thirtieth Anniversary Date, (b) the Net Refinancing Proceeds, if any, are deposited promptly after such refinancing into the Facility Account and distributed pursuant to Article 5, (c) all terms and conditions of such refinancing and all refinancing documents applicable to such refinancing are approved by the City, such approval not to be unreasonably withheld or delayed (the failure of the City to object within thirty (30) days after receipt of all Refinancing Documents shall be deemed approval by the City), and (d) the Operator is not then in default hereunder.

12.3 Liens. The Operator shall not suffer or permit to be enforced and shall indemnify the City from and against all Liens. If within sixty (60) days following the filing or other assertion of any Lien, the Operator does not cause such Lien to be released, stayed, satisfied, bonded or otherwise secured in a manner satisfactory to the City, the City shall have the right but not the obligation to cause the Lien to be

released by any means the City deems proper including, without limitation, payment of the Lien. All reasonable sums paid by the City and all expenses and costs incurred by the City in connection therewith including, without limitation, reasonable attorneys' fees plus interest computed at the Premium Rate from the day any such amount was paid by the City shall be payable by the Operator to the City upon demand. Any amounts paid by the Operator to the City pursuant to the preceding sentence shall be Operating Expenses and shall be paid from the Facility Account. In the event the City desires to take action to release a Lien prior to the expiration of such sixty-day period, it may do so, but if it is later determined by a court of competent jurisdiction that in doing so the City released a Lien which did not secure a valid debt or obligation of the Operator or any lessee or licensee, the City shall not be entitled to reimbursement of any of the expenses incurred in connection with such release or other action with respect thereto. If a final judgment is rendered by a court of competent jurisdiction for the enforcement or foreclosure of any Lien, and if the Operator fails to stay the execution of the judgment by lawful means or to pay the judgment within thirty (30) days of its entry, the City shall have the right but not the obligation to pay or otherwise discharge, stay or prevent the execution of any such judgment, Lien or both. The Operator shall reimburse the City for all reasonable sums paid

by the City hereunder (including reasonable attorneys' fees), together with interest, at the Premium Rate computed from the day any such sum was paid by the City. If the Lien that is the subject of such judgment does not secure a permitted debt or obligation of the Operator under this Agreement any amount paid by the Operator to the City pursuant to the preceding sentence shall be paid from the Operator's own funds and shall not be included as an Operating Expense or paid from the Facility Account. If the Lien that is the subject of such judgment does secure a permitted debt or obligation of the Operator under this Agreement, any amount paid by the Operator to the City pursuant to this Section 12.3 shall be included as an Operating Expense and shall be paid from the Facility Account.

ARTICLE 13 ASSIGNMENT AND TRANSFER.

13.1 Definition of "Transfer". As used in this Article 13, 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 Article 12.

13.2 Prohibition Against Assignment of Agreement by the Operator. Except as permitted by Article 12, or as required pursuant to the selection of a Replacement Operator under Article 5 of the Assurance Agreement, the Operator shall not transfer, or attempt to transfer, this Agreement, or any right herein, without prior written approval of the City. Such approval shall only be given by the City if such transfer is deemed by the City to be in the best interests of the City to carry out the purposes of the Redevelopment Plan, the DDA and this Agreement, and if the proposed transferee has, in the opinion of the City, the financial capability and overall competence to operate the Facility in accordance with this Agreement. Approval by the City of any transfer shall be conditioned upon such transferee executing and delivering to the City its agreement, in form and substance satisfactory to the City, to assume the rights and obligations thereby transferred and to keep and perform all provisions of this Agreement. Any transfer or attempted transfer of this Agreement or rights hereunder not in full compliance with this Article 13 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 shall acquire any rights or powers under this Agreement.



13.3 Prohibitions Against Transfers of Interest in the Operator.

13.3.1 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 equity securities of each such issuer;

(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 13.3.1(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.

13.3.2 The City shall act in good faith in exercising its rights pursuant to Sections 13.2, 13.3.1 and 13.3.5(b) to approve any transfer and shall not unreasonably withhold such approval.

13.3.3 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 such identities and the nature and the extent of such Interest.

13.3.4 Subject to the notice and cure periods of Section 16.1.4, 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.

13.3.5 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 13.3.1; (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 party 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.

13.3.6 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.

13.4 Legends. The Operator shall cause all certificates issued by the General Partner to evidence legal or beneficial ownership in the General Partner to be surrendered to such issuing entity and to cause such entity to place conspicuously on such certificate, instrument or writing, a legend to the following effect:

THE SHARES OF STOCK REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS SET FORTH IN THAT CERTAIN OPERATING AGREEMENT DATED AS OF JULY 19, 1989, BETWEEN THE CITY OF PHOENIX AND PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP, AND NONE OF SUCH SHARES, OR ANY INTEREST THEREIN, SHALL BE TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT AS PROVIDED IN SUCH AGREEMENT. A COPY OF THE OPERATING AGREEMENT IS ON FILE IN THE OFFICE OF THE CORPORATION AND WILL BE MADE AVAILABLE FOR INSPECTION TO ANY PROPERLY INTERESTED PERSON WITHOUT CHARGE WITHIN FIVE (5) WORKING DAYS AFTER THE CORPORATION'S RECEIPT OF A WRITTEN REQUEST.

The Operator shall cause the Team to file with the Delaware Secretary of State an amended certificate of limited partnership of Phoenix Suns Limited Partnership, which shall be identical to the existing certificate of limited partnership, except that it shall include the following:

"Phoenix Suns Limited Partnership is a party to and is bound by that certain Assurance Agreement dated as of July 19, 1989, between the Partnership and the City of Phoenix, Arizona. A copy of such Assurance Agreement is on file at the offices of JDM Sports, Inc., in Phoenix,

Arizona and may be inspected during normal business hours by any properly interested person within five (5) days of written request therefor."

13.5 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 of their Affiliates.

ARTICLE 14 PARKING.

14.1 Suites. The Operator shall be entitled to reserve and mark a number of parking spaces in any portion of the Arena Garage for use by Suite licensees without charge. Such number of parking spaces shall be no greater than the



product of the number of Suites (as may be currently licensed from time to time) times three (3).

14.2 Promotional and Operational. The Operator shall be entitled to reserve and mark thirty (30) parking spaces for the Team and thirty (30) parking spaces for the Operator either in a parking area situated beneath the exhibition floor of the Arena or in a covered floor of the Arena Garage. The Operator and the Team shall be entitled to use such parking spaces without charge. If the thirty (30) parking spaces reserved for the Team are located in the Arena Garage, such spaces shall be in a location that is segregated from other locations in the Arena Garage. The Team shall also be entitled without charge to use or permit the use of thirty (30) unreserved parking spaces for media and promotional purposes, provided that the Team shall make such spaces available to the Operator at no charge for Operator Events other than Home Games. The Operator shall be entitled to up to twenty (20) parking spaces in close proximity to the Arena box office (not necessarily in the Arena Garage) for the exclusive short term, complimentary use of visitors to the Arena ticket booths and box offices and the Arena Store. In addition to the Operator's right to use or permit the use of parking spaces otherwise permitted by this Section 14.2, the Operator shall be entitled to validate (at no charge to the Operator or the Team) the Operator's or the Team's business invitee's use of parking spaces in the Arena

Garage, provided that such use shall not exceed two (2) hours and shall not occur during the period commencing one (1) hour before and terminating one (1) hour after any Event. In denying or permitting a request for such validation, the Operator shall exercise its reasonable business judgment. To the extent that the final Design Development Drawings provide for parking spaces on the Site to the east of the Arena, the Operator shall permit the Team to use a reasonable number of such parking spaces for use by members of the media, players and coaches. Under no circumstances shall the Operator and the Team be entitled to more than an aggregate of ninety (90) parking spaces without charge in the Arena Garage for each Operator Event.

14.3 City Right of First Refusal. The City shall be entitled to use a number of unreserved parking spaces in any portion of the Arena Garage at prevailing market rates. Such number shall not be greater than fifty percent (50%) of the maximum parking capacity of the Arena Garage (as such capacity may exist from time to time). The use of such parking spaces by the City shall be restricted to the period between 5:00 a.m. and 6:00 p.m. excluding weekends and holidays.

14.4 Jefferson and Third Street Garage. The City shall use commercially reasonable efforts to maintain and operate the Jefferson and Third Street Garage (at least 1500

spaces, expandable at the City's option to 2000 spaces); such garage shall be generally available for Arena use at the City's standard charge but not to the exclusion of other permitted uses of such garage.

14.5 Other Parking. The City shall make available to the Arena at the City's standard charge on a non-exclusive basis any City-owned or City-controlled spaces in the vicinity of the Arena and shall not enter into exclusive agreements which will preclude Arena use of such spaces on weekdays after 6:00 p.m. and on weekends; provided, however, that this Section 14.5 shall not in any manner limit or restrict (a) the City's use of underground parking spaces at the Phoenix Civic Plaza, (b) the City's existing agreement relating to Patriot's Park, and (c) the City's rights under Section 14.3 hereof.

#### ARTICLE 15 REPRESENTATIONS, WARRANTIES AND COVENANTS

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

15.1.1 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 party 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 this 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).

15.1.2 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, the DDA and the Assurance 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.

15.1.3 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.

15.1.4 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.

15.1.5 THIS SECTION INTENTIONALLY OMITTED.

15.1.6 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.

15.1.7 Environmental and Historical Laws. After the Operations Start Date, and solely with respect to the City's use of the Facility, (a) the City shall maintain, keep current and comply in full with any and all permits, consents and approvals required by the Environmental Laws and (b) 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, however, that the City's obligations pursuant to this Section 15.1.7 shall not release the Operator from any obligations otherwise required by this Agreement and shall 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 of the DDA with respect to conditions existing on the Site as of the Construction Start Date. 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 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.

15.1.8 Non-Competition. During the term of this Agreement, the City agrees that it shall not compete with the business activities of the Arena, to the extent specifically described in this Section. All obligations of the City under this Section 15.1.8 shall be inapplicable to any ordinance, consent or other action of the City promulgated, granted or taken in its governmental, legislative, judicial, or administrative capacity, and all covenants to act or refrain from acting made by the City under this Section relate solely to acts or forbearance of the City in its proprietary capacity.

15.1.8.1 Competing Facilities Defined. For purposes of this Agreement, a "Competing Facility" shall mean a sports, entertainment, cultural, artistic or multi-use arena, stadium, forum, amphitheatre or other public assembly facility

located within the City limits, having a capacity for total attendance (seated or seated/standing combined) of more than 6,000, to which the general public is invited with or without charge for concerts, sports, entertainment and other events of the kind typically booked at arenas comparable to the Arena in the ordinary course of operations thereof ("Comparable Events"), provided that the following shall be excluded from this definition of Competing Facility:

15.1.8.1.1 all such facilities which exist as of the date of this Agreement, but this exclusion shall not be available for any such facility after any material expansion in seating or change in configuration to accommodate Comparable Events;

15.1.8.1.2 one stadium for both professional football and professional baseball or one stadium for each;

15.1.8.1.3 one open-air amphitheatre having a capacity for total attendance (fixed seating, lawn seating or seated/standing combined) of not more than 20,000;

15.1.8.1.4 any outdoor Cactus League or minor league baseball facility provided such facility shall not book Comparable Events other than concerts and other events which are then being conducted as exclusively outdoor events;



15.1.8.1.5 parks and open areas not designed or used primarily for Comparable Events;

15.1.8.1.6 one aquatic facility for water sport events, provided such facility shall not book Comparable Events other than events which are then being conducted as aquatic events (inclusive of entertainment which is presented as part of such events, the charges for which are included as part of the admission charges for such events, and the audience for which is limited to those attending such events);

15.1.8.1.7 one velodrome or similar facility for bicycle sporting events, provided such facility (a) shall not book Comparable Events other than events which are then being conducted as bicycle sporting events or rollerskating events that are not Commercial Events (inclusive of entertainment which is presented as part of such events, the charges for which are included as part of the admission charges for such events, and the audience for which is limited to those attending such events) and (b) shall not book any Commercial Event involving rollerskating (inclusive of entertainment which is presented as part of such events, the charges for which are included as part of the admission charges for such events, and

the audience for which is limited to those attending such events) unless the Operator has not booked such event within thirty (30) days after notice of the opportunity to book such event;

15.1.8.1.8 any facility for national and international amateur athletic events, provided that (a) such facility shall not book Comparable Events other than amateur nonbasketball events (inclusive of entertainment which is presented as part of such events, the charges for which are included as part of the admission charges for such events, and the audience for which is limited to those attending such events) and (b) such facility may book amateur athletic basketball events, but if such facility books any amateur basketball events (inclusive of entertainment which is presented as part of such events, the charges for which are included as part of the admission charges for such events, and the audience for which is limited to those attending such events) on dates on which the Facility would have been available for such events, all profits derived by the City from such amateur basketball event shall be deemed Facility Revenue, and the City shall deposit an amount equal to such profits into the Facility Account within thirty (30) days after the City receives such profits; and

15.1.8.1.9 any other facility that does not book Comparable Events.

15.1.8.2 Prohibition Against Economic Assistance to Competing Facility. Subject to Section 15.1.8.2.1, the City shall not give economic assistance in its proprietary capacity, including without limitation any contribution, subsidy, benefit, loan, gift, loan of credit, equity or capital investment, or any other direct or indirect assistance having a monetary value ("Economic Assistance"), to any Competing Facility. For purposes of this Agreement, a failure to tax a nonprofit organization shall not be deemed to be giving Economic Assistance.

15.1.8.2.1 Equivalent Services to Arena. Economic Assistance to a Competing Facility shall not be deemed a violation of this Agreement if it consists of services provided in support of any event or series of events at such facility if the City offers to provide equivalent services to the Arena for similar events on the same terms as provided to the Competing Facility.

15.1.8.3 Civic Plaza Use by City Which is Competitive With Use by Operator. The City shall not use the Phoenix Civic Plaza for Comparable Events. For purposes of

this Section 15.1.8.3, any event held at the Phoenix Civic Plaza at which attendance capacity is less than 6,000 seated shall be deemed not to be a Comparable Event. In addition, the following uses shall be excluded from the prohibitions of this Section:

15.1.8.3.1 Use of the Phoenix Civic Plaza for purposes of conventions, lectures, trade shows, expositions and similar functions and car shows, boat shows and other so-called flat shows, including entertainment events not directly or indirectly open to the public, and other events which at the time of such use are of the kind typically booked at the Phoenix Civic Plaza or a similar facility in the ordinary course of operations thereof ("Civic Plaza Events"), including entertainment open to the public, providing for seating of not more than 6,000 and incidental to and included as part of a Civic Plaza Event; and

15.1.8.3.2 Any use to which the Operator gives its prior written consent, if the Operator is Phoenix Arena Development Limited Partnership or an Affiliate of the Team; otherwise, any use to which the Team gives its prior written consent.

15.1.8.4 Arena Use by the City Which is Competitive With Use by Operator. The City shall use the Arena only for events and celebrations (a) which do not feature performers or performances which are normally booked in arenas comparable to the Arena and (b) for which ticket prices are less (when compared nationally with reference to industry guides) than those typically charged for Comparable Events ("Non-Commercial Events"). The City will not use the Communication System in the Arena for announcement of any event other than Non-Commercial Events and public service announcements. The following uses shall be excluded from the prohibitions of this Section:

15.1.8.4.1 Use of the Arena for Civic Plaza Events;

15.1.8.4.2 Any use to which the Operator gives its prior written consent, if the Operator is Phoenix Arena Development Limited Partnership or an Affiliate of the Team; otherwise, any use to which the Team gives its prior written consent.

15.1.8.5 Ownership or Control. At no time shall the City:

15.1.8.5.1 Own a substantial financial interest (including any interest as an agent, employee, representative, consultant, advisor, principal, partner or shareholder but excluding any interest in the securities of a publicly-owned corporation that is not a Controlling interest if such securities are traded on the open market) in any entity that owns or manages a Competing Facility, or Controls, is Controlled by, or is under common Control with such an entity; or

15.1.8.5.2 Have substantial management control of any entity specified in Section 15.1.8.5.1.

15.1.8.6 Enforcement. The City agrees that the rights conveyed by this Agreement are of a kind for which there is no adequate remedy at law and for which money damages will not be adequate compensation. Therefore, the City agrees that, if the City breaches the covenants of this Section 15.1.8, the Operator shall have the right, subject to ADR, to obtain an injunction or decree of specific performance from any court of competent jurisdiction to restrain or compel the City to perform this Section 15.1.8, as well as any other rights granted by law or equity to the Operator. The covenants of the City in each subsection of this Section shall each be construed as an agreement independent of any other provision in

this Agreement. If the Operator is not an Affiliate of the Team from the Thirtieth Anniversary Date through the Expiration Date, the Team shall be entitled to rely upon and enforce this Section as a third party beneficiary. Any and all reasonable costs paid or incurred by the Operator or the Team to enforce the provisions of Sections 15.1.8.1 through 15.1.8.8 shall be Operating Expenses and shall be paid from Facility Revenue. Any and all amounts received by the Operator or the Team pursuant to the enforcement of such provisions less any amounts paid or incurred by the Operator or the Team to enforce such provisions and not reimbursed pursuant to the preceding sentence shall be deposited into the Facility Account and shall be Facility Revenue.

15.1.8.7 Optional Remedy of Operator. In the event that the City should violate the covenants of this Section 15.1.8, if the Operator seeks and fails to obtain injunctive relief, then the Operator shall, at its option and for as long as the City is operating a Competing Facility, be entitled to receive payment from the City in an amount equal to the gross receipts of the City from such Competing Facility, provided that the aggregate of all such payments from the City to the Operator shall not exceed such gross receipts. The parties agree that if the City were to breach Section 15.1.8, the aggregate damages arising from such breach would be

substantially incapable of estimation due to the lost value attributable to the adverse consequences such a breach would have on the Operator and that the amount set forth in this Section 15.1.8.7 constitutes the best, reasonable and objective estimate of the damages that would be incurred in the event the City were to breach Section 15.1.8.

15.1.8.8 Severability. If and to the extent that a court of competent jurisdiction determines that any provision of this Section or part thereof is unenforceable, whether by virtue of excessive scope, geographical limitation, term or otherwise, such provision or part thereof shall be interpreted so as to delete that portion of the provision which exceeds the maximum legal prohibition or otherwise to modify such provision in such a manner so as to make this Agreement, as so modified, enforceable.

15.1.9 No Interference.

15.1.9.1 General. Subject to Section 15.1.9.2, any proprietary event conducted by the City or at the direction of the City or any event for which the City issues a license or permit (a "City Proprietary Activity") shall be conducted in such a manner so that (a) there shall be at least one point of access to and from the Arena to be used



for commercial purposes and located on Jackson Street available for the Operator and the Operator's employees, vendors, suppliers and licensees; and (b) during the period commencing two (2) hours immediately before any Operator Event and terminating two (2) hours immediately after such Operator Event there shall be public access to and from the Arena and an aggregate of 8,500 parking spaces within a ten (10) minute walking distance from the Facility for each of the Home Games, and a reasonable number of parking spaces for all other Operator Events within a ten (10) minute walking distance from the Facility. To the extent that sufficient parking spaces are not available to satisfy the requirements of the preceding sentence, the City shall provide at no expense to the Operator reasonable substitute parking and shuttle service therefrom for patrons of the Operator Event.

15.1.9.2 Grand Prix. The parties acknowledge that once or twice (but not more than twice) per year a Grand Prix automobile racing event may be held in Phoenix, that such event is a City Proprietary Activity, that the provisions of this Section 15.1.9 are unique to the Grand Prix and are applicable to no other event or activity, and that a certain amount of disruption to the downtown area may occur in connection therewith. Accordingly, the City, to mitigate such disruption to the Facility, agrees as follows:

(a) From and after the Operations Start Date, the location of the Grand Prix race course for each Grand Prix race will be placed such that the Facility is not located within the interior of the race course;

(b) In the event the race course is located adjacent to the Facility, then two (2) hours immediately preceding an Operator Event occurring during the evening of each of Wednesday through Saturday immediately preceding the Sunday on which the race is to occur and the evening of the race day (each being a "Race Day") and ending two (2) hours immediately following such Operator Event, two (2) of the north-south streets located between Central Avenue and Fifth Street, inclusive, will be opened to permit Facility patrons access to the Facility;

(c) At all times during the period commencing four (4) weeks prior to the Sunday on which the race is to occur (the "Preparation Period") and ending two (2) weeks following the Sunday on which the race is to occur (the "Restoration Period") while barricades for the race course are in place, the City will place, at no cost to the Operator or the Team, directional signs along City streets sufficient to direct Facility patrons along the most expeditious route to the Facility;

(d) During the Preparation Period, the City will use its best efforts to cause installation of barriers, fencing and other preparatory steps that would disrupt access to the Facility to be commenced starting at the west end of the race course, proceeding easterly in an effort to minimize disruption for as long as possible near the Facility prior to the Race Days; and during the Restoration Period, the City will use its best efforts to commence removal of such barriers, fences and other items blocking or disturbing access to the Facility first in the area near the Facility and then moving westerly, in an effort to minimize the period of any disruption following the race; and

(e) The access rights to be made available pursuant to Sections 15.1.9.1 and 15.1.9.2 shall only be for Operator Events to be held during the evenings of the Race Days, and the parking and shuttle service rights pursuant to such Section shall be made available for all Operator Events held during the days or the evenings of the Race Days.

15.1.10 Adverse Governmental Action Specific to Arena. In the event that the City enacts any law applicable only to the Arena which materially affects the use and operation of the Arena as contemplated by this Agreement, then, notwithstanding any other provision to the contrary, from the

date of any such action, all amounts which would otherwise be payable to the City as Priority Operating Fee Payments pursuant to Section 5.1.5, including interest thereon, shall be payable to the Operator and the Team in amounts which are determined by ADR to be equal to the detrimental economic effects upon the Operator and the Team of such action throughout the remaining term of this Agreement.

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

15.2.1 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.

15.2.2 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, the NBA Constitution or Bylaws or any written rule, regulation or policy of the NBA, 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.

15.2.3 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.

15.2.4 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.

15.2.5 Non-competition. During the term of this Agreement, the Operator agrees that it shall not without prior consent of the City use the Arena for Civic Plaza Events.

15.2.6 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, the Suns License, the Suite Marketing Agreement, the Listing Agreement, the Suns Office Lease and the Advertising 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.

15.2.7 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 (excluding the City) or agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, the DDA, the Suns License, the Suite Marketing Agreement, the Listing Agreement, the Suns Office Lease and the Advertising 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.

15.2.8 THIS SECTION INTENTIONALLY OMITTED.

15.2.9 Environmental and Historical Conditions.

After 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 15.2.9 shall not release the City from obligations otherwise required by this Agreement. 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 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.

15.3 Mutual Covenants.

15.3.1 Additional Documents and Approval. The City and the Operator shall, 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 the 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, and to carry out the purpose and intent of, this Agreement and each of the Related Agreements. Without limiting the foregoing, the City and the Operator shall 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 the DDA 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.

15.3.2 Good Faith. In exercising its rights and fulfilling its obligations under this Agreement and each of the Related Agreements, each of the City and the Operator shall act in good faith. Each party acknowledges that this Agreement and all Related Agreements 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 together 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.

15.3.3 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 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.

15.3.4 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 Person. The City and the Operator shall 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 an Operating Expense. 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.

15.3.5 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 Article 15 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 suits referred to in Sections 15.1.4 and 15.2.3 and any Challenge referred to in Section 15.3.4.

15.3.6 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.

15.3.7 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 16 DEFAULTS, REMEDIES AND TERMINATION.

16.1 Events of Default. Each of the following events shall constitute an Event of Default:

16.1.1 If any representation or warranty made by the City or by the Operator 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 or 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 or warranty to become correct.

16.1.2 If the Operator shall breach its obligations under the provisions of Sections 5.1.1, 5.1.2, 5.1.5, 9.1, 9.2, 9.3, 9.4, 9.5 or 9.6 and such breach is not cured within five (5) days after written notice by the City to the Operator.

16.1.3 If the Operator shall (without prior written City approval) make any modification, amendment or waiver of any provision of the Suns License, the Advertising Agreement and the Suite Marketing Agreement and such breach is not cured and all amounts by which the Facility has been damaged are not paid by the Operator into the Facility Account, within ten (10) days after written notice by the City to the Operator.

16.1.4 If the City or the Operator shall materially breach any of the other covenants or provisions in this Agreement other than as referred to in Sections 16.1.2 and 16.1.3 and such failure is not cured within forty-five (45) days after written notice; provided, however, that if it is not

reasonably possible to cure such failure within such forty-five (45) day period, such cure period shall be for an unlimited period of time if within forty-five (45) days after such written notice the curing party commences diligently and thereafter continues to cure.

16.2 Notice to Lender and Lender Cure Right.

Notwithstanding any other provisions herein to the contrary, 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 Section 16.1.

16.3 Institution of Litigation Permitted by

Article 17. To the extent permitted by Article 17, in addition to any other rights or remedies, either party may institute litigation to recover damages for any Event of Default or to obtain any other remedy (including specific performance and any other kind of equitable remedy) consistent with the purposes of this Agreement; provided that specific performance shall in no event require the Team or the shareholders of the general partner of the Team to commit capital in addition to any

capital already committed. Litigation pursuant to this Section 16.3 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 City and the Operator consent to the jurisdiction of such courts. Subject to Article 17, neither the existence of any claim or cause of action of a party, whether predicated on this Agreement or otherwise, nor the pendency of ADR proceedings involving another party, shall (a) constitute a defense to specific enforcement of the obligations of such other party under this Agreement or (b) bar the availability of injunctive relief or any other equitable remedy under this Agreement.

16.4 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive 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 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.

16.5 Costs, Expenses and Fees. In the event of any litigation, arbitration or other dispute resolution proceeding ("Challenge Proceeding") instituted by a Person not a party to

this Agreement, the Operator or the City shall be entitled to advances from and to be reimbursed from Facility Revenue for all costs and expenses incurred by any of them in such Challenge Proceeding, including reasonable attorneys' fees and costs, and such costs and expenses shall be treated as Operating Expenses, and any award granted to the Operator or the City in such Challenge Proceeding, including an award of any such costs and expenses, shall be treated as Facility Revenue. In the event of any litigation, arbitration or other dispute resolution proceeding in connection with this Agreement, involving a claim against a party to this Agreement by the other party to this Agreement ("Proceeding"), (a) except as provided in Section 15.1.8.6, no party shall be entitled to advances from or to be reimbursed from Facility Revenue for any costs or expenses incurred by it in such Proceeding (except for any fees and costs of the Neutral and AAA in the Mediation as permitted by Article 17), including reasonable attorneys' fees or costs, (b) except as provided in Section 15.1.8.6 or Article 17, no such costs and expenses shall be treated as Operating Expenses, (c) the prevailing party in such Proceeding shall be entitled to be reimbursed by the other party (and not from Facility Revenue) for all costs and expenses incurred in such Proceeding, including reasonable attorneys' fees and costs as may be fixed by the Superior Court of Arizona for Maricopa County, the Federal District Court for the District of Arizona,



or the arbitrator, and (d) except as provided in Section 15.1.8.6, any award granted to a party in such Proceeding shall be treated as the sole property of such party.

16.6 THIS SECTION INTENTIONALLY OMITTED.

16.7 Acceptance of Legal Process.

16.7.1 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.

16.7.2 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 the statutory agent of 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.

16.8 Termination. Notwithstanding any other provision herein to the contrary, this Agreement may not be

terminated by the Operator or the City except as specifically permitted in Sections 10.2, 10.3, 11.1, 11.2, 11.3, 16.8.2 or 16.8.3.

16.8.1 Termination of Operator by the City.

Provided that the City is not in default of this Agreement and has caused no event to occur or condition to exist which with the passage of time or the giving of notice, or both, would constitute a default under this Agreement, the City at its option may terminate the Operator upon fifteen (15) days written notice to the Operator (and the Lender to the extent provided in the Loan Documents) if the Operator has caused an Event of Default to occur. Immediately upon such termination the City and the Team (and, to the extent provided in the Loan Documents, the Lender) shall select a Replacement Operator pursuant to the Assurance Agreement. If the City and the Team fail to agree on a Replacement Operator, the Operator shall continue to carry out its obligations under this Agreement (if directed to do so by the City), or the City, at its election, may operate the Facility in accordance with the provisions of this Agreement and shall be entitled to charge the Facility Account a commercially reasonable management fee, such fee to be paid as an Operating Expense.

16.8.2 Termination of Agreement by the Operator. Provided that the Operator is not in default of this Agreement and has caused no event to occur or condition to exist which with the passage of time or the giving of notice, or both, would constitute a default under this Agreement, the Operator at its option may terminate its obligations under this Agreement after fifteen (15) days prior written notice to the City if the City has caused an Event of Default to occur. If the Operator terminates its obligations under this Agreement for an Event of Default by the City, the Operator shall continue to carry out its obligations hereunder, if directed to do so by the City, for a reasonable period of time to permit the selection of a Replacement Operator as provided for in the Assurance Agreement. The Operator shall be entitled to a commercially reasonable fee for its services after termination.

16.8.3 Automatic Termination of Agreement. This Agreement automatically terminates upon any termination by the Team or the City of the Suns License as provided for in the Assurance Agreement or upon any termination of the DDA by the City or the Operator prior to the Operations Start Date.

16.8.4 Rights After Termination of Agreement. In the event the City or the Operator terminates this Agreement pursuant to Section 16.8.3, the City and the Operator shall

have no further rights against or liabilities to each other under this Agreement. In the event of a termination pursuant to Section 16.8.2, each party shall have available to it all of its rights and remedies under this Agreement and in law and equity.

ARTICLE 17 DISPUTE RESOLUTION.

Except for Events of Default specified in Section 16.1.2 or 16.1.3, in the event of any default, breach or other dispute between the parties in connection with this Agreement (collectively, the "Dispute"), the parties shall comply with the following procedures (all of which shall collectively be referred to as "ADR"). Within seven (7) Business Days after written request (the "Request") by either party, the parties promptly shall hold an initial meeting to attempt in good faith to negotiate a settlement of the Dispute. No Request concerning a Dispute may be made after the time allowed by any statute of limitations applicable to such Dispute. If within ten (10) days after the Request, the parties have not negotiated a settlement of the Dispute, the parties jointly shall appoint a mutually acceptable neutral person who is not affiliated with either of the parties (the "Neutral"). If the parties are unable to agree upon the appointment of the Neutral within fourteen (14) days after the

Request, either party may request the American Arbitration Association or its successor ("AAA") to serve as the Neutral or to select the Neutral or may require both parties to submit to any procedures of AAA to select the Neutral, including without limitation the selection of AAA as the Neutral. In order to resolve the Dispute, the parties shall develop a non-binding alternative dispute resolution procedure such as mediation or facilitation (the "Mediation") with the assistance of the Neutral. The Neutral shall make the decision as to how, when and where the Mediation will be conducted if the parties have been unable to agree on such matters by the earlier of seven (7) Business Days after the appointment of the Neutral or twenty-one (21) days after the Request. The parties shall participate in good faith in the Mediation to its conclusion. If the parties resolve their Dispute through their own negotiations or in the Mediation, the resolution shall be reduced to the form of a written settlement agreement which shall be binding upon both parties and shall preclude any litigation with respect to such Dispute. If the parties have not resolved the Dispute through the Mediation within thirty (30) days after the Request, then at any time thereafter, and prior to resolution of the Dispute by the Mediation, upon written demand by either party, the Mediation shall cease, and the Dispute shall be submitted to arbitration (the "Arbitration") for resolution by an arbitrator or a panel of

arbitrators whose number shall be determined and who shall be selected in accordance with the rules of the AAA. Arbitration shall be conducted in accordance with the rules of the AAA. If Arbitration results in a determination by the arbitrator(s) that an Event of Default has occurred, the provisions of Article 16 shall govern the damages and other remedies which may be implemented or ordered by the arbitrator(s). Neither the requirement to utilize nor the pendency of any ADR procedures shall in any way invalidate any notices or extend any cure periods applicable to an Event of Default as provided in Article 16. Except as expressly provided to the contrary in this Article 17 or elsewhere in this Agreement, these ADR procedures require that the parties use these ADR procedures exclusively rather than litigation as a means of resolving their disputes hereunder or to determine the consequences of an Event of Default and the implementation of the remedies therefor as provided in Article 16. Notwithstanding any other provision of this Article 17 to the contrary, in the event a party may wish to seek interim relief, whether affirmative or prohibitive, in the form of a temporary restraining order or preliminary injunction or other interim equitable relief concerning a Dispute including without limitation declaratory relief, provisional remedies, special action relief, stay proceedings in connection with special action relief and any similar relief of an interim nature, either before beginning or

at any point in the ADR procedures concerning such Dispute, such party may initiate the appropriate litigation to obtain such relief ("Equitable Litigation"). Nothing herein shall be construed to suspend or terminate the obligation of both parties promptly to proceed with the ADR procedures concerning the Dispute that is the subject of such Equitable Litigation while such Equitable Litigation and any appeal therefrom is pending. Notwithstanding any contrary provisions of Rules 65(a)(2) of the Arizona Rules of Civil Procedure or Rule 65(a)(2) of the Federal Rules of Civil Procedure as either rule currently exists or may be amended, the parties agree there shall be no consolidation of any hearing for preliminary injunction in the Equitable Litigation with a trial of an action for permanent injunction on the same matter. Regardless of whether such interim relief is granted or denied or such Equitable Litigation is pending or any appeal is taken from the grant or denial of such relief, at all times the parties shall diligently proceed to complete the ADR procedures. Any interim or appellate relief granted in such Equitable Litigation shall remain in effect until, and only until, the ADR procedures concerning the Dispute that is the subject of such Equitable Litigation result in a settlement agreement or the issuance of an Arbitration award. Such written settlement agreement or award shall be the binding, final determination on the merits of the Dispute (including but not limited to any equitable

relief and monetary damages but excluding any award of attorneys' fees or costs rendered in the Equitable Litigation), shall supercede and nullify any decision in the Equitable Litigation on the merits of the dispute that is the subject of such Equitable Litigation, and shall preclude any subsequent litigation on such merits, notwithstanding any determination to the contrary in connection with any Equitable Litigation granting or denying interim relief or any appeal therefrom. The parties agree that any disputes which arise out of such a written settlement agreement or award during the term of this Agreement shall be resolved exclusively by the procedures set forth in this Article 17, provided that any party may institute legal proceedings in a court of competent jurisdiction to enforce judgment upon an Arbitration award in accordance with A.R.S. § 12-1501 et seq. or other applicable law. Except as provided in Section 4.10.2 or 4.11.1, the fees and costs of the Neutral and AAA in the Mediation shall be an Operating Expense; provided, however, that the prevailing party in Arbitration shall be entitled to recover from the other party's own assets and not from Facility Revenue, in addition to any other remedy, reimbursement for any costs of such proceeding, reasonable attorneys' fees, reasonable costs of investigation and any other expenses incurred in connection with such Arbitration or the Mediation of the Dispute that is the subject of such



Arbitration. Except as provided in Section 15.1.8.6, any recovered costs and expenses in such Arbitration shall not be included as Operating Expenses or paid from Facility Revenue.

ARTICLE 18 MISCELLANEOUS PROVISIONS

18.1 Tickets. The Operator shall be entitled to receive, at the option of the Operator Event sponsor, up to 100 tickets per Operator Event at no charge.

18.2 Operator Suite. The Operator shall be entitled to the use of one Suite at no charge at for purposes of marketing the Arena.

18.3 PEGC Suite. The Phoenix Economic Growth Corporation, or its successor or other designee of the City, shall be entitled to the use of one Suite at no charge for the purpose of promoting the economic development of the City.

18.4 Advisory Board. The City and the Operator shall use best efforts to create, within ninety (90) days after the execution of this Agreement, a plan for an advisory board to the Operator consisting of an equal number of members designated by the Operator and an equal number of members designated by the City.

18.5 Arts Contribution. The Operator shall provide a \$350,000 arts contribution by furnishing, through commissioning, purchase or otherwise, works of artistic expression to be displayed for public benefit within the Arena or on the Site, such contribution to be of the value or amount not less than \$50,000 per Fiscal Year in each year in which such amount is available to be paid from the Operator's share of Adjusted Excess Net Cash Flow under Section 5.2 of this Agreement. The works to be contributed shall be chosen by the Operator with the advice and consultation of the Phoenix Arts Commission, and, if the parties cannot agree, the advice of the Dean of the Fine Arts School of Arizona State University.

ARTICLE 19 GENERAL PROVISIONS.

19.1 Notice. All notices and other communications pursuant to this Agreement shall be in writing 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:  
Phoenix Arena Development  
Limited Partnership  
2800 North Central Avenue  
Phoenix, Arizona 85004  
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:  
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 800  
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.

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

19.3 Conflicts of Interest. The Operator and the City acknowledge that this Agreement is subject to Arizona Revised Statutes § 38-511.

19.4 Relationship of Parties. No partnership, joint venture landlord-tenant 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 Agreement, the Operator, its employees, agents, independent contractors and licensees 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 and independent contractors 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 and licensees resulting in either personal injury or property damages. The relationship created hereby is solely that of owner-independent contractor.

19.5 Severability. If any provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

19.6 Force Majeure. 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; 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) 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 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 shall be deemed to commence thirty (30) days prior to the giving of such notice. The period of the delay due to any such cause shall, for the purpose of Section 2.1, be 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 an Event of Default hereunder.

19.7 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.

19.8 Binding Effect. This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

19.9 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.

19.10 Entire Agreement. This Agreement is executed in twelve (12) duplicates each of which is deemed to be an original. This Agreement (which includes 155 pages of text (including a table of contents and signature page) and the referenced Exhibits, each of which is incorporated herein), together with the Related Agreements to the extent applicable, constitute the entire understanding and agreement of the parties with respect to the subject matter of this Agreement. This Agreement and all Related Agreements integrates all of the terms and conditions mentioned herein or incidental hereto and, except as provided in Section 1.2, supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

19.11 Amendment. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Operator. This Agreement may not be changed, modified or rescinded except in writing by the City and the Operator, and any attempt at oral modification of this Agreement shall be void and of no effect.

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

19.13 Nondiscrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the Facility. Neither the Operator nor any person claiming under or through it shall establish or permit any such practice or practices of discrimination, or segregation with reference to the selection, location, number, use or occupancy of licensees, sublicensees or vendors (if any), using or operating at the Site or Facility or any portion thereof. The City and the United States shall be the beneficiaries of this provision and entitled to enforce it.

19.14 Nondiscrimination Clause. The Operator, for itself and its successors and assigns, shall cause the following clause to appear in all contracts, licenses or sublicenses concerning the Site or the Facility: "Any supplier, contractor or lessee 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, contractor or lessee shall take affirmative action to ensure that 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, contractor or lessee 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." The clause required herein may be modified or deleted to conform to changes in applicable laws, ordinances and regulations and deleted when no longer required by applicable law.

ARTICLE 20 LIABILITY LIMITATION.

20.1 City. Notwithstanding and prevailing over any contrary provision or implication in this Agreement, no member, elected official, official, employee, agent, independent contractor or consultant of the City shall be liable to the Operator, or any successor in interest to the Operator, in the event of any default or breach by the City for any amount which

may become due to the Operator or any successor in interest to the Operator, or on any other obligation under the terms of this Agreement, except for their criminal acts with respect hereto (i.e., acts which would constitute crimes were they prosecuted therefor and convicted thereof).

20.2 Operator. 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 ("Operator Personnel"), shall not in any way be liable hereunder or with respect hereto; 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 liability hereunder or with respect hereto; no judgment with respect to liability hereunder or with respect hereto 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 in the Operator; and the liability of the Operator hereunder shall be limited to the assets of the Operator and the General Partner. The limitations of this Section 20.2 shall in no way limit the City's rights (a) to specific performance of each and every provision of this

Agreement or in any of the Related Agreements (provided that specific performance shall in no event require the Team or the shareholders of the General Partner to commit capital in addition to any capital already committed), (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 20.2 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.

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

Operator:

PHOENIX ARENA DEVELOPMENT  
LIMITED PARTNERSHIP, a  
Delaware limited partner-  
ship,

By Phoenix Arena Develop-  
ment Corporation, an  
Arizona corporation, its  
General Partner,

By: Richard H. Dozer  
Richard H. Dozer, President

City:

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

David A. Schreiner  
David A. Schreiner  
Assistant Director, Community  
and Economic Development

ATTEST:

Steven F. Kozell  
DEPUTY City Clerk

APPROVED AS TO FORM:

[Signature]  
Acting City Attorney

EXHIBIT 1.1

FIRST RESTATED OPERATING AGREEMENT  
DEFINITIONS

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

1. AAA has the meaning set forth in Article 17.

2. Abatement Period(s) means any period for which the 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 this Agreement or Section 16 of the Suns License, (c) Article 11 of this Agreement or Section 17 of the Suns License, (d) Section 19.6 of this Agreement, (e) Section 22.4 of the Suns License, and (f) Sections 4.11.2, 4.11.5 or 9.5 of the DDA. Any Abatement Period under any of the foregoing agreements shall be deemed to be an Abatement Period for every other such agreement.

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3. Accountants has the meaning set forth in Section 5.6.2.

4. Accounts means the Facility Account, the Renewal and Replacement Account, the Interest Account and all other accounts concerning the Facility Revenue or the Facility as provided in Article 5.

5. Additional Equity has the meaning set forth in Section 13.3.5.

6. Additions means permanent installations, alterations or improvements to the Facility, other than those included in the Scope of Development or any Request for Change Orders as constructed pursuant to the DDA, regardless of whether paid for by the Operator or the City.

7. Adjusted Annually means (with respect to an amount) to increase such amount, effective the first day of each Fiscal Year, at the annual rate of three percent (3%) per year compounded annually.

8. Adjusted Excess Net Cash Flow means (for each Fiscal Year) the Excess Net Cash Flow of the Facility as adjusted for deductions and payments authorized by Sections 5.1.3, 5.1.4, and 5.1.7.

9. Adjusted Excess Net Cash Flow Payments means payments to the City and the Operator pursuant to Section 5.2.

10. ADR with respect to the Operating Agreement means the alternative dispute resolution procedures described in Article 17 thereof, or, with respect to the Advertising Agreement, Section 12 thereof, or, with respect to the Suite Marketing Agreement, Section 11 thereof, or, with respect to the Listing Agreement, Section 10 thereof.

11. Advertising Agreement means the Advertising Agreement between the Operator and the Team as of the date hereof, attached to the DDA as Exhibit D-4, as and if amended or restated.

12. Advertising Payment means a payment to be made to the Team pursuant to Section 5.1.4.2, subject to the terms of Sections 5.1.4.3 and 5.1.7.

13. Advertising Revenue means, for any period of time during the term of the Advertising Agreement, the sum of Temporary Commercial Advertising Revenue and Fixed and Permanent Commercial Advertising Revenue.

14. Affiliate of any Person (the "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. Notwithstanding the foregoing, if at any time the Operator shall conclude that the foregoing definition is so broad as to be unduly burdensome with respect to the procedures required by Section 4.10, the parties shall in good faith negotiate a more narrow definition or less burdensome procedures which are nonetheless consistent with and fulfilling of the parties' original intent with respect to such definition.

15. Affiliate Contract means any Facility Contract, Vendor Contract or any other contract between the Operator and an Affiliate related to the Facility or related to any performance or Event at the Facility.



16. Affiliate Contract Excess Consideration has the meaning set forth in Section 4.10.2.

17. Amortized Priority Operating Fee Payment has the meaning set forth in Section 5.1.7.

18. Amortized Suns Payment has the meaning set forth in Section 5.1.7.

19. Annual Budget means the information budget to be prepared by the Operator and submitted to the City as provided in Section 4.2.2.

20. Arbitration with respect to the Operating Agreement has the meaning set forth in Article 17 thereof, or, with respect to the Advertising Agreement, Section 12 thereof, or, with respect to the Suite Marketing Agreement, Section 11 thereof, or, with respect to Listing Agreement, Section 10 thereof.

21. 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 DDA.

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

23. Arena Name means the name of the Arena designated by the Operator and approved by the City pursuant to Section 4.4.

24. Arena Store means the store for the sale of Hard Concessions to be opened and operated by the Team pursuant to the Suns Office Lease.

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

26. Award has the meaning set forth in Section 11.1.

27. Basketball Season means the period of the NBA basketball season as established from time to time by the NBA for the playing of pre-season, regular and play-off Home Games (as of the date hereof, October of each year through June of the following year).

28. Business Days means Monday, Tuesday, Wednesday, Thursday or Friday, excluding City holidays.

29. Capital Improvements means any permanent structures and fixtures within or a part of the Facility costing in excess of \$50,000 (Adjusted Annually) including major Facility components such as seats, chairs, basketball floor, basketball standards, telecommunications systems, HVAC equipment, generators, ice plant, hockey dasher wall and other similar items within or a part of the Facility; provided that the cost of such items must be of a type which under generally accepted accounting principles is to be capitalized.

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

31. Challenge has the meaning set forth in Section 15.3.4.

32. Challenge Proceeding has the meaning set forth in Section 16.5.

33. City means the City of Phoenix, a municipal corporation of the State of Arizona, and any of its administrative departments, divisions and functions and its successors and assigns; provided that, for purposes of Sections 15.1.8, 15.1.9 and 15.1.10, "City" shall also include without limitation any other board, commission or entity which, by reason of its relationship to the City, is subject to the provisions of Article 3.1, Chapter 3, Title 38, Arizona Revised Statutes ("Open Meeting Law"), as amended from time to time; notwithstanding the foregoing, if at any time the City shall conclude that the foregoing definition is so broad as to be unduly burdensome, the parties shall in good faith negotiate a more narrow definition which is nonetheless consistent with and fulfilling of the parties' original intent with respect to such definition.

34. City Advertising means permitted Commercial Advertising in connection with City Events excluding Licensee Advertising at such City Events.

35. City Debt means an amount (as of the date such amount is computed, the "Computation Date") equal to (a) the sum of (i) the face value of any and all bonds and other indebtedness (whether redeemed or outstanding) of the City or the City of Phoenix Civil Improvement Corporation incurred in

order to fund the City's obligations under Section 4.5.2 of the DDA (the "Bonds") and (ii) all paid or accrued interest on the Bonds paid on or prior to the Computation Date or accrued to the Computation Date minus (b) the aggregate of all Priority Operating Fee Payments and Ordinary Operating Fee Payments paid to the City as of the Computation Date.

36. City Events means the Events conducted or 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.

37. City Priority Activity has the meaning set forth in Section 15.1.9.1.

38. Civic Plaza Events has the meaning set forth in Section 15.1.8.3.1.

39. Commercial Advertising means announcements, acknowledgments, banners, signs and other visual or audible messages displayed or broadcast within the Facility during Operator Events and during City Events (when permitted) for a fee. Commercial Advertising shall not include (a) the naming of the Facility, (b) public service announcements, or (c) radio or television advertising in connection with radio, television

and other broadcasts, reproductions and transmittals of the pictures, descriptions, and accounts of the Home Games and all other activities of the Team and the visiting teams which are (i) incidental to NBA basketball and (ii) conducted in the Facility as permitted by the Suns License or conducted in the locker room or any studio located in the Facility (provided that if such activity generates significant revenue the Operator shall be entitled to charge a commercially reasonable fee that takes into account the amount of such revenue for the use of such television studio), regardless of the nature of the technology and whether distributed locally, nationally or otherwise. Commercial Advertising shall include Temporary Commercial Advertising (including City Advertising and Sponsor Signs) and Fixed and Permanent Commercial Advertising.

40. Commercial Event means any Event which features performers or performances which are normally booked in arenas comparable to the Facility and for which the admission charge (whether in money, goods or services), is substantially equivalent (when compared nationally with reference to industry guides) to admission charges for events typically booked at comparable arenas. Without limiting the definition contained in the preceding sentence, Commercial Events shall include any concert, show, benefit, boxing match, wrestling match, truck pull, or exhibition game, regular season game, play-off game or tournament involving professional athletes.

41. Communication System means all the audio and visual communication systems within or at the Facility, including but not limited to scoreboards, television and loudspeaker systems, public address systems, timers, clocks, message centers, video screens, signs and marquees, within or at the Facility.

42. Comparable Events has the meaning set forth in Section 15.1.8.1.

43. Competing Facility has the meaning set forth in Section 15.1.8.1.

44. Condemnation Deficiency has the meaning set forth in Section 11.2.2

44.1 Construction Costs has the meaning set forth in the DDA.

45. Construction Financing means the loan(s) obtained to fund the Operator's obligations under Section 4.5 of the DDA.

46. Construction Start Date means the date the City issues a "notice to proceed" to any Contractor (as such term is defined in the DDA) 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 of the DDA.

47. 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, (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 20% of the income, losses or distributions from such trust, entity, or association.

48. Current Cash Flow means cash, demand deposits and other current funds available from time to time for immediate payment without penalty for withdrawal.

49. DDA means the Disposition and Development Agreement between the City and the Operator dated as of July 19, 1989, as and if amended or restated.



50. DDA Construction Procedures means the procedures for construction of the Facility established in Article 4 of the DDA.

51. Debt Service Payment means any amount paid or payable in satisfaction of a current obligation which constitutes Operator Debt.

52. Depository means one or more banks, trust companies, insurance companies (including title insurance companies) or savings banks that are designated by the City as depositories for the Accounts.

53. 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.

54. Destruction Date has the meaning set forth in Section 10.2.

55. Direct or Indirect and Directly or Indirectly means through one or more tiers of subsidiaries, partnerships, or other tiered structures.

56. Dispute with respect to the Operating Agreement has the meaning set forth in Article 17 thereof, or, with respect to the Advertising Agreement, Section 12 thereof, or, with respect to the Suite Marketing Agreement, Section 11 thereof, or, with respect to the Listing Agreement, Section 10 thereof.

57. Economic Assistance has the meaning set forth in Section 15.1.8.2.

58. Emergency Capital Improvements means Capital Improvements or Interest-Funded Capital Improvements undertaken by the Operator and deemed necessary by it because of an emergency; provided, however, that any expenditure for a putative Emergency Capital Improvement is subject to challenge pursuant to Section 5.3.3.

59. Environmental Laws has the meaning set forth in Section 7.1.9 of the DDA.

60. Equitable Litigation with respect to the Operating Agreement has the meaning set forth in Article 17 thereof, or, with respect to the Advertising Agreement, Section 12 thereof, or, with respect to the Suite Marketing Agreement, Section 11 thereof, or, with respect to the Listing Agreement, Section 10 thereof.

61. Event Days means days when Events are conducted in the Facility.

62. Event of Default has the meaning set forth in Section 16.1.

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

64. Excess Consideration means (for each Fiscal Year) the amount by which aggregate consideration paid or to be paid by or to the Operator under an Affiliate Contract exceeds the amount which is commercially reasonable, as determined pursuant to Section 4.10.2.

65. Excess FR Account Amount has the meaning set forth in Sections 10.4 or 11.4.

66. Excess Net Cash Flow means (for each Fiscal Year) Net Cash Flow less the amounts required or authorized to be paid under Sections 5.1.1, 5.1.2 and 5.1.5.

67. Exculpatory Language means the language set forth in the following paragraph with the name of the exculpating party inserted into the blanks.

\_\_\_\_\_ acknowledges that this Agreement imposes no contractual obligations upon the City unless, until and only if the City expressly assumes the obligations of the Operator hereunder pursuant to the provisions of the Operating Agreement; that the City (and each of its members, elected officials, other officials, officers, agents, employees, independent contractors and consultants as to the indemnities set forth in this Agreement) is an express third party beneficiary of this Agreement; and that in the event of a default under this Agreement, of any kind or nature whatsoever, \_\_\_\_\_ shall look solely to the Operator at the time of the default for remedy or relief; and that no member, elected official, officer, employee, agent, independent contractor or consultant of the City, shall be liable to \_\_\_\_\_, or any successor in interest to \_\_\_\_\_, in the event of any default or breach by the City under any of the Related Agreements (as such term is defined in the Operating Agreement between the City and the Operator, dated as of July 19, 1989), or on any other obligation under the terms of this Agreement, except for their criminal acts with respect hereto, (i.e., act which would constitute crimes were they prosecuted therefor and convicted thereof).

68. Expiration Date means the date of expiration of the Operating Agreement, the Assurance Agreement, the Suns License, the Suns Office Lease, the Suite Marketing Agreement, the Advertising Agreement and the Listing Agreement, as established in Section 2.1, forty (40) years after the License

Commencement Date, as extended by (a) any Abatement Period (or portion thereof) commencing after the License Commencement Date and having a duration of at least ninety (90) days and (b) any period during which payments are made by the City to satisfy the Restoration Loss Amount pursuant to Section 6.9 of the Assurance Agreement.

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

70. Facility Account means the bank account or accounts which shall be established for the deposit of all Facility Revenue and from which all Operating Expenses and other payments required by this Operating Agreement shall be paid.

71. FR Accounts means the Facility Account and Renewal and Replacement Account.

72. Facility Contracts means any contract for a performance or an Event at the Facility to which the Operator or any of its Affiliates is a party.

73. Facility Revenue means (for each Fiscal Year) all revenue of any nature derived as a result of the construction, use, booking, licensing, rental, operation, destruction, damage, restoration and condemnation of the Facility or portions thereof or amenities contained therein, including (without limitation) tax refunds other than refunds to Investors, revenues from the sale of Hard Concessions (as defined in the Suns License), interest on funds in the Facility Account, proceeds of insurance and Net Refinancing Proceeds but excluding any revenue specifically excluded from the definition of Facility Revenue by the explicit terms of this Agreement, provided that (a) with respect to Ticket Receipts (as defined under the Suns License) only the Use Fee (as defined in the Suns License) shall be considered Facility Revenue, and (b) Facility Revenue shall not include (i) any revenue from Licensee Advertising (provided that the licensee for such Licensee Advertising pays a commercially reasonable fee for the right to display and broadcast such Licensee Advertising), (ii) any revenue from the sale of non-edible items at City Events that are not sold in the Arena Store and (iii) any revenue derived from radio, television and other broadcasts, reproductions and transmittals of the pictures, descriptions and accounts of the Home Games and all other activities of the Team and the visiting teams which are (A) incidental to NBA basketball and (B) conducted in the Facility as permitted by

the Suns License or conducted in the locker room or any studio located in the Facility (provided that if such activity generates significant revenue the Operator shall be entitled to charge a commercially reasonable fee that takes into account the amount of such revenue for the use of such television studio), regardless of the nature of the technology and whether distributed locally, nationally or otherwise.

74. Fiscal Year means the tax year of the Operator, or any portion thereof.

75. Fixed and Permanent Commercial Advertising means all Commercial Advertising other than Temporary Commercial Advertising.

76. Fixed and Permanent Commercial Advertising Revenue means (for each Fiscal Year) the sum of gross receipts from Fixed and Permanent Commercial Advertising.

77. General Manager of the Operator means the chief operations officer of the Operator, Robert Machen, or his successor.

77.1 General Partner means the general partner of the Operator, unless otherwise provided.

78. Grand Prix means any automobile racing event that is the subject of the contract between the City and Long Enterprises, Inc., a California corporation, dated January 13, 1989, or any other comparable automobile race.

79. Home Games means all exhibition games played in Maricopa County, all regular season games and all playoff games between the Team and other NBA teams for which the Team is the home team responsible for procuring the playing site; provided, however, that for the purposes of this Agreement, Home Games shall not include games between the Team and other NBA teams that are not played at the Facility (but are played at a location in Maricopa County) due to an isolated scheduling conflict or any condition that renders the Facility unusable.

80. Immediate Family means any spouse, son, daughter or parent of any individual (by blood or by 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.

81. 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.

82. Independent Advertising Agent means the party to the Independent Advertising Agent Agreement (as such agreement is defined in the Assurance Agreement) other than the Team as authorized by Section 5.1.4.2 hereof.

83. Independent Advertising Agent's Fees has the meaning set forth in Section 5.1.4.2.

84. Initial Operating Agreement has the meaning set forth in Section 1.2.

85. Initial Related Agreements has the meaning set forth in Section 1.2.

86. Insurance Deficiency has the meaning set forth in Section 10.2.

87. Insurance Proceeds has the meaning set forth in Section 10.1.

88. Interest means with respect to the Operator, the general partner of the Operator or the Team, any legal or beneficial interest in the Operator, the general partner of the Operator 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 any such interest described in this sentence is Direct or Indirect. A percentage Interest in the Operator, the general partner of the Operator 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 of the Operator 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.

89. Interest Account means the account established pursuant to Section 5.3.2.

90. Interest-Funded Capital Improvements means any permanent structure or fixture within or part of the Facility or any item of equipment or other improvement to be used in or as part of the Facility with a useful life greater than three (3) years, the cost of which is greater than \$1,000.00 and is not authorized to be paid from the Renewal and Replacement Account.

91. Investor means any owner of any Interest.

92. Jefferson and Third Street Parking Garage means a parking garage containing 1,500 spaces (expandable at the City's option to 2,000 spaces) located and constructed within the blocks bounded by Jefferson Street, Jackson Street, Third Street and Fourth Street.

93. Late Payment Charge means the charge for late payments established under Section 5.5.

94. Leases means the Suns Office Lease and all other leases provided for in the Listing Agreement.

95. Lender means each lender providing Construction Financing.

96. License Commencement Date has the meaning set forth in the Suns License.

97. Licensee Advertising has the meaning set forth in Section 4.4.

98. THIS SECTION INTENTIONALLY OMITTED.

99. Licenses means the Suns License, the Suite Licenses and all other booking and use agreements as described in Section 4.5.

100. Liens means all encumbrances, liens, security interests, pledges and claims in, to, against or in any way applicable to any portion of the Facility or the Accounts.

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

102. 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 of the DDA.

103. Lost Revenue Present Value means the discounted present value (computed as of the time any calculation requiring the determination of the Lost Revenue Present Value pursuant to Sections 10.4 or 11.4) of the City's or the Operator's (as the case may be) "aggregate remaining income."

For the purposes of the preceding sentence, "aggregate remaining income" shall be determined with reference to (a) the 185 Event pro forma included in Exhibit R-N of the Assurance Agreement if less than 202 Events were conducted at the Facility during the full Fiscal Year immediately prior to such date of calculation, or (b) the 220 Event pro forma included in Exhibit R-N of the Assurance Agreement if 202 or more Events were conducted at the Facility during the full Fiscal Year immediately prior to such date of calculation, and shall mean each party's total income projected to be realized from the Facility (as reflected in the applicable pro forma) after the date of any calculation requiring the determination of Lost Revenue Present Value pursuant to Sections 10.4 or 11.4.

104. Management Fee means the fee payable to the Operator pursuant to Sections 5.2.1 and 5.2.2.

105. Management Services means the services which the Operator is required to render in connection with the management of the Facility pursuant to this Agreement.

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

107. Mediation with respect to the Operating Agreements has the meaning set forth in Article 17 thereof, or, with respect to the Advertising Agreement, Section 12 thereof, or, with respect to the Suite Marketing Agreement, Section 11 thereof, or, with respect to the Listing Agreement, Section 10 thereof.

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

109. Net Cash Flow means (for each Fiscal Year) Facility Revenue less Operating Expenses.

110. Net Refinancing Proceeds means net proceeds, after paying the balance of the Construction Financing and any costs of refinancing pursuant to the Loan Documents.

111. Neutral with respect to the Operating Agreement has the meaning set forth in Article 17 thereof, or, with respect to the Advertising Agreement, Section 12 thereof, or, with respect to the Suite Marketing Agreement, Section 11 thereof, or, with respect to the Listing Agreement, Section 10 thereof.

112. Non-Commercial Event has the meaning set forth in Section 15.1.8.4.

113. Non-default Rate means 10% per annum, compounded annually.

114. THIS SECTION INTENTIONALLY OMITTEDa.

115. Operating Expenses means (for each Fiscal Year) all usual and ordinary costs and expenses incurred by the Operator in managing, operating and otherwise performing its duties in connection with the Facility as provided in this Agreement as determined in accordance with generally accepted accounting principles including, without limitation, such costs and expenses for (a) compensating Facility personnel; (b) purchasing Facility supplies and equipment; (c) performing the agreements with respect to and obligations in connection with the Facility as provided in Section 4; (d) utilities and other services for the Facility; (e) Impositions and insurance premiums; (f) repair, maintenance and restoration of the Facility as provided in this Agreement; (g) Additions; (h) the amount set aside for the Working Capital Reserve pursuant to Section 5.1.7 of this Agreement; (i) reasonable attorney's fees and expenses of the Operator in enforcing Section 15.1.8 of the



Operating Agreement and reasonable attorney's fees and expenses of the Team in enforcing Section 3.1.11 of the Assurance Agreement; (j) a commercially reasonable fee paid to a Replacement Operator; and (k) the fees and costs of the Neutral and AAA as provided in Article 17. Debt Service Payments, Renewal and Replacement Account Payments, City Priority Operating Fee Payments, Suns Payments, City Ordinary Operating Fee Payments, the Operator's Management Fee, Amortized Priority Operating Fee Payments, Amortized Suns Payments, payments made or awards to the prevailing party in any Arbitration as required by Article 17, and any other categories of payments specifically excluded from the definition of Operating Expenses by the terms of this Operating Agreement shall not constitute Operating Expenses.

116. Operations Start Date means the earlier of (a) the date of issuance of a final and unconditional Certificate of Occupancy for 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.

117. Operations Start Year means the period commencing on the Operations Start Date and ending on the last day of the Fiscal Year in which the Operations Start Date occurs.

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

119. Operator Debt means any outstanding indebtedness (including principal and accrued interest thereon) owed by the Operator pursuant to the Loan Documents and the Refinancing Documents.

120. Operator Events means the Home Games and all other Events except City Events.

121. Operator Personnel has the meaning set forth in Section 20.2.

122. Ordinary Operating Fee Payment has the meaning set forth in Section 5.2.

123. Permitted Security Interests means the pledge of the Operator's, the Team's and the Marketer's rights and interests under this Agreement and the Related Agreements as authorized by Section 3.2 of the DDA and Sections 12.1 and 12.2.

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

125. Premium Rate means a rate of interest equal to two percent (2%) in excess of the Prime Rate.

126. Preparation Period has the meaning set forth in Section 15.1.9.1.

127. Prime Rate means the rate of interest announced from time to time by Valley National Bank, or another bank designated by the Operator, as the Bank's "prime rate" of interest.

128. Priority Operating Fee Payments means (for each Fiscal Year) the payments from the Operator to the City required by Section 5.1.5, subject to moratorium as established in Section 5.1.6 and to the priorities established in Section 5.1.7.

129. Proceeding with respect to the Operating Agreement has the meaning set forth in Section 16.5, or, with respect to the Advertising Agreement, Section 13.2 thereof, or,

with respect to the Suite Marketing Agreement, Section 12.2 thereof, or, with respect to the Listing Agreement, Section 11.2 thereof.

130. Race Days has the meaning set forth in Section 15.1.9.1.

131. Records means the complete and accurate records of the Facility that the City is permitted to inspect and audit pursuant to Section 5.6.

132. Redevelopment Area means that portion of the City of Phoenix, Arizona, designated for redevelopment by the Redevelopment Plan.

133. Redevelopment Plan means the Downtown Area Redevelopment and Improvement Plan that was approved 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.

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

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

136. Renewal and Replacement Account means the Renewal and Replacement Trust Account established for funds deposited pursuant to Sections 5.1.2 and 5.3.2, which may be used as specified in Section 5.3.3.

137. Renewal and Replacement Account Payments means payments into the Renewal and Replacement Account paid in the manner and amounts established in Sections 5.1.2 and 5.3.1.

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

139. Request with respect to the Operating Agreement has the meaning set forth in Article 17 thereof, or, with respect to the Advertising Agreement, Section 12 thereof, or, with respect to the Suite Marketing Agreement, Section 11 thereof, or, with respect to the Listing Agreement, Section 10 thereof.

140. Restoration Loss Amount has the meaning set forth in Section 6.9 of the Assurance Agreement.

141. Restoration Period has the meaning set forth in Section 15.1.9.2.

142. Schedule Year means the twelve-month period between October 1 and the next September 30, inclusive.

143. Shared Expenses means expenses for goods, services or any other thing of value used directly or indirectly by the Operator and the Team.

144. Site means that portion of the Redevelopment Area described as Blocks 37 and 38 and portions of Blocks 33 and 34, Original Townsite of Phoenix and such other real property as described in the DDA. The Site is legally described in Exhibit D-82(b) attached to the DDA.

145. Soft Concessions means items of food and drink dispensed at the Facility.

146. Sponsor Signs has the meaning set forth in the Suns License.

147. Submitted Affiliate Contract means an Affiliate Contract submitted to the City for approval pursuant to Section 4.10.2.

148. Suite License means the form of that certain Suite License Agreement for execution by Suite licensees and the Operator attached to the DDA as Exhibit D-85, and all such executed forms of agreement as are executed and in effect from time to time.

149. Suite Marketing Agreement means the Suite Marketing Agreement between the City and the Marketer dated as of July 19, 1989, attached to the DDA as Exhibit D-12, as and if amended or restated.

150. Suite Payment means a payment to be made to the Team pursuant to Section 5.1.3, subject to the terms of Sections 5.1.3.2 and 5.1.7.

151. Suites means the approximately 110 box seat enclosures to be constructed in the Arena as more fully described in the DDA.

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

153. Suns Office Lease means the Office and Store Lease Agreement between the Operator and the Team dated as of July 19, 1989, attached as Exhibit 87 to the DDA, as and if amended or restated.

154. Suns Payments means Suite Payments and Advertising Payments.

155. Taking has the meaning set forth in Section 11.1.

156. Taking Date has the meaning set forth in Section 11.1.

157. Team means the Phoenix Suns Limited Partnership, a Delaware limited partnership, its successors and assigns.

158. Temporary Commercial Advertising means Commercial Advertising in connection with any Event which is to be removed or terminated at the conclusion of such Event.



159. Temporary Commercial Advertising Revenue means, for any period of time during the term of the Advertising Agreement, the sum of gross receipts from all Temporary Commercial Advertising except Licensee Advertising.

160. Thirtieth Anniversary Date has the meaning set forth in Section 2.1.

161. Title Exceptions has the meaning set forth in Section 15.1.6.

162. Total Outstanding Debt means the sum of Operator Debt and City Debt.

163. THIS SECTION INTENTIONALLY OMITTED.

164. Transfer has the meaning set forth in Section 13.1.

165. Vendor Contract Excess Consideration has the meaning set forth in Section 4.11.1.

166. Vendor Contracts means agreements between the Operator and any vendor, supplier, manufacturer, distributor or lessor of equipment, supplies, goods or services (other than

performances) used by the Operator in the ordinary course of its business managing the Facility.

167. Working Capital Reserve means the amount set aside as a working capital reserve by the Operator as an Operating Expense and any amount set aside by the Operator in the exercise of its discretion pursuant to Section 7.2.

EXHIBIT 4.5

DATE RESERVATION AND SCHEDULING PROCEDURES

DEFINITIONS

1. Definitions. For purposes of this Exhibit, the following terms shall have the definitions set forth herein:

1.1 Arena Schedule. A schedule of all Events and of Facility maintenance, repair, construction and other usage.

1.2 Bureau. The Phoenix and Valley of the Sun Convention and Visitors Bureau, or any successor designated by the City.

1.3 City Event. Any Event sponsored or co-sponsored by the City. A City Event shall be either a City Priority Event or a City Dark Date Event.

1.4 City Priority Event. Any City Event assigned a priority pursuant to Sections 3.1.4, 3.1.6, 3.2.2 or 3.2.4 of this Exhibit.

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1.5 City Dark Date Event. Any City Event other than a City Priority Event.

1.6 Commercial Event. Any Event, including a Family Show, which features performers or performances which are normally booked in facilities comparable to the Arena and for which the admission charge (whether in money, goods or services), is substantially equivalent (when compared nationally with reference to industry guides) to admission charges for events typically booked at comparable facilities. Without limiting the definition contained in the preceding sentence, Commercial Events shall include any concert, show, benefit, boxing match, wrestling match, truck pull, or exhibition game, regular season game, play-off game or tournament not involving a professional sports franchise.

1.7 Confirmed. An Event shall be deemed to be Confirmed if it has been Scheduled and if the party requesting such Event has executed a written Arena Use Agreement with the Operator to stage such Event on the Schedule Date; provided, however, that a Convention shall be deemed to be Confirmed upon execution by the Operator of a reservation form executed by both the City and the Bureau requesting a date for a Confirmed Event.

1.8 Convention. Any Event at which is conducted a meeting of delegates, members or representatives of any trade, religious, political, recreational or other organization and which is requested to be Scheduled by the Bureau and the City.

1.9 Event. Any event conducted in or at the Facility.

1.10 Family Show. Any Event reasonably suitable for audiences of all ages, including without limitation any ice show, circus or rodeo.

1.11 Non-Convention City Priority Event. Any City Priority Event other than a Convention.

1.12 Off-Season. All portions of a Schedule Year other than the Prime Season. Unless the Prime Season is expanded as provided herein, the Off-Season shall be the three-month period between July 1 and the next September 30, inclusive, of each Schedule Year and shall consist of 92 days.

1.13 Operator Event. Any Event sponsored or co-sponsored by the Operator.

1.14 Other Operator Events. Any Operator Event other than Sports Franchise Events and Commercial Events for which the sponsor or co-sponsor of each such Other Operator Event pays a commercially reasonable fee and other reasonable charges for the use of the Facility.

1.15 Prime Season. The nine-month period between October 1 and the next June 30, inclusive, of each Schedule Year, consisting of 273 days, except that a Prime Season ending in a leap year shall consist of 274 days. Notwithstanding the foregoing, if the NBA should extend its regular or play-off season to begin prior to October 1 or end after June 30, the Prime Season shall be expanded to coincide with the extended NBA regular or play-off season. The specific dates to accomplish such expansion shall be mutually agreed upon by the Operator, the Team and the City.

1.16 Receipt Date. The date upon which the Operator receives a request for a Schedule Date. A request for a Schedule Date for an Event shall be deemed to have been received by the Operator on the earlier of (a) the date such request would be deemed an effective notice pursuant to Section 19.1 of the Operating Agreement, or (b) the date such request is sent by facsimile transmission to the Operator.

1.17 Schedule Date. The time or times for which the use of the Facility has been Scheduled for an Event pursuant to the procedures herein.

1.18 Schedule Year. The twelve-month period between October 1 and the next September 30, inclusive.

1.19 Scheduled. An Event shall be deemed to be Scheduled as of the first date it has been entered onto the Arena Schedule by the Operator.

1.20 Sports Franchise Event. Any Event involving a professional sports franchise.

1.21 Suns Games. Any Team Regular Game or Team Play-Off Game.

1.22 Suns Regular Games. Any regular season game between the Team and another NBA team for which the Team is the home team responsible for procuring the playing site.

1.23 Suns Play-Off Games. Any play-off game between the Team and another NBA team for which the Team is the home team responsible for procuring the playing site.

2. General Scheduling and Confirmation Responsibilities.

2.1 Arena Schedule. The Operator shall maintain a schedule for all Events scheduled to occur during the term of the Operating Agreement and during the ten (10) Schedule Years immediately following the expiration of the Operating Agreement in accordance with the provisions of this Exhibit. The Operator shall permit any designee of the City to inspect such schedule during the Operator's normal business hours to plan dates for City Events.

2.2 Scheduling and Confirmation in Absence of Conflict. Upon receipt of any request for a Schedule Date for an Event (for the purposes of this Article 2, such requested Event shall be referred to as a "Requested Event"), if such date has not already been Scheduled, the Operator shall Schedule such Event and shall attempt to Confirm such Event by requesting the sponsor of such Event to execute an Arena Use Agreement or a reservation form if the Event is a Convention.

2.3 Scheduling and Confirmation of Conflicting Requests. If the requested Schedule Date has already been Scheduled or Confirmed for another Event, the Operator shall accept or deny such request as follows:



2.3.1 If the requested Schedule Date has already been Confirmed for another Event, and if such Confirmed Event has a higher priority than the Requested Event, the request shall be denied.

2.3.2 If the requested Schedule Date has already been Confirmed for another Event, and if such Confirmed Event has a lower priority than the Requested Event, the Operator may in its discretion request the sponsor of the Confirmed Event to consider rescheduling the Confirmed Event. Unless such sponsor agrees to reschedule the Confirmed Event, the request for the Requested Event shall be denied.

2.3.3 If the requested Schedule Date has already been Scheduled for another Event, and if such Scheduled Event has a higher priority than the Requested Event, the Operator shall request the sponsor of the Scheduled Event to elect either to Confirm such Event or to reschedule such Event. If such Scheduled Event is not Confirmed or rescheduled within the Permitted Election Period (as defined below), and if the sponsor of the Requested Event commits to Confirm such Event, the Scheduled Event shall be deemed to be unscheduled and the date requested for the Requested Event shall be Confirmed. If such Scheduled Event is Confirmed within the Permitted Election Period, the Requested Event shall be denied. For the purposes

of this Section 2.3.3, the term Permitted Election Period shall mean a period of time after the Operator requests the sponsor of the Scheduled Event to make the election either to Confirm or to reschedule such Scheduled Event. Such period of time shall be the lesser of (a) the period of time then customarily used at other facilities comparable to the Arena for the confirmation of events to be conducted at such facilities, or (b) fifteen (15) days.

2.3.4 If the requested Schedule Date has already been Scheduled for another Event, and if such Scheduled Event has a lower priority than the Requested Event, the Operator shall notify the sponsor of the Scheduled Event and the sponsor of the Requested Event requesting such sponsors to Confirm their respective Events. Fifteen (15) days after the Operator sends each of such sponsors notice pursuant to the preceding sentence (and if the Operator sends such notices on different dates, then fifteen (15) days after the latter of such dates), the Operator shall dispose of the request for the Requested Event as follows: if only one of such sponsors signs and submits all documents necessary to Confirm such sponsor's Event, the Operator shall Confirm such sponsor's Event; if both of such sponsors sign and submit all necessary documents to Confirm their respective Events, the Requested Event shall be Confirmed and the Scheduled Event shall be deemed to be

unscheduled. If neither sponsor signs and submits all necessary documents to Confirm their respective Events, neither Event shall be Confirmed; provided, however, that the Operator may, in its sole discretion, Schedule either of such sponsors' Events irrespective of the priority of such Events.

2.4 Good Faith Efforts to Avoid Conflicts. The Operator shall act in good faith in Scheduling and Confirming Events pursuant to this Exhibit.

3. Scheduling and Confirmation Priorities. The Operator shall Schedule Events according to the following priorities:

3.1 During Prime Season.

3.1.1 First priority to Suns Games.

3.1.2 Second priority to Sports Franchise Events other than Suns Games.

3.1.3 Third priority to each of three Family Shows of eight (8) days duration each.

3.1.4 Fourth priority to City Priority Events that are Conventions.

3.1.5 Fifth priority to Commercial Events.

3.1.6 Sixth priority to City Priority Events  
other than Conventions.

3.1.7 Seventh priority to Other Operator Events.

3.1.8 Eighth priority to City Dark Date Events.

3.2 During Off-Season.

3.2.1 First priority to one Family Show of two weeks' duration if such Family Show has been Confirmed for presentation during the Family Off-Season Dates pursuant to Section 6.1 of this Exhibit. If any such Family Show has not been Confirmed for presentation during the Family Off-Season Dates pursuant to Section 6.1 of this Exhibit, such Family Show shall have a priority subordinate to the priority established by Section 3.2.2 and superior to the priority established by Section 3.2.3.

3.2.2 Second priority to City Priority Events  
that are Conventions.

3.2.3 Third priority to Commercial Events and Sports Franchise Events (other than Events sponsored by the Team), and as between Commercial Events and Sports Franchise Events, the Operator shall have the sole discretion to determine priority.

3.2.4 Fourth priority to Non-Convention City Priority Events.

3.2.5 Fifth priority to Events at which the Team conducts its summer rookie camp or its participation in the NBA draft of player personnel.

3.2.6 Sixth priority to Other Operator Events.

3.2.7 Seventh priority to City Dark Date Events.

4. Requests. Requests for Confirmed and Scheduled Events shall be submitted and acted upon as follows:

4.1 Requests for Schedule Dates. Subject to the priority requirements of Section 3.1 and 3.2 of this Exhibit, and except for the 100 dates that must be Scheduled for Suns Regular Games pursuant to Section 4.3.1 of this Exhibit, the Operator may Schedule any Event irrespective of the date such Event occurs.

4.2 Requests for City Priority Event Confirmed Dates. The City shall provide the Operator with requests for dates for Confirmed City Priority Events, and the Operator shall Confirm such Events within the following time limits:

4.2.1 Conventions requested to be Confirmed during the Prime Season. Subject to the priority requirements of Section 3.1 of this Exhibit, the Operator shall Confirm requests for Conventions during Prime Season that are Scheduled for dates that occur not more than five (5) years after the Receipt Date of such requests. Requests for Conventions during Prime Season that are Scheduled for dates that occur more than five (5) years after the Receipt Date of such requests may be Confirmed at the Operator's discretion.

4.2.2 Conventions requested to be Confirmed during the Off-Season. Subject to the priority requirements of Section 3.2 of this Exhibit, the Operator shall Confirm requests for Conventions during Off-Season that are Scheduled for dates that occur not more than ten (10) years after the Receipt Date of such requests. Requests for Conventions during Off-Season that are Scheduled for dates that occur more than ten (10) years after the Receipt Date of such requests may be Confirmed at the Operator's discretion.

4.2.3 Non-Convention City Priority Events to be Confirmed During any Season. Subject to the priority requirements of Sections 3.1 and 3.2 of this Exhibit, the Operator shall Confirm requests for Non-Convention City Priority Events that are Scheduled for dates that occur not more than one (1) year after the Receipt Date of such requests. Requests for Non-Convention City Priority Events that are Scheduled for dates that occur more than one (1) year after the Receipt Date of such requests may be Confirmed at the Operator's discretion. Subject to Article 7 of this Exhibit, it is generally expected that the City shall request ten (10) Non-Convention City Priority Events for each Schedule Year.

4.2.4 Maximum. Notwithstanding the foregoing, the Operator shall not be required to Confirm requests for more than fifty (50) City Priority Events for any Schedule Year; provided, however, that the Operator may Confirm requests for a greater number of City Priority Events for any Schedule year if the City commits to pay a commercially reasonable fee and other reasonable charges for the use of the Facility for each such Event.

4.2.5 Number of Conventions and Day

Preferences. Subject to Article 7 of this Exhibit, it is generally expected that the City will request twenty (20) Conventions for each Prime Season, and it is generally expected that the City will request twenty (20) Conventions for each Off-Season. The Team's Regular Game day preferences shall be Thursdays, Fridays and Saturdays, and Convention day preference shall be Sunday, Monday, Tuesday and Wednesday during Prime Season and any day during Off-Season. Any deviation from the day preferences set forth in the preceding sentence shall require the prior written approval of the Team, the Operator and the City.

4.3 Requests for Suns Games Schedule Dates. The Team shall provide the Operator with requests for dates for Scheduled or Confirmed Suns Games, and the Operator shall Confirm or Schedule such Suns Games within the following time limits:

4.3.1 Suns Regular Games. On or before \_\_\_ of each Schedule Year, the Team shall notify the Operator of requests for 100 Schedule Dates for Suns Regular Games that occur during the period commencing November 1 and ending April 20, inclusive, for each of the next five Schedule Years. On or before August 1 of each Schedule Year, the Team shall



Confirm dates for its home schedule of forty-two (42) Suns Regular Games for the season commencing on the next November 1 and terminating on the next April 20.

4.3.2 Suns Play-off Games. The Team shall be deemed to have requested all dates between April 20 and June 30 of each Schedule Year (the "Play-Off Period") for Suns Play-off Games. All such dates shall be Scheduled by the Operator for Suns Play-Off Games until the earlier of (a) seven (7) days after the date the play-off schedule is released by the NBA or (b) the date the Team notifies the Operator that the Team releases such play-off Schedule Dates. If the Team fails to release such play-off Schedule Dates within seven (7) days after the play-off schedule is released by the NBA, and if the Team is not scheduled in such play-off schedule, all dates deemed to be Schedule Dates pursuant to this Section 4.3.2 shall be deemed released. Notwithstanding the foregoing, the Operator may, prior to the release of dates Scheduled for Suns Play-Off Games, and with the Team's prior written consent, Schedule and Confirm one daytime Event on either Monday, Tuesday, Wednesday or Thursday of each week during a Play-Off Period, provided that there is not scheduled more than one other Confirmed Event (other than a Suns Play-Off Game) during such week, and provided that such other Confirmed Event commences and terminates on the same day.

4.4 Requests for Schedule Dates for National Hockey League Games, Minor Hockey League Games or Other Sports Franchises. If a professional hockey team or other professional sports team has contracted to play its games in the Arena, the Operator may Schedule dates for such team's home games, provided that the Operator shall not Confirm such dates for any Schedule Year until after the Operator Confirms the Team's home schedule of forty-two (42) Suns Regular Games for such Schedule Year pursuant to Section 4.3.1.

5. Special Confirmation Procedures for Prime Season.

5.1 Family Shows During Prime Season.

Notwithstanding any other provision of this Exhibit to the contrary, the Operator shall Confirm requests for three (3) Family Shows (each of eight (8) days consecutive duration) during the Prime Season of each Schedule Year, provided that (a) Family Shows shall not be Confirmed during the week that the first Suns Regular Game is played and during the week that the last Suns Regular Game is played, and (b) there must be twenty-one (21) consecutive calendar days before the closing of one Family Show and the opening of another Family Show. Notwithstanding the priorities established by Section 3.1 of this Exhibit, once a Family Show has been conducted during

Prime Season pursuant to this Section 5.1 on substantially similar dates (e.g., within the same calendar week) for two (2) consecutive Schedule Years, such Family Show shall have first priority for substantially similar dates in the Schedule Year immediately following such two consecutive Schedule Years.

5.2 Conventions During Prime Season. The Operator shall Confirm requests for Conventions during any Prime Season only after the Operator has Scheduled (a) Team Regular and Play-Off Games and (b) any hockey franchise regular season and play-off games (when applicable); provided, however, that the Operator shall not Confirm any Convention for dates for which a Family Show has first priority pursuant to Section 5.1 of this Exhibit. A Confirmed Date for a Convention shall not be cancelled or rescheduled without the written consent of the City and the Bureau unless the sponsor of such Convention has failed to sign and return an Arena Use Agreement no later than nine (9) months prior to the first day of such Convention (the date nine (9) months prior to the first day of a Convention shall be referred to herein as the "Cancellation Date"). No Confirmed Convention may be cancelled or rescheduled due to the failure of the sponsor of such Convention to sign and return an Arena Use Agreement unless such sponsor has been furnished with an Arena Use Agreement for the Confirmed Convention and unless such sponsor, the City and the Bureau each receive two notices,

one notice no later than ninety (90) days prior, and a second notice no later than thirty (30) days prior, to the Cancellation Date that the Confirmed date for such Convention will be cancelled or rescheduled if such Arena Use Agreement is not signed and returned on or before the Cancellation Date.

5.3 Commercial Events During Prime Season. The Operator shall Confirm requests for Commercial Events during Prime Season that are Scheduled for dates that occur not more than three (3) years after the Receipt Date of such requests. Requests for Confirmed Commercial Events during Prime Season that are Scheduled for dates that occur more than three (3) years after the Receipt Date of such requests may be Confirmed at the Operator's discretion.

5.4 Non-Convention City Priority Events During Prime Season. The Operator shall Confirm requests for Non-Convention City Priority Events (including Seasonal City Events, as such term is defined in the following sentence) that are Scheduled for dates that occur not more than one (1) year after the Receipt Date of such requests. For the purposes of the preceding sentence, a "Seasonal City Event" means a Non-Convention City Priority Event involving a holiday or a special program which must be or traditionally is held on a certain calendar date such as Cinco de Mayo or Martin Luther

King Holiday. Requests for Confirmed Non-Convention City Priority Events (including Seasonal City Events) that are Scheduled for dates that occur more than one (1) year after the Receipt Date of such requests may be Confirmed at the Operator's discretion. Notwithstanding any provision of this Exhibit to the contrary, the Operator shall not reschedule or cancel any Confirmed Seasonal City Event. The Operator may reschedule or cancel any Confirmed date for a Non-Convention City Priority Event other than a Seasonal City Event no later than six (6) months prior to such Confirmed date. The City shall be notified of any such rescheduling or cancellation.

5.5 Other Operator Events During Prime Season. The Operator shall Confirm requests for Other Operator Events during Prime Season in accordance with the priority requirements of Section 3.1 of this Exhibit.

5.6 City Dark Date Events. The Operator shall Confirm requests for City Dark Date Events during Prime Season for any date which is not otherwise Confirmed and which occurs not more than sixty (60) calendar days after the Receipt Date of such requests.

6. Special Confirmation Procedures for Off-Season.

6.1 Family Shows During Off-Season. Within ninety (90) days prior to the commencement of each Schedule Year, the Operator shall notify the City of a fourteen-day period during each of the Off-Seasons occurring during the next five Schedule Years ("the Family Off-Season Dates"). During the Family Off-Season Dates the Operator shall, upon the request of the City and the Bureau, Confirm one Family Show.

6.2 Conventions During Off-Season. A Confirmed Convention shall not be cancelled or rescheduled without the prior written consent of the City and the Bureau unless the sponsor of such Convention has failed to sign and return an Arena Use Agreement no later than nine (9) months prior to the first day of such Convention (the date nine (9) months prior to the first day of a Convention shall be referred to herein as the "Cancellation Date"). No Confirmed Convention may be cancelled or rescheduled due to the failure of the sponsor of such Convention to sign and return an Arena Use Agreement unless such sponsor has been furnished with an Arena Use Agreement for the Confirmed Convention and unless such sponsor, the City and the Bureau each receive two notices, one notice no later than ninety (90) days prior, and a second notice no later

than thirty (30) days prior, to the Cancellation Date that the Confirmed date will be cancelled or rescheduled if such Arena Use Agreement is not signed and returned on or before the Cancellation Date.

6.3 Commercial Events During Off-Season. The Operator shall Confirm requests for Commercial Events during the Off-Season that are Scheduled for dates that occur not more than three (3) years after the Receipt Date of such requests. Requests for Confirmed Commercial Events during Off-Season that are Scheduled for dates that occur more than three (3) years after the Receipt Date of such requests may be Confirmed at the Operator's discretion.

6.4 Non-Convention City Priority Events During Off-Season. The Operator shall Confirm requests for Non-Convention City Priority Events (including Seasonal City Events, as such term is defined in Section 5.4) that are Scheduled for dates that occur not more than one (1) year after the Receipt Date of such requests. Requests for Confirmed Non-Convention City Priority Events (including Seasonal City Events) that are Scheduled for dates that occur more than one (1) year after the Receipt Date of such requests may be Confirmed at the Operator's discretion. Notwithstanding any provision of this Exhibit to the contrary, the Operator shall

not reschedule or cancel any Confirmed Seasonal City Event. The Operator may reschedule or cancel a Confirmed date for a Non-Convention City Priority Event other than a Seasonal City Event no later than six (6) months prior to such Confirmed date. The City shall be notified of any such rescheduling or cancellation.

6.5 Other Operator Events During Off-Season. The Operator shall Confirm requests for Other Operator Events during Off-Season in accordance with the priority requirements of Section 3.2 of this Exhibit.

6.6 City Dark Date Usage. The Operator shall Confirm requests for City Dark Date Events during Off-Season for any date which is not otherwise Confirmed and which occurs not more than sixty (60) calendar days after the Receipt Date of such requests.

6.7 Other Sports Franchise Events. The Operator shall Confirm requests for Sports Franchise Events during Off-Season other than Events conducted by the Team or by a professional hockey team during Off-Season that are Scheduled for dates that occur not more than three (3) years after the Receipt Date of such requests. Requests for Confirmed Sports Franchise Events during Off-Season other than Events conducted



by the Team or by a professional hockey team that are Scheduled for dates that occur more than three (3) years after the Receipt Date of such requests may be Confirmed at the Operator's discretion.

7. Changes in Scheduling. Although the parties expect the City to request the number of Non-Convention Priority Events and Conventions as set forth in Sections 4.2.3 and 4.2.5 of this Exhibit, upon written request from the City, and with the prior written consent of the Operator (which consent shall not be unreasonably withheld), the Operator shall reschedule any Scheduled or Confirmed Date for a City Event to any unscheduled date (the "Rescheduled Date") in the Schedule Year or to any date previously Scheduled for another City Event; provided, however, that the Operator may in its sole discretion withhold its consent if within twenty (20) days after the Receipt Date of the City's rescheduling request the Operator Schedules (a) a first or second priority Event (as defined by Sections 3.1.1 and 3.1.2 hereof) for the requested Reschedule Date if such date is in the Prime Season, or (b) a first priority event (as defined in Section 3.2.1 hereof) for the requested Reschedule Date if such date is in the Off-Season.