

DOWNTOWN MULTIPURPOSE ARENA

FIRST RESTATED

ASSURANCE AGREEMENT

DATED as of JULY 19, 1989

By and Between

CITY OF PHOENIX, ARIZONA,

City,

and

PHOENIX SUNS LIMITED PARTNERSHIP,

Team,

and

PHOENIX SUNS MARKETING LIMITED PARTNERSHIP,

Marketer.

TABLE OF CONTENTS

**FIRST RESTATED
ASSURANCE AGREEMENT**

	<u>PAGE</u>
RECITALS	1
ARTICLE 1 SUBJECT OF AGREEMENT	8
1.1 Definitions	8
1.2 Restatement	8
ARTICLE 2 TERM.	10
2.1 Commencement, Thirtieth Anniversary Date and Expiration	10
2.2 Master Abatement	11
ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS	12
3.1 City Representations, Warranties and Covenants	12
3.1.1 Authority	12
3.1.2 No Conflicts	13
3.1.3 No Violation of Laws	13
3.1.4 Redevelopment Project.	14
3.1.5 Litigation	14
3.1.6 This Section Intentionally Omitted	15
3.1.7 Limited Recourse	15
3.1.8 Site Possession and Title	15
3.1.9 Environmental and Historical Laws	16
3.1.10 Parking.	19

	<u>PAGE</u>
3.1.10.1 Suites	19
3.1.10.2 Promotional and Operational. . .	19
3.1.10.3 Jefferson and Third Street Garage	20
3.1.10.4 Other Parking	21
3.1.11 Non-Competition	22
3.1.11.1 Competing Facilities Defined	22
3.1.11.2 Prohibition Against Economic Assistance to Competing Facility	26
3.1.11.2.1 Equivalent Services to Arena.	26
3.1.11.3 Civic Plaza Use by City Which is Competitive With Arena	26
3.1.11.4 Arena Use by City Which is Competitive With Use by Operator or Team	28
3.1.11.5 Ownership or Control	28
3.1.11.6 Enforcement	29
3.1.11.7 Optional Remedy of Team	30
3.1.11.8 Severability	31
3.1.12 No Interference	31
3.1.12.1 General	31
3.1.12.2 Grand Prix	32
3.2 Team Representations, Warranties and Covenants.	35
3.2.1 Organization	35

	<u>PAGE</u>
3.2.2 Authorization; No Violation	36
3.2.3 Litigation	36
3.2.4 No Payments.	36
3.2.5 No Conflicts	37
3.2.6 No Violations of Laws.	37
3.2.7 This Section Intentionally Omitted	38
3.2.8 Environmental and Historical Laws	38
3.3 Marketer Representations, Warranties and Covenants.	38
3.3.1 Organization	38
3.3.2 Authorization; No Violation	39
3.3.3 Litigation	39
3.3.4 No Payments.	39
3.3.5 No Conflicts	40
3.3.6 No Violation of Laws	40
3.3.7 This Section Intentionally Omitted	40
3.3.8 Environmental and Historical Laws	41
3.4 Mutual Covenants	41
3.4.1 Additional Documents and Approval	41
3.4.2 Good Faith	42
3.4.3 No Termination	42
3.4.4 Cooperation	43
3.4.5 Notice of Matters	43

	<u>PAGE</u>
3.4.6 Compliance with Laws	44
3.4.7 Survival of Covenants and Warranties	44
3.4.8 Recognition	45
ARTICLE 4 ADDITIONAL COVENANTS	45
4.1 Use Covenant	45
4.2 No Interference	46
4.3 Team Revenue	47
4.4 Negative Pledge	47
4.5 Amendment of Documents	48
4.6 Opinion of Team's Counsel	49
4.7 Opinion of City's Counsel	50
4.8 Adverse Governmental Action	50
4.9 City Cure Rights	50
4.10 Prohibition Against Assignments of Agreement or Transfer of the Facility by the City	51
ARTICLE 5 REPLACEMENT OPERATOR	52
5.1 Replacement of Operator	52
5.2 Selection of Replacement Operator	52
5.2.1 Third Party Beneficiary	53
5.3 Replacement Operator Fee	54
5.4 Survival of Agreements with Team and Marketer	54
5.5 No Amendments to Suite License Agreements	55
5.6 Certain Amendments to Operating Agreement and Equivalent Actions	55

	<u>PAGE</u>
5.7	Suns License 56
5.8	Advertising Agreement 57
5.9	Suns Office Lease 57
5.10	Suite Marketing Agreement 58
5.11	Arts Contribution 58
ARTICLE 6	DEFAULTS, REMEDIES AND TERMINATION 59
6.1	Termination of the Suns License and other Related Agreements Controlled Hereunder 59
6.2	Termination of This Agreement and Suns License by Team 59
6.3	Termination of this Agreement and Suns License by City 62
6.4	Termination of this Agreement and Suns License by Team or City 64
6.4.1	Termination of DDA 65
6.4.2	Construction Start Date 65
6.4.3	Operations Start Date 65
6.4.4	Restoration Deadlines 65
6.5	Rights After Termination of Agreement 66
6.6	Events of Default 66
6.7	Specific Performance 68
6.8	Liquidated Damages 69
6.8.1	Intent and Objective 69
6.8.2	Payment Obligations 71
6.9	Restoration Losses 72

	<u>PAGE</u>
6.10 Institution of Litigation Permitted by Section 6.11	74
6.11 Dispute Resolution Procedures	75
6.12 Rights and Remedies are Cumulative	80
6.13 Costs, Expenses and Fees	80
6.14 Applicable Law	81
6.15 Acceptance of Legal Process	81
6.15.1 Service on City	81
6.15.2 Service on the Team or the Marketer	82
ARTICLE 7 INDEMNIFICATION	82
ARTICLE 8 LIMITATION OF LIABILITY	83
8.1 Team	83
8.2 Marketer	84
8.3 City	84
ARTICLE 9 GENERAL PROVISIONS	85
9.1 Notices, Demands and Communications Between the Parties	85
9.2 Time of Essence	86
9.3 Conflict of Interests	86
9.4 Force Majeure and Abatement Periods	86
9.5 Interest	87
9.6 Right to Inspection and Audit of Records	88
9.6.1 Inspection of Records	88
9.6.2 Audit	89

	<u>PAGE</u>
9.6.3 Confidentiality	90
9.7 Severability	90
9.8 Captions	90
9.9 Interpretations	90
9.10 Entire Agreement, Waivers and Amendments	91

Exhibit List.

Exhibit 1.1 Definitions
Exhibit 4.4 Negative Pledge
Exhibit 6.2, 4.1 Obsolescence ADR
Exhibit R-N Pro Forma Financial Information

FIRST RESTATED ASSURANCE AGREEMENT

THIS FIRST RESTATED ASSURANCE AGREEMENT ("Agreement") is dated as of July 19, 1989 and entered into by and between the CITY OF PHOENIX, ARIZONA, a municipal corporation ("City"), the PHOENIX SUNS LIMITED PARTNERSHIP, a Delaware limited partnership ("Team"), and the PHOENIX SUNS MARKETING LIMITED PARTNERSHIP, a Delaware limited partnership ("Marketer").

RECITALS:

A. The City and the Operator have entered into the DDA for the development of the Site and construction of the Facility.

B. The City and the Operator have entered into the Operating Agreement for the operation of the Facility, for the licensing of Suites in the Arena, for the licensing or leasing of a restaurant and an athletic club in the Arena, for the licensing of Operator Events at the Facility and for the marketing and sale of Commercial Advertising at the Facility for a period of forty (40) years from the License Commencement Date (or a shorter period if the Operating Agreement is terminated earlier pursuant to its terms or a longer period if the term is suspended).

C. The Operator and the Team have entered into the Suns License of even date herewith permitting and obligating the Team to play all of its Home Games at the Facility for a period of forty (40) years from the License Commencement Date (or a shorter period if the Suns License is terminated earlier pursuant to the terms of this Agreement or a longer period if the term is suspended).

D. For the purpose of enhancing the City's and the Operator's benefits under the DDA and the Operating Agreement, and the Team's benefits under the Suns License, the Operator and the Team have entered into the Suns Office Lease for the leasing of space in the Arena to be used for the Team's offices and for a store for the sale of Hard Concessions. The term of such lease will be for a period of forty (40) years from the Lease Commencement Date (or a shorter period if the Suns Office Lease is terminated earlier pursuant to its terms or pursuant to the terms of this Agreement or a longer period if the term is suspended).

E. The Operator and the Marketer have entered into the Suite Marketing Agreement for the marketing and sale of Suites for a period commencing July 19, 1989 and ending upon the termination or expiration of the Suns License.

F. The Operator and the Team have entered into the Advertising Agreement for the marketing and sale of all Commercial Advertising for a term commencing July 19, 1989 and ending upon the termination or expiration of the Suns License.

G. The Operator and the Marketer have entered into the Listing Agreement for the Suns Office Lease and to provide for the leasing or licensing of a restaurant and an athletic club and other areas in the Facility for a term commencing July 19, 1989 and ending upon the termination or expiration of the Suns License.

H. As of the date hereof, the Operator is an Affiliate of the Team, and the Marketer is an Affiliate of the Team.

I. The actions by the City required under this Agreement and the Related Agreements are the exercise of proprietary powers and are not the exercise of the City's governmental, legislative, executive, judicial or regulatory powers. Nothing in this Agreement shall be construed as a limitation on the exercise by the City of its governmental, legislative, judicial or regulatory powers.

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

K. In reliance upon and in consideration of the City's obligations under this Agreement, the Team has (a) incurred costs and expenses in excess of \$750,000, (b) incurred expenses for employees, independent contractors and consultants for the development and operation of the Facility, (c) foregone and discontinued discussion and negotiations concerning alternative arena projects, and (d) undertaken obligations in accordance with the Suns License and other Related Agreements. Upon execution hereof, the Team,

the Operator and the Marketer will incur additional costs and expenses in excess of \$36,000,000, including expenses for additional employees, independent contractors and consultants to fulfill each of the Team's, the Operator's and the Marketer's contractual obligations.

L. The unique obligations of the Team and its Affiliates under this Agreement, the DDA, the Operating Agreement, the Advertising Agreement, the Suns Office Lease, the Suns License, the Suite Marketing Agreement and the Listing Agreement including, without limitation, the obligation to play the Team's Home Games at the Facility, are integral to the revitalization of the City's downtown and to the City's well being generally, are personal to the Team, and may be discharged only by the Team.

M. The City's unique obligations under this Agreement, the DDA and the Operating Agreement, and the City's approval of the Suns License, the Advertising Agreement, the Suns Office Lease, the Listing Agreement and the Suite Marketing Agreement are fundamental to the Team's decision to commit the Team's NBA franchise to the Facility and to the City (pursuant to the terms of this Agreement and the Suns License) for forty (40) years from the License Commencement Date (or a

shorter period if such agreements are terminated earlier pursuant to their terms or if the Facility is obsolete pursuant to the terms of this Agreement, or a longer period if the term of such agreements is suspended).

N. The parties have entered into this Agreement after reviewing and considering the pro forma financial information attached hereto as Exhibit R-N and incorporated herein by this reference. The pro forma financial information is an estimate only and subject to the uncertainties that attend any projection of events that are to occur far into the future. Nevertheless, the Team and the City agree to the use of the pro forma financial information solely for the purpose of setting forth the City's expectations as to future revenues from the Facility and the measuring of liquidated damages, herein provided for, for a breach by the Team of Section 4.1 of this Agreement. In the event the Team breaches its obligations to play its Home Games at the Facility as provided for herein, the City would lose certain revenue anticipated in such pro forma financial information as well as other revenue and suffer other detriments not anticipated in such pro forma financial information, such as (a) the loss of excise taxes on admissions, advertising and sales generated at the Facility (unless such taxes are collected by the City at a replacement facility at which the Team plays, located within the City's

taxing jurisdiction), (b) increased economic activity in the City's downtown area vital to the City's Redevelopment Plan and the resulting substantial excise tax proceeds (were the Team to play its Home Games at a replacement facility located outside the downtown area), (c) enhanced convention marketing and (d) long-term association between the City and an NBA franchise team (were the Team to move from the greater metropolitan Phoenix area).

O. In the event the City breaches Section 4.2, the Team would suffer severe damage and other detriment.

P. In the event the City breaches its obligation to provide the Facility to the Team under the terms of this Agreement, thereby resulting in the Team losing revenues from the Facility as provided for in this Agreement and in the Related Agreements, the Team may lose substantial collateral benefits such as (a) the ability, through an Affiliate of the Team, to operate its Home Game arena, (b) enhanced revenues from tickets, concessions, Suite marketing and advertising and (c) long-term association between the City, its basketball fans and the Team.

AGREEMENTS:

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

ARTICLE 1 SUBJECT OF AGREEMENT.

1.1 Definitions. As used in this Agreement and in all attachments hereto, the capitalized terms shall have the respective meaning set forth in Exhibit 1.1, unless otherwise provided herein.

1.2 Restatement. This Agreement is a clarification and restatement of the original Assurance Agreement between the parties dated as of July 19, 1989 (the "Initial Assurance Agreement"), and each of the Related Agreements is a clarification and restatement of each of the respective original Related Agreements dated as of July 19, 1989 (the "Initial Related Agreements"), all of which shall remain effective as restated. The Initial Assurance 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 to

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 Assurance Agreement and the Initial Related Agreements is valid and effective, and each of its warranties contained in the Initial Assurance Agreement and the Initial Related Agreements is correct and effective, and each of its covenants contained in the Initial Assurance 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, Thirtieth Anniversary Date and Expiration. The term of this Agreement shall be effective as of July 19, 1989. Notwithstanding and prevailing over any other provision in this Agreement or in any Related Agreement, the term of this Agreement may be suspended or extended only pursuant to this Article 2, and may be terminated prior to the Expiration Date only pursuant to Article 6. The Thirtieth Anniversary Date shall be the date thirty (30) years after the July 1 immediately prior to the License Commencement Date, and the 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 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 Payments has been paid to the Team in satisfaction of any Restoration Loss Amount pursuant to Section 6.9. 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 Operating 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. In the event any Abatement Period occurs, and provided that the cause of such Abatement Period prevents the playing of basketball games in the Facility, then during the pendency of such Abatement Period all obligations of the Team hereunder to play basketball games in

the Facility shall abate and be forgiven. To the extent 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.

ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS.

3.1 City Representations, Warranties and Covenants.

The City represents, warrants and covenants to the Team and the Marketer the following:

3.1.1 Authority. The City has full municipal power and authority to enter into this Agreement, the DDA and the Operating Agreement, and the execution, delivery, and consummation of this Agreement, the DDA and the Operating 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 the Operating Agreement of the Suns License, the Suns Office Lease, the Listing Agreement, the Advertising Agreement, the Suite Marketing Agreement and the form of Suite License. The City and the Phoenix Civic Plaza Building Corporation have taken all actions and proceedings required to be taken by them to authorize the construction of the Jefferson and Third Street Parking Garage (which shall contain 1500 spaces, expandable at the City's option to 2000 spaces).

3.1.2 No Conflicts. Except as disclosed 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 Operating 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.

3.1.3 No Violation of Laws. Neither the execution, delivery nor performance of this Agreement, the DDA or the Operating 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, the DDA and the Operating 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.

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

3.1.5 Litigation. No suit is pending before or by any court or governmental body seeking to restrain or prohibit, or seeking damages or other relief in connection with, the execution and delivery of this Agreement, the DDA or the Operating 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.

3.1.6 THIS SECTION INTENTIONALLY OMITTED.

3.1.7 Limited Recourse. All payment obligations of the City pursuant to this Agreement, the DDA and the Operating Agreement shall be payable only from excise taxes validly imposed by the City, revenues, if any, from Facility operations and activities and proceeds of bonds issued by the City of Phoenix Civic Improvement Corporation. Notwithstanding the foregoing, the City shall not be obligated to pay more than \$35,000,000 for Project Costs. Such obligations shall under no circumstances constitute a general obligation of the City or be payable from the proceeds of ad valorem taxes or from any general funds of the City.

3.1.8 Site Possession and Title. The rights of the Team pursuant to this Agreement, the DDA and the Operating Agreement, and the Team's and the Marketer's peaceful use and quiet enjoyment of the Facility as provided in the Suns License, the Suns Office Lease, the Advertising Agreement, the Suite Marketing Agreement, and the Listing 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 Team or the Marketer as a result of any Title Exceptions, none of which shall be treated as Construction Costs.

3.1.9 Environmental and Historical Laws. To the best of the City's knowledge, except as disclosed in the Dames & Moore Phase I Environmental Assessment dated July 17, 1989 (the "Assessment"), a true copy of which has been furnished to the Team and the Marketer, no condition at, on or under the Site violates or may violate any federal, state, county or local law, statute, code, ordinance, rule, regulation or judicial or administrative decision, order or directive relating to environmental matters, historic preservation matters, or industrial health or safety matters, including, without limitation, any of the foregoing regulating or applying to any toxic or hazardous substance or waste or any environmental pollutant, as those terms are defined in any of the foregoing (collectively, "Environmental Laws"). The City shall use its best efforts to cure and correct not later than

the Construction Start Date, and shall pay and be liable for all costs, expenses, liabilities and claims necessary to cure and correct at any time now and in the future, any condition at, on or under the Site which violates or may violate any Environmental Law and which (a) is disclosed in the Assessment or (b) (i) is not disclosed in the Assessment and (ii) existed as of July 19, 1989 and was not known to the City as of the date of this Agreement; provided that liability of the City pursuant to this sentence shall be limited to \$200,000 (as provided in Section 2.1.2.1 of the DDA) with respect to conditions existing at, on or under the Site as of July 19, 1989. All costs, expenses, liabilities and claims related to and necessary for curing and correcting at any time now and in the future any condition at, on or under the Site which did not exist as of July 19, 1989 and which violates or may violate any Environmental Law shall be Construction Costs subject to the limitations of Section 2.1.2.1 of the DDA ; provided, however, that the City shall use its best efforts to cure and correct not later than the Construction Start Date, and shall pay and be liable for all expenses, liabilities and claims necessary to cure and correct at any time now and in the future, any condition at, on or under the Site which violates or may violate any Environmental law, to the extent that such condition did not exist as of July 19, 1989, and to the extent that such condition was directly or indirectly caused by the

acts or omissions of the City in the discharge of its duties pursuant to Section 2.1.2.1 of the DDA. The City agrees to disclose promptly to the Team and the Marketer all information within its actual knowledge relating to the foregoing matters. During the term of this Agreement, (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 that this Section 3.1.9 shall apply only to the conduct of the City in its use of the Facility 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 at, on or under the Site as of the Construction Start Date; and provided further that this Section 3.1.9 shall not release the Team or the Marketer from any of their respective obligations under this Agreement. The City shall promptly notify the Team if the City has actual knowledge of any material noncompliance or potential material noncompliance with any Environmental Laws 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.

3.1.10 Parking.

3.1.10.1 Suites. There shall be reserved and marked 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 the Suites (as may be currently licensed from time to time) times three (3).

3.1.10.2 Promotional and Operational.

There shall be reserved and marked thirty (30) parking spaces for the Team either in a parking area situated beneath the exhibition floor of the Arena or in a covered floor of the Arena Garage. 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 be entitled without charge to validate the use of thirty (30) unreserved parking spaces for media and promotional purposes; provided, however, that the Team shall make such spaces available to the Operator at no charge for Operator Events other than Home Games. In addition to the Team's right to use or permit the use of parking spaces otherwise permitted by this

Section 3.1.10.2, the Team's business invitees may request the Operator to validate without charge such invitee's use of parking spaces in the Arena Garage (at no charge to the Team), provided that each 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 Team shall be entitled to use or permit the use of a reasonable number of such parking spaces for use by members of the media, players and coaches. Under no circumstances shall the Team and the Operator be entitled to use or validate for use without charge more than ninety (90) parking spaces in the Arena Garage for each Operator Event.

3.1.10.3 Jefferson and Third Street Garage. The City shall use its best efforts to obtain as quickly as practicable, by negotiated purchase or pursuant to eminent domain, any property required for the construction of the Jefferson and Third Street Garage. The City's best efforts shall not include paying more than the fair market value of such property as determined by the City if the purchase is negotiated or by the Maricopa County Superior Court or a court

of appellate jurisdiction if condemnation is completed. If such property is acquired no later than 15 months before the Completion Date of the Facility, such garage shall be completed not later than the Completion Date of the Facility. If such property is not acquired by such date and such garage is not completed by the Completion Date, the City shall use its best efforts to provide substitute parking within a reasonable distance for use by the Facility by the Completion Date and shall diligently proceed with the construction of such garage. 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.

3.1.10.4 Other Parking. The City shall make available for Arena parking at the City's standard charge on a nonexclusive 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; provided, however, that this Section 3.1.10.4 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 of the Operating
Agreement.

3.1.11 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 3.1.11 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.

3.1.11.1 Competing Facilities Defined. For
purposes of this Agreement, a "Competing Facility" shall mean a
sports, entertainment 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:

3.1.11.1.1 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;

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

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

3.1.11.1.4 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;

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

3.1.11.1.6 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);

3.1.11.1.7 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;

3.1.11.1.8 any facility for national or 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 athletic 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 events 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

3.1.11.1.9 any other facility that does not book a Comparable Event.

3.1.11.2 Prohibition Against Economic Assistance to Competing Facility Subject to

Section 3.1.11.2.1, 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.

3.1.11.2.1 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.

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

Section 3.1.11, any event 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:

3.1.11.3.1 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, but not providing for seating in excess of 6,000, and incidental to and included as part of a Civic Plaza Event; and

3.1.11.3.2 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.

3.1.11.4 Arena Use by the City Which is Competitive With Use by Operator or Team. 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:

3.1.11.4.1 Use of the Arena for Civic Plaza Events;

3.1.11.4.2 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.

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

3.1.11.5.1 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

3.1.11.5.2 Have substantial management control of any entity specified in Section 3.1.11.5.1.

3.1.11.6 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 Agreement, the Team 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 of this Agreement, as well as any other rights granted by law or equity to the Team. 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. Any and all reasonable costs paid or incurred by the Team to enforce the provisions of Sections 3.1.11.1 through 3.1.11.8 shall be Operating Expenses and shall be paid from Facility Revenue. Any and all amounts received by 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.

3.1.11.7 Optional Remedy of Team. In the event that the City should violate the covenants of this Section 3.1.11, if the Team seeks and fails to obtain injunctive relief, then the Team 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 Team shall not exceed such gross receipts. The parties agree that if the City were to breach Section 3.1.11, 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 Team and that the amount set forth in this Section 3.1.11.7 constitutes the best, reasonable and objective

estimate of the damages that would be incurred in the event the City were to breach Section 3.1.11.

3.1.11.8 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.

3.1.12 No Interference.

3.1.12.1 General. Subject to Section 3.1.12.2, 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 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 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.

3.1.12.2 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 3.1.12.2 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 any time 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 to 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 then moving westerly, in an effort to minimize the period of any disruption following the race;

(e) The access rights to be made available pursuant to Sections 3.1.12.1 and 3.1.12.2 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.

(f) If at any time during the term of the Suns License, barriers are constructed in connection with the Grand Prix in front of the Facility on Jefferson Street, and east of First Street, the Use Fee (as such term is defined in the Suns License) shall be abated and no such Use Fee shall be due or owing by the Team with respect to Ticket Receipts (as such term is defined in the Suns License) for the Home Games which occur within the sixteen-day period commencing ten (10)

days prior to the final day of such Grand Prix and ending five (5) days after the final day of such Grand Prix. By notice to the City, the Team shall submit a claim for the damages incurred by the Team as a result of such Grand Prix during such sixteen-day period. If the City and the Team do not agree as to such damages, the damages shall be determined as provided in Section 6.11. If the damages are less than the abated Use Fees, the difference shall be returned to the Operator with interest at the rate of ten percent (10%) compounded annually, from the date the abated Use Fees to be paid were originally due and payable until paid. If the damages are greater than the abated Use Fees, the excess damages shall be payable from City Ordinary Operating Fee Payments, as and when paid under the Operating Agreement, and shall bear interest at the rate of ten percent (10%), compounded annually, from the date the damages are established either by agreement of the parties or pursuant to Section 6.11.

3.2 Team Representations, Warranties and Covenants.

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

3.2.1 Organization. The Team 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.

3.2.2 Authorization; No Violation. The execution, delivery and performance by the Team 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 Team is a party or by which the Team or its assets may be bound or affected. All consents and approvals of any person (including partners of the Team) required in connection with this Agreement have been obtained.

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

3.2.4 No Payments. The Team 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.

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

3.2.6 No Violation of Laws. The Team has received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the Team 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 Suns License, the Advertising Agreement and the Suns Office Lease; and the Team 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.

3.2.7 THIS SECTION INTENTIONALLY OMITTED.

3.2.8 Environmental and Historical Laws. After the Operations Start Date, the Team 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. The Team shall promptly notify the City if the Team 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.

3.3 Marketer Representations, Warranties and Covenants. The Marketer represents, warrants and covenants to the City as follows:

3.3.1 Organization. The Marketer 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.

3.3.2 Authorization; No Violation. The execution, delivery and performance by the Marketer of this Agreement have been duly authorized by all necessary partnership action and will not violate its limited partnership agreement, or result in the breach of or constitute a default under any loan or credit agreement, or other agreement or instrument to which the Marketer is a party or by which the Marketer may be bound or affected. All consents and approvals of any person (including partners of the Marketer) required in connection with this Agreement have been obtained.

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

3.3.4 No Payments. The Marketer 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.

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

3.3.6 No Violation of Laws. The Marketer has received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the Marketer 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 Suite Marketing Agreement and the Listing Agreement; and the Marketer 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.

3.3.7 THIS SECTION INTENTIONALLY OMITTED.

3.3.8 Environmental and Historical Laws. After the Operations Start Date, the Marketer 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. The Marketer shall promptly notify the City if the Marketer 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.

3.4 Mutual Covenants.

3.4.1 Additional Documents and Approval. The City, the Team and the Marketer shall, whenever and as often as each shall be reasonably requested to do so by another party, 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.

3.4.2 Good Faith. In exercising its rights and fulfilling its obligations under this Agreement and each of the Related Agreements, each of the City, the Team and the Marketer shall act in good faith. Each party acknowledges that this Agreement and all Related Agreements contemplate cooperation between the Team, the Marketer and the City. The City is acting in its proprietary capacity hereunder, but it has certain governmental powers which are not susceptible to contractual limitation. Each party further acknowledges that the terms and conditions of this Agreement and the Related Agreements have been negotiated on the basis of certain projections and assumptions, including the assumption that the City, the Team and the Marketer 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.

3.4.3 No Termination. The City shall not terminate this Agreement, the DDA, or the Operating Agreement, and neither the Team nor the Marketer shall terminate this Agreement or any Related 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 Team or the Marketer except by the institution of a declaratory action in which the City, the Team, the Marketer and (to the extent required by the Loan Documents) the Lender are named as parties.

3.4.4 Cooperation. The City, the Team and the Marketer 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, the Team and the Marketer shall strive in good faith to defend any such Challenge, and each party's legal fees, costs and other expenses in connection with such Challenge shall be treated as Operating Expenses. Furthermore, the City, the Team and the Marketer each 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.

3.4.5 Notice of Matters. Should the City, the Team and the Marketer receive knowledge about any matter which may constitute a breach of any of its warranties or covenants set forth in Article 3 which arises after the date hereof, it

shall promptly notify the other parties of the same in writing. Specifically, without limitation, the City, the Team and the Marketer shall each promptly inform the other parties of any suit referred to in Sections 3.1.5, 3.2.3 or 3.3.3 and any Challenge referred to in Section 3.4.4.

3.4.6 Compliance with Laws. During the term of this Agreement, the City, the Team and the Marketer 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 Team and the Marketer shall obtain and maintain all necessary permits and licenses that are required in connection with their uses of the Facility. The terms of this covenant shall apply to all actions by the City taken in its proprietary capacity.

3.4.7 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.

3.4.8 Recognition. The parties agree that notwithstanding any default under the Operating Agreement by the Operator or the termination thereof, the Suns License, the Advertising Agreement, the Suns Office Lease, the Suite Marketing Agreement, the Suite Licenses and the Listing Agreement shall continue in full force and effect and are not dependent or conditioned in any way upon the absence of defaults by the Operator under the Operating Agreement or the continued existence of the Operating Agreement.

ARTICLE 4 ADDITIONAL COVENANTS.

4.1 Use Covenant. From the License Commencement Date and continuing during the term of this Agreement, the Team shall play its Home Games only at the Facility and shall not play any of its Home Games at any other location, except as permitted by Sections 16.3, 17 and 22.4 of the Suns License and Section 2.2 hereof. Without limiting the Team's obligations under the preceding sentence, the Team shall be deemed to have failed to observe or perform the provisions of this Section 4.1 if any of the following shall occur:

4.1.1 The Team plays or takes steps to play any of its Home Games at any location other than the Facility.

4.1.2 The Team enters into any contract which purports to obligate the Team to play any of its Home Games at any location other than the Facility.

4.1.3 The Team notifies the NBA of the Team's intent to play any of its Home Games at any location other than the Facility or requests NBA permission to play any of its Home Games at any location other than the Facility.

4.1.4 The Team takes any action that constitutes an anticipatory breach of this Section 4.1.

All obligations of the Team to play its Home Games at the Facility pursuant to this section shall be suspended during any suspension period, as provided for in Section 22.4 of the Suns License and during any Abatement Period, the cause of which prevents the playing of basketball games in the Facility.

4.2 No Interference. Subject to Section 9.4, the City shall not interfere and shall not permit interference in the operation of the Facility which causes the Facility to be unavailable for uses permitted by the Operating Agreement, the Suns License and the Suns Office Lease fourteen (14)

consecutive days or thirty (30) days in any twelve (12) month period; provided, however, that any day included in an Abatement Period or in a period of suspension provided for in Section 22.4 of the Suns License shall not be considered when determining the number of days, if any, the Facility is unavailable pursuant to this Section 4.2. The availability of parking as required by Section 3.1.10 shall be a factor to be considered when determining whether the Facility is unavailable. In the event of a dispute regarding the unavailability of the Facility, such dispute shall be submitted to ADR; provided, however, that neither the requirement to utilize nor the pendency of ADR shall in any way preclude or limit each party's opportunity to seek any interim equitable remedy appropriate to the circumstances as provided in Section 6.11.

4.3 Team Revenue. Except as expressly permitted in this Agreement or any of the Related Agreements, the Team and any of its Affiliates shall not charge or receive any fee or payment out of Facility Revenue or charge or receive any payment in goods or services from the Operator.

4.4 Negative Pledge. Pursuant to Exhibit 4.4, the Team hereby pledges to the City not to play any of the Team's Home Games at any location other than the Facility as provided by Section 4.1.

4.5 Amendment of Documents. Within ninety (90) days after the execution hereof, the Team shall:

(a) cause the filing with the Arizona Corporation Commission of an amendment to articles of incorporation of JDM Sports, Inc., such that the amended articles of incorporation shall be identical to the existing articles of incorporation except that they shall include the following:

"JDM Sports, Inc. is the general partner of Phoenix Suns Limited Partnership, a Delaware limited partnership (the "Partnership"). The Partnership is a party to and is bound by that certain Assurance Agreement dated 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."

and

(b) 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 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."

4.6 Opinion of Team's Counsel. Prior to December 31, 1989, the Team shall have delivered to the City an opinion of Lewis and Roca in form and substance satisfactory to the City to the effect that the execution and performance of this Agreement will not violate the Team's limited partnership agreement, the Team's NBA Franchise Agreement, the NBA Constitution and Bylaws, or any written NBA rule, regulation, procedure or policy (as applicable).

4.7 Opinion of City's Counsel. Prior to December 31, 1989, the Team and the Operator shall receive an opinion from counsel to the City in form and substance acceptable to counsel for the Team and counsel for the City relating to the transactions between the Phoenix Civic Improvement Corporation and the City in connection with the transactions contemplated in this Agreement.

4.8 Adverse Governmental Action. 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 and the Related Agreements, notwithstanding any other provision of those Agreements to the contrary, from the date of any such action, all amounts which would otherwise be payable to the City as a Priority Operating Fee Payment pursuant to Section 5.1.5 of the Operating Agreement, including interest thereon, shall be payable to the Operator and the Team in amounts which are determined by ADR procedures to be equal to the detrimental economic effects upon the Operator and the Team of such action throughout the remaining term of this Agreement.

4.9 City Cure Rights. In the event of a default by the Operator under the Suns License, the Suns Office Lease, the Advertising Agreement, the Listing Agreement or the Suite

Marketing Agreement (collectively, the "Suns Agreements"), the Team or the Marketer, as applicable (collectively, the "Suns"), shall deliver to the City a duplicate of each notice of default delivered to the Operator at the same time as such notice is issued to the Operator. During the time that the applicable Suns Agreement permits the Operator to cure such default, the City also shall have the right, but not the obligation, to cure such default on behalf of the Operator. The Team agrees to accept such cure by the City on behalf of the Operator. The City shall notify the Team within ten (10) days after receipt of a notice of default pursuant to this Section 4.9 stating whether the City intends to exercise its right to cure such default. If the City fails to issue such notice within such ten-day period, then the City shall have waived its right to cure such default and no longer shall have any right to cure such default.

4.10 Prohibition Against Assignment of Agreement or Transfer of the Facility by the City. The City shall not transfer or attempt to transfer this Agreement, any rights herein, the Facility, or any rights therein, and any such transfer or attempted transfer shall be void; provided, that this Section shall not act as a prohibition against any transfer by and between the City and the City of Phoenix Civic Improvement Corporation, or any successor in interest to such

corporation, nor against any formal transfer to a financial institution, trustee or fiduciary in furtherance of any debt financing or refinancing by the City or the City of Phoenix Civic Improvement Corporation; provided, however, that such transfer does not increase the Impositions with respect to the Facility, the Operator, the Team or any Affiliate thereof.

ARTICLE 5 REPLACEMENT OPERATOR.

5.1 Replacement of Operator. If the Operator is terminated pursuant to the Operating Agreement, a Replacement Operator shall be selected as provided in this Article, and all rights of the Replacement Operator with respect to the Facility shall be limited by this Article.

5.2 Selection of Replacement Operator. The City, the Team (and, to the extent provided in the Loan Documents, the Lender) shall mutually agree upon a Replacement Operator (which shall be deemed to refer to any party which operates the Facility pursuant to the Operating Agreement, or any arrangement which supercedes the arrangement contemplated by the Operating Agreement) and the terms and conditions of any agreement between the Replacement Operator and the City. In the event the City and the Team are unable to agree upon a

Replacement Operator, the selection of such Replacement Operator shall be determined by ADR procedures. Unless and until such mutual agreement is reached, the Operator shall continue to carry out its obligations under the Operating 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 the Operating Agreement and shall be entitled to charge the Facility Account a commercially reasonable management fee, such fee to be paid as an Operating Expense.

5.2.1 Third Party Beneficiary. The Team and the Marketer shall be third party beneficiaries of any agreement between the Replacement Operator and the City and, for the purpose of protecting the rights of the Team and the Marketer as affected by the performance by the City and the Replacement Operator of their obligations under such agreement, shall be entitled to enforce such agreement against either the Replacement Operator or the City in the event that either commits any material breach of such agreement. Specifically, but without limitation, the Team shall have all of the rights held by the City under any agreement with the Replacement Operator to inspect any records of the Replacement Operator relating to the Facility and shall be entitled to inspect such records not more frequently than once per year upon not less than 72 hours' notice to the Replacement Operator, and at

reasonable times. In addition, the Team shall be entitled to notice of and all documents and information inspected in connection with any audit of the Replacement Operator by the City.

5.3 Replacement Operator Fee. No payments (whether in money, services, goods or otherwise) shall be made to the Replacement Operator from Facility Revenue, and the City shall not permit any such payment to be made, to or for the benefit of the Replacement Operator (including the City acting under the Operating Agreement as Replacement Operator), unless such compensation is commercially reasonable (as agreed by the City and the Team or as determined by ADR procedures). Within forty-five (45) days of the end of every quarter of the Replacement Operator's fiscal year, the City shall cause the Replacement Operator to certify to the Team, the Marketer and the City all Facility Revenue and Operating Expenses, including all amounts paid to the Replacement Operator, in reasonable detail for the quarter then ended.

5.4 Survival of Agreements with Team and Marketer. Unless the Suns License terminates, all of the terms of the Suite Marketing Agreement, the Advertising Agreement, the Listing Agreement, the Suns License, and the Suns Office Lease (collectively, the "Suns Agreements") shall survive and shall

be enforceable by the Marketer and the Team, respectively, against the Replacement Operator without any adverse effect upon the Team or the Marketer.

5.5 No Amendments to Suite Licenses. Without prior written consent of each of the Team, the Marketer and the City, there shall be no amendment to the form of the Suite Licenses; provided, however, that no consent of the City shall be required for insubstantial amendments to the form of the Suite Licenses or amendments to the license fee or term of the Suite Licenses.

5.6 Certain Amendments to Operating Agreement and Equivalent Actions. Without prior written consent of the Team and the Marketer, the City shall neither make nor permit there to be made any amendment to the Operating Agreement, and shall not take any other action (whether by amendment of the Operating Agreement with any Replacement Operator or by any other agreement with any Replacement Operator), which (a) adversely affects the rights of the Team or the Marketer under any of the Suns Agreements or (b) changes the priority of payments to be made from amounts in the Facility Account(s) as set forth in the Operating Agreement or (c) permits the City to receive any Facility Revenues (other than a commercially reasonable management fee for such times as the City shall be

operating the Facility) before payment of Operating Expenses or the required deposit to the Renewal and Replacement Account or (d) would affect the amount or priority of the contribution to, or the amount to be distributed from, Facility Revenues to the Renewal and Replacement Account, or (e) until the Thirtieth Anniversary Date, would permit the City to receive any Facility Revenues (other than a commercially reasonable management fee during such times as the City shall be operating the Facility) in excess of the Priority Operating Fee Payment prior to payment of the Suns Payment, as set forth in the Operating Agreement, or (f) after the Thirtieth Anniversary Date would permit the City to receive any Ordinary Operating Fee Payment unless at the same time the Team receives 40% of Adjusted Excess Net Cash Flow (the Management Fee) if the Operator is not an Affiliate of the Team, as set forth in the Operating Agreement and the Suns License.

5.7 Suns License. The Team shall not directly or indirectly modify or amend the Suns License in any manner without prior written City approval. The Team shall observe and fully perform the covenants, obligations and other provisions of the Suns License; and shall not consent to the waiver of any covenant, obligation or other provision of the Suns License. Any attempted waiver by the Operator of any covenant, obligation or other provision of the Suns License shall be void.

5.8 Advertising Agreement. The Team shall not directly or indirectly modify or amend the Advertising Agreement without prior written City approval in any manner. The Team shall not enter into the Independent Advertising Agent Agreement and shall not directly or indirectly modify, amend or waive any provision of the Independent Advertising Agent Agreement without prior City approval; provided, however, that the amount of compensation paid the Independent Advertising Agent shall not require City approval. The Team shall not consent to the waiver of any covenant, obligation or other provision of the Advertising Agreement. Any attempted waiver by the Operator of any covenant, obligation or other provision of the Advertising Agreement shall be void. The Team shall observe and fully perform those provisions of the Advertising Agreement and the Independent Advertising Agent Agreement required by Section 5.1.4.2 of the Operating Agreement.

5.9 Suns Office Lease. The Team shall not directly or indirectly modify or amend the Suns Office Lease in any manner without prior written City approval. The Team shall not consent to the waiver of any covenant, obligation or other provision of the Suns Office Lease. Any attempted waiver by the Operator of any covenant, obligation or other provision of the Suns Office Lease shall be void.

5.10 Suite Marketing Agreement. The Marketer shall not directly or indirectly modify or amend the Suite Marketing Agreement or the Listing Agreement in any manner without prior written City approval. The Marketer shall not consent to the waiver of any covenant, obligation or other provision of the Suite Marketing Agreement or the Listing Agreement. Any attempted waiver by the Operator of any covenant, obligation or other provision of the Suite Marketing Agreement or the Listing Agreement shall be void. The Marketer shall observe and fully perform the Suite Marketing Agreement and the Listing Agreement.

5.11 Arts Contribution. In the event that a Replacement Operator is selected pursuant to this Article 5 prior to the Operator's full satisfaction of its obligation to provide a \$350,000 arts contribution pursuant to Section 18.5 of the Operating Agreement, the Team shall satisfy fully any outstanding obligation as may exist when the Operator is terminated and a Replacement Operator selected (the "Outstanding Arts Obligation") as follows: Commencing in the latter of the Fiscal Year in which a Replacement Operator is selected or the Fiscal Year in which the Seventh Anniversary Date occurs, and in each Fiscal Year thereafter until the Outstanding Arts Obligation is satisfied in full, the Team shall make an annual contribution (pursuant to the provisions

of Section 18.5 of the Operating Agreement) in an amount not less than \$50,000 per Fiscal Year in each year in which such amount is available to be paid from a Suns Payment.

ARTICLE 6 DEFAULTS, REMEDIES AND TERMINATION.

6.1 Termination of the Suns License and other Related Agreements Controlled Hereunder. Notwithstanding any other provision of this Agreement or any provision of the Related Agreements, the provisions of Sections 6.1, 6.2, 6.3 and 6.4 govern the termination of this Agreement and the Suns License, and neither this Agreement nor the Suns License may terminate under any other circumstances. If this Agreement is terminated, then all of the Related Agreements shall simultaneously be terminated and any election or notice of termination of this Agreement shall be deemed to be an election or notice of termination of all of the Related Agreements; provided that notice of termination of this Agreement is delivered to the Operator if the Operator is not then an Affiliate of the Team.

6.2 Termination of This Agreement and Suns License by Team. Provided that the Team is not in default under 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 Team at its option may terminate this Agreement and the Suns License after fifteen (15) days' prior written notice to the City if:

6.2.1 The City shall have breached its obligation under Section 4.2 of this Agreement;

6.2.2 The City, acting in its proprietary or governmental capacity, shall have permitted (other than the routine granting of licenses, zoning, variances and other similar types of authorizations), in any twelve (12) month period, six or more Comparable Events to take place in one or more Competing Facilities or in an existing or future facility described in Sections 3.1.11.1.1, 3.1.11.1.5, 3.1.11.1.6, 3.1.11.1.7 and 3.1.11.1.8 (collectively, such existing or future facilities shall be referred to herein as "Exempt Facilities"); provided, however, that a Comparable Event shall not be included as one of the six or more Comparable Events described in the preceding sentence that would give rise to the Team's option to terminate this Agreement pursuant to Section 6.2 if: (a) such Comparable Event is permitted by Section 3.1.11.1; or (b) such Comparable Event is an event which the City establishes was an inadvertent and unintended breach of Section 3.1.11; or (c) the Team was aware of such

event prior to its commencement and failed to notify the City of such Comparable Event prior to the commencement of such event; or (d) the Team was aware of conduct of the City with respect to such event which would violate an obligation imposed by Sections 3.1.11.1 through 3.1.11.5 and the Team had sufficient time to seek, but failed to seek, specific performance of such obligation or injunctive relief to restrain such conduct; or (e) the Team failed to seek, or sought and failed to diligently prosecute, a damage award with respect to such event, or, having obtained such a damage award, did not diligently seek to recover such award for at least ninety (90) days; or (f) the City shall not have given Economic Assistance to the Competing Facility or the Exempt Facility at which such Comparable Event occurs.

6.2.3 If (a) any Person (including the City) other than the Team, the Marketer or any Affiliate of the Marketer or the Team challenges this Agreement, or any Related Agreement, and if due to such challenge any provision of this Agreement or any Related Agreement providing for the allocation or distribution of revenue to the Team, the Marketer or any Affiliate of the Team or Marketer is held by a court of competent jurisdiction to be invalid, unenforceable, ultra vires or in violation of any law, and the omission of such agreement or portion thereof materially diminishes the economic

benefits of the Team or any of its Affiliates; or (b) the City challenges all or any provision of this Agreement, the DDA or the Operating Agreement, and if due to such challenge all or any provision of this Agreement, the DDA or the Operating Agreement is held by a court of competent jurisdiction to be invalid, unenforceable, ultra vires or in violation of any law, and the omission of such agreement or portion thereof materially diminishes the economic benefits of the Team or any of its Affiliates.

6.2.4 The Facility is determined to be obsolete at the Thirtieth Anniversary Date. The determination of obsolescence of the Facility shall occur as set forth in Exhibit 6.2.4.

6.3 Termination of This Agreement and Suns License by 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 this Agreement and all Related Agreements after fifteen (15) days' prior written notice to the Team if:

6.3.1 The Team shall have breached its obligation under Section 4.1 of this Agreement.

6.3.2 The Team or the Marketer (or either of their respective general partners) shall have commenced any case, proceeding or other action (a) under the Federal Bankruptcy Code, as amended from time to time, or under any other existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to the Team or the Marketer or either of their respective general partners, seeking to adjudicate the Team or the Marketer or either of their respective general partners a bankrupt or insolvent or seeking reorganization, arrangement, adjustments, winding-up, liquidation, dissolution, discharge, composition or other relief with respect to the Team or the Marketer or either of their respective general partners or the debts of the Team or the Marketer or either of their respective general partners or (b) seeking appointment of a receiver, custodian or other similar official for the Team or the Marketer or either of their respective general partners for all or any substantial part of the assets of the Team or the Marketer, or the Team or the Marketer or either of their respective general partners shall make a general assignment for the benefit of the creditors of the Team or the Marketer or either of their respective general partners; or

6.3.3 There shall be commenced against the Team or the Marketer (or either of their respective general partners) any case, proceeding or other action of a nature referred to in Section 6.3.2 which (a) results in the entry of an order for relief or any such adjudication or appointment or (b) which is not stayed or dismissed within sixty (60) days; or

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

6.4 Termination of this Agreement and Suns License by Team or City. Either the Team or the City may terminate this Agreement and the Suns License after fifteen (15) days' prior written notice if:

6.4.1 Termination of DDA. Prior to the Operations Start Date the DDA is terminated;

6.4.2 Construction Start Date. The Construction Start Date has not occurred prior to September 30, 1990, provided that (a) the party electing to terminate shall give notice of termination under this Section 6.4.2 not later than November 15, 1990, and (b) if the Operator is an Affiliate of the Team satisfaction of the notice provisions of Sections 8.7.1 or 8.7.2 of the DDA shall be deemed to satisfy the fifteen-day notice requirement of this Section 6.4;

6.4.3 Operations Start Date. The Operations Start Date has not occurred by the latter of (a) December 31, 1993, or (b) if any period of restoration of the Facility has occurred pursuant to Section 4.11 of the DDA, the date first occurring after December 31, 1993, after the expiration of a period of time equal to the duration of such period of restoration; or

6.4.4 Restoration Deadlines. The Facility is damaged, destroyed or taken by right of eminent domain, and the City and the Operator fail to commit (pursuant to Article 10 or Article 11 of the Operating Agreement and Section 16 or Section 17 of the Suns License) to restore the Facility within

ninety (90) days of the damage, destruction or condemnation, or having timely committed to restore the Facility, fail to restore the Facility (a) within three years after the date of damage, destruction or condemnation if the damage, destruction or condemnation occurs prior to the Twentieth Anniversary Date, (b) within two and one-half years after the date of damage, destruction or condemnation if the damage, destruction or condemnation occurs on or after the Twentieth Anniversary Date and prior to the Thirtieth Anniversary Date, or (c) within two years after the date of damage, destruction or condemnation if the damage, destruction or condemnation occurs on or after the Thirtieth Anniversary Date and prior to the Expiration Date.

6.5 Rights After Termination of Agreement. If the City or the Team terminates this Agreement pursuant to this Article 6, the City and the Team each shall have all rights and remedies available at law or equity as have accrued as of the date of such termination, subject to Section 6.11.

6.6 Events of Default. Each of the following shall constitute an Event of Default; provided, however, that no Event of Default shall be deemed to have been caused or permitted by the Team or the Marketer 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 Team is entitled pursuant to this Section 6.6:

6.6.1 If any representation and warranty made by the City, the Team or the Marketer 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 and warranty fails to cause such representation and warranty to become correct within thirty (30) days after written notice that such representation and warranty was incorrect; provided, however, that if it is not reasonably possible to cause such representation and warranty to become correct within such thirty-day period, such cure period shall be for an unlimited period of time if within thirty (30) days after such written notice the curing party commences diligently and thereafter continues to cause such representation and warranty to become correct.

6.6.2 If the Team shall fail to observe or to perform any of the provisions of Section 4.1.

6.6.3 If the City shall fail to observe or to perform any of the provisions of Section 4.2 or shall have permitted six or more Comparable Events to take place in a twelve (12) month period (as described more fully in Section 6.2.2) and such events shall have given the Team the option to terminate this Agreement and the Suns License pursuant to Section 6.2.2.

6.6.4 If the Team, the Marketer or the City shall fail to observe or perform any of the other covenants, agreements or provisions in this Agreement other than as referred to in Sections 3.1.12, 6.6.2 and 6.6.3 and such failure is not cured within thirty (30) days after written notice of such failure; provided, however, that if it is not reasonably possible to cure such failure 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 cure.

6.7 Specific Performance. The parties acknowledge and agree that if the City were to fail to observe or to perform any of the provisions of this Agreement, including in particular Section 4.2, or if the Team were to fail to observe or to perform any of the provisions of this Agreement,

including in particular Section 4.1, the award of damages arising from such breach, including liquidated damages as contemplated by Section 6.8 hereof, would not be an adequate remedy. Therefore, the parties acknowledge and agree that, subject to Section 6.11, (a) each party shall be entitled to specific performance, any other injunctive relief, or any other court order to enforce the performance of the covenants and obligations undertaken under this Agreement, including in particular Sections 3.1.12, 4.1 and 4.2; and (b) notwithstanding any other provision in this Agreement or any Related Agreement, no cure period provided for in this Agreement or any Related Agreement shall be a condition to the right to obtain such specific performance, other injunctive relief or any court order enforcing performance of this Section 6.7.

6.8 Liquidated Damages.

6.8.1 Intent and Objective. The parties acknowledge and agree that (a) the liquidated damage remedy provided by this Section 6.8 is only available in the event that the remedies provided by Section 6.7 are not available to the City as determined by a court having jurisdiction over the subject matter of this Agreement, and (b) if the Team were to breach Section 4.1, and the City were not able to obtain the

remedies provided by Section 6.7, the aggregate damages arising from such breach would be substantially incapable of estimation due, to a substantial extent, to the lost value attributable to the adverse consequences such a breach would have on the redevelopment of the City's downtown area. The parties further acknowledge and agree that the liquidated damages required under this Section 6.8 to be paid by the Team in the event the Team were to breach Section 4.1 (and the City were not to be able to obtain its specific performance remedy for some reason) are a reasonable estimate of the damages that would be incurred due to such breach and are not a penalty. The parties further acknowledge and agree that the intent and objective of this Section 6.8 is to attempt to compensate the City for its loss (which the parties acknowledge cannot be fully compensated for by any payment of damages, including liquidated damages) that would result from the Team's breach of its obligation to play its Home Games at the Facility as required under this Agreement. To accomplish such objective, the parties have, as of the date hereof, agreed that the formulas set forth in Section 6.8.2 constitute the best, reasonable and objective estimate of the damages that would be incurred in the event the Team were to breach Section 4.1 and the City were not able to obtain the remedies provided by Section 6.7.

6.8.2 Payment Obligations. If the Team breaches Section 4.1 and the City is unable to obtain the remedies provided by Section 6.7, then, as liquidated damages and not as a penalty, the Team shall be obligated to pay to the City, within ninety (90) days after the end of each Fiscal Year commencing with the Fiscal Year during which such breach occurs, an amount (the "Liquidated Damages Amount") calculated in accordance with the following formula: (a) the aggregate of all City Priority Operating Fee Payments and City Ordinary Operating Fee Payments received by the City as of the date of the breach shall be subtracted from \$200,000,000; (b) the remainder derived by the subtraction pursuant to clause (a) shall be divided by the the number of years (rounded to the nearest one-half year) remaining from the date of the breach until the Expiration Date. The quotient derived by the division pursuant to clause (b) shall be the Liquidated Damages Amount. The Team shall pay to the City, within ninety (90) days after the end of each Fiscal Year commencing with the Fiscal Year during which the breach occurs, the Liquidated Damages Amount, provided that for each such year the Team shall be entitled to a credit against the Liquidated Damages Amount, which credit shall be equal to the Post-Breach City Revenue (if any) received by the City during each Fiscal Year for which a Liquidated Damages Amount is payable.

6.9 Restoration Losses. In the event any restoration of the Facility undertaken pursuant to Article 10 or Article 11 of the Operating Agreement and Section 16 or Section 17 of the Suns License causes an Abatement Period during which time the Team is required to play its Home Games at a location other than the Facility, (the "Restoration Abatement Period") the Team may elect to receive, from Facility Revenue, an amount to compensate the Team for losses incurred by the Team due to the unavailability of the Facility during such Restoration Abatement Period, plus interest at ten percent (10%) per annum compounded annually. Such amount (the "Restoration Loss Amount") shall be equal to the difference between (a) the Team's revenues from the replacement facility used for Home Games played at a location other than the Facility and (b) the parties' mutual good faith estimate (or, in the absence of such agreement, an estimate established pursuant to ADR) of the revenues which the Team would have derived from the sources described in the following sentence had such Home Games been played at the Facility. The sources of revenue to be considered for purposes of determining the revenues which the Team would have received from the Facility shall be restricted to the following sources: the Advertising Agreement, Suite Marketing Agreement, Suns License and the Suns Office Lease. The Restoration Loss Amount plus interest at ten percent (10%) per annum compounded annually shall be payable annually as

follows: commencing with the first Ordinary Operating Fee Payment to the City following the expiration of an Abatement Period during which the Team was required to play its Home Games at a location other than the Facility, and continuing thereafter until the Restoration Loss Amount plus interest at ten percent (10%) per annum compounded annually is paid, the Team shall receive from Facility Revenue an amount equal to fifty percent (50%) of each Ordinary Operating Fee Payment otherwise payable to the City. If any portion of an Ordinary Operating Fee Payment to which the Team is entitled pursuant to this Section 6.9 is received by the City, the City shall pay such portion to the Team within ten (10) days. If the Team terminates this Agreement pursuant to Sections 6.2.1 or 6.2.2, any unpaid Restoration Loss Amount shall remain due and owing from the City. If this Agreement is terminated for any other reason, the Team shall forfeit any unpaid Restoration Loss Amount. The Team shall make an election to receive payments pursuant to this Section 6.9 (the "Restoration Loss Amount Payments") by written notice to the City within thirty (30) days following the completion of any Restoration Abatement Period. If the Team elects to receive Restoration Loss Amount Payments, the City shall make such payments to the Team pursuant to this Section 6.9 and the term of this Agreement shall be extended pursuant to Section 2.1, the term of the Operating Agreement shall be extended pursuant to Section 2.1

thereof, and the term of the other Related Agreements shall be extended as provided therein. If the Team elects not to receive Restoration Loss Amount Payments, the City shall have no obligation to make any Restoration Loss Amount Payments to the Team, and the City shall have no liability to the Team for losses incurred by the Team due to the unavailability of the Facility during such Restoration Abatement Period.

6.10 Institution of Litigation Permitted by Section 6.11 To the extent permitted by Section 6.11, in addition to any other rights or remedies, either party may institute litigation to recover damages (the prosecution of any such action for damages shall be subject to prior compliance with Section 6.11) for any Event of Default, or to obtain any other remedy (including specific performance and any other equitable remedy) consistent with the purpose of this Agreement; provided that specific performance shall in no event require the Team or the shareholders of the general partner of the Team to commit capital in addition to any capital already committed. Litigation permitted by this Agreement shall only be instituted in the Superior Court of Arizona for the County of Maricopa, or in the Federal District Court in the District of Arizona. The Team, the Marketer and the City consent to the jurisdiction of such courts. Subject to Section 6.11, neither the existence of any claim or cause of action of a party

against another 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.

6.11 Dispute Resolution Procedures. In the event of a 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 any 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 any 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, any party may request the American Arbitration Association or its successor ("AAA") to select the Neutral or

cause all 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 all 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 any 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 and shall conduct the Arbitration in accordance with the rules of AAA. If the Arbitration results in a

determination by the arbitrator(s) that an Event of Default has occurred, the provisions of Article 6 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 6. Except as expressly provided to the contrary in this Section 6.11 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 Section 6.6.

Notwithstanding any other provision of this Section 6.11 to the contrary, in the event any 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 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 Section 6.11, 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. 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, 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 3.1.11.6, any recovered costs and expenses in such Arbitration shall not be included as Operating Expenses or paid from Facility Revenue.

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

6.13 Costs, Expenses and Fees. In the event of any Challenge by a Person who is not a party hereto in any litigation, arbitration or other dispute resolution proceeding ("Challenge Proceeding") the Team, the Marketer 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 Team, the Marketer 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 any party to this Agreement by another party hereto ("Proceeding"), (a) except as provided in Section 3.1.11.6, no party shall be entitled to advances from or to be reimbursed from Facility

Revenue for any costs or expenses incurred by them in such Proceeding (except for any fees and costs of the Neutral and AAA in the Mediation as permitted by Section 6.11), including reasonable attorneys' fees or costs, (b) except as provided in Section 3.1.11.6 or 6.11, 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 3.1.11.6, any award granted to any party in such Proceeding shall be treated as the sole property of such party.

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

6.15 Acceptance of Legal Process.

6.15.1 Service on City. In the event that any legal or equitable action is commenced by the Team or the Marketer 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.

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

ARTICLE 7 INDEMNIFICATION.

The Team shall indemnify and save the City and its elected officials, officers, employees, 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 attorney's fees) which may be imposed upon or incurred by or asserted against the City or its elected officials, officers, employees, agents, independent contractors and consultants by reason of any failure on the part of the

Team to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement, except to the extent caused by the City's negligent acts or omissions.

ARTICLE 8 LIMITATION OF LIABILITY.

8.1 Team. 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, independent contractors, consultants and limited partners of the Team (collectively "Team Personnel"), shall not in any way be liable hereunder or with respect hereto; no deficiency or other monetary or personal judgment of any kind with respect to liability arising hereunder or with respect hereto shall be sought or entered against any of the Team Personnel; no judgment with respect to liability arising hereunder or with respect hereto shall give rise to any right of execution or levy against the assets of any of the Team Personnel; and the liability of the Team hereunder, shall be limited to the assets of the Team and its general partner.

8.2 Marketer. 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, independent contractors, consultants and limited partners of the Marketer (collectively "Marketer Personnel"), shall not in any way be liable hereunder or with respect hereto; no deficiency or other monetary or personal judgment of any kind with respect to liability arising hereunder or with respect hereto shall be sought or entered against any of the Marketer Personnel; no judgment with respect to liability arising hereunder or with respect hereto shall give rise to any right of execution or levy against the assets of any of the Marketer Personnel; and the liability of the Marketer hereunder shall be limited to the assets of the Marketer and its general partner.

8.3 City. No member, elected official, officer, employee, agent, independent contractor or consultant of the City shall be liable to the Team or to the Marketer, or any successors in interest to the Team or to the Marketer, in the event of any default or breach by the City for any amount which may become due to the Team or to the Marketer or any successors in interest to the Team or to the Marketer, 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).

ARTICLE 9 GENERAL PROVISIONS.

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

Team Designate:

The Phoenix Suns
2910 North Central Avenue
Phoenix, Arizona 85012
Attention: Mr. Richard Dozer

With a copy to:

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

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

With a copy to:
City Attorney
Law Department
City of Phoenix
251 West Washington
Suite 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.

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

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

9.4 Force Majeure and Abatement Periods. Failure in performance by either party hereunder shall not be deemed an Event of Default, and the nonoccurrence of any condition hereunder shall not give rise to any right otherwise provided herein, when such failure or nonoccurrence is due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; unusually severe weather; inability (when both parties are faultless) of any contractor, subcontractor or supplier; acts or the failure to act, of any public or governmental agency or entity (except

acts or failures to act by the City acting in its proprietary capacity) 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, however, 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 delay due to any such cause shall, for the purposes 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, the Team and the Marketer. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure a default hereunder.

9.5 Interest. Unless otherwise provided herein, any amounts which may be owed to either party by the other pursuant to this Agreement shall bear interest from the due date until paid at the Premium Rate. Payment of such interest shall not excuse or cure any Event of Default.

9.6 Right to Inspection and Audit of Records.

9.6.1 Inspection of Records. The Team shall keep and maintain complete and accurate books, records and documents of all kinds in any way related to the Team's rights and obligations under this Agreement. All books, records and documents required to be kept and maintained pursuant to this Section 9.6.1 shall be kept separate and identifiable from its other books, records and documents for a period of five (5) years after the end of the fiscal year to which such books, records and documents pertain. In the event the Team breaches Section 4.1, the City shall be entitled during the remaining term of this Agreement and five years thereafter (at the Team's office, upon not less than seventy-two (72) hours' notice, and at all reasonable times) to inspect the books, records and other documents of the Team of all kinds possessed by or under the control of the Team in any way related to the Team's obligations under this Agreement. In the event the City breaches Section 4.2, the Team shall be entitled during the remaining term of this Agreement and five (5) years thereafter (at the Facility, upon not less than seventy-two (72) hours' notice, and at all reasonable times) to inspect the books, records and other documents of the City and the Operator in any way related to the City's obligations under this Agreement.

9.6.2 Audit. In the event the Team breaches Section 4.1, (a) the City shall be entitled (at its expense) once during each calendar year during the remaining term of this Agreement and once after the expiration or termination of this Agreement, to conduct an independent audit of the Team's books, records and other documents of all kinds related to the Team's obligations under this Agreement (including, without limitation, any books, records and other documents related to any revenue derived by the Team or any of its Affiliates from any of the Team's Home Games played at a location other than the Facility) by a certified public accounting firm to be designated by the City; and (b) the Team shall be entitled (at its expense) once during each calendar year during the remaining term of this Agreement and once after the expiration or termination of this Agreement, to conduct an independent audit of the City's books, records and other documents of all kinds related to the City's obligations under this Agreement (including, without limitation, any books, records and other documents related to any Post-Breach City Revenue) by a certified public accounting firm to be designated by the Team. Any audit performed pursuant to this Section 9.6.2 shall be conducted during usual business hours.

9.6.3 Confidentiality. The City will, to the fullest extent permitted by law, preserve the confidentiality of information obtained from the Team pursuant to this Section 9.6.

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

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

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

9.10 Entire Agreement, Waivers and Amendments.

9.10.1 This Agreement is executed in twelve (12) duplicates each of which is deemed to be an original. This Agreement (which includes 100 pages of text (including a table of contents and signature page) and the referenced exhibits, each of which are 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.

9.10.2 This Agreement, together with the Related Agreements to the extent applicable, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof except as provided in Section 1.2.

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

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

CITY:

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



David A. Schreiner
Assistant Director, Community and Economic Development

TEAM:

PHOENIX SUNS LIMITED PARTNERSHIP, a Delaware limited partnership

By JDM SPORTS, INC., an Arizona corporation, its general partner

By: 
Jerry J. Colangelo,
President

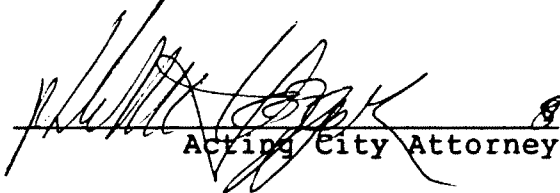
ATTEST:


DEPUTY City Clerk

MARKETER:

PHOENIX SUNS MARKETING LIMITED PARTNERSHIP, a Delaware limited partnership

APPROVED AS TO FORM:


Acting City Attorney

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

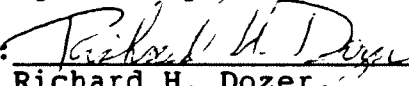
By: 
Richard H. Dozer,
President

EXHIBIT 1

FIRST RESTATED
ASSURANCE AGREEMENT
DEFINITIONS

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

1. AAA means the American Arbitration Association or any successor thereto.

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 hereof, (b) Article 10 of the Operating Agreement or Section 16 of the Suns License, (c) Article 11 of the Operating Agreement or Section 17 of the Suns License, (d) Section 19.6 of the Operating Agreement, (e) Section 22.4 of the Suns License, and (f) Sections 4.11.2, 4.11.5 or 9.5 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.

3. ADR means the alternative dispute resolution procedures established pursuant to Section 6.11.

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

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

6. 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 debts of such Subject Person, Controls such Subject Person.

7. Arbitration has the meaning set forth in Section 6.11.

8. 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.

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

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

10.1 Assessment has the meaning set forth in Section 3.1.9.

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

12. Challenge has the meaning set forth in Section 3.4.4.

13. Challenge Proceeding has the meaning set forth in Section 6.13.

14. 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 3.1.11, 3.1.12 and 4.2, "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 definitions are 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 definitions.

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

16. City Designate has the meaning set forth in Section 9.1.

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

18. City Proprietary Activity has the meaning set forth in Section 3.1.12.1.

19. Civic Plaza Events has the meaning set forth in Section 3.1.11.3.

20. Commercial Advertising means announcements, acknowledgments, banners, signs and other visual or audible messages displayed or broadcast within the Facility for a fee. Commercial Advertising shall not include the naming of the Facility, public service announcements, 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 (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 television 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 includes Temporary Commercial Advertising (as defined in the Operating Agreement) and Fixed and Permanent Commercial Advertising (as defined in the Operating Agreement).

21. Commercial Event means any Event which features performers or performances which are normally booked in arenas 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 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 not involving a professional sports franchise.

22. Communication System means all the audio and visual communication systems, including but not limited to scoreboards, television and loudspeaker systems, public address

systems, timers, clocks, message center, video screens, signs and marquees, within or at the Facility.

23. Comparable Events has the meaning set forth in Section 3.1.11.1.

24. Competing Facilities has the meaning set forth in Section 3.1.11.1.

25. Completion Date has the meaning set forth in Section 4.10 of the DDA.

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

27. Construction Start Date means the date the City issues a "notice to proceed" to any construction contractor to proceed with the first phase of construction of the Facility after the City has completed its Site clearance obligation pursuant to the DDA.

28. Control, Controlled or Controlling means (a) with respect to a corporation, owning legally, beneficially or in combination at least twenty percent (20%) of any class of issued and outstanding debt or equity of such corporation,

(b) with respect to a partnership, being a general partner or being entitled to receive at least twenty percent (20%) of the income, losses or distributions from such partnership, and
(c) with respect to a trust or other entity or association not described in clauses (a) or (b), being the trustee or other person entitled to direct the management of such trust's, entity's or association's assets, or being entitled to receive at least twenty percent (20%) of the income, losses or distributions from such trust, entity or association.

29. 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.

30. 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.

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

32. Dispute has the meaning set forth in Section 6.11.

33. Economic Assistance has the meaning set forth in Section 3.1.11.2.

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

35. Equitable Litigation has the meaning set forth in Section 6.11.

36. Event means all revenue or nonrevenue producing sports, entertainment, cultural, civic and other activities and events which are conducted at the Facility including City Events and Operator Events.

37. Events of Default means the events described as such in Section 6.6.

38. Exempt Facilities has the meaning set forth in Section 6.2.2.

39. Expiration Date means the date this Agreement expires pursuant to Section 2.1.

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

41. Facility Account means the bank account to be established by the Operator for the deposit of all Facility Revenue.

42. 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) any tax refunds other than refunds to Investors, revenue 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, and excluding any revenue specifically excluded from the definition of Facility Revenue by the explicit terms of the Operating Agreement; provided, however, that (a) with respect to Ticket Receipts (as defined under the Suns License), only the Use Fee (as defined under 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 nonedible 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 television 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.

43. Fiscal Year means the taxyear of the Operator, or any portion thereof.

44. 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.

45. Hard Concession shall have the meaning set forth in the Suns License.

46. 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 an emergency condition that renders the Facility practicably unusable.

47. Immediate Family means any spouse, son, daughter or parent of any individual (by blood or marriage), or any trust, estate, partnership, joint venture, company, corporation, operation or any other legal entity or business or investment enterprise Directly or Indirectly Controlled by such spouse, son, daughter or parent.

48. Independent Advertising Agent means the party to the Independent Advertising Agent Agreement other than the Team, as authorized by Section 5.1.4.2 of the Operating Agreement.

49. Independent Advertising Agent Agreement means the Arena Independent Advertising Agent Agreement between the Team and the Independent Advertising Agent in form and substance approved by the City.

50. Initial Assurance Agreement has the meaning set forth in Section 1.2.

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

52. 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 block bounded by Jefferson Street, Jackson Street, Third Street and Fourth Street.

53. Lease Commencement Date has the meaning set forth in the Suns Office Lease.

54. Lender means each lender providing Construction Financing (as such term is defined in the DDA).

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

56. Licensee Advertising has the meaning set forth in Section 4.4 of the Operating Agreement.

57. Liquidated Damages Amount shall have the meaning set forth in Section 6.8.

58. 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.

59. 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.

60. Management Fee means the fee payable to the Operator pursuant to Sections 5.2.1 and 5.2.2 of the Operating Agreement or payable to the Team if the Operator is not an Affiliate of the Team pursuant to Section 5.6 hereof.

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

62. Marketer Personnel has the meaning set forth in Section 8.2.

63. Mediation has the meaning set forth in Section 6.11.

64. 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.

65. Non-Commercial Events shall have the meaning set forth in Section 3.1.11.4.

66. Neutral has the meaning set forth in Section 6.11.

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

68. Operating Expenses means all usual and ordinary business costs and expenses incurred by the Operator in managing, operating and otherwise performing its duties in connection with the Facility as provided in the Operating Agreement and 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 of the Operating Agreement; (d) utilities and other services for the Facility; (e) Impositions and insurance premiums; (f) repair, maintenance and restoration of the Facility as provided in the Operating Agreement; (g) Additions; (h) 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; (i) a commercially reasonable fee paid to a Replacement Operator; (j) the amount set aside for the Working Capital Reserve pursuant to Section 5.1.7 of the Operating Agreement; and (k) the fees and costs of the Neutral and AAA as provided in Section 6.11. 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, Amortized Suns Payments, payments made or any awards to the prevailing party in any Arbitration as required by Section 6.11, and any other categories of payments specifically excluded from the definition of Operating Expenses by the terms of the Operating Agreement shall not constitute Operating Expenses.

69. Operations Start Date means the 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 a Temporary Certificate of Occupancy permitting any Event to be conducted.

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

71. Operator Events means the Home Games and all other Events which are not City Events.

72. Ordinary Operating Fee Payment has the meaning set forth in Section 5.2 of the Operating Agreement.

73. Outstanding Arts Obligation has the meaning set forth in Section 5.11.

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

75. Post-Breach City Revenue means for the period following the date the Team breaches Section 4.1, all revenue derived by the City from the operation of the Facility, less any operating expenses associated with the operation of the Facility during such period.

76. Preparation Period has the meaning set forth in Section 3.1.12.2.

77. Premium Rate means a rate of interest equal to two percent (2%) in excess of the rate of interest announced from time to time by Valley National Bank, or another bank designated by the Operator, as such bank's prime rate of interest.

78. Priority Operating Fee Payment means the payments from the Operator to the City required by Section 5.1.5 of the Operating Agreement, subject to the moratorium established in Section 5.1.6 and to the priorities established in Section 5.1.7.

79. Proceeding has the meaning set forth in Section 6.13.

80. Project Costs means all Preopening Soft Costs and all Construction Costs, as such terms are defined in the DDA.

81. Race Day has the meaning set forth in Section 3.1.12.2.

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

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

84. Renewal and Replacement Account means the Renewal and Replacement Trust Account to be established for capital improvements to the Facility as provided in the Operating Agreement.

85. Replacement Operator means the person or entity selected pursuant to Article 5.

86. Request has the meaning set forth in Section 6.11.

87. Restoration Abatement Period has the meaning set forth in Section 6.9.

88. Restoration Loss Amount has the meaning set forth in Section 6.9.

89. Restoration Loss Amount Payments has the meaning set forth in Section 6.9.

90. Restoration Period has the meaning set forth in Section 3.1.12.2.

91. Seventh Anniversary Date means the date seven (7) years after the July 1 immediately prior to the License Commencement Date; provided, however, that the Seventh Anniversary Date shall be extended for a period equal to the aggregate of (a) every Abatement Period (or portion thereof) commencing after the License Commencement Date having a duration of at least ninety (90) days and (b) the period of

time during which a portion of the City's Ordinary Operating Fee Payments has been paid to the Team in satisfaction of any Restoration Loss Amount pursuant to Section 6.9.

92. 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(a) attached to the DDA.

93. 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-84 and all such forms of agreement as are executed and in effect from time to time.

94. Suite Licensees means the licensees who have executed Suite Licenses with the Operator for the use of the Suites.

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

96. Suites means, collectively, the 110 box seat enclosures in the Arena as more fully described in the DDA.

97. Suns has the meaning set forth in Section 4.9.

98. Suns Agreements has the meaning set forth in Section 5.4.

99. Suns License means the 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.

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

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

102. Team Designate has the meaning set forth in Section 9.1.

103. Team's NBA Franchise (Agreement) means the agreement between the Team and the NBA pursuant to which the Team owns and operates an NBA basketball franchise.

104. Team Personnel has the meaning set forth in Section 8.1.

105. Tenth Anniversary Date means the date ten (10) years after the July 1 immediately prior to the License Commencement Date; provided, however, that the Tenth Anniversary Date shall be extended for a period equal to the aggregate of (a) every Abatement Period (or portion thereof) commencing after the License Commencement Date having a duration of at least ninety (90) days and (b) the period of time during which a portion of the City's Ordinary Operating Fee Payments has been paid to the Team in satisfaction of any Restoration Loss Amount pursuant to Section 6.9.

106. Ticket Receipts means the gross amount of money received by the Team from the sale of the Tickets after first deducting therefrom all applicable federal, state and local excise, sales, transaction privilege and other taxes but no other charges or costs. All money received from premiums and other charges for, or in any way related to the use of, club or other preferred seating, or related rights or privileges,

before, at or after the Home Games shall be included in "Ticket Receipts." "Ticket Receipts" do not include the fees or other sums payable to the Operator by the Suite Licensees but do include additional Tickets purchased by the Suite Licensees plus any additional premiums or charges on such additional Tickets.

107. Title Exceptions has the meaning set forth in Section 3.1.8.

108. Twentieth Anniversary Date means the date twenty (20) years after the July 1 immediately prior to the License Commencement Date; provided, however, that the Twentieth Anniversary Date shall be extended for a period equal to the aggregate of (a) every Abatement Period (or portion thereof) commencing after the License Commencement Date having a duration of at least ninety (90) days and (b) the period of time during which a portion of the City's Ordinary Operating Fee Payments has been paid to the Team in satisfaction of any Restoration Loss Amount pursuant to Section 6.9.

EXHIBIT 6.2.4

OBSOLESCENCE ADR

Within three years prior to the expiration of the Thirtieth Anniversary Date of this Agreement, but no later than two years prior to the expiration of the Thirtieth Anniversary Date, the Team may by written notice (the "Notice") to the City commence the process to determine if the Facility is obsolete so as to permit termination of this Agreement and the Related Agreements on the Thirtieth Anniversary Date. Upon receipt of the Notice the parties shall commence binding arbitration on the sole issue of obsolescence, the cost of which shall be shared equally by the parties, as follows:

(i) Within fifteen (15) days after the Notice is received by the City, the parties promptly shall hold an initial meeting attended by the official of the City of Phoenix who shall have the decision-making authority with respect to the selection of a neutral arbitrator and with respect to the procedures for arbitration and the President of the Team or his designee who shall also have such decision-making authority.

(ii) If within ninety (90) days after the Notice, the parties have not resolved the issue of obsolescence, the parties shall each appoint an arbitrator who shall be a person

familiar with facilities in use by NBA teams for their home games. The arbitrators appointed by each party shall select a neutral person who shall not be an Affiliate of either party and who shall not be a resident of Arizona or any state bordering Arizona (the "Obsolescence Neutral").

(iii) If within one hundred and twenty (120) days after the Notice, the arbitrators are unable to agree upon the appointment of the Obsolescence Neutral, either party may cause the American Arbitration Association (AAA) (or similar national arbitration if the AAA or its successor is unable or unwilling to act in the matter) to select the Obsolescence Neutral who shall not be an Affiliate of either party and who shall not be a resident of Arizona or any state bordering Arizona.

(iv) The parties shall in good faith attempt to arrive at an agreement as to an obsolescence alternative dispute resolution ("Obsolescence ADR") procedures with the assistance of the Obsolescence Neutral.

(v) If the parties are unable to agree upon Obsolescence ADR procedures within fifteen (15) days after the appointment of the Obsolescence Neutral, the Obsolescence Neutral shall make the final decision as to procedure and shall establish the time and the place for Obsolescence ADR, which place shall not be within fifty (50) miles of Maricopa County

or within fifty (50) miles of the greater metropolitan Phoenix area, whichever distance is greater.

(vi) The arbitrator appointed by each party and the Obsolescence Neutral shall constitute the panel of arbitrators who shall conduct the arbitration in accordance with the procedures and rules established by the Obsolescence Neutral.

(vii) The parties shall participate in good faith in the Obsolescence ADR process (which shall not extend beyond one hundred and eighty (180) days from the date of the selection of the Obsolescence Neutral) to its conclusion.

(viii) The arbitrators shall render their decision (by majority vote) within thirty (30) days of the conclusion of the Obsolescence ADR process.

The parties agree that the decision of the arbitrators shall be final and binding upon them. The parties agree that no other dispute resolution process under this Agreement or any Related Agreement nor any judicial proceeding or determination shall in any way invalidate the decision of the arbitrators and neither party is to be permitted to take any action to invalidate the decision of the arbitrators by judicial proceeding or otherwise. The procedures of this provision are intended to require that the parties use these proceedings exclusively

rather than judicial proceedings or any other proceedings as the means of resolving the issue of obsolescence. Notwithstanding any other provision of this Agreement or any provision of any Related Agreement, the commencement of litigation between the City and the Team (or an Affiliate of the Team) under this Agreement or the Related Agreements concerning any issue, other than issues of wrongful termination of the Suns License pursuant to Article 6 of the Assurance Agreement (irrespective of whether such litigation is commenced before or after the institution of these proceedings) shall not interfere with the resolution of the issue of obsolescence through these procedures.

The arbitrators shall consider the intentions of the parties upon entering into this Agreement and the Related Agreements and shall give such weight to the intentions of the parties as they deem appropriate. The intentions of the parties are as follows:

(a) The Team has committed to play in Phoenix at the Facility for forty (40) years, but is entitled under this Agreement and the Related Agreements, negotiated with the City in good faith, to have the option, if the Facility is obsolete, of leaving the Facility and, if it decides to do so, the City of Phoenix at the end of thirty (30) years; provided, however, that the duration of the Team's obligation to play at the

Facility is subject to any Abatement, termination or extension provisions of this Agreement and the Related Agreements.

(b) The Team has accepted the risks inherent in selecting metropolitan Phoenix as its location for 40 years if the Facility is not obsolete upon the occurrence of the Thirtieth Anniversary Date. Accordingly, the concept of obsolescence does not include factors such as deterioration in the Phoenix metropolitan area economy, the population of the Phoenix metropolitan area or the metropolitan Phoenix market for professional sports entertainment. Further, the Team has accepted the economic risks of this Agreement and the Related Agreements that have been entered into with the City of Phoenix, i.e., the direct and indirect revenues the Team will derive from the Facility as provided for in this Agreement and the Related Agreements.

(c) The Team also has accepted the risk of its own performance as a professional basketball team compared to the performance of other professional basketball teams with which it competes and that its performance at the time of Obsolescence ADR may affect the success of the Facility.

(d) The City of Phoenix has accepted the risks of its bargain with the Team (and Affiliates of the Team), including specifically the risk that the Facility will be obsolete upon

the occurrence of the Thirtieth Anniversary Date, permitting the Team to elect to terminate this Agreement and the Related Agreements at that time.

(e) Neither the economic expectations of the Team and its Affiliates nor the economic expectations of the City, whether prior to the Thirtieth Anniversary Date or after the Thirtieth Anniversary Date should be taken into consideration by the arbitrators because the issue of obsolescence should be determined based on the circumstances concerning the Facility as they exist at the time of arbitration.

(f) The arbitrators should consider amounts in the Renewal and Replacement Account as available to improve the Facility at the time of the arbitration proceedings. The arbitrators should consider proposals by the City to expend amounts in the Renewal and Replacement Account as well as such additional amounts (if any) the City may propose to expend. The arbitrators should determine the issue of the obsolescence of the Facility for the immediate future and the extended term based on such binding financial commitments, if any, the City may wish to make. The arbitrators should consider rendering a decision which is conditioned upon the City entering into a binding agreement with the Team to make immediate (to be completed no later than one year after the Thirtieth Anniversary Date) improvements to the Facility as well as

future improvements to assure non-obsolescence of the Facility for the full forty-year term (as may be extended pursuant to this Agreement or any Related Agreement).

(g) In deciding whether the Facility is obsolete, the arbitrators should consider (i) physical deterioration, (ii) functional obsolescence, and (iii) the Facility's revenue generating capacity.

EXHIBIT 4.4

NEGATIVE PLEDGE

Pursuant to an Assurance Agreement dated as of July 19, 1989, and the First Restated Assurance Agreement dated as of July 19, 1989, between the Phoenix Suns Limited Partnership, a Delaware limited partnership ("Debtor") and City of Phoenix, Arizona, a municipal corporation ("Secured Party"), Debtor has agreed that, during the term of the Suns License, the Debtor will not play any Home Games at any location other than the Facility except as provided in the Assurance Agreement and the Suns License. (All capitalized terms in the preceding sentence shall have the meaning set forth in the Assurance Agreement).

THIS FILING IS MADE SOLELY TO GIVE NOTICE OF THE AFOREMENTIONED NEGATIVE PLEDGE AND IS NOT BEING MADE IN CONNECTION WITH A SECURED TRANSACTION BETWEEN DEBTOR AND SECURED PARTY.