

**SECOND AMENDMENT TO
FIRST RESTATED OPERATING AGREEMENT**

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

RECITALS:

A. The City is the owner of the land and improvements commonly known as the America West Arena (the "**Arena**").

B. The Operator operates the Arena pursuant to the Operating Agreement.

C. The Operator and the City desire to amend certain provisions of the Operating Agreement, as more specifically described in these recitals and set forth in this Amendment, to reflect the manner by which the Facility has been operated since its opening in 1992, and to clarify certain of the Operator's obligations under the Operating Agreement.

D. To assure that sufficient funds are available in the Renewal and Replacement Account for Capital Improvements at the Arena, the City and the Operator desire to amend the Operating Agreement to require increased Renewal and Replacement Account Payments effective for the Fiscal Year ending June 30, 2001, and continuing for each Fiscal Year thereafter during the term of the Operating Agreement.

E. The City and the Operator also desire to clarify the definition of "Capital Improvements" as set forth in the Operating Agreement in the manner provided in this Amendment.

F. Pursuant to the Operating Agreement, the Operator was required to enter into the Advertising Agreement providing for the Team's engagement of the Independent Advertising Agent to review and approve the allocation of advertising and sponsorship revenues generated at the Facility. The City and the Operator now desire to establish a new review and audit procedure for such revenues, including annual reviews and audits from an independent public accounting firm, to ensure the continued, appropriate allocation of revenues derived from advertising and sponsorships at the Facility. Believing it to be in the best interest of the City and the Operator, and in anticipation of the implementation of the new review and audit procedure, the Team, with the Operator's approval, entered into that certain Termination Agreement and Mutual Release, dated August 23, 2001 (the "**Termination Agreement**") whereby the Team terminated its

engagement of the Independent Advertising Agent.

G. The Operating Agreement sets forth certain reporting and audit requirements that require the Operator to deliver to the City financial and other information relevant to the Operator's operation of the Facility. Over the term of the Operating Agreement, the Operator's reports and audits have evolved so as to provide such financial and other information to the City in a form that differs from that required by the Operating Agreement, but which is satisfactory to the City. The City and the Operator therefore desire to amend the reporting and audit requirements set forth in the Operating Agreement to reflect the form of the Operator's reports and audits as they are currently being provided, and to modify the timing of such reports and audits in a manner consistent with the times at which such reports and audits are currently being provided.

AGREEMENT:

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

1. **Section 4.2.2 Amended.** Section 4.2.2 of the Operating Agreement is hereby amended to state in its entirety as follows:

4.2.2 prepare and submit to the City, on or before August 1 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. In addition, the Operator shall submit to the City on such date a projection of the Capital Improvements proposed by the Operator for the next two Fiscal Years, together with (i) a description of the nature of each Capital Improvement proposed; (ii) an estimate of the cost of each Capital Improvement proposed; and (iii) and a designation as to whether the cost of each Capital Improvement proposed is proposed by the Operator to be paid from the Renewal and Replacement Account;

2. **Section 4.2.6 Deleted.** Section 4.2.6 of the Operating Agreement is hereby deleted in its entirety.

3. **Section 4.11.1 Amended.** The first sentence of Section 4.11.1 of the Operating Agreement is hereby amended to state in its entirety as follows:

4.11.1 Procedure. On or before October 31 of each Fiscal Year after the Operations Start Date, or more frequently if the Operator elects, the Operator shall provide to the City (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 by each such party under the corresponding

Vendor Contract, accompanied by a sworn affidavit from the Operator attesting, with respect to each party so listed, that, to the best knowledge of the Operator, such party either is or is not an Affiliate of the Operator and that no consideration has been furnished to such party except as expressly disclosed in such Vendor Contract or in such affidavit, or as is customary in the operation of facilities comparable to the Facility.

4. **Section 5.1.4.2 Amended.** Section 5.1.4.2 of the Operating Agreement is hereby amended to state in its entirety as follows:

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 submit to an annual Independent Verification for each Fiscal Year, as required by and described in Section 5.1.8 hereof, for the purposes of calculating and analyzing the Advertising Revenue and Allocations for such Fiscal Year in the manner described in Section 5.1.8 hereof. Pursuant to the Termination Agreement, the Team is required to make annual payments to the Independent Advertising Agent through December 2009 (all such payments are referred to herein as "Termination Payments"). Pursuant to the Advertising Agreement, 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 Termination Payments and the professional fees incurred in obtaining the Independent Verification required by Section 5.1.8 (the amount of the fees for such Independent Verification shall be referred to herein as the "Independent Verification Fees"). After paying the Termination Payments and the Independent Verification Fees, 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). Any payment required by the preceding sentence (the "Advertising Payment") shall be made within sixty (60) days after the end of the preceding 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 such 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. **Section 5.1.5 Amended.** Section 5.1.5 of the Operating Agreement is hereby amended to state in its entirety as follows:

5.1.5 Priority Operating Fee Payments. Except as provided in Section 5.1.6, (i) commencing on the Operations Start Date, during each Fiscal Year (or any portion thereof) prior to the Thirtieth Anniversary Date, the Operator shall make 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%), and (ii) commencing for the Fiscal Year ending in 2003, during each Fiscal Year (or any portion thereof) prior to the Thirtieth Anniversary Date, the Operator shall make payments to the City equal to the aggregate of (x) the amount required to amortize the Reimbursable City Amount in equal annual installments over the number of Fiscal Years from and including the Fiscal Year that ends in 2003 to and including the Fiscal Year during which the Thirtieth Annual Anniversary occurs, and (y) interest at the rate of 6.5% per year on the portion of the Reimbursable City Amount that has not then been paid to the City pursuant to this Section 5.1.5.

The Operator acknowledges that the Reimbursable City Amount will be disbursed by the City under the Construction Administration Agreement in multiple disbursements over time, and that the interest to be paid by the Operator to the City pursuant to the immediately preceding paragraph shall, with respect to each such disbursement, begin to accrue on the date such disbursement is made by the City.

The amounts to be paid to the City pursuant to clause (i) and clause (ii) of this Section 5.1.5 are collectively the "Priority Operating Fee

Payment.” Amounts paid by the Operator to the City as Priority Operating Fee Payments shall be applied first to the amounts due and payable under clause (i) of the first sentence of this Section 5.1.5 until all such amounts have been paid; second to the interest amounts that are unpaid but then due and payable under clause (ii) of the first sentence of this Section 5.1.5 until all such interest amounts have been paid; and third to the amortization payments then due and payable under clause (ii) of the first sentence of this Section 5.1.5 until all such amounts have been paid.

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

At the end of the Fiscal Year ending June 30, 2003, the amortization to which clause (ii)(x) of this Section 5.1.5 refers shall be made based upon the actual Reimbursable City Amount as of the end of such Fiscal Year. If, during a given Fiscal Year thereafter, the City makes additional disbursements under the Construction Administration Agreement, the amount of the amortization payment to be made by the Operator pursuant to clause (ii)(x) of this Section 5.1.5 for such Fiscal Year and thereafter shall be recalculated at the end of such Fiscal Year by re-amortizing the total amount of the Reimbursable City Amount (including such additional disbursements) that has not then been paid to the City pursuant to this Section 5.1.5 in equal annual installments over the number of Fiscal Years from and including such given Fiscal Year to and including the Fiscal Year during which the Thirtieth Annual Anniversary occurs. Following any such re-amortization, the amount to be paid by the Operator under clause (ii)(x) of this Section 5.1.5 shall (until the next re-amortization required by this paragraph, if any) be such re-amortized amount.

6. **Section 5.1.8 Added.** A new Section 5.1.8 is hereby added to the Operating Agreement, to state in its entirety as follows:

5.1.8 **Independent Verification of Advertising Revenue and Allocations.** No later than August 1, 2002, the Operator and the Team shall jointly engage Arthur Andersen, L.L.P. or another independent public accounting firm reasonably acceptable to the City (the “Advertising Auditors”) to perform the services described in this Section 5.1.8 (the “Independent Verification”). Commencing with the Fiscal Year ending June 30, 2002 and continuing for each Fiscal Year thereafter, the Advertising Auditors shall perform the following services: (i) calculation of the Advertising Revenue for such Fiscal Year; (ii) calculation of the aggregate Allocations for all sponsorship/advertising agreements

for such Fiscal Year; (iii) calculation of the Allocations within each sponsorship/advertising agreement for such Fiscal Year; (iv) analysis of each component of such Allocations as a percentage of Advertising Revenues for such Fiscal Year; and (v) comparison of the Allocations for such Fiscal Year within each sponsorship/advertising agreement to the Allocations for similar agreements between the Operator and other sponsors/advertisers at the Facility. The calculations and comparisons of the Advertising Auditors described in the preceding sentence shall, with respect to a given Fiscal Year, be concluded and reported in writing to the City, the Operator and the Team no later than the first November 1 after the end of such Fiscal Year. The Operator and the Team shall issue joint instructions to the Advertising Auditors which shall be substantially in the form of Exhibit 5.1.8 attached hereto, subject to such changes as may be recommended by the Advertising Auditors and agreed to by the City, the Operator and the Team, consistent with this Agreement. The City and the Operator shall each provide to the Advertising Auditors all information and documents required by the Advertising Auditors to perform a given Independent Verification within thirty (30) days after receipt of a written request therefor from the Advertising Auditors, and the Operator shall cause the Team to provide to the Advertising Auditors (as required by the Advertising Agreement) all information and documents required by the Advertising Auditors to perform a given Independent Verification from the Team within thirty (30) days after the Operator's receipt of a copy of a written request therefor from the Advertising Auditors. All information provided by the City, the Operator or the Team pursuant to the immediately preceding sentence shall be accompanied by a certificate signed by an authorized officer or official of the party providing such information attesting to the propriety and completeness of the information provided. If the Independent Verification for a given Fiscal Year, or the City's own audit and review conducted pursuant to Section 5.6.3 hereof, establishes an issue regarding any Allocation, the City, the Operator and the Team (as required by the Advertising Agreement) shall meet to discuss, and if necessary resolve, such issue. Any dispute regarding any Allocation that is not so resolved shall be subject to ADR.

7. **Section 5.3.1 Amended.** Section 5.3.1 of the Operating Agreement is hereby amended to state in its entirety as follows:

5.3.1 **Schedule of Payments.** Commencing with the Fiscal Year ending June 30, 2001, and continuing for each Fiscal Year thereafter, the Operator shall make Renewal and Replacement Account Payments to the Renewal and Replacement Account in the

amount of \$750,000 per year, increased effective the first day of each such 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 this Section 5.3.1 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.

8. **Section 5.3.3 Amended.** Section 5.3.3 of the Operating Agreement is hereby amended to state in its entirety as follows:

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 this Agreement. The Operator may, in addition to proposing Capital Improvements by including such proposed Capital Improvements in an Annual Budget in the manner required by Section 4.2.2, from time to time propose Capital Improvements, any portion of the costs of which is to be paid from the Renewal and Replacement Account, by written proposal submitted to the City. The City may from time to time propose Capital Improvements, any portion of the costs of which is to be paid from the Renewal and Replacement Account, by written proposal submitted to the Operator. Except for expenditures for Emergency Capital Improvements, no liability or obligation for any Capital Improvement, any portion of the costs of which is to be paid from the Renewal and Replacement Account, shall be incurred until the corresponding Capital Improvement is authorized and directed by joint writing signed 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 within five (5) days after the General Manager of the Operator authorizes 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 authorized by the General Manager of the Operator as an Emergency Capital Improvement was not for an Emergency Capital Improvement, the amount expended from the Renewal and Replacement Account for the claimed 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 a determination is made pursuant to ADR, that such expenditure was not for an Emergency Capital Improvement. Prior to the Thirtieth Anniversary Date, the Operator and the City shall each exercise their respective reasonable business judgment in deciding whether to authorize and direct the expenditure of funds from the Renewal and Replacement Account for proposed 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 authorize and direct the expenditure of funds from the Renewal and Replacement Account for Capital Improvements intended to maximize the Facility's revenue generating capacity. After a party has proposed a Capital Improvement (other than an Emergency Capital Improvement) to the other party (after the proposing party has exercised its reasonable business judgment and determined that funds from the Renewal and Replacement Account should or should not, as the case may be, be expended for such proposed Capital Improvement), the party receiving such proposal shall notify the proposing party in writing of the determination by the party receiving the proposal whether funds from the Renewal and Replacement Account should or should not, as the case may be, be expended for such proposed Capital Improvement. If the parties agree to the expenditure of funds from the Renewal and Replacement Account for a given proposed Capital Improvement, the City shall cause the City Designee, and the Operator shall cause the General Manager of the Operator, to authorize and direct such expenditure by writing signed by both and describing the expenditure and the Capital Improvements thereby authorized and directed. Any dispute regarding the authorization of a proposed Capital Improvement, and/or the expenditure of funds from the Renewal and Replacement Account therefor, shall be subject to ADR. Nothing in this Section 5.3.3 is intended, or shall be construed, to limit the right of the Operator (under any other provision of this Agreement) to make Additions that also constitute Capital Improvements as Operating Expenses.

9. **Section 5.6.2 Amended.** Section 5.6.2 of the Operating Agreement is hereby amended to state in its entirety as follows:

The Operator shall furnish to the City on or before October 31 after the end of each Fiscal Year, (a) the Operator's balance sheet as of the close of such Fiscal Year, (b) the Operator's statement of operations for such Fiscal year, (c) the Operator's statement of cash

flows for such Fiscal Year, and (d) the Operator's statement of changes in partnership equity for such Fiscal year, each prepared in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding Fiscal 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 Fiscal Year for which such statements are submitted, and accompanied by the unqualified report thereon of certified public accountants (the "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 Fiscal 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.

10. **Section 5.6.2.1 Amended.** Section 5.6.2.1 of the Operating Agreement is hereby amended to state in its entirety as follows:

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 Excess 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 the following:

"We have audited in accordance with generally accepted auditing standards, the balance sheets of PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP (PADLP) as of _____, and the related statements of operations, partners' deficit and cash flows for the year then ended, and have issued a separate report thereon dated _____. Our audit was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The accompanying special purpose schedule is the responsibility of PADLP's management and is presented for purposes of complying with the terms of Section 5.6.2.1 of the First Restated Operating Agreement dated July 19, 1989, between the City of Phoenix and PADLP, as amended, and is not part of

the basic financial statements. This special purpose schedule has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, fairly states in all material respects the financial data required to be set forth therein in relation to the basic financial statements taken as a whole.”

11. **Section 5.6.2.2 Amended.** Section 5.6.2.2 of the Operating Agreement is hereby amended to state in its entirety as follows:

5.6.2.2 On or before October 31 after the end of each Fiscal Year, 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) no material Facility Revenue has been paid or distributed, directly or indirectly, to or for the benefit of the Operator or any Affiliate of the Operator, except as authorized by this Agreement. The procedures to be performed shall include, but shall not be limited to, the following:

(a) Examination of the 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.

On or before October 31 after the end of each Fiscal Year, the Accountants shall furnish to the City and the Operator a copy of the Accountants’ report indicating that the procedures discussed in this Section 5.6.2.2 have been performed and the results of such procedures.

12. **Section 5.6.2.3 Amended.** Section 5.6.2.3 of the Operating Agreement is hereby amended to state in its entirety as follows:

5.6.2.3 On or before October 31 after the end of each Fiscal Year, the Operator shall provide to the City a statement from the

Accountants that states (a) in the conduct of the audit of the Accountants performed under Section 5.6.2, nothing came to the attention of the Accountants that caused the accountants to believe that the Operator was not in compliance with the Operator's covenants as stated in Article V of this Agreement, and (b) the affidavit requirements set forth in Sections 4.10 and 4.11 of this Agreement have been satisfied, in each case insofar as they relate to accounting or auditing matters.

13. **Section 5.6.2.4 Deleted.** Section 5.6.2.4 of the Operating Agreement is hereby deleted in its entirety.

14. **Section 5.6.3 Amended.** Section 5.6.3 of the Operating Agreement is hereby amended to state in its entirety as follows:

5.6.3 City Audit and Review. 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 under this Agreement, the City shall notify the Operator of the amount of such underpayment. If the Operator disputes the existence and/or 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 an agreement as to the amount, if any, of such underpayment within thirty (30) days after the Operator received the City's notice regarding the claimed underpayment, such dispute shall be submitted to ADR. The amount of any underpayment determined by the arbitrator, or agreed upon by the parties, shall, upon such determination or agreement, become immediately due and payable to the City by the Operator, plus interest computed at the Premium Rate from the date the amount(s) underpaid 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. The amount of any overpayment to the City determined by the arbitrator, or by agreement of the parties, shall, upon such determination or agreement, become immediately due and payable to the Operator by the City, plus interest computed at the Premium Rate from the date(s) the amount overpaid was paid. In addition, The City shall be entitled, at its expense with respect to each Fiscal Year, to conduct an independent audit, review and evaluation of the Advertising Revenue for such Fiscal Year; the calculation of the aggregate Allocations for all sponsorship/advertising agreements for such Fiscal Year, the calculation of the Allocations within each sponsorship/advertising agreement for such Fiscal Year, the analysis of each component of the Allocations as a percentage of Advertising Revenues for such Fiscal Year, and the analysis of the Allocations for such Fiscal Year within each sponsorship/advertising agreement

in comparison to similar agreements between the Operator and other sponsors/advertisers at the Facility. The City and the Operator acknowledge that the public disclosure of the substance of Advertising Agreements may benefit competitors of the Arena, and thereby harm the interest of each of the City and the Operator. Accordingly, the City and the Operator shall from time to time agree to and implement reasonable methods of conducting the audits, reviews and evaluations contemplated by this Section 5.6.3 in a manner that will preserve the confidentiality of the substance of Advertising Agreements, while complying with applicable law.

15. **Section 9.7.6 Amended.** Section 9.7.6 of the Operating Agreement is hereby amended to state in its entirety as follows:

9.7.6 Prior to the Operations Start Date, the Operator shall provide to the City a copy of such policies, together with certificates from the companies issuing such policies certifying that each of such policies is in full force and effect. 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, with a copy to the City of Phoenix, Risk Management Department, 251 W. Washington Avenue, 8th Floor, Phoenix, Arizona 85003, Attention: Sam Pignato.

16. **Exhibit 1.1 Amended.** Exhibit 1.1 to the Operating Agreement is hereby amended first, by deleting all Section numbers preceding the text of the definitions set forth in Exhibit 1.1 to the Operating Agreement, and then as follows:

A. **Definition of “Advertising Auditors”.** A new definition of “Advertising Auditors” is hereby added to Exhibit 1.1 to the Operating Agreement to state in its entirety as follows:

Advertising Auditors has the meaning set forth in Section 5.1.8.

B. **Definition of “Advertising Revenue”.** The definition of “Advertising Revenue” in Exhibit 1.1 to the Operating Agreement is hereby amended to state in its entirety as follows:

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

C. **Definition of “Allocations”.** A new definition of “Allocations” is hereby added to Exhibit 1.1 to the Operating Agreement to state in its entirety as follows:

Allocations shall mean the allocations of Advertising Revenue for a given Fiscal Year or for a given sponsorship/advertising agreement among the following components: (i) Fixed and Permanent Commercial Advertising Revenue, (ii) Temporary Commercial Advertising Revenue for City Events (where permitted), (iii) Temporary Commercial Advertising Revenue during Home Games, and (iv) Other Advertising Revenue.

D. Definition of "Capital Improvement". The definition of "Capital Improvement" in Exhibit 1.1 to the Operating Agreement is hereby amended to state in its entirety as follows:

Capital Improvement means (i) any permanent alteration or modification of, renovation of, addition to and/or fixture attached to and incorporated into, the Facility, the cost of all of the related components of which exceeds \$50,000 (Adjusted Annually), the useful life of which equals or exceeds three (3) years and the cost of which, under generally accepted accounting principles, is required to be capitalized; or (ii) any item or group of functionally related items of personal property acquired for use solely in connection with the operation of the Facility, the cost of which exceeds \$50,000 (Adjusted Annually), the useful life of which equals or exceeds two (2) years and the cost of which, under generally accepted accounting principles, is required to be capitalized, the effect of the implementation or acquisition of each of which shall be to maintain and maximize the revenue generating capacity of the Facility as contemplated and required by Section 5.3.3.

E. Definition of "Construction Administration Agreement". A new definition of "Construction Administration Agreement" is hereby added to Exhibit 1.1 to the Operating Agreement to state in its entirety as follows:

Construction Administration Agreement means that certain Construction and Administration and Additional Cost Payment Agreement dated as of July 31, 2001 by and between the City and the Operator (City Contract Number 96733), as amended.

F. Definition of "Independent Verification". A new definition of "Independent Verification" is hereby added to Exhibit 1.1 to the Operating Agreement to state in its entirety as follows:

Independent Verification has the meaning set forth in Section 5.1.8.

G. Definition of “Independent Verification Fees”. A new definition of “Independent Verification Fees” is hereby added to Exhibit 1.1 to the Operating Agreement to state in its entirety as follows:

Independent Verification Fees has the meaning set forth in Section 5.1.4.2.

H. Definition of “Other Advertising”. A new definition of “Other Advertising” is hereby added to Exhibit 1.1 to the Operating Agreement to state in its entirety as follows:

Other Advertising means (i) radio, television and all other non-Commercial Advertising during the broadcast or transmission of Home Games, (ii) every other form of product or service advertising in connection with sponsorship, endorsement or promotion of the Team and Home Games, and (iii) advertising described in subsections (a), (b) and (c) of the definition of “Commercial Advertising.”

I. Definition of “Other Advertising Revenue”. A new definition of “Other Advertising Revenue” is hereby added to Exhibit 1.1 to the Operating Agreement to state in its entirety as follows:

Other Advertising Revenue means (for each Fiscal Year) the sum of gross receipts from Other Advertising (during such Fiscal Year).

J. Definition of “Records”. The definition of “Records” in Exhibit 1.1 to the Operating Agreement is hereby amended to state in its entirety as follows:

Records means the complete and accurate records of the Facility, including the annual reports of the Advertising Auditors as required by Section 5.1.8, that the City is permitted to inspect and audit pursuant to Section 5.6 and that are required to enable the City to conduct the audits, evaluations and reviews described in Section 5.6.3.

K. Definition of “Reimbursable City Amount”. A new definition of “Reimbursable City Amount” is hereby added to Exhibit 1.1 to the Operating Agreement to state in its entirety as follows:

Reimbursable City Amount means the aggregate amount by which the amount disbursed or expended by the City pursuant to the Construction Administration Agreement exceeds the amount of Nine Million Nine Hundred Thousand Dollars (\$9,900,000); provided, however, that the Reimbursable City Amount shall not exceed the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000).

L. Definition of "Termination Agreement". A new definition of "Termination Agreement" is hereby added to Exhibit 1.1 to the Operating Agreement to state in its entirety as follows:

Termination Agreement means that certain Termination Agreement and Mutual release dated August 23, 2001 between the Team and the Independent Advertising Agent, whereby the Team terminated its engagement of the Independent Advertising Agent.

M. Definition of "Termination Payment". A new definition of "Termination Payment" is hereby added to Exhibit 1.1 to the Operating Agreement to state in its entirety as follows:

Termination Payment has the meaning set forth in Section 5.1.4.2.

17 **Exhibit 5.1.8 Added.** Exhibit 5.1.8 attached to this Amendment is hereby added to the Operating Agreement as Exhibit 5.1.8 to the Operating Agreement.

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

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

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

[Signatures are on the next page]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the date first written above.

OPERATOR

**PHOENIX ARENA DEVELOPMENT
LIMITED PARTNERSHIP**

By: Phoenix Arena Development
Corporation, its General Partner

By: Paige R. Peterson

Name: Paige R. Peterson

Its: Vice President

CITY

THE CITY OF PHOENIX, an Arizona municipal
Corporation acting by its City Manager, Frank
Fairbanks

By: Patrick Grady

Patrick Grady
Community and Economic Development
Director

ATTEST

Vicky Miel
City Clerk

APPROVED AS TO FORM

Alan [Signature]
ACTING City Attorney

2002 AUG - 5 PM 3: 50
CITY CLERK DEPT
[Signature]

EXHIBIT 5.1.8 -- ADVERTISING AUDITORS' INSTRUCTIONS

During the term of the that certain First Restated Operating Agreement dated July 19, 1989, between the City and the Operator, as amended (with such agreement as so amended being referred to herein as the "**Operating Agreement**"), the Advertising Auditors shall perform the following services for the Operator and the City in accordance with these Instructions (the "**Instructions**"). Except as expressly set forth herein, the Advertising Auditors shall not disclose to the City any advertiser specific information provided to the Advertising Auditors by the Operator regarding advertising other than advertising for City Events. Capitalized terms used but not defined herein shall have the meanings assigned to them in the Operating Agreement.

1. Advertising Revenue for Fiscal Year ended June 30, 2001. No later than November 1, 2002, the Advertising Auditors shall calculate and report the Advertising Revenue for Fiscal Year ended June 30, 2001.

2. Allocations and Analysis for Fiscal Year ended June 30, 2001. No later than November 1, 2002, the Advertising Auditors shall:

2.1 Calculate and report the Allocations for Fiscal Year ended June 30, 2001.

2.2 Calculate and report each component of the Allocations for Fiscal Year ended June 30, 2001 (i.e. Fixed and Permanent Commercial Advertising, Temporary Commercial Advertising for City Events (where permitted), Temporary Commercial Advertising during Home Games, and Other Advertising) as a percentage of Advertising Revenue for Fiscal Year ended June 30, 2001.

3. Annual Services. For the Fiscal Year ending June 30, 2002, and for each Fiscal Year thereafter during the Term of the Operating Agreement, the Advertising Auditors shall make the following calculations and evaluations and shall issue the following written reports to the City, the Operator and the Team no later than November 1 of the first Fiscal Year after the Fiscal Year for which the report is prepared:

3.1 Advertising Revenues. The Advertising Auditors shall calculate and report Advertising Revenues for the Fiscal Year for which the report is prepared. The Advertising Auditors shall review all Existing Agreements relating to advertising and/or sponsorship and verify that the total Advertising Revenues specified in such agreements are accurately reported as Advertising Revenues.

3.2 Allocations and Analysis. The Advertising Auditors shall calculate and report the Allocations for such Fiscal Year, and shall calculate and report each component of the Allocations for such Fiscal Year (i.e. Fixed and Permanent Commercial Advertising, Temporary Commercial Advertising for City Events (where permitted), Temporary Commercial Advertising during Home Games, and Other Advertising) as a percentage of Advertising Revenue for such Fiscal Year.

3.3 Comparison to Prior Fiscal Year. The Advertising Auditors shall calculate and report (a) the actual dollar increase or decrease of each component of the Allocation, and (b) the increase or decrease of each component as a percentage of Advertising Revenue, as compared to the same calculations for the immediately preceding Fiscal Year.

3.4 Comparison to Similar Agreements. The Advertising Auditors shall (a) compare each component of the Allocation of each advertising/sponsorship agreement (each a "New Agreement") entered into during such Fiscal Year against allocations of the same components of similar advertising/sponsorship agreements (each an "Existing Agreement") entered into prior to such Fiscal Year, and (b) report the amount and percentage of variances noted between similar components in Allocations in New Agreements and Existing Agreements. In determining such variances, the Advertising Auditors shall select Existing Agreements that contain components as reasonably similar to New Agreements, taking into account specific components, placement of signs, duration of agreements, etc.

4. Information Requests. The Advertising Auditors shall make such written requests of the parties to the Operating Agreement (and of the Team) as the Advertising Auditors shall deem necessary to obtain the information and documents required to perform the Advertising Auditors' obligations in accordance with these Instructions. Such written requests shall be made in accordance with the notice provisions of Section 19.1 of the Operating Agreement and of Section 13.1 of the Advertising Agreement. Each party to the Operating Agreement (and the Team pursuant to the Advertising Agreement) has agreed to comply with such requests within thirty (30) days of its receipt of such request. The Advertising Auditors shall promptly notify each party to the Operating Agreement in accordance with Section 19.1 of the Operating Agreement (and the Team in accordance with the notice provisions of Section 13.1 of the Advertising Agreement) of any party's failure to comply with such a written request for information or documents.

5. Further Direction. In their discretion, the Advertising Auditors may submit written requests to the City, the Operator and the Team for further clarification, direction or guidance regarding these Instructions. The City, the Operator and the Team shall agree in writing to the clarification, direction or guidance to be provided to the Advertising Auditors in response to any such written request(s), and any such clarification, direction or guidance shall be attached hereto and incorporated herein. The Advertising Auditors shall not accept any clarification, direction or guidance regarding these Instructions that is not contained in a writing signed by the City, the Operator and the Team.

6. Confidentiality. The City and the Operator acknowledge that the public disclosure of the substance of Advertising Agreements may benefit competitors of the Arena, and thereby harm the interest of each of the City and the Operator. Accordingly, the Advertising Auditors shall comply with such additional instructions as the City and the Operator may from time to time jointly provide to the Advertising Auditors pertaining the methods of conducting the Independent Verifications in a manner that will preserve

the confidentiality of the substance of Advertising Agreements while complying with applicable law.