

**ARENA LEASE AND MANAGEMENT AGREEMENT**

by and among

**CITY OF GLENDALE,**

an Arizona municipal corporation (the “City”)

and

**ARIZONA HOCKEY ARENA PARTNERS, LLC,**

a Delaware limited liability company (the “Arena Manager”)

and

**ARIZONA HOCKEY PARTNERS, LLC,**

a Delaware limited liability company (the “Team Owner”)

Dated as of \_\_\_\_\_, 2012

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**ARENA LEASE AND MANAGEMENT AGREEMENT**

**THIS ARENA LEASE AND MANAGEMENT AGREEMENT** (this “**Agreement**”) is dated as of \_\_\_\_\_, 2012 (the “**Effective Date**”), and is entered into by and among the City of Glendale, an Arizona municipal corporation (the “**City**”); Arizona Hockey Arena Partners LLC, a Delaware limited liability company (the “**Arena Manager**”), and Arizona Hockey Partners LLC, a Delaware limited liability company (the “**Team Owner**”).

**RECITALS**

A. On May 5, 2009, Coyotes Hockey, LLC, the owner for a time of the NHL team currently bearing the designation “Phoenix Coyotes” (the “**Team**”), and its affiliated entity, Arena Management Group, LLC, under a new owner of both entities, Dewey Ranch, LLC (collectively, “**Debtors**”), filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code. Coyotes Hockey, LLC and Dewey Ranch, LLC are referred to herein collectively as the “**Former Coyotes Owner.**”

B. During the above described Bankruptcy Case, two NHL-owned entities, Coyotes Newco, LLC and Arena Newco, LLC, purchased certain of the assets and assumed certain of the rights and obligations of the Dewey Ranch entity.

C. The NHL-owned entities did not, however, assume the Amended and Restated Arena Management, Use and Lease Agreement dated November 29, 2001, filed with the Glendale City Clerk as Document No. C-4416 (the “**Former AMULA**”).

D. While supporting the NHL-owned entities in the acquisition of the Coyotes franchise and the assumption of the arena management responsibilities, the City, did not waive any of its rights against the bankruptcy debtors with respect to the Former AMULA, including the Former Coyotes Owner’s covenant to cause the Team to play all of the Team’s home games at the facility in the City currently known as Jobing.com Arena (the “**Arena**”) in accordance with Section 9.5 of the Former AMULA.

E. The City has found and determined that the entering into of this Agreement by the City is part of the City’s endeavor to mitigate the more than \$500 million in future damages to the City caused by the termination of the Former AMULA by the Debtors.

F. Upon the closing of a purchase by the Team Owner from Coyotes Newco, LLC of the player contracts, the NHL franchise for the operation of the Team (the “**Franchise**”), and other assets relating to the Team pursuant to a purchase agreement to be negotiated between the Team Owner, the NHL and Coyotes Newco, LLC (the “**NHL Purchase Agreement**”) the Team Owner will be a member of the NHL and will hold the franchise for the operation of the Team as an NHL hockey team bearing the designation “Phoenix Coyotes”. Subject to the closing of the NHL Purchase Agreement, the City and the Team Owner desire that the Team will play all of its home games, commencing on the Closing Date and continuing for the term specified in this Agreement (together with any additional complete NHL hockey seasons as may occur during any extension of the Term pursuant to this Agreement), at the Arena Facility subject to the terms and conditions set forth in this Agreement and the terms of the Noncompetition/Non-Relocation Agreement, executed contemporaneously with this Agreement.

G. The City has determined that it is in the best interest of the City and its residents to provide for the lease, management, and use of the Arena Facility in the manner described in this

Agreement. Such acquisition, management and use will benefit the City and its residents by providing a substantial, regular, and continuing utilization of the Arena Facility by the Team Owner, providing additional employment opportunities within the City, increasing the City's tax base, and stimulating additional development on properties in the vicinity of the Arena Facility.

H. The respective obligations of each of the Arena Manager and the Team Owner under this Agreement and the Related Agreements, including the Team Owner's obligation to play all of the Team's home games at the Arena Facility, are unique and are integral to the use and operation of properties in the vicinity of the Arena Facility and to the well being of the City and its residents generally, and, with respect to the Team Owner, are personal to the Team Owner and may be discharged only by the Team Owner.

I. In reliance upon and in consideration of the City's obligations under this Agreement and the Related Agreements, subject to the closing of the NHL Purchase Agreement, (i) the Arena Manager will require the Team Owner to agree, pursuant to the Noncompetition/Non-Relocation Agreement, to play all of its home games at the Arena Facility, and (ii) the Arena Manager and the Team Owner have undertaken their respective obligations under this Agreement and the Related Agreements.

## **AGREEMENT**

**NOW THEREFORE**, in consideration of the premises, covenants, agreements and obligations contained herein, the parties enter into this Agreement and agree as follows:

### **1. DEFINITIONS: INTERPRETATION.**

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings indicated unless a different meaning is specifically provided or unless the context otherwise requires:

**"Account Records"** means accurate records relating to the management and operation of the Arena Facility, including records establishing all amounts received by the Arena Manager (whether as Operating Revenues or otherwise) and all amounts paid by the Arena Manager (whether as Operating Expenses or otherwise) and records relating to the Arena Accounts, including any records maintained by any Arena Sub-Manager.

**"Additional Arena Manager Event Block"** means 20 Events, which are not Hockey Events or City Sponsored Events, the Arena Manager causes to occur in a given Fiscal Year and for which the average attendance is not less than 7,000 patrons.

**"Advertising"** means all permanent and temporary announcements, acknowledgments, banners, liquid electronic displays, monument and other signs, show bills and other audio or visual commercial messages of any nature displayed, announced or otherwise presented at, in or on the Arena Facility or any portion thereof, provided that Advertising shall not include (a) any Advertising contained in the broadcasts, reproductions or transmittals of Team games in any medium or any Advertising of the broadcasts, reproductions or transmittals of Team games in any medium, (b) the Naming Rights, (c) Arena announcements, or (d) the City's program advertisements. For clarity, (i) under this Agreement Advertising does not include any advertising relating to the Team or the events occurring in the Arena Facility which are published, displayed, announced or transmitted in any medium other than by display, announcement or presentation at, in or on the Arena Facility or any portion thereof and (ii) any Advertising content transmitted on computers or other electronic communication devices owned by the

Team Owner or Arena Manager shall not, by virtue of the fact that such computers or devices are Personal Property, be deemed to Advertising “displayed, announced or otherwise presented at, in or on the Arena Facility or any portion thereof” for purposes of this definition.

“**Advertising Agreement**” means any contract or agreement entered into by or on behalf of the Arena Manager for Advertising.

“**Affiliate**” of a specified Person means a Person who (a) controls, is directly or indirectly controlled by, or is under common control with, the specified Person; (b) owns, directly or indirectly, 10% or more of the equity interests of the specified Person; (c) is a general partner (if the specified Person is a partnership), managing member or manager (if the specified Person is a limited liability company), officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in clause (a) or (b) above; or (d) is a member of the Immediate Family (e.g., any spouse, son, daughter or parent of any individual (by blood or by marriage), or any trust, estate, partnership, joint venture, limited liability company, corporation, or any other legal entity directly or indirectly controlled by such spouse, son, daughter or parent) of the specified Person or the Person described in clauses (a) through (c) above. A Person shall be deemed to control another Person for the purposes of this definition if the first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“**Annual Budget**” means an annual budget (prepared by the Arena Manager in the form provided in Exhibit G and submitted to the City and the Team Owner for their reasonable approval as stated herein) for a given Fiscal Year or partial Fiscal Year, as applicable, projecting in reasonable detail for such Fiscal Year (i) the Operating Revenues and Operating Expenses estimated in good faith by the Arena Manager; (ii) expenditures for Capital Improvements estimated in good faith by the Arena Manager; (iii) cash flows and timing of cash flows estimated in good faith by the Arena Manager; and (iv) such other amounts or information as may from time to time be reasonably required by the City within reasonable time limits while any Management Fee is payable hereunder.

“**Applicable Law**” means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, or any recorded restrictive covenant or deed restriction, affecting the Arena Facility, including those applicable to environmental, zoning, building code, health and safety and other similar matters.

“**Arbitration**” means the process by which an Arbitration Dispute is resolved under this Agreement, as provided in Section 21 hereof.

“**Arbitration Dispute**” means any dispute among the parties to this Agreement (or between any two of them) and arising out of or related to this Agreement.

“**Arbitrator**” means the individual selected by the parties in accordance with the Arbitration procedures established herein to decide an Arbitration Dispute.

“**Arena**” means, collectively, the Arena Facility and the Personal Property.

“**Arena Account**” means any one or more of the accounts described in Section 8.10.

**“Arena Facility”** shall mean the building in the City currently known as “Jobing.com Arena” and all foundations, structural elements, interior areas, all improvements, furnishings, fixtures and equipment (excluding furnishings and equipment owned by suite holders and temporary furnishings owned by Persons staging Events at the Arena) of whatever nature located therein or thereon and all exterior area, including the plaza and other exterior area adjacent to, located on Lot 9 of Westgate, and exclusively serving patrons attending Events at the Arena Facility, all as shown on Exhibit “A” and Exhibit “B” hereto. The cooling plant serving the Arena is specifically included as part of the Arena Facility.

**“Arena Maintenance Standard”** means a standard of maintenance that, as of the time of application, meets or exceeds the quality of the maintenance of (i) the multi-purpose facility currently known as “US Airways Arena” in Phoenix, Arizona (to the extent that records are available to the parties for the purpose of determining the quality of maintenance; to the extent not available, any other comparable multi-purpose arena for which such records are available); or (ii) such other multi-purpose arena to which the parties may from time to time, in their respective sole discretion, agree in writing. In the event of a conflict between Exhibit C and any Arena Maintenance Standard, Exhibit C shall control.

**“Arena Management Fee”** means the amount paid by the City to the Arena Manager for the management of the Arena in accordance with Section 10 and the terms and conditions set forth herein.

**“Arena Manager Affiliate Contract”** means any contract or agreement relating to the Arena Facility to which both the Arena Manager and an Affiliate of the Arena Manager or the Team Owner are parties, other than this Agreement, the Noncompetition/Non-Relocation Agreement and the Related Agreements. For clarity, agreements on the contributions of capital by owners, allocations of distributions among owners, the allocations of internal rights and control among the managers and owners with respect to the Arena Manager or the Team Owner shall not be Arena Manager Affiliate Contracts, and no payments by Arena Manager pursuant to such agreements or contracts shall be deemed Operating Expenses.

**“Arena Manager Default”** means the occurrence of any of the following events:

a. If the Arena Manager fails, within a reasonable time under the circumstances (including any time required for a reasonable investigation and subject to all appropriate employment procedures), after the Arena Manager receives notice or otherwise acquires knowledge that any employee, officer, director, independent contractor or agent of the Arena Manager has misappropriated monies or engaged in other fraudulent or illegal activity that is not de minimis in scope, to suspend or discharge such employee, officer, director, independent contractor or agent;

b. If the Arena Manager fails to make any payment or distribution to be made by the Arena Manager hereunder at the time and in the manner required by this Agreement, and such failure is not cured within 30 days after the Arena Manager’s receipt of notice of such failure from any other party hereto;

c. If any representation or warranty made by the Arena Manager in this Agreement at any time proves to have been incorrect in any material respect as of the time made, and if the Arena Manager fails to cause such representation or warranty to become correct within 30 days after the Arena Manager’s receipt of notice from any other party hereto that such representation or warranty was incorrect; provided, however, that if it is reasonably possible to cause such

representation or warranty to become correct but it is not reasonably possible to cause such representation or warranty to become correct within such thirty-day period, then such cure period shall be for an unlimited period of time so long as the Arena Manager (i) commences to cause such representation or warranty to become correct within 30 days after the Arena Manager's receipt of such notice, and (ii) thereafter diligently continues to cause such representation or warranty to become correct; or

d. If the Arena Manager materially breaches any covenant or provision of this Agreement, and such breach is not cured within 30 days after the Arena Manager's receipt from any other party hereto of notice of such breach; provided, however, that if it is reasonably possible to cure such breach but it is not reasonably possible to cure such breach within such thirty-day period, then such cure period shall be for an unlimited period of time so long as the Arena Manager (i) commences to cure such breach within 30 days after the Arena Manager's receipt of such notice, and (ii) thereafter diligently continues to cure such breach.

**"Arena Manager Event"** means an Event other than a Hockey Event or a City Sponsored Event that the Arena Manager secures for the Arena with Ticketed attendance of not less than 7,000 patrons.

**"Arena Manager Withdrawal"** means any of the following events

a. The Arena Manager resigns;

b. The Arena Manager is dissolved;

c. An Arena Manager Default or Team Owner Default exists under this Agreement or a Team Default exists under the Noncompetition/Non-Relocation Agreement, and the City elects to secure a Replacement Arena Manager or the City elects to act as Replacement Arena Manager, subject to the Team Owner's first right to secure a Replacement Arena Manager as set forth under Section 19.3.3;

d. The Arena Manager commences, or has commenced against it, any case, proceeding or other action under the United States Bankruptcy Code, or any other Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking (i) to have an order for relief entered with respect to the Arena Manager; (ii) to adjudicate the Arena Manager bankrupt or insolvent or seeking reorganization, winding up, liquidation, dissolution, discharge, composition, or other relief with respect to the Arena Manager or the debts of the Arena Manager; or (iii) the appointment of a receiver, trustee, custodian, or similar official for the Arena Manager; or

e. The Arena Manager becomes insolvent or admits in writing its inability to pay its debts as they mature.

**"Arena Parking Area"** means the parking areas made available to Arena Facility for parking of the vehicles of Arena patrons, which parking areas shall provide 5,500 parking spaces for each Event during the Term; provided, however, that if the Arena Manager notifies the City no less than three days prior to an Event that fewer parking spaces are required, the City shall only be required to make available such lower number of parking spaces.

**“Arena Parking Rights”** means (i) the right to directly charge for parking in any space or area which is a part of the Arena Parking Area; (ii) the right to negotiate and enter into agreements for the sale or license of Parking Advertising on that portion of the Arena Parking Area owned by the City; and (iii) the right to negotiate and enter into agreements for the sale or license of naming rights in connection with all or part of that portion of the Parking Area owned by the City.

**“Arena Revenue Bonds”** means the 2003 Arena Revenue Bonds designated “Series 2003A” and “Series 2003B” and any other bonds issued to refinance these bonds to the extent the principal maturity date is not extended.

**“Arena Sub-Manager”** means a qualified arena manager acceptable to and approved by the City to whom the Arena Manager may, from time to time, delegate all or a portion of its duties and responsibilities under this Agreement.

**“Business Day”** means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally under the laws of the State of Arizona. Use of the word “day”, as opposed to “Business Day”, means calendar day.

**“Capital Improvements”** means any or all installations, alterations or improvements of or to, and all purchases of additional or replacement furniture, fixtures, machinery or equipment for, the Arena Facility, the depreciable life of which, according to GAAP, is in excess of one (1) year.

**“City Default”** means the occurrence of any of the following events:

a. If the City fails to pay when due, for any reason, any amount payable by the City hereunder, including any portion of the Management Fee, and such failure is not cured within 30 days after the City’s receipt of notice of such failure from any other party hereto;

b. If any representation or warranty made by the City herein at any time proves to have been incorrect in any material respect as of the time made, and if the City fails to cause such representation or warranty to become correct within 30 days after the City’s receipt of notice from any other party hereto that such representation or warranty was incorrect; provided, however, that if it is reasonably possible to cause such representation or warranty to become correct but it is not reasonably possible to cause such representation or warranty to become correct within such thirty-day period, then such cure period shall be for an unlimited period of time so long as the City (i) commences to cause such representation or warranty to become correct within 30 days after the City’s receipt of such notice, and (ii) thereafter diligently continues to cause such representation or warranty to become correct;

c. If the City commences a proceeding under Chapter 9 of the United States Bankruptcy Code; or

e. If the City materially breaches any covenant or provision of this Agreement, and such breach is not cured within 30 days after the City’s receipt from any other party hereto of notice of such breach; provided, however, that if it is reasonably possible to cure such breach (excluding any failure to pay any portion of the Management Fees, which shall only be subject to subpart a. above) but it is not reasonably possible to cure such breach within such thirty-day period, then such cure period shall be for an unlimited period of time so long as the City (i)

commences to cure such breach within 30 days after the City's receipt of such notice, and (ii) thereafter diligently continues to cure such breach.

**"City Revenue Event"** shall have the meaning set forth in Section 7.6.

**"City Sponsored Event"** shall mean a City Revenue Event or a Community Event.

**"City Surcharge"** shall have the meaning set forth in Section 9.1.

**"City Surcharge Account"** means an account established and maintained for the benefit of the City as one or more trust accounts that require the signature of only the City for withdrawals at a federally-insured institution(s) having offices in the State of Arizona for the deposit and disbursement of City Surcharge.

**"City's Knowledge"** means the actual knowledge of the City Manager, the Acting City Manager (if applicable), or the Glendale City Council as a whole.

**"Claim or Loss"** means any claim, cost damage, demand, expense, loss, obligation or other liability (including reasonable attorneys' fees), including those relating to property, injury to or death of persons, loss of income and losses under workers' compensation laws and benefits.

**"Closing" and "Closing Date"** means the consummation of the transaction (and the date of consummation) contemplated by this Agreement upon the satisfaction or waiver of all conditions set forth in Section 17.2.

**"Community Event"** means an Event at the Arena Facility (i) which is sponsored or co-sponsored by the City; (ii) which is conducted or presented as a service to the City, its residents, or a non-profit organization; or (iii) which does not feature performers or performances normally booked in arenas comparable to the Arena Facility; or (iv) which the financial benefits (if any) of which are received or distributed to a non-profit, civic or other community organization; and (v) which in all cases are reasonably approved by the Arena Manager.

**"Community Event Expenses"** means those expenses that are directly attributable to the use of the Arena Facility for a Community Event, *i.e.*, those that would not have been incurred but for the Community Event, including the cost and expense of utilities, insurance, cleaning, repairs and personnel. For clarity, only payments or other considerations to be made or provided by the Arena Manager that (i) are calculated solely on the basis of sales made or transactions completed during a Community Event directly relating to such Community Event or (ii) are payable solely because a given Community Event is held shall be "directly attributable" to such Community Event.

**"Concessions"** means the sale, furnishing or renting of foods, beverages (including alcoholic beverages), apparel, souvenirs, programs (excluding program Advertising) or other goods or merchandise by a Person (other than the Team Owner at the Team Retail Stores) in, at, from or in connection with the operation of the Arena Facility, whether sold, furnished or rented from shops, kiosks or by individual vendors circulating in the Arena Facility, including any restaurant (whether open to the public or restricted to members thereof), club, membership dining room or other facility for the sale of food and beverages, and including sales to fill orders for any such items by any Person other than the Team Owner at the Arena Facility (whether received by mail, facsimile, telephone or other medium of communication).



**“Concessions Agreement”** means any agreement or contract for the right to engage in or conduct one or more Concessions.

**“Emergency”** means any condition or situation that presents an imminent and significant threat (or if not immediately acted upon will present an imminent and significant threat) to the health or safety of users of the Arena Facility or to the structural integrity of the Arena Facility.

**“Event”** means any revenue or non-revenue producing sports, entertainment, cultural or civic event or other activity (including related event set-up and take-down) which is either (i) presented or held in the bowl (main seating) portion of the Arena Facility, or (ii) presented or held in any other portion of the Arena Facility in a manner that precludes the use of the bowl (main seating) portion of the Arena Facility for other events or activities. If such event or activity is presented in its entirety more than once during a given day, all such presentations during such day shall be deemed one Event. If such event or activity is presented in its entirety on more than one consecutive day, each day on which such event or activity is presented shall be deemed a separate Event. For purposes of this paragraph, any event or activity that commences on a given day and is completed within the four hours immediately following the end of such day shall be deemed to have been presented in its entirety on the day such event or activity commenced.

**“Event of Default”** means a Team Owner Default, Arena Manager Default, or City Default and refers to an event that exists after the expiration of all applicable notice and cure periods and periods of Force Majeure.

**“Exclusive Arena Manager Revenues”** means, and excludes any revenues that are Exclusive City Revenues, (i) revenues from or in connection with Concessions at Hockey Events and, as applicable, other Events, (ii) revenues from or in connection with food and beverage services provided by Arena Manager at Hockey Events and, as applicable, other Events, (iii) revenues from or in connection with Naming Rights; (iv) revenues from or in connection with any Advertising, (v) Suite License Revenues and revenues from the licensing of Premium Seats, including any “premium,” “premium fee,” or “personal seat license fee”, and (vi) any revenues that are not Exclusive Team Revenues or Exclusive City Revenues.

**“Exclusive City Revenues”** means (i) all Impositions of the City, (ii) City Surcharge, and (iii) interest or other income derived from the investment of any of the foregoing.

**“Exclusive Team Revenues”** means all (i) Hockey Ticket Receipts (minus City Surcharge and Impositions); (ii) revenues from or in connection with the operation of Team Sales generated by Team Retail Stores; and (iii) sponsorship revenues and receipts, including television and radio broadcasting, promotional and other sponsorship fees received or collected in connection with the conduct of Hockey Events (excluding, for clarity, the Naming Rights); all of which shall be excluded from Operating Revenues.

**“Exclusive Team Spaces”** means the portions of the Arena Facility designed and constructed for the exclusive use by the Team Owner, including the team locker room (the space in the Arena Facility designed and constructed for the exclusive use by the Team Owner as a home team locker room, including dressing, locker, shower, lounge, training, exercise and video coaching areas), the Team Owner’s office, the Team’s storage areas, and the Team Retail Stores, as described on Exhibit “A”.

**“Exculpatory Language”** means the following language:

[Insert name of exculpating Person] acknowledges and agrees that (i) this [insert title of contract or agreement] imposes no contractual obligation on the City of Glendale; (ii) in the event of a default under this [insert title of contract or agreement], of any kind or nature whatsoever, [insert name of exculpating Person] shall look solely to [insert name of the Arena Manager or the Team Owner, as applicable] at the time of the default for remedy or relief; and (iii) no elected official, officer, employee, agent, independent contractor or consultant of the City of Glendale shall be liable to [insert name of exculpating Person], or any successor in interest to [insert name of exculpating Person], with respect to this [insert title of contract or agreement].

**“Fee Activity”** means any Event or other activity at the Arena Facility, the admission to which is controlled by a Ticket.

**“Fiscal Quarter”** means a three month period commencing on the first day of January, April, July or October, and ending on the last day of March, June, September or December, respectively.

**“Fiscal Year”** means a 12 month period commencing on July 1 and ending on June 30.

**“Force Majeure”** means any of the following that prohibits or delays the initial occupancy of the Arena Facility or prohibits or materially interferes with the occupancy, operation or use of the Arena Facility or any material portion thereof after the Effective Date: strikes; lock-outs; acts of the public enemy; the enactment, imposition or modification of any Applicable Law which occurs after the Effective Date and precludes performance under this Agreement; confiscation or seizure by any government or public authority; wars or war-like action (whether actual and pending or expected, and whether de jure or de facto); blockades; insurrections; riots; civil disturbances; governmental restrictions; epidemics; landslides; earthquakes; fires; hurricanes; floods; wash-outs; explosions; failure of major equipment or machinery critical to the occupancy, operation or use of the Arena Facility for its intended purposes; nuclear reaction or radiation; radioactive contamination; or any other cause, whether of the kind herein enumerated or otherwise, which is not reasonably within the control of the party claiming the right to alter, delay or postpone performance on account of such occurrence, but specifically excluding any financial condition, lack of funds, lack of financing, insolvency or bankruptcy of such party.

**“Governmental Authority”** means any federal, state, and local agency, department, commission, board, bureau, administrative or regulatory body or other governmental instrumentality having jurisdiction over the Arena Facility (or any portion thereof) and the transactions contemplated by this Agreement.

**“Hazardous Material”** means any chemical, element, compound, mixture, solution, or other substance that is prohibited, limited, governed, or regulated by any applicable federal, state or county, municipal, local or other statute, law, ordinance or regulation that related to or deals with the protection of human health, safety or the environment, and any rules, regulations or guidelines adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced as of the Effective Date or the Closing Date, including by way of example and not limitation substances designated as “hazardous” or “toxic” under Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act; any hazardous substance or toxic pollutant designated under Section 311(b)(2)(a) or Section 307(a) of the Clean Water Act; and any imminently hazardous chemical substance or mixture with respect to which the Environmental Protection Agency Administrator has “taken action under” Section 7 of the Toxic Substances Control Act.

**“Hockey Event”** means any of the following when played or conducted at the Arena Facility: (i) any Home Game (including any related warm-up sessions); (ii) any All-Star Game (including any related warm-up sessions); or (iii) any Hockey-Related Event.

**“Hockey Event Permitted Uses”** include the following:

- a. Hockey Events;
- b. The use by the media for watching, broadcasting, and reporting on Hockey Events and other Team Owner activities; and
- c. The sale and distribution of Hockey Tickets.

**“Hockey Event Spaces”** means all portions of the Arena Facility, other than the Exclusive Team Spaces.

**“Hockey-Related Event”** means any Event (other than a Pre-season Game, Regular Season Game, Play-off Game or All-Star Game) conducted, sponsored or co-sponsored by the Team Owner, including any award ceremony, championship celebration, promotional performance or festival, breakfast, luncheon, dinner, ball, demonstration, exhibition, instruction or workshop. Notwithstanding the foregoing, the Hockey-Related Events described in this definition shall not exceed four such Hockey-Related Events in any Fiscal Year without the consent of the City, and shall be subject to the Scheduling Procedures.

**“Hockey Rules”** means all then applicable NHL policies, procedures, provisions, rules, regulations, by-laws, contracts and directives that govern the rights, duties, privileges and obligations of members of the NHL.

**“Hockey Season”** means a period beginning on the date officially promulgated by the NHL as the first day of training camp for a given NHL hockey season and ending on the date on which the last NHL Play-off Game is played for such season.

**“Hockey Ticket”** means a Ticket for a Hockey Event.

**“Hockey Ticket Receipts”** means the gross amount of money received by the Team Owner from the sale of Hockey Tickets, including Hockey Tickets for Suites and for Premium Seats and any City Surcharge assessed on or charged with respect to any Hockey Ticket.

**“Home Game”** means an NHL Pre-season Game, an NHL Regular Season Game or an NHL Play-off Game in which the Team is designated as the “home team”.

**“Imposition(s)”** means all governmental assessments, franchise fees, transaction privilege and use taxes, excise taxes, license and permit fees, levies, charges and taxes, general and special, ordinary and extraordinary, of every kind and nature whatsoever (irrespective of the nature thereof, including all such charges based on the fact of a transaction, irrespective of how measured) which at any time during the Term may be assessed, levied, confirmed or imposed upon: (a) the Arena or any portion thereof; and (b) any payments received by the Arena Manager or the Team Owner from any Person using or occupying the Arena Facility or any portion thereof.

**“Interest Rate”** means the annual interest rate that is announced from time to time by Wells Fargo Bank, N.A. or its successor as its “prime” lending rate, plus 2%. If, at any time during the Term, Wells Fargo Bank, N.A. or its successor no longer announces a “prime” lending rate, then the Interest Rate shall be the annual interest rate that is announced by a national bank reasonably selected by the parties and having an office in Phoenix, Arizona as such national bank’s “prime” lending rate, plus 2%. The Interest Rate shall change and be adjusted upon each announcement by Wells Fargo Bank, N.A. or its successor (or any substitute national bank selected by the parties pursuant to this definition) of each change in the “prime rate” used to determine the Interest Rate in the manner described in this definition. Except as otherwise expressly required by the terms of this Agreement, all interest to be paid pursuant to this Agreement shall be paid at the Interest Rate and shall be computed on the basis of a 360-day year consisting of 12 months of 30 days each and the actual number of days in any partial month.

**“Land”** shall mean the land parcel(s) on which any portion of the Arena Facility is located.

**“License”** means any agreement or contract (other than Tickets) entered into by the Arena Manager pursuant to the terms of this Agreement for the use of the Arena Facility (or any portion thereof) with any party (other than the Team Owner with respect to Hockey Events and the City with respect to City Sponsored Events) for a limited period of time (no more than 14 consecutive days), including any agreement or contract with a promoter or sponsor for Events or other activities at the Arena (other than Hockey Events and City Sponsored Events), but excluding the following: (i) this Agreement; (ii) Concessions Agreements; (iii) Suite License Agreements; (iv) Premium Seat Agreements; (v) Advertising Agreements; and (vi) Naming Rights Agreements.

**“Licensee”** means a Person entitled to use the Arena or a portion thereof pursuant to a License.

**“Management Fee”** shall have the meaning set forth in Section 10.

**“Management Performance Standards”** shall mean the performance standards for the Arena Manager and any Arena Sub-Manager, as set forth and described in Exhibit “C” attached hereto.

**“Naming Rights”** means the exclusive rights to designate or assign a brand, company, product or other name to, or have a name association with or sponsorship of, the following: one or more portions (or all) of the Arena Facility including the Arena Facility; concourses within the Arena Facility; the rink in the Arena Facility; panels, walls; media boards; scoreboards; equipment; entrances; exits; landscaping; pavilions; attractions; service areas; Team Owner Retail Stores; clubs; seating; communication systems; audio and video systems; Team mascots; Zambonis®; Team performers; Team ticket stock; and directional signage. Naming Rights shall not include the Naming Rights to any of the Arena Parking Area.

**“Naming Rights Agreement”** means any contract or agreement entered into by or on behalf of the Arena Manager for Naming Rights.

**“NHL”** means the National Hockey League, and any successor or assignee of the National Hockey League, or, if there is no National Hockey League or successor or assignee then operating, any other hockey-related association, league or other group or entity with which the Team Owner is affiliated.

**“Noncompetition/Non-Relocation Agreement”** means the Noncompetition and Non-Relocation Agreement, dated as of the Effective Date, by and among the City, the Arena Manager and the Team Owner.

**“Notice of Team Assignment”** shall have the meaning set forth in Section 12.1.3.

**“Operating Account”** means one or more depository accounts established and maintained for the benefit of the Arena Manager, the Team Owner, and the City at a federally-insured institution(s) having offices in the State of Arizona for the deposit and disbursement of Operating Revenues.

**“Operating Expenses”** means all expenses or obligations paid directly or incurred by or on behalf of the Arena Manager with respect to, or which are reasonably allocated to, the management and operation of the Arena Facility during the Term (all of which shall be the responsibility of the Arena Manager except to the extent specifically otherwise set forth herein), including: costs incurred in performing agreements and contracts pertaining to the management and operation of the Arena; Impositions; all expenses incurred to obtain Operating Revenues; salaries, wages and benefits of all personnel engaged in connection with the operation of the Arena Facility, including event staff and temporary staff; human resource support services and training and development expenses; contract labor expenses; maintenance and repair expenses; utility costs and expenses; deposits for utilities; common area maintenance expenses payable pursuant to any covenants, conditions or restrictions applicable to the land upon which the Arena Facility is located (as described in Exhibit B) or any portion thereof; the Arena Parking Area or any portion thereof; telephone expenses; expenses incurred under Licenses; telescreen, video or scoreboard operation expenses; dues, membership and subscription expenses; security expenses (including expenses incurred under the Safety and Security Agreement); management fees; audit fees; legal fees; other professional fees; refuse removal expenses; cleaning expenses; sales taxes; costs of office and other materials, supplies and equipment; Ticket commissions (other than Ticket commissions for Hockey Events and City Sponsored Events); insurance premiums and bond charges (including premiums and charges for fidelity/employee dishonesty bonds); data and information processing and storage expenses; advertising, marketing and public relations expenses; expenses and costs incurred in the production and promotion of Events and other activities at the Arena Facility (other than expenses and costs incurred in the promotion of Hockey Events and City Sponsored Events); pest control expenses; Arena Facility related entertainment expenses; employment fees; freight and delivery expenses; expenses for leasing, maintaining and repairing equipment; credit and debit facility costs and expenses and telecheck fees and expenses; travel, lodging and related out-of-pocket expenses properly allocable to the operation of the Arena Facility, including promotion of the Arena Facility, conferences, facility management seminars and classes; and any Claim or Loss (other than as expressly set forth in this Agreement) relating to the Arena Facility; provided, however, that amounts on account of the Exclusive City Revenues or Exclusive Team Revenues that are received for and paid to the City or the Team Owner respectively by the Arena Manager shall not be included as Operating Expenses; further provided that expenses or obligations, to the extent incurred or paid on behalf of Team Owner or to the extent reasonably allocable to the operation of the Team Owner’s business, shall not be included as Operating Expenses. Operating Expenses do not include expenses allocable to the Team Owner under Generally Accepted Accounting Principles or other reasonable allocation principles, including but not limited to allocations pursuant to the NHL’s Collective Bargaining Agreement.

Any Operating Expenses that relate to a period of time after the Termination Date shall be prorated between the City and the Arena Manager so that the City shall pay the portion of the Operating Expenses applicable to the period after the Termination Date, and the Arena Manager shall pay, pursuant to this Agreement, the portion of the Operating Expenses applicable to the period during the Term.

**“Operating Revenues”** means all revenues collected or otherwise received by the Arena Manager from the management and operation of the Arena (including all Exclusive Arena Manager Revenues, but excluding amounts received on account of the Exclusive City Revenues and Exclusive

Team Revenues and any interest earned on any of the foregoing), as determined on an accrual basis in accordance with Generally Accepted Accounting Principles. Operating Revenues do not include revenues allocable to the Team Owner under Generally Accepted Accounting Principles or other reasonable allocation principles, including but not limited to allocations pursuant to the NHL's Collective Bargaining Agreement.

**"Parking Advertising"** means advertising on all or part of the Arena Parking Area.

**"Permitted Exceptions"** means the permitted exceptions to title to the Arena and Arena Facility set forth in Exhibit "D" attached hereto.

**"Person"** means an individual, general or limited partnership, corporation, joint stock company, trust (including a business trust), unincorporated association, joint venture, limited liability company, Governmental Authority or other entity.

**"Personal Property"** means all movable items (not fixtures) owned by the Arena Manager, the Team Owner, any Affiliate of the Arena Manager or Team Owner, or the Team Owner's players located within or on any portion of the Arena Facility.

**"Play-off Game"** means any ice hockey game (i) in which the Team is a participant; (ii) which, under the Hockey Rules, is classified as a "play-off game for the NHL (Stanley Cup) championship; and (iii) which is, under the Hockey Rules, a "home game" of the Team, including, in the Team Owner's sole discretion, any related pre-event, intermission or post-event promotion, competition, performance, autograph session, show or other entertainment or activity presented at the Arena Facility for which there is no admission charge other than the price of the related Hockey Ticket.

**"Premium Seat"** means any seat (excluding any seat in a Suite, but including restaurant, bar and similar seating) in the Arena Facility that has services or amenities that are not available to general seating in the Arena Facility and for which the licensee thereof pays a premium over the price for general seating pursuant to a Premium Seat License Agreement.

**"Premium Seat Agreement"** means written contracts or agreements for (i) the use of Premium Seat(s) for Hockey Events, and (ii) the first right to purchase the use of such Premium Seat(s) for all other Events except Community Events, during the Term.

**"Pre-season Game"** means any ice hockey game (i) in which the Team is a participant; (ii) which is scheduled to be played prior to the portion of the Hockey Season promulgated by the NHL as the regular season; and (iii) which is, under the Hockey Rules, a "home game" of the Team, including, in the Team Owner's sole discretion, any related pre-event, intermission or post-event promotion, competition, performance, autograph session, show or other entertainment or activity presented at the Arena Facility for which there is no admission charge other than the price of the related Hockey Ticket.

**"Qualified Ticket"** means a Ticket to a Fee Activity for which (i) the Team Owner, with respect to Hockey Events; (ii) the Arena Manager or sponsor or promoter, with respect to Team Revenue Events, City Revenue Events and other Fee Activities that are not Events; or (iii) the City, with respect to City Sponsored Events, receives valuable consideration (whether in money, services, goods or other value). Any Ticket for which (i) the Team Owner, with respect to Hockey Events; (ii) the Arena Manager or the sponsor or promoter with respect to Team Revenue Events, City Revenue Events and other Fee Activities that are not Events; or (iii) the City with respect to City Sponsored Events, (a) receives no value, or (b)

receives money (but not any other services, goods or other value) for such Ticket in an amount less than 25% of the retail price stated on the face of such Ticket, shall not be a “Qualified Ticket”; provided, however, that, if the average number of Tickets described in the immediately preceding clauses (a) and (b) that are distributed by the Team Owner for each Hockey Event (other than Hockey-Related Events) in a given Hockey Season exceeds 1,000, then the number of Tickets by which the average number of Tickets described in the immediately preceding clauses (a) and (b) distributed by the Team Owner for each Hockey Event in such Hockey Season exceeds the average of 1,000 Tickets per Hockey Event in such Hockey Season shall be deemed “Qualified Tickets”, unless the City and the Team Owner mutually agree otherwise.

**“Regular Season Game”** means any ice hockey game (i) in which the Team is a participant; (ii) which is scheduled to be played during the portion of the Hockey Season promulgated by the NHL as the regular season; and (iii) which is, under the Hockey Rules, a “home game” of the Team, including, in the Team Owner’s sole discretion, any related pre-event, intermission or post-event promotion, competition, performance, autograph session, show or other entertainment or activity presented at the Arena Facility for which there is no admission charge other than the price of the related Hockey Ticket.

**“Related Agreements”** means the Noncompetition/Non-Relocation Agreement, the Safety and Security Agreement, and any agreement that is included as an Exhibit hereto or otherwise specifically contemplated by this Agreement.

**“Renewal and Replacement Account”** means one or more accounts, requiring the signatures of the Arena Manager and the City for withdrawals, maintained at a federally insured institution(s) having offices in the State of Arizona for the deposit of Capital Improvement Contributions and disbursement of Capital Improvement Expenditures as defined in Section 11.

**“Replacement Arena Manager”** means, in the event of an Arena Manager Withdrawal, a qualified arena manager designated by the Team Owner or the City, as applicable under Section 19.3.3, that agrees to assume the obligations of the Arena Manager under this Agreement.

**“Safety and Security Agreement”** means that certain Safety and Security Agreement in the form attached hereto as Exhibit “E”, to be entered into as of the Effective Date by and among the City, the Arena Manager and the Team Owner.

**“Scheduling Procedures”** means the scheduling procedures for the Arena Facility attached hereto as Exhibit “F”, as the same may be amended, from time to time, by agreement among the City, the Arena Manager and the Team Owner.

**“Substantial Taking”** means a Taking of the Arena Facility that, in the reasonable estimation of Arena Manager, will render the Arena Facility unsuitable for the Arena Manager’s operations as contemplated by this Agreement.

**“Suite”** means any portion of the Arena Facility that is constructed as a “suite” within the Arena Facility and designated by the Team Owner as a “suite”, including specialty suites, such as opera suites, party suites and “under stands” suites.

**“Suite License Agreement”** means written contracts or agreements for the license or use of Suites.

“**Suite License Revenues**” means the revenues received by the Arena Manager in connection with the licensing or rental of Suites.

“**Taking**” means the exercise of the right of eminent domain, with or without litigation, or the transfer in lieu or under the threat of eminent domain.

“**Team Assignee**” means a Person to which the Team Owner intends to make an assignment in accordance with the terms and conditions of this Agreement.

“**Team Owner Default**” means the occurrence of any of the following events:

a. If the Team Owner fails to pay when due any amount payable by the Team Owner hereunder, and such failure is not cured within 30 days after the Team Owner’s receipt of notice of such failure from any other party hereto;

b. If any representation or warranty made by the Team Owner in this Agreement at any time proves to have been incorrect in any material respect as of the time made, and if the Team Owner fails to cause such representation or warranty to become correct within 30 days after the Team Owner’s receipt of notice from any other party hereto that such representation or warranty was incorrect; provided, however, that if it is reasonably possible to cause such representation or warranty to become correct but it is not reasonably possible to cause such representation or warranty to become correct within such thirty-day period, then such cure period shall be for an unlimited period of time so long as the Team Owner (i) commences to cause such representation or warranty to become correct within 30 days after the Team Owner’s receipt of such notice, and (ii) thereafter diligently continues to cause such representation or warranty to become correct; or

c. If the Team Owner becomes insolvent; or admits in writing its inability to pay its debts as they mature; or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of a receiver or trustee for it or for a substantial part of its property or business;

d. If the Team Owner materially breaches any covenant or provision of this Agreement, and such breach is not cured within 30 days after the Team Owner’s receipt from any other party hereto of notice of such breach; provided, however, that if it is reasonably possible to cure such breach but it is not reasonably possible to cure such breach within such thirty-day period, then such cure period shall be for an unlimited period of time so long as the Team Owner (i) commences to cure such breach within 30 days after the Team Owner’s receipt of such notice, and (ii) thereafter diligently continues to cure such breach.

“**Team Locker Room**” means the space in the Arena Facility designed and constructed for the exclusive use by the Team Owner as a home team locker room, including dressing, locker, shower, lounge, training, exercise and video coaching areas.

“**Team Revenue Event**” means a revenue-producing Event, other than Hockey Events, Community Events, or City Sponsored Events, that is sponsored or co-sponsored by the Team Owner or that is conducted under, with, or in the Team’s name.



**“Team Retail Stores”** means any the area or areas in the Arena facility designed and exclusive use by the Team Owner for Team Sales, as described on Exhibit “A”.

**“Team Sales”** means sales by the Team Owner which result in Exclusive Team Revenues only.

**“Term”** means the period commencing on the Closing Date and ending on the Termination Date or, if earlier, the date on which this Agreement otherwise is terminated on the terms set forth herein.

**“Termination Date”** means the 30<sup>th</sup> day after the last day of the NHL hockey season commencing in 2031.

**“Third Party”** means a third party that is not the Team Owner, the Arena Manager or an Affiliate of the Team Owner or the Arena Manager.

**“Ticket”** means the ticket or other indicia by which admission to the Arena Facility for an Event or other activity at the Arena Facility is permitted and controlled.

1.2 Terms. Whenever the context shall so require, all words herein in any gender shall be deemed to include the masculine, feminine or neuter gender, and all singular words shall include the plural, and all plural words shall include the singular.

1.2.1 The words “herein,” “hereof,” “hereunder,” “hereby,” “this Agreement” and other similar references shall mean and include this Agreement and all amendments hereof and supplements hereto unless the context clearly indicates or requires otherwise.

1.2.2 The words “include,” “including,” and other similar references, shall mean “include, without limitation,” and “including, without limitation,” respectively.

1.2.3 The words “sole discretion” and other similar references shall mean “sole, absolute and unfettered discretion.”

1.2.4 Exhibits. Each exhibit referred to herein shall be considered a part of this Agreement as fully, and with the same force and effect, as if such exhibit had been included herein in full.

1.2.5 Language. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

## **2. PARTY REPRESENTATIVES.**

2.1 City Representative. The City Manager shall be the City’s authorized representative who shall act as liaison and contact person among the City and the other parties in administering and implementing the provisions of this Agreement. The City shall have the right to designate a substitute City Representative by providing notice of such designation to the other parties. The City Representative, or his authorized designee, shall respond to a request for the City Representative’s approval, consent or waiver under this Agreement within 10 days after receipt of such request or within such other period as may be expressly required by this Agreement or agreed to in writing by the parties. Except as expressly stated otherwise in this Agreement, the City Representative’s failure to respond to any such request within such ten-day or other applicable period shall be conclusively deemed the City’s denial of such request.

2.2 Arena Manager Representative. The Arena Manager's then current general manager of Arena Facility operations shall be the Arena Manager's authorized representative who shall act as liaison and contact person among the Arena Manager and the other parties in administering and implementing the provisions of this Agreement. The Arena Manager shall have the right to designate a substitute Arena Manager Representative by providing notice of such designation to the other parties. The Arena Manager Representative, or his authorized designee, shall respond to a request for the Arena Manager's approval, consent or waiver under this Agreement within 10 days after receipt of such request or within such other period as may be expressly required by this Agreement or agreed to in writing by the parties. Except as expressly stated otherwise in this Agreement, the Arena Manager Representative's failure to respond to any such request within such ten-day or other applicable period shall be conclusively deemed the Arena Manager's denial of such request.

2.3 Team Owner Representative. The Team Owner's then current chief operating officer shall be the Team Owner's authorized representative who shall act as liaison and contact person among the Team Owner and the other parties in administering and implementing the provisions of this Agreement. The Team Owner shall have the right to designate a substitute Team Owner Representative by providing notice of such designation to the other parties. The Team Owner Representative, or his authorized designee, shall respond to a request for the Team Owner's approval, consent or waiver under this Agreement within 10 days after receipt of such request or within such other period as may be expressly required by this Agreement or agreed to in writing by the parties. Except as expressly stated otherwise in this Agreement, the Team Owner Representative's failure to respond to any such request within such ten-day or other applicable period shall be conclusively deemed the Team Owner's denial of such request.

### **3. TERM.**

3.1 Binding Effect; Closing Date. This Agreement shall be binding on the parties as of the Effective Date, but the obligations of the parties to perform under this Agreement are subject to the conditions set forth in Section 17.2. Specifically but without limitation, the provisions of this Agreement pertaining to the commencement of the demise and lease to the Arena Manager of the leasehold interest in the Arena pursuant to Section 5 and the commencement of the grant of the subleasehold to the Team Owner pursuant to Section 6 and the commencement of all rights and obligations associated with such leasehold and subleasehold, do not commence until the Closing Date. This Agreement shall terminate on the Termination Date, unless earlier terminated pursuant to the terms and conditions set forth in this Agreement.

3.2 Renewal. After the end of the 2029 NHL hockey season, the Arena Manager, the Team Owner, and the City will begin discussions to extend upon mutual agreement this Agreement for five years beyond the Termination Date, which discussions shall include the terms and conditions of the renewal; provided however, there shall be no renewal or extension of the Term unless there is a corresponding renewal or extension of the Noncompetition/Non-Relocation Agreement.

### **4. ARENA MANAGER.**

4.1 Engagement of Arena Manager. The City and the Team Owner hereby engage the Arena Manager to be the sole and exclusive manager of the Arena Facility during the Term, with the responsibility for the operation, direction, management and supervision of the Arena Facility and its staff, subject to, and as more fully described in, this Agreement.

4.2 Compliance with Management Performance Standards.

4.2.1 Arena Manager shall manage the Arena during the Term in a manner that is consistent with the Arena Management Performance Standards.

(a) If the City notifies the Arena Manager that it has failed to comply with the Management Performance Standards (which claim shall be in writing and describe the bases therefor in reasonable detail), the Arena Manager shall, within 30 days after the Arena Manager's receipt of the City's notice of such breach, (i) cure the failure claimed by the City, or (ii) if it is reasonably possible to cure but it is not reasonably possible to cure within such thirty-day period, then such cure period shall be for an unlimited period of time so long as the Arena Manager (a) commences to cure within 30 days after the Arena Manager's receipt of such notice, and (b) thereafter diligently continues to complete such cure as soon as practicable thereafter, or (iii) retain an Arena Sub-Manager, subject to the reasonable approval of the City, for the duties and responsibilities of the Arena Manager for which the City claims the Arena Manager has failed to comply with the Management Performance Standards.

(b) In the event that the Arena Manager disputes such breach, such dispute shall be resolved by Arbitration pursuant to this Agreement.

4.2.2 The Arena Manager and the City acknowledge that a material consideration for this Agreement is the Arena Manager's ability to ensure that an NHL franchise shall be a primary tenant of the Arena during the Term; therefore, the Arena will be maintained and managed in a manner that facilitates that tenant's operations and is consistent with the Hockey Rules; provided however, the parties' rights and obligations under this Agreement shall not be materially diminished as a result of the parties' compliance with such Hockey Rules.

4.2.3 Arena Sub-Manager. The Arena Manager may, from time to time, to delegate all or a portion of its duties and responsibilities to an Arena Sub-Manager that shall comply with all of the Arena Manager's obligations under this Agreement with respect to the duties and responsibilities delegated.

4.2.4 Delegation. Any delegation of the Arena Manager's duties under this Section:

(a) Shall not release or discharge the Arena Manager from any of its duties or responsibilities under this Agreement;

(b) Shall not increase the amount of the Management Fees; and

(c) Shall be subject to the approval of the City, which approval shall not be unreasonably withheld or delayed.

(d) The Arena Manager shall cause any Arena Sub-Manager to perform the duties and responsibilities of the Arena Manager that are delegated to such Arena Sub-Manager in compliance with the Management Performance Standards.

(e) If the City claims that the Arena Sub-Manager has failed to comply with the Management Performance Standards, the City shall give the Arena Manager and the Team Owner notice of such claim.

(f) The Arena Manager shall, within 30 days after the Arena Manager's receipt of the City's notice, (i) cause the Arena Sub-Manager to cure the failure claimed by the City, or if incapable of cure within 30 days, commence cure within such period and use good faith efforts to complete such cure as soon as practicable thereafter, or (ii) discharge the Arena Sub-Manager and assume responsibility for the duties and responsibilities of the Arena Manager that had been delegated to the discharged Arena Sub-Manager.

**5. DEMISE OF ARENA AND USE RIGHTS.**

5.1 Demise of Arena Facility. The City hereby demises and lets to the Arena Manager, and the Arena Manager hereby takes and leases from the City, effective on the Closing Date, for the Term and upon the provisions hereinafter specified, the exclusive use of the Exclusive Team Space, together with the non-exclusive use of the entire balance and remainder of the Arena, which areas are indicated on the map included as Exhibit "A" hereto, in accordance with and subject to the terms and conditions set forth in this Agreement.

5.2 Grant of Use Rights. In addition to the rights granted by the City to the Arena Manager in the other provisions of this Agreement, the City hereby grants to the Arena Manager, and approves the right of the Arena Manager to grant to the Team Owner, during the Term, the exclusive right and obligation to use and occupy the Hockey Event Spaces during all Hockey Events for Hockey Event Permitted Uses, in accordance with and subject to the terms and conditions set forth in this Agreement.

5.2.1 The Arena Manager shall have the exclusive right (subject to the Arena Manager's grant to the Team Owner as set forth in Section 6.2 below) to use the Hockey Event Spaces for Hockey Event Permitted Uses for a reasonable time before, during, and for a reasonable time after the Hockey Event.

5.2.2 Subject to the rights of the Team Owner under this Agreement, the Arena Manager shall retain possession and control of all portions of the Hockey Event Spaces; provided, however, in exercising its control over the Hockey Event Spaces, the Arena Manager (i) shall not interfere in any material respect with Hockey Event Permitted Uses; and (ii) shall not allow any Person to enter the Hockey Event Spaces during any Hockey Event without a Hockey Ticket.

5.3 Compliance with Law. Neither the Arena Manager nor the Team Owner shall knowingly cause or permit the use of the Arena Facility in a manner that violates Applicable Law.

**6. LEASEHOLD INTEREST.**

6.1 Lease of Exclusive Team Spaces. In addition to the rights granted by the City to the Arena Manager in the other provisions of this Agreement, effective as of the Closing Date, (i) the City hereby leases the Exclusive Team Spaces to the Arena Manager, and the Arena Manager leases the Exclusive Team Spaces from the City, subject to the Permitted Exceptions, and (ii) the City hereby grants to the Arena Manager the non-exclusive right to use the common areas at the Arena Facility for all purposes reasonably necessary and convenient for the exercise of the Arena Manager's and the Team Owner's reasonable exercise of rights and performance of obligations under this Agreement, including without limitation for reasonably convenient access to and from the Exclusive Team Spaces, all for the duration of the Term, and in accordance with and subject to the terms and conditions set forth in this Agreement.

6.2 Sublease of Exclusive Team Spaces. The Arena Manager hereby subleases the Exclusive Team Spaces to the Team Owner, and the Team Owner subleases the Exclusive Team Spaces from the Arena Manager, and the Arena Manager grants to the Team Owner (i) the exclusive right and obligation to use and occupy the Hockey Event Spaces during all Hockey Events for Hockey Event Permitted Uses; and (ii) the non-exclusive right to use the common areas at the Arena Facility for reasonably convenient access to and from the Exclusive Team Spaces, subject to the Permitted Exceptions and all terms and conditions of this Agreement and the Noncompetition/Non-Relocation Agreement, all for the duration of the Term, and in accordance with and subject to the terms and conditions set forth in this Agreement.

6.2.1 The Team Owner, as the approved subtenant, shall pay all expenses of furnishing the Exclusive Team Spaces. The Arena Manager (or the Team Owner as its subtenant) shall have the right to use the Exclusive Team Spaces for any lawful purpose, consistent with and subject to the provisions of this Agreement.

6.2.2 The Arena Manager and City shall have the right to enter the Exclusive Team Spaces only as reasonably necessary to perform its obligations under this Agreement upon at least three days' notice to the Team Owner, except in the case of an Emergency, in which event the Arena Manager or City may enter the Exclusive Team Spaces upon reasonable notice. In exercising its right of entry to the Exclusive Team Spaces, the Arena Manager and City shall not interfere in any material respect with the Team Owner's operations or activities.

6.2.3 Team Equipment.

(a) The Team Owner may, as the approved subtenant, at the Team Owner's expense and risk, place such Team Owner equipment, furniture, fixtures and other moveable and non-moveable equipment owned or leased by the Team Owner and used exclusively by the Team Owner ("**Team Equipment**") at the Arena Facility, as the Team Owner may from time to time deem necessary or appropriate (i) in the Exclusive Team Spaces at any time, and (ii) in the Hockey Event Spaces at any time during which the Team Owner has the right to use the Hockey Event Spaces.

(b) The City acknowledges the Team Equipment is the property of the Team Owner and may be removed by the Team Owner at any time.

(c) The Team Owner shall be responsible for obtaining, at the Team Owner's expense, whatever insurance covering the Team Equipment the Team Owner deems appropriate.

6.3 Further Sublease Agreements. Upon the written request of the Team Owner, the Arena Manager or the City, the Team Owner and the Arena Manager shall enter into a written sublease agreement more specifically setting forth the terms and conditions of the sublease of the Exclusive Team Spaces from the Arena Manager to the Team Owner; provided however that such any such written sublease agreement (or amendment or modification thereto) shall be subject to the prior written consent of the City, which shall not be unreasonably withheld as to provisions that are consistent with this Agreement. Neither the Arena Manager nor the Team Owner shall (a) further sublease any portion of the Arena Facility, including the Exclusive Team Spaces, to any third party without the City's prior written consent, or (b) purport to grant any rights in excess of the rights granted by the City hereunder.

6.4 Rights and Obligations of Team Owner as Subtenant. The Team Owner, as subtenant of the Arena Manager pursuant to Section 6.2 above, shall be responsible only for those obligations expressly set forth in this Agreement and in the Noncompetition/Non-Relocation Agreement as

obligations applicable to the Team Owner, and the Team Owner shall not otherwise be responsible for performing any act or obligation, and shall not assume or incur any liability for or in connection with, any act or obligation in this Agreement and in the Noncompetition/Non-Relocation Agreement based on the terms of this Agreement and the Noncompetition/Non-Relocation Agreement.

6.5 Team Sales. The Team Owner shall have the sole and exclusive right, at all times during the Term, to engage in and conduct all Team Sales and to receive, as Exclusive Team Revenues, all revenue therefrom. Accordingly, neither the Arena Manager nor the City shall take any action with respect to, or have any authority over, Team Sales other than at the express direction of the Team Owner; provided, however, nothing in this Section shall be construed as a limitation on the City's governmental powers. The Team Owner shall bear and pay, from the Team Owner's own monies, all direct expenses attributable to Team Sales, including vendors and other personnel, equipment, costs of goods sold, advertising and promotional costs and rights fees.

6.6 Base Rent. As part of the consideration for the leasehold interest granted to the Arena Manager under this Agreement, during the Term the Arena Manager shall pay to the City rent in the following amounts, which shall be paid in equal quarterly installments, the first installment due and payable on the commencing on the Closing Date and thereafter each installment due and payable on or before each quarterly (on a three calendar month basis) anniversary of the Closing Date during the Term:

6.6.1 For the five years following the Closing Date, \$500,000 per year; and

6.6.2 Beginning of the sixth anniversary of the Closing Date and continuing until the day before the thirteenth anniversary of the Closing Date, \$650,000 per year; and

6.6.3 Beginning of the thirteenth anniversary of the Closing Date and continuing until the day before the twenty second anniversary of the Closing Date, \$800,000 per year.

6.7 Taxes on Arena Manager's Interest. The parties acknowledge and agree that the Arena Manager's leasehold interest in the Arena under this Agreement is exempt, under A.R.S. §42-6208(4), from the government property lease excise tax imposed under A.R.S. §42-6201 through §42-6210, but if such leasehold interest ceases to be exempt, the Arena Manager shall pay (or cause to be paid) prior to delinquency any government property lease excise taxes and similar taxes or fees that may be lawfully imposed on the leasehold interest of the Arena Manager under this Agreement (including any personal property taxes and any other taxes imposed with respect to such leasehold interest). Any payment of such tax shall constitute an Operating Expense hereunder.

6.8 Quiet Enjoyment. So long as the Arena Manager performs all of its obligations under this Agreement, the City shall do nothing (other than the acts permitted or required by this Agreement) that will prevent the Arena Manager or its licensees or subtenants from peaceably and quietly enjoying, using, and occupying the Arena Facility during the Term in the manner described in this Agreement, and shall defend the Arena Manager's quiet enjoyment, use and occupancy of the Arena Facility in the manner described in this Agreement (subject only to the Permitted Exceptions) against the claims of all Persons claiming by, under or through the City.

6.9 City Access.

6.9.1 The City, through appropriate designees, as landlord reserves the right to enter the portions of the Arena Facility, upon reasonable advance notice to the Arena Manager and, with

respect to the Exclusive Team Spaces, the Team Owner during the Arena Manager's regular business hours or other hours when the Arena Manager is open for business (other than during Events); provided however, that in exercising the City's rights under this Section the City shall not unreasonably interfere with the operations of the Arena Facility.

6.9.2 Notwithstanding any provision of this Agreement, the City does not in any manner limit its governmental rights, authority, responsibilities, or powers.

## **7. LICENSES.**

7.1 Arena Manager's Authority. Effective as of the Closing, the Arena Manager shall have the sole and exclusive right to grant, negotiate, and enter into Licenses during the Term, subject to and in accordance with the provisions of this Agreement and the Scheduling Procedures.

7.2 Negotiations. The Arena Manager shall make commercially reasonable efforts to seek potential Licenses and shall, prior to negotiating the terms and conditions of a given License, determine the proposed manner of providing the Arena Manager with sufficient monies to pay the applicable City Surcharge with respect to the proposed License.

### 7.3 Requirements.

7.3.1 The Arena Manager shall cause:

(a) The terms, conditions and performance of each License to not, in any event, conflict with any provisions of this Agreement, any other License, or any Concessions Agreement, Suite License Agreement, Premium Seat Agreement, Advertising Agreement or Naming Rights Agreement.

(b) Each License for a Fee Activity to require that the Licensee pay to the Arena Manager an amount not less than the aggregate City Surcharge for such Fee Activity.

(c) Each License for any Activity in the Arena Facility to include the Exculpatory Language.

7.3.2 If, under the circumstances contemplated by a given License, it is commercially reasonable to do so in order to attract an Event, the Team Owner shall agree in such License to close or limit the operations of the Team Retail Stores during the Event that is the subject of such License.

7.4 Execution and Performance. The Arena Manager shall (in the name of the Arena Manager and not of the City) execute the License and thereafter perform the licensor's obligations under such License.

7.5 Existing Licenses. The Arena Manager shall use commercially reasonable efforts to comply with and perform the obligations under Licenses assumed under the NHL Purchase Agreement and existing on the Closing Date until such Licenses expire or are terminated in accordance with their respective terms.

7.6 City Revenue Events.

7.6.1 The Arena Manager has the sole discretion under this Agreement to approve or disapprove all License applications for Events that are submitted by prospective Licensees. The Arena Manager shall promptly deliver notice (which notice may be oral) to the City of its disapproval of any completed License application together with the terms and conditions of such proposed License. Subject to the Scheduling Procedures, all Concessions Agreements, all Suite License Agreements, all Premium Seat Agreements, all Advertising Agreements, all Naming Rights Agreements and the requirements set forth in this Section, the City shall have the right, to the extent the prospective Licensee remains willing to enter into a License upon such terms and conditions as are set forth in the License application, to cause the Arena Manager to enter into such proposed License, notwithstanding the disapproval of such proposed License by the Arena Manager, by giving the Arena Manager notice of the City's agreement to pay to the Arena Manager the amount by which the expenses that are directly attributable to the Event contemplated by the proposed License exceeds the revenues directly attributable to such Event (which shall then be a **"City Revenue Event"**). The Arena Manager shall use commercially reasonable efforts to either approve or disapprove such License application quickly enough to provide the City with a reasonable opportunity to exercise its rights under this Section 7.6.

7.6.2 The City's notice pursuant to Section 7.6.1 shall be given to the Arena Manager within such time as the Arena Manager reasonably designates when the Arena Manager provides notice to the City of its disapproval of a License application pursuant to Section 7.6.1.

7.6.3 The Arena Manager shall maintain separate records of all revenues and all expenses directly attributable to each City Revenue Event, and all amounts received for deposit and deposited into the City Surcharge Account with respect to such City Revenue Event. For clarity, only payments or other considerations to be made or provided that (i) are calculated solely on the basis of sales made or transactions completed during a City Revenue Event directly relating to such City Revenue Event or (ii) are payable solely because a given City Revenue Event is held shall be "directly attributable" to such City Revenue Event.

7.6.4 The Arena Manager, at the time the quarterly financial report for such Fiscal Quarter is submitted to the parties pursuant to Section 8.15, shall either:

(a) If the aggregate of the expenses directly attributable to the City Revenue Events held during a given Fiscal Quarter exceeds the aggregate of the revenues directly attributable to the City Revenue Events, set-off against any distributions or payments to be made to the City for such Fiscal Quarter the amount by which the aggregate of such expenses exceeds the aggregate of such revenues and submit to the City an invoice for any shortfall for which the City will provide reimbursement within 30 days , or

(b) If the aggregate of the revenues directly attributable to the City Revenue Events exceeds the aggregate of the expenses directly attributable to the City Revenue Events held during a given Fiscal Quarter, remit to the City within 30 days after the end of the Fiscal Quarter the excess of the revenue over the expenses.

7.6.5 In no event shall any License entered into by the Arena Manager pursuant to this Section 7.6 be a Team Revenue Event.



7.7 Enforcement of Licenses. The Arena Manager shall make commercially reasonable efforts to enforce all Licenses.

7.8 Collection and Allocation of Revenues. The Arena Manager shall make commercially reasonable efforts to collect revenues under and generated by all Licenses.

**8. ARENA MANAGEMENT.**

8.1 Management and Operations of the Arena Facility. From and after the Closing Date, the Arena Manager shall take all actions necessary for the management of the Arena Facility in accordance with this Agreement, the Management Performance Standards, and the applicable Annual Budget, and the Arena Manager shall perform all of the obligations described in this Agreement. Without limiting the generality of the foregoing, the Arena Manager is authorized to and shall, in a commercially reasonable manner, do the following:

8.1.1 Collect Operating Revenues and pay Operating Expenses in the manner required by this Agreement;

8.1.2 Maintain and furnish, in the manner required by this Agreement, all financial records and information required by this Agreement;

8.1.3 Employ, pay, train and supervise, as employees of the Arena Manager and not of the City or the Team Owner, all personnel (other than fire and police personnel, which are to be provided by and employees of the City) that are necessary for the operation of the Arena Facility; determine all matters with regard to such personnel, including compensation, bonuses, employee benefit plans, hiring, training and replacement; and prepare, on the Arena Manager's behalf, and file when due, all forms, reports and returns required by Applicable Law relating to the employment of such personnel;

8.1.4 Other than security to be provided pursuant to the terms of the Safety and Security Agreement, provide or arrange for security and paramedics for the Arena Facility for the purpose of maintaining public order and safety in and around the Arena Facility, including the enforcement of safety policies and procedures and the determination of appropriate safety and security staffing levels and patterns, the review and approval of security measures and the exclusion or ejection from the Arena Facility of persons or items in the interest of safety or security;

8.1.5 Maintain, repair and replace all materials, tools, machinery, equipment and supplies necessary for the maintenance and operation of the Arena Facility;

8.1.6 Operate and maintain the Arena Facility in good, clean order, condition and repair and in compliance with (i) the Arena Maintenance Standard; (ii) all Applicable Law; (iii) all NHL requirements in effect from time to time; and (iv) the provisions of this Agreement, and provide for, either directly or by reimbursement, cleaning of, and trash removal for, properties in the vicinity of the Arena Facility following Events and other activities at the Arena Facility;

8.1.7 Coordinate and administer a preventative maintenance program for the Arena Facility;

8.1.8 Coordinate and administer a safety program for the Arena Facility;

8.1.9 Arrange for all utility and other services for the Arena (including electricity for Hockey Events in compliance with applicable NHL requirements and sufficient to light the Arena Facility with the degree of illumination required for color televising and broadcast of Hockey Events), and pay or cause to be paid when due all charges for water, sewer, gas, light, heat, cooling, telephone, electricity and other utilities and services rendered to or used in connection with the operation of the Arena Facility;

8.1.10 Maintain or cause to be maintained all necessary licenses, permits and authorizations for the Arena Manager's management of the Arena Facility in accordance with this Agreement and Applicable Law;

8.1.11 Furnish to the City the reports and other information regarding the Arena Facility and the management as required herein;

8.1.12 Other than Tickets and credentials issued by the Team Owner or any promoter or sponsor of any Event or other activity at the Arena Facility, or any agent thereof, issue all Tickets and credentials for Events and other activities at the Arena Facility;

8.1.13 Verify (and require certificates with respect thereto) that (i) each Licensee has obtained and is maintaining the insurance required by the applicable License; (ii) each concessionaire under a Concessions Agreement has obtained and is maintaining the insurance required by the applicable Concessions Agreement; (iii) the Arena Manager has obtained or caused to be obtained, and is maintaining or causing to be maintained, the insurance required to be obtained and maintained by the Arena Manager pursuant to this Agreement; (iv) the Team Owner has obtained and is maintaining the insurance required to be obtained and maintained by the Team Owner pursuant to this Agreement; and (v) with respect to each City Sponsored Event, the City has obtained the insurance, or has made adequate arrangements for self-insurance, for such Event as required by this Agreement;

8.1.14 Establish and maintain bookings, calendars and schedules for Events and other activities at the Arena Facility booked or scheduled in accordance with the Scheduling Procedures, and use commercially reasonable efforts to schedule and book such Events and other activities in order to utilize the Arena Facility as much as possible in accordance with this Agreement and the Scheduling Procedures; and

8.1.15 To the extent Home Games are cancelled or a Hockey Season is shortened or cancelled, diligently use further commercially reasonable efforts to schedule and book such Events and other activities in order to utilize the Arena Facility as much as possible in accordance with this Agreement and the Scheduling Procedures.

8.1.16 Manage City Revenue Events and Community Events in accordance with this Agreement.

8.2 Management and Operation of Parking.

8.2.1 Parking Rights. In consideration of the covenants by the Arena Manager in this Agreement and of the execution and delivery of the Noncompetition/Non-Relocation Agreement by the Team Owner and Arena Manager, on the Closing Date, the City will transfer to the Arena Manager all of the City's rights and obligations with respect to the Arena Parking Area, including the Arena Parking Rights. The City shall not take any action to reduce the Arena Parking Area, and will ensure that the

Arena Parking Area provides 5,500 parking spaces for each Event during the Term; provided, however, that if the Arena Manager notifies the City no less than three days prior to an Event that fewer parking spaces are required, the City shall only be required to make available such lower number of parking spaces.

(a) Except as provided in Section 8.2.1(c), the Arena Manager shall take all actions necessary to provide, manage and operate, for the benefit of the Arena Facility, the Arena Parking Areas.

(b) The Arena Manager shall cause the Arena Parking Areas to be available for each Event at a reasonable time prior to the commencement of such Event and continuing until a reasonable time after the completion of such Event.

(c) The Arena Manager shall be responsible for the sweeping and other light cleaning of the Arena Parking Areas promptly after an Event; however, the Renewl and Replacement Account, Section 11.5, may be used for capital maintenance and repair of the Arena Parking Areas, including but not limited to patching, resurfacing, sealing and striping.

(d) All costs and expenses incurred by the Arena Manager in managing and operating the Arena Parking Area shall be paid by the Arena Manager; provided, however, that all costs and expenses incurred by the City pursuant to its obligations in Section 8.2.1(c) shall be paid by the City.

(e) The Arena Manager shall receive as Operating Revenue all revenue from the Arena Parking Areas, including revenue from Parking Advertising. Within 10 days after receipt of any revenue received from Parking Advertising, the Arena Manager shall remit to the City an amount equal to 15% of such revenue from Parking Advertising. Other than as provided in the preceding sentence, the Arena Manager shall not be obligated to remit any revenue from the Arena Parking Areas to the City (subject to applicable taxes, and further provided that this Section 8.2.1(e) shall not limit the Arena Manager's obligations to remit amounts to the City pursuant to Sections 7.6.4(b) or 8.8.2(d)(ii)).

(f) As soon as practicable after the Closing, the Arena Manager and the City will develop a set of mutually acceptable policies and procedures for the operation, maintenance and improvement of the Arena Parking Areas including, but not limited to, the process for relocating any portion of the Arena Parking Areas when that is necessary.

8.2.2 Traffic Control and Parking Security. Pursuant to the terms and conditions of the Safety and Security Agreement, the Arena Manager shall cooperate with the City and the Team Owner to develop, and to from time to time revise, a traffic management and parking security plan to facilitate the ingress and egress of traffic to and from, and the security in Arena Parking Areas for, all Events.

### 8.3 Event Requirements.

#### 8.3.1 Hockey Events.

(a) Arena Manager and Team Owner shall cause the Team to play not fewer than 40 Regular Season Games at the Arena.

(b) In the event that the Arena Manager and Team Owner do not play 40 Regular Season Games, the Arena Manager and Team Owner, jointly or severally, will pay to the City an

amount equal to \$60,000 multiplied by a number equal to the Regular Season Games required by this Section less the Regular Season Games actually played.

8.3.2 Arena Manager Events.

(a) Each Fiscal Year Arena Manager shall cause to occur through its efforts not less than 30 Arena Manager Events.

(b) In the event additional Arena Manager Events exceed the number required by this Section, the City shall pay Arena Manager within 30 days after the end of the then current Fiscal Year an amount equal to \$500,000 multiplied by the number of Additional Arena Manager Event Blocks.

(c) In the event that the Arena Manager does not through its efforts cause 30 Arena Manager Events to occur at the Arena, the Management Fee next due from the City to Arena Manager will be reduced by an amount equal to \$25,000 multiplied by a number equal to the Arena Manager Events required by this section less the Arena Manager Events that actually occurred.

8.4 Quality Standard.

8.4.1 Standard. In performing its obligations under this Agreement, the Arena Manager shall manage and operate the Arena Facility in a manner consistent with the Management Performance Standards and the Arena Maintenance Standard.

8.4.2 Consultation with the Team Owner. The Arena Manager shall, in managing the Arena Facility pursuant to this Agreement, solicit the Team Owner's input on, and recommendations regarding, maintenance, repairs, safety, staffing and operation and service standards, and shall, consistent with this Agreement, make commercially reasonable efforts to implement such recommendations.

8.4.3 Staffing for Events. The Arena Manager shall furnish trained event staff and personnel sufficient for the operation and maintenance of the Arena Facility and Arena Parking Areas for each Event (and with respect to Hockey Events, in such number and with such qualifications as the Team Owner may reasonably require consistent with NHL requirements and procedures) and other activities at the Arena Facility, including an event coordinator, security personnel, ticket takers, ushers, first aid attendants, janitors, cleaning personnel, plumbers, electricians, carpenters, maintenance crew and supervisors qualified to operate the Arena Facility, which expenses shall be Operating Expenses.

(a) The Arena Manager shall adopt and enforce such grooming, dressing, and identification and cleanliness standards for event staff and other Arena Manager employees who will have contact with guests and patrons during Events and other activities at the Arena Facility as the Team Owner may from time to time reasonably require.

(b) The Arena Manager shall implement such customer service, security and hospitality training for event staff as the Team Owner may from time to time reasonably require.

(c) All expenses incurred by the Arena Manager in connection with the event staff shall be Operating Expenses.

8.5 Concessions.

8.5.1 Concessions Agreements. The Arena Manager has the sole and exclusive right during the Term to negotiate and enter into all Concessions Agreements, and shall assume, to the extent required under the NHL Purchase Agreement, any existing Concessions Agreement entered into prior to the Closing Date to the extent permitted by such Concessions Agreement.

(a) Concession Agreements shall be made upon such commercially reasonable terms and conditions as the Arena Manager deems appropriate in its reasonable discretion. Without the consent of the Arena Manager, the Team Owner shall not take any action with respect to, or have any authority over, Concessions and Concessions Agreements.

(b) Arena Manager shall retain as Exclusive Arena Manager Revenues all payments and other consideration to be made to or provided pursuant to a given Concessions Agreement to the extent not directly attributable to a Team Revenue Event or a City Sponsored Event.

(c) The Arena Manager shall cause, and shall cause each Concessions Agreement to require that, all payments and other consideration to be made to or provided by the concessionaire under a Concessions Agreement (i) be paid to the Arena Manager, as Operating Revenues, to the extent directly attributable to a Team Revenue Event or a City Sponsored Event, and (ii) be paid to the City, to the extent directly attributable to a Community Event. For clarity, only payments or other considerations to be made or provided pursuant to a Concessions Agreement that (A) are calculated solely on the basis of sales made or transactions completed during a Team Revenue Event or a City Sponsored Event directly relating to such Team Revenue Event or City Sponsored Event, or (B) are payable solely because a given Team Revenue Event or City Sponsored Event is held shall be “directly attributable” to such Team Revenue Event or City Sponsored Event.

(d) The Arena Manager shall, within 10 days after the execution of a Concessions Agreement, give to the City notice of the execution of the Concessions Agreement, the name of the concessionaire that is a party to such Concessions Agreement, and the products or services to be offered by such concessionaire under such Concessions Agreement.

(e) The Arena Manager shall cause all Concessions Agreements to contain the Exculpatory Language and a provision requiring that food and beverage service for the City Suite shall be provided at the same cost and manner as food and beverage service provided to the “Owner’s Suite” or any suite licensed to or used by the Arena Manager, the Team Owner, or their respective Affiliates, whichever is lowest.

(f) The Arena Manager shall maintain a copy of each Concessions Agreement during the term of such Concessions Agreement and for a period of six years thereafter (or such longer time as may be required by Applicable Law) and the City shall have the right to inspect a copy of each Concessions Agreement, after reasonable notice to the Arena Manager, at the Arena Manager’s office during normal business hours.

8.5.2 Food and Beverage Services. Subject to the terms of any Concessions Agreement, License, Advertising Agreement, or Naming Rights Agreement, the Arena Manager shall have the right to offer food and beverage services directly to consumers at the Arena Facility in lieu of, or in addition to, food and beverage services that are offered pursuant to Concessions Agreements.

(a) The Arena Manager shall, if it is commercially reasonable to do so in order to attract a given Event (other than a Hockey Event or a Team Revenue Event), permit the

distribution (without charge) of food and beverage samples by a Licensee for such Event during such Event.

(b) All revenues received by the Arena Manager from food and beverage services offered by the Arena Manager pursuant to this Section shall, to the extent not directly attributable to a Team Revenue Event or a City Sponsored Event, be retained by the Arena Manager as Exclusive Arena Manager Revenues.

(c) The Arena Manager shall cause all revenues received by the Arena Manager from such food and beverage services, (i) to be paid to the Arena Manager, as Operating Revenues, to the extent directly attributable to a Team Revenue Event or a City Sponsored Event, and (ii) to be paid to the City, less the variable costs and expenses directly incurred by the Arena Manager in providing such services, to the extent directly attributable to a Community Event. For clarity, only payments or other considerations to be made or provided that (A) are calculated solely on the basis of sales made or transactions completed during a Team Revenue Event or a City Sponsored Event directly relating to such Team Revenue Event or City Sponsored Event, or (B) are payable solely because a given Team Revenue Event or City Sponsored Event is held shall be “directly attributable” to such Team Revenue Event or City Sponsored Event.

(d) Notwithstanding anything to the contrary in this Section, the provisions of this Section shall not apply to Team Sales.

8.5.3 Arena Manager Provision of Food and Beverage Services. If the Arena Manager elects to provide food and beverage services at the Arena, then the benefits to the City from the Arena Manager’s offering of such services with respect to City Sponsored Events shall be no less favorable than could be obtained from a Third Party with respect to such Events. In such event, the Arena Manager shall, at least 15 Business Days prior to the commencement of the Arena Manager’s provision of any such food or beverage services, give the other parties notice of the services to be offered by the Arena Manager, together with reasonable evidence that the benefits to the City from the Arena Manager’s offering of such services with respect to City Sponsored Events will be no less favorable than could be obtained from a Third Party with respect to such Events.

(a) The City shall have 15 Business Days after receipt of such notice to give the Arena Manager notice that either (i) the City agrees that the benefits to the City from the Arena Manager’s offering of such services with respect to a City Sponsored Events are no less favorable than could be obtained from a Third Party, or (ii) the City claims that such benefits are less favorable than could be obtained from a Third Party with respect to such Events.

(b) If the City does not give such notice within such 15 Business Day period, the City shall be deemed to have agreed that such benefits are no less favorable than could be obtained from a Third Party with respect to such Events.

(c) If the City notifies the Arena Manager that the City claims that the benefits to the City from the Arena Manager’s offering of such services are less favorable than could be obtained from a Third Party with respect to such Events, the Arena Manager shall obtain *bona fide* bids for comparable services from not less than two Third Parties, taking into consideration not only price, but also quality, reliability, experience, expertise, ability to perform and similar factors, and such evidence shall be conclusive as to whether the proposed benefits to the City from the Arena Manager’s offering of such services are fair and acceptable.

8.6 Advertising and Media.

8.6.1 Arena Manager Advertising. Except as provided in this Section, the Arena Manager shall have the sole and exclusive rights to post, exhibit, display and otherwise present, and to sell and license, all Advertising during the Term. Accordingly, neither the Team Owner nor the City, except as provided in this Section, shall take any action with respect to, or have any authority over, the posting, exhibition, display, sale or license of Advertising or Advertising Agreements, other than at the express direction of the Arena Manager.

8.6.2 Advertising Revenue. The Arena Manager shall receive all revenue from Advertising at the Arena and shall not be obligated to remit any such revenue to the City (subject to applicable taxes).

8.6.3 City Advertisements. The Team Owner shall cause all printed game programs produced by the Team Owner at Home Games and at All-Star Games (subject to the Hockey Rules) to include a one-page advertisement acknowledging the City's role in providing facilities for the Team and promoting attributes of the City. No advertisement permitted by this Section shall be applicable to programs produced by third parties or increase the cost to the Team of producing the program in which the advertisement is to appear (other than by adding a page to the program). The text and design for each such advertisement shall be prepared by the City, at the City's expense, and shall be provided to the Team Owner with sufficient lead time to allow the Team Owner a commercially reasonable time to arrange for the inclusion of such advertisement in such program.

8.6.4 Naming Rights.

(a) The Arena Manager, in consultation with the Team Owner, shall have the sole and exclusive rights to sell and license all Naming Rights to be effective during the Term; provided, however, that the sale or license of Naming Rights to the Arena Facility shall be subject to the approval of the City, which shall not be unreasonably withheld; provided however, the City's rejection of any entity with which the City is currently in litigation or litigation is overtly threatened shall be deemed reasonable. The Arena Manager shall use commercially reasonable efforts to cause the name "Glendale" (for example: "XXXXXX ARENA in Glendale, Arizona") to be included in the use of name of the Arena Facility or a major component thereof; provide however, Arena Manager shall not be required to incur additional costs as a result of the inclusion of "Glendale" in the use of the Arena's Name.

(b) The Arena Manager shall receive all revenue from the sale and licensing of Naming Rights, including any unpaid amount under the current Naming Rights Agreement, and shall, within 10 days after receipt of any revenue received from the sale or licensing of Naming Rights, remit to the City an amount equal to 15% of the portion of such gross revenue from the sale and/or license of Naming Rights that is attributable to signage (except for any unpaid amount under the current Naming Rights Agreement, which the parties agree shall not be subject to such 15% charge).

(c) During such time that the Naming Rights have been sold or licensed under this Agreement, when reasonably possible to do so, the Arena Manager shall use commercially reasonable efforts to cause "Glendale, Arizona" to be included in or after uses of the name of the Arena Facility.

8.6.5 Names, Logo and Schedule.

(a) Team.

(i) At the request of the Team Owner, the Arena Manager shall prominently display the Team's name, logo and schedule in areas around the Arena Facility. The size, location and appearance of such displays shall be developed and mutually agreed upon by the Team Owner and the Arena Manager. No display or any other material prepared or permitted by the Arena Manager or the City shall use the name, any logo or any trade or service mark of the Team without the Team Owner's prior consent, which consent may be given or withheld by the Team Owner in its sole discretion.

(ii) The Team Owner shall use commercially reasonable efforts to have the name of the Team changed to the "Arizona Coyotes" as soon as is commercially feasible.

(b) City. At the request of the City, the Arena Manager shall display the City's name and logo at the Arena Facility in a manner and at a location reasonably acceptable to the Arena Manager and the City; provided however, that no display or any other material prepared or permitted by the Arena Manager or the Team Owner shall use the name, any logo or any trade or service mark of the City without the City's prior consent, which consent may be given or withheld by the City in its sole discretion.

8.6.6 Broadcasts. The Team Owner has and shall retain the sole and exclusive rights to control, and to receive as Exclusive Team Revenues all revenue from, all radio, television and other media broadcasts, reproductions and transmittals of the pictures, descriptions and accounts of Hockey Events and all other activities of the Team, the Team Owner and the visiting teams incidental to Hockey Events, regardless of the nature of the technology or the medium and whether distributed locally, nationally or otherwise.

(a) The Team Owner's rights shall apply to, without limitation, cable television, pay television, direct broadcast satellite television, subscription television, master antenna and satellite antenna television, closed circuit television, Internet and broadband distribution and any other technology now in existence or hereafter developed.

(b) The Team Owner's rights include the right to, from time to time, enter into agreements or other arrangements with other parties (including agreements with "truck producers") pursuant to which such other parties may exercise any or all of the rights of the Team Owner to control and receive revenue from such broadcasts, reproductions, transmittals and distributions.

8.6.7 Use of Communication Systems. The City shall have the right to use (without charge) the Communication Systems for a reasonable number of times (to be mutually agreed upon by the City and the Team Owner) during each Hockey Event solely for the purpose of making public service announcements, and for a reasonable number of times (to be mutually agreed upon by the City and the Team Owner) during each Hockey Event solely for the purpose of making announcements concerning future City Sponsored Events.

(a) Subject to the terms of any License, the City shall have the right to use (without charge) the Communication Systems for a reasonable number of times (to be mutually agreed upon by the City and the Arena Manager) during each Event (other than a Hockey Event) solely for the



purpose of making public service announcements, and for a reasonable number of times (to be mutually agreed upon by the City and the Arena Manager) during each Event (other than a Hockey Event) solely for the purpose of making announcements concerning future City Sponsored Events. The City acknowledges that Licenses for Events (other than Hockey Events) may prohibit the City's use of the Communication Systems during such Events.

(b) No announcement permitted by this Section shall exceed a reasonable time (to be mutually agreed upon by the City and the Team Owner or the Arena Manager, as applicable) in duration. The City shall be responsible, at the City's expense, for the creation of all announcements to be made pursuant to this Section.

(c) For the purposes of this Agreement, "**Communications Systems**" refers to all audio and visual Communication Systems that are owned by the City and that are located at, in or on the Arena Facility, including scoreboards, satellite hook-ups, television and loudspeaker systems, public address systems, outdoor speakers, timers, clocks, message centers and video screens, specifically excluding, however, any Advertising and any Parking Advertising displayed or otherwise presented on, in or by any portion of such audio and visual communication systems.

8.7 Suites.

8.7.1 Suite License Agreements. The Arena Manager shall have the sole and exclusive right to the following:

(a) To enter into Suite License Agreements upon such terms and conditions consistent with this Agreement and as the Arena Manager in its reasonable discretion deems appropriate; and

(b) To receive Suite License Revenues.

(c) The Arena Manager shall cause each Suite License Agreement to include the following:

(i) The Exculpatory Language;

(ii) A commercially reasonable provision requiring that the licensee under such Suite License Agreement execute and deliver, from time to time at the request of the Arena Manager, the Team Owner, or the City, accurate estoppel certificates regarding such Suite License Agreement;

(iii) A commercially reasonable provision requiring that the licensee under such Suite License Agreement obtain and maintain, during the term of such Suite License Agreement, insurance covering any damage to or destruction of the corresponding Suite caused by or attributable to any act or omission of such licensee and any agent, employee, guest or invitee of such licensee;

(iv) A commercially reasonable provision providing that the licensee under such Suite License Agreement shall be liable for any damage to or destruction of the corresponding Suite or any other portion of the Arena Facility caused by or attributable to any act or omission of such licensee and any agent, employee, guest or invitee of such licensee; and

(v) A commercially reasonable provision providing for (A) the waiver by the licensee under such Suite License Agreement of any Claim or Loss arising from or attributable to the use of such Suite by such licensee and its agents, employees, guests and invitees, and (B) such licensee's agreement to indemnify, hold harmless and defend the Arena Manager, the Team Owner, the City and the NHL, and their respective city council members and elected officials (with respect to the City), agents, directors, employees, other officials and officers, against any Claim or Loss arising from or attributable to the use of such Suite by such licensee and its agents, employees, guests and invitees.

8.7.2 Services to Suites. The Arena Manager shall provide to each Suite (with the cost thereof being an Operating Expense) (i) heating, ventilation and air-conditioning so as to provide a temperature in the Suite during the use thereof that is reasonably comfortable; (ii) electricity for lighting and use of the appliances and equipment in the Suite; (iii) water; (iv) cleaning after each use and at other times reasonably necessary to keep the Suite in a clean and neat condition; and (v) maintenance and repair of the Suite as required to maintain the Suite in a first-class condition.

8.7.3 City Suite. The City shall have the right to continue to use the existing Suite used by the City (Suite Nos. 1238 and 1239), including Tickets (for seating and standing room in such Suite) to all Events, all at no cost to the City. Food and beverage service for such Suite shall be provided at the same cost and manner as food and beverage service provided to the "Owner's Suite" or any suite licensed to or used by the Arena Manager, the Team Owner, or their respective Affiliates, whichever is lowest.

8.8 Premium Seat Agreements. The Arena Manager shall have the sole and exclusive right to enter Premium Seat Agreements.

8.8.1 The Arena Manager shall have the sole and exclusive right to receive, as Exclusive Arena Manager Revenues, all Premium Seat revenues.

8.8.2 The Arena Manager shall cause each Premium Seat Agreement to include the following:

(a) The Exculpatory Language;

(b) A commercially reasonable provision requiring that the licensee under such Premium Seat Agreement execute and deliver, from time to time at the request of the Arena Manager, the Team Owner, or the City, accurate estoppel certificates regarding such Premium Seat Agreement;

(c) A commercially reasonable provision providing for (a) the waiver by the licensee under such Premium Seat Agreement of any Claim or Loss arising from or attributable to the use of such Premium Seat by such licensee and its agents, employees, guests and invitees, and (b) such licensee's agreement to indemnify, hold harmless and defend the Arena Manager, the Team Owner, the City and the NHL, and their respective city council members and elected officials (with respect to the City), agents, directors, employees, officials and other officers against any Claim or Loss arising from or attributable to the use of such Premium Seat by such licensee and its agents, employees, guests and invitees; and

(d) A commercially reasonable provision providing that the licensee under such Premium Seat Agreement shall have the right to purchase a Ticket for the Premium Seat described in such Premium Seat Agreement for each Event, other than a Hockey Event or Community Event, at the Ticket price established by and to be paid to the sponsor or promoter of such Event (including any applicable City Surcharge), pursuant to the procedures from time to time established by the Arena Manager for the exercise of such right.

8.8.3 Procedures. The Arena Manager shall establish, and from time to time revise, the procedures requiring the licensee under a Premium Seat Agreement to exercise, with respect to each Event other than a Hockey Event and a Community Event, the licensee's right to purchase a Ticket for the Premium Seat described in such Premium Seat Agreement for such Event sufficiently in advance of such Event so as to provide the sponsor or promoter of such Event with a reasonable opportunity to sell such Ticket if such licensee has not exercised its right to purchase such Ticket within the time period specified by such procedures.

8.9 Scheduling. The Arena Manager shall schedule all events and other activities at the Arena Facility in accordance with the Scheduling Procedures.

8.9.1 Hockey Event Responsibilities.

(a) Condition of Arena Facility for Hockey Events. The Arena Manager shall cause, not later than a reasonable time prior to the commencement of a given Hockey Event, the Arena Facility to be in a condition suitable for the Team's use of the Arena Facility for such Hockey Event, including, to the extent applicable:

(i) furnishing of the ice playing surface in accordance with all NHL requirements for Hockey Events; and

(ii) furnishing in good operating order, condition and repair, in accordance with all NHL requirements, all required goals and backup goals, nets, lines and striping, dashboards, protective glass systems, photographers and media areas, time keeper areas, player penalty boxes, on-ice officials box, goal judge boxes, goal lights, ice surfacing equipment, signs and markers, team benches, tables and chairs, lighting, the Arena Communication Systems, remote broadcast systems, coach phone hookups and all other special equipment and facilities necessary or desirable for the Hockey Event.

(b) Ice Surface.

(i) The Arena Manager shall, at the request of the Team and subject to scheduling of other Events, remove and replace the ice surface in the Arena Facility, as an Operating Expense, if such surface does not meet any NHL requirement or requirement of the Hockey Rules.

(ii) In addition, the Arena Manager, as an Operating Expense, shall (A) remove and replace (or cover) the ice surface in the Arena Facility as necessary to accommodate the preparation for, or conduct of, Events other than Hockey Events, and (B) restore the ice surface to meet NHL requirements and all of the Hockey Rules prior to each Hockey Event.

(c) Hockey Tickets. The Team Owner (i) shall control the pricing, the advertising of and on, and the distribution (including the distribution for no charge) of Hockey Tickets,

whether Hockey Tickets are issued directly by the Team Owner, through agencies, or other designees authorized by the Team Owner; and (ii) shall receive and retain, as Exclusive Team Revenues, all Hockey Ticket Receipts (other than any such revenues constituting Exclusive City Revenues). Neither the City nor the Arena Manager shall issue any Hockey Ticket or authorize anyone else to do so or admit any Person to a Hockey Event without a valid Hockey Ticket.

8.9.2 City Sponsored Events. Subject to the Scheduling Procedures, all Concessions Agreements, all Suite License Agreements, all Premium Seat Agreements, all Advertising Agreements and all Naming Rights Agreements, the City shall have the non-assignable right to use the Arena Facility, except for the Exclusive Team Spaces, for not more than four City Sponsored Events each Fiscal Year.

(a) Prior to the scheduling of a City Sponsored Event that is a Fee Activity, the City shall give the Arena Manager notice of whether the City elects to waive the City Surcharge with respect to such City Sponsored Event, and if such notice is not provided it shall be deemed an election by the City not to waive such fees with respect to that City Sponsored Event.

(b) The City shall take such actions as are required to cause the payment to the Arena Manager of an amount not less than the aggregate amount of City Surcharge for each such City Sponsored Event, except to the extent that the City has waived, pursuant to this Agreement, such fees.

(c) The Arena Manager shall maintain separate records of all revenues and all expenses directly attributable to each City Sponsored Event, and all amounts received for deposit and deposited into the City Surcharge Account with respect to each City Sponsored Event. For clarity, only payments or other considerations to be made or provided that (A) are calculated solely on the basis of sales made or transactions completed during a City Sponsored Event directly relating to such City Sponsored Event or (ii) are payable solely because a given City Sponsored Event is held shall be “directly attributable” to such City Sponsored Event.

(d) The Arena Manager shall, at the time the quarterly financial report for such Fiscal Quarter is submitted to the parties pursuant to Section 8.15:

(i) If the aggregate of the expenses directly attributable to all City Sponsored Events held during a given Fiscal Quarter exceeds the aggregate of the revenue directly attributable to City Sponsored Events, set-off against any distributions or payments to be made to the City for such Fiscal Quarter the amount by which the aggregate of such expenses exceeds the aggregate of such revenues and submit an invoice for the shortfall to the City for reimbursement within 30 days (any such set-off and/or reimbursed amounts constituting Operating Revenues), or

(ii) If the aggregate of the revenues directly attributable to City Sponsored Events held during a given Fiscal Quarter exceeds the aggregate of the expenses directly attributable to City Sponsored Events held during a given Fiscal Quarter, remit to the City the amount by which the aggregate of such revenues exceeds the aggregate of such expenses within 30 days after the end of the Fiscal Quarter.

8.9.3 Community Events. Subject to the Scheduling Procedures, all Concessions Agreements, all Advertising Agreements and all Naming Rights Agreements, the City shall have the non-assignable right to use the Arena Facility, except for the Exclusive Team Spaces, for Community Events up to six times per Fiscal Year.

(a) The Arena Manager and the City shall take such actions as are required to cause all revenues generated by Community Events to be paid directly to the City, and such revenues shall not be Operating Revenues.

(b) Prior to the scheduling of a Community Event that is a Fee Activity, the City shall give the Arena Manager notice of whether the City elects to waive the City Surcharge with respect to such Community Event, and if such notice is not provided it shall be deemed an election by the City not to waive such fees with respect to that Community Event.

(c) The City shall take such actions as are required to cause the payment to the Arena Manager of an amount not less than the aggregate City Surcharge for such Community Event, except to the extent the City has properly waived, pursuant to this Agreement, such fees.

8.10 Arena Accounts.

8.10.1 Operating Account. The Arena Manager shall, prior to the Closing Date, establish and maintain the Operating Account and make commercially reasonable efforts to collect Operating Revenues and, upon collection, deposit all Operating Revenues collected into the Operating Account not later than two Business Days after receipt.

8.10.2 Application of Monies in Operating Account. The Arena Manager shall cause the monies in the Operating Account to be applied to the payment of Operating Expenses as and when they become due and payable; such monies shall otherwise be available to the Arena Manager and the Team Owner as needed from time to time.

8.10.3 City Surcharge Account. The Arena Manager shall, prior to the Closing Date, establish and maintain the City Surcharge Account, and shall make deposits into the City Surcharge Account of all City Surcharge not later than two Business Days after the date on which such City Surcharge was deemed to have been earned. For purposes of this Agreement, the date on which a City Surcharge is deemed to have been earned shall be the date of the Fee Activity actually occurs, in which case there was no cancellation or postponement of the Fee Activity.

(a) Interest and other income earned on amounts held in the City Surcharge Account shall not be Operating Revenues and shall be the property of the City.

(b) The City shall make withdrawals from the City Surcharge Account at any time and from time to time in the City's sole discretion.

8.11 Impositions.

8.11.1 The Arena Manager shall pay or cause to be paid, as Operating Expenses, any and all Impositions that accrue after the Closing Date and during the Term, as and when they become due and payable, and before any fine, penalty, interest or cost may be added thereto or become due or be imposed by operation of law for the nonpayment thereof, except for Impositions being contested in good faith by appropriate proceedings diligently pursued and for which the Arena Manager has made adequate reserves for the Imposition and any additional fees, interest, or penalties.

8.11.2 Subject to Section 8.11.1 above, the Arena Manager may contest the legal validity or amount of any Imposition to be paid by the Arena Manager hereunder, and may institute such proceedings as the Arena Manager considers necessary therefor.

8.11.3 The City may require the Arena Manager to contest any Imposition; provided, however, that the Arena Manager shall not be required to proceed with any such contest that would cause the Arena Manager to suffer undue financial burden.

8.11.4 All costs and expenses incurred by the Arena Manager under this Section shall be Operating Expenses.

8.12 Contracts and Agreements.

8.12.1 Exculpatory Language. The Arena Manager shall cause all contracts or agreements entered into by the Arena Manager or the Team Owner and relating in any way to the Arena Facility (including Licenses, Concessions Agreements, Suite License Agreements, Premium Seat Agreements, Advertising Agreements, Naming Rights Agreements and vendor contracts) to contain the Exculpatory Language.

8.12.2 Assignment and Transfer. The Arena Manager shall cause every contract or agreement to which the Arena Manager or the Arena Sub-Manager is a party that (a) pertains to the management, operation and use of the Arena Facility, (b) provides for consideration in excess of \$100,000, and (c) has a term of more than one year, including any options to renew or extend (excluding this Agreement, any Related Agreement, any agreement between the Arena Manager and the Arena Sub-Manager, and any employment agreements entered into by the Arena Manager or the Arena Sub-Manager), to provide for the following:

(a) The right of the Arena Manager or the Arena Sub-Manager (as applicable), in connection with a replacement of the Arena Manager or the Arena Sub-Manager (as applicable) under this Agreement, to transfer and assign such contract or agreement, or the Arena Manager's or the Arena Sub-Manager's (as applicable) interest in such contract or agreement, to an assignee or transferee approved by the Team Owner and the City, provided that

(i) such transfer or assignment fully assigns all of the rights and delegates all of the duties of the Arena Manager or the Arena Sub-Manager (as applicable) under such contract or agreement to such assignee or transferee, and

(ii) such assignee or transferee assumes the Arena Manager's or the Arena Sub-Manager's (as applicable) duties thereunder; and

(b) That upon such transfer or assignment, the non-assigning party(ies) shall thereafter look solely to such assignee or transferee for performance of the Arena Manager's or the Arena Sub-Manager's (as applicable) duties under such contract or agreement.

8.12.3 City's Right to Cure.

(a) The Arena Manager shall cause any contract or agreement entered into by the Arena Manager or the Arena Sub-Manager with respect to the management, operation and use of the Arena Facility (other than this Agreement, any Related Agreement, any agreement between the Arena

Manager and the Arena Sub-Manager and any employment agreements entered into by the Arena Manager or the Arena Sub-Manager), which agreement or contract provides for consideration in excess of \$100,000 and has a non-terminable term of more than one year (including any option to renew or extend), to provide that, if a material default is asserted against the Arena Manager or the Arena Sub-Manager(if any), then the City shall have the right, but not the obligation, to cure such default, as set forth in the immediately following sentence;

(b) The City shall not exercise such right if the Arena Manager or the Arena Sub-Manager is taking action to contest or cure the asserted default unless the City reasonably determines that the actions of Arena Manager or Arena Sub-Manager will not effectively or timely cure the default.

(c) The Arena Manager shall cause each such contract or agreement entered into after the Closing Date shall provide that (i) any default asserted against the Arena Manager or the Arena Sub-Manager shall require written notice to the Arena Manager or the Arena Sub-Manager and to the Team Owner and the City; and that (ii) the City has 15 days after the expiration of the cure time permitted the Arena Manager or the Arena Sub-Manager to exercise the City's right to cure any asserted default.

(d) If the City fails to timely exercise its right to cure, the City shall have waived such right.

(e) If the City elects to cure an asserted default in accordance with this Section, the City shall be entitled to reimbursement by the Arena Manager of all reasonable costs and expenses incurred by the City in curing such default from Operating Revenues without limiting the City's other remedies against the Arena Manager or Arena Sub-Manager.

#### 8.12.4 Arena Manager Affiliate Contracts.

(a) No Arena Manager Affiliate Contract shall be less favorable to Arena Manager than could be obtained from a Third Party, provided that the foregoing requirement and the City's right to demand compliance with subsection (b)-(d) below shall not apply with respect to an Arena Manager Affiliate Contract if the Arena Manager certifies that such contract (i) can have no adverse effect on the performance by the Arena Manager of its obligations under this Agreement, (ii) cannot increase Operating Expenses, and (iii) cannot decrease Operating Revenues. The Arena Manager shall maintain a separate and distinct file with complete copies of all Arena Manager Affiliate Contracts available for inspection by the City (or a representative thereof) at the Arena Facility at any time during normal business hours.

(b) City and the Team Owner separately shall have 15 Business Days after receipt of such copy to give the Arena Manager (and the other parties) notice that either (i) the party giving notice agrees that the terms and conditions of the Arena Manager Affiliate Contract are no less favorable than could be obtained from a Third Party, or (ii) the party giving notice claims that such terms and conditions are less favorable than could be obtained from a Third Party.

(c) Except in the circumstances where a reasonable determination can be made that the terms and conditions are clearly less favorable, if the City or Team Owner does not give such notice within such 15 Business Day period, then the City or Team Owner shall be deemed to have agreed that such terms and conditions are no less favorable than could be obtained from a Third Party.

(d) If either the City or the Team Owner notifies the Arena Manager that the notifying party claims that the terms and conditions of an Arena Manager Affiliate Contract do not appear to have been made on a fair market, arms-length equivalent basis, the Arena Manager shall obtain *bona fide* bids for comparable services from not less than two Third Parties, taking into consideration not only price, but also quality, reliability, experience, expertise, ability to perform and similar factors, and such evidence shall be conclusive as to whether the proposed Affiliate contract is fair and acceptable.

8.13 Accounting Procedures. The Arena Manager shall establish and maintain accounting procedures for the Arena Accounts on an accrual basis, in accordance with Generally Accepted Accounting Principles applied on a consistent basis throughout the periods indicated (commonly referred to as “GAAP”).

8.14 Annual Budget.

8.14.1 Requirement. The Arena Manager shall, not later than May 31 of each year, prepare and submit to the City and the Team Owner for their respective review and approval, a proposed Annual Budget, for the period beginning on the July 1 following the end of the first full Fiscal Year and ending on June 30 of the following year, and for each Fiscal Year thereafter during the Term.

8.14.2 Initial Period and First Fiscal Year. The Arena Manager has prepared in consultation with the City and the Team Owner, and the City and the Team Owner have reviewed and, by the execution hereof, the City and the Team Owner have approved (i) an Annual Budget for the period commencing on the Closing Date and ending on the last day of the Fiscal Year during which the Closing Date occurs and (ii) an Annual Budget for the first full Fiscal Year of the Term; the form of such Annual Budgets are attached hereto as Exhibits “G”.

8.14.3 Review. Each of the City and the Team Owner shall review each proposed Annual Budget (and any revised proposed Annual Budget submitted to the City and the Team Owner pursuant to this Section) and give a notice of approval or disapproval thereof to the Arena Manager (with a copy to the other of the City or the Team Owner, as applicable).

(a) The City shall review the Annual Budget to assure it is substantially in accord with the obligations set forth in this Agreement and is not substantially inconsistent with budget of other similar arena facilities. The Arena and Team shall agree upon the standard of the Team’s review of the Annual Budget and provide written notice of that standard to the City.

(b) The City and Team shall provide the Arena Manager its notice of approval or disapproval of the budget within 15 days after receipt of such proposed Annual Budget; provided, however, that the failure by the City or the Team to deliver an approval of the proposed Annual Budget within such time period shall be deemed to be approval thereof.

8.14.4 Disapproval. Any notice of disapproval of a given proposed Annual Budget shall state in detail the basis for such disapproval.

(a) Upon disapproval of a given proposed Annual Budget pursuant to this Section, the Arena Manager shall revise such proposed Annual Budget and submit the revised proposed Annual Budget to the City and the Team Owner for review and approval or disapproval under this Section.



(b) Beginning with the second full Fiscal Year of the Term, if the Annual Budget for a given Fiscal Year is not approved by the City and the Team Owner pursuant to this Section prior to the commencement of such Fiscal Year, then the approved Annual Budget for the immediately preceding Fiscal Year, increased by the greater of (i) 5% and (ii) if positive, the increase in the Consumer Price Index for all Urban Consumers for the prior year, per line item per Fiscal Year, shall remain in effect until a replacement Annual Budget is approved by the City and the Team Owner pursuant to this Section or by an Arbitrator as provided herein.

8.15 Revisions and Reallocations.

(a) The Arena Manager may from time to time, after notice to the City and the Team Owner, revise the approved Annual Budget as reasonably necessary to reflect any unanticipated circumstances; provided, that if and only if the total budgeted Operating Expenses of such original Annual Budget are less than the Management Fees payable for that Fiscal Year, the City shall review and have the right to approve (or disapprove) the proposed revision to the Annual Budget in the manner set forth above in this Section.

(b) The Arena Manager may from time to time, after notice to the City and the Team Owner, reallocate all or part of the amounts allocated to one or more expense line items in the then applicable Annual Budget so long as such reallocations do not increase the total aggregate amount of all of the expense items in such Annual Budget or materially change the projected timing of revenues and expenses.

8.15.2 Unbudgeted Expenses.

(a) Circumstances may arise that require, in the reasonable opinion of the Arena Manager, unbudgeted expenses (whether as Operating Expenses or expenditures for Capital Improvements), and in each such case, the Arena Manager shall within a reasonable time provide notice to the City and the Team Owner of such unbudgeted expenses and, if and only if the quarterly variance for such unbudgeted expenses is more than 10% of the amount budgeted for Operating Expenses for such Fiscal Quarter (which, for the avoidance of doubt, will not be cumulative with any prior Fiscal Quarter), the Arena Manager shall provide a reasonably detailed explanation of the circumstances giving rise to such expenses.

(b) If the City refuses to recognize such unbudgeted expenses as Operating Expenses or expenditures for Capital Improvements, such dispute shall be resolved by Arbitration as provided herein.

8.15.3 Emergencies. The Arena Manager shall, promptly after acquiring knowledge that an Emergency exists, give notice to the City and the Team Owner of the existence of such Emergency and a description of the circumstances of such Emergency.

(a) If the Arena Manager determines that Capital Improvements are required to alleviate such Emergency, the Arena Manager shall promptly notify the City and the Team Owner of the need to make such Capital Improvements and the nature of the same; and

(b) The Arena Manager shall undertake the emergency Capital Improvements, subject, in each case, to the City's responsibility to provide for, and to reimburse the Arena Manager for its incurrence of any costs relating to, such Capital Improvements.

(c) If the City refuses to recognize such expenditures as Capital Improvements necessary to alleviate an Emergency, such dispute shall be resolved by Arbitration as provided herein.

8.15.4 Monitoring of Budget. The Arena Manager shall, on an ongoing basis during each Fiscal Year, (i) monitor all actual expenses and revenues; (ii) compare such actual revenues and expenses to the corresponding categories of budgeted expenses and revenues for such Fiscal Year; and (iii) promptly give notice to the City and the Team Owner of any circumstances that indicate to the Arena Manager that there may be a need to incur unbudgeted expenses.

8.16 Financial Reports.

8.16.1 Periodic Reports. Commencing on the Closing Date and continuing during the Term, the Arena Manager shall provide to the parties the following financial reports in a format and with a level of detail reasonably agreed to by the parties:

(a) Monthly Financial Reports. Not later than the last day of each calendar month, (a) a statement setting forth the prior calendar month's Operating Revenues, Operating Expenses, and expenditures for Capital Improvements; and (b) a statement setting forth the end of the month balances for each of the Arena Accounts (other than the City Surcharge Account) and describing the reasons for any transfers between or among accounts (other than withdrawals by the City from the City Surcharge Account) during the prior calendar month.

(b) Quarterly Financial Reports. Not later than 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, a balance sheet relating to Arena Facility operations as of the end of such Fiscal Quarter, and statements of income and cash flows relating to Arena Facility operations for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter.

(c) Annual Financial Reports. Not later than 90 days after the end of each Fiscal Year, provided, that if all necessary information from the NHL related to the following items (a), (b) and (c) shall not have been received by the date which is 30 days after the end of each Fiscal Year, then interim reports shall be provided within the normal time frame and final reports shall be provided within 60 days after the receipt of all necessary information from the NHL related thereto): (a) a balance sheet relating to Arena Facility operations as of the end of such Fiscal Year, (b) a statement of profit or loss for Arena Facility operations during such Fiscal Year, and (c) a statement of changes of financial condition for Arena Facility operations during such Fiscal Year, each prepared in accordance with GAAP as consistently applied (if there are multiple interpretations of the application of GAAP, GAAP as traditionally interpreted by the Arena Manager and the Team Owner shall apply) (collectively, the "**Annual Financial Reports**"), and accompanied by a report containing an opinion of the Arena Manager's accountants, stating that such Annual Financial Reports fairly present, in all material respects, the activities to which such Annual Financial Reports relate, that such Annual Financial Reports have been prepared in accordance with GAAP as consistently applied and that the examination by the Arena Manager's accountants in connection with such financial reports was made in accordance with GAAP.

(d) Accountants. The Arena Manager's independent certified public accounting firm shall be a nationally recognized public accounting firm selected by the Arena Manager. Following not less than a 30-day notice to the other parties, the Arena Manager may from time to time engage replacement accountants.

(e) GAAP. All financial statements shall be prepared in accordance with GAAP, except that the unaudited financial statements need not contain all footnotes required by generally accepted accounting principles. The financial statements shall fairly present in all material respects the financial condition and operating results as of the dates, and for the periods, indicated therein, subject in the case of the unaudited financial statements to normal year-end audit adjustments.

8.16.2 Inspection.

(a) The Arena Manager shall, for a period of five years after the end of the Fiscal Year to which they pertain (or such longer time as may be required by Applicable Law), keep and maintain complete Account Records.

(b) The Arena Manager shall require any Arena Sub-Manager to comply with the provisions of this Section and the inspection and audit rights of the parties granted herein.

(c) The Arena Manager shall keep the Account Records separate and identifiable from any other records of the Arena Manager.

(d) Upon not less than five Business Days' notice to the Arena Manager and the other parties, each of the City and the Team Owner (including their respective accountants and attorneys) shall be entitled to inspect the Account Records, during the period the Arena Manager is required to maintain them, at the Arena Manager's office during normal business hours.

8.17 Audits.

8.17.1 The City shall have the right to conduct an independent audit of the management and operation of the Arena Facility and the Account Records and the Team Owner Records by an independent certified public accounting firm selected by the City.

(a) Any such audit shall be conducted after reasonable notice to the Arena Manager and at the Arena Manager's normal business hours.

(b) Notwithstanding any provisions to the contrary in this Agreement, the City's right to conduct such an independent audit after the Termination Date shall survive any termination of this Agreement.

8.17.2 Overpayments/Underpayments.

(a) If any such audit reveals an overpayment or an underpayment of any amount to be paid or distributed under this Agreement, then the City shall deliver to the Arena Manager a copy of the report of such audit prepared by the City's independent certified public accounting firm.

(b) The Arena Manager shall have the right to review such report and provide within 30 days of the receipt of the report information supporting an amount different from that set forth in the report, which different amount may indicate that there has been no overpayment or underpayment; and the parties shall in that event proceed in good faith to resolve any disagreement regarding such amount.

(c) Within 30 days after the resolution of any such disagreement, if an overpayment or underpayment shall have occurred, in the case of an underpayment, the Arena Manager

shall make a payment to rectify such underpayment, or, in the case of an overpayment, the City shall make a payment to rectify such overpayment.

8.17.3 Disputes. In the event of a dispute between or among the parties regarding the accuracy of the results of an audit conducted pursuant to this Section, the dispute shall be submitted to Arbitration as provided in this Agreement.

8.17.4 No Limitation on Governmental Powers. Nothing in this Section shall be construed as a limitation on the City's governmental powers to audit and review tax reports and tax returns.

8.18 Litigation.

8.18.1 Litigation Reports.

(a) The Arena Manager shall deliver to the City and the Team Owner each month a report describing any of the following incidents that have occurred during the prior month of which the Arena Manager has knowledge:

(i) Any injury to any Person at the Arena Facility that requires either immediate on site, or subsequent off-set medical attention; or

(ii) Any incident that the Arena Manager reasonably determines is likely to lead to the commencement of one or more legal actions or proceedings by a Person.

(b) The Arena Manager shall notify the City no less than one Business Day following any fatality or serious bodily injury to any patrons or employees working at the Arena Facility, assaults or incidents involving five or more individuals, and theft or property damage greater than, in a single instance, \$5,000.

8.18.2 Notices and Information. The Arena Manager shall, promptly after acquiring knowledge of the commencement of any legal action or proceeding relating to the Arena Facility, give any insurer and the other parties notice of such commencement, and keep the other parties reasonably advised of the status of, and all significant developments in, any such legal action or proceeding.

8.18.3 Retention of Counsel. In consultation with the other parties, the Arena Manager shall, in good faith, retain counsel with respect to the defense, settlement, or tender of defense to an applicable insurer, with respect to all legal actions or proceedings regarding the Arena Facility.

8.18.4 Costs. Unless the costs and expenses are incurred as a result of an intentional breach of this Agreement, the gross negligence, intentional misconduct or criminal acts of the Arena Manager or the Team Owner or any of their respective agents, employees, officials or other representatives, all costs and expenses incurred by the Arena Manager in defending, settling, or prosecuting such legal actions and proceedings shall be Operating Expenses.

8.18.5 Participation. The City or Team Owner shall have the right to participate, at their own respective expense, and not as an Operating Expense, in any legal action or proceeding described in this Section.

8.19 Use by the Team and Occurrence of Home Games. In connection with the Arena Manager's management of the Arena Facility, the Arena Manager shall secure the substantial, regular and continuing use by the Team and the occurrence of Home Games at the Arena Facility during the Term as provided in the Noncompetition/Non-Relocation Agreement by causing the Team Owner to execute and deliver the Noncompetition/Non-Relocation Agreement. The Arena Manager shall cause Team Owner to fully comply with the terms of the Noncompetition/Non-Relocation Agreement.

## **9. CHARGES AND FEES.**

### 9.1 City Surcharge.

9.1.1 The Arena Manager shall take the following actions to collect and hold in trust for the City for the purposes of depositing into the City Surcharge Account, and which shall not be Operating Revenue, a surcharge in the amount described in this Section 9.1 for each Qualified Ticket (the "**City Surcharge**"):

9.1.2 Amount of the City Surcharge. The City Surcharge shall be in the following amounts:

(a) For the first five years following the Closing Date, \$2.75 per Qualified Ticket with respect to each Fee Activity (for which the City has not waived the City Surcharge); and

(b) Beginning on the sixth anniversary of the Closing Date and continuing until end of the Term, \$3.00 per Qualified Ticket with respect to each Fee Activity (for which the City has not waived the City Surcharge);

9.1.3 Hockey Events. The Arena Manager shall, with respect to each Hockey Event that is a Fee Activity, deposit into the City Surcharge Account all amounts payable as City Surcharge pursuant to this Section with respect to such Hockey Event, within two Business Days after such City Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.1.4 Team Revenue Events and City Revenue Events. The Arena Manager shall, with respect to each Team Revenue Event and City Revenue Event that is a Fee Activity, deposit into the City Surcharge Account all amounts payable as City Surcharge pursuant to this Section with respect to such Team Revenue Event and City Revenue Event, within two Business Days after such City Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.1.5 City Sponsored Events. The Arena Manager shall, with respect to each City Sponsored Event that is a Fee Activity and for which the City has not waived the City Surcharge, deposit into the City Surcharge Account all amounts payable as City Surcharge pursuant to this Section with respect to such City Sponsored Event, within two Business Days after such City Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.1.6 Licenses for Other Fee Activities. With respect to a Fee Activity that is not a Hockey Event, Team Revenue Event, City Revenue Event or City Sponsored Event, the Arena Manager shall deposit into the City Surcharge Account all amounts payable as City Surcharge pursuant to this Section with respect to such Fee Activity, within two Business Days after such City Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.2 Separate Statement of Fees on Tickets. To facilitate the verification of City Surcharge:

9.2.1 The Team Owner shall cause the retail price of each Hockey Ticket to be stated on the face of such Hockey Ticket, and shall require that admission for a Hockey Event (including for Suites and Premium Seats) be pursuant to a Hockey Ticket;

9.2.2 The Arena Manager shall cause each License for a Team Revenue Event or a City Revenue Event to require that the retail price of each Ticket for such Event be stated on the face of such Ticket, and that admission for each such Event (including for Suites and Premium Seats) be pursuant to a Ticket;

9.2.3 The Arena Manager and the City (as applicable) shall cause the retail price of each Ticket for a City Sponsored Event to be stated on the face of such Ticket, and shall require that admission for each City Sponsored Event (including for Suites and Premium Seats) be pursuant to a Ticket; and

9.2.4 With respect to a Fee Activity that is not a Hockey Event, Team Revenue Event, City Revenue Event or City Sponsored Event, the Arena Manager shall cause each License for a Fee Activity that is not an Event shall require that the retail price of each Ticket for such Fee Activity be stated on the face of such Ticket, and that admission for each such Fee Activity (including for Suites and Premium Seats) be pursuant to a Ticket.

**10. ARENA MANAGEMENT FEE; TAXATION.**

10.1 Management Fee. During the Term, in consideration of the Arena Manager's agreement to perform the management and other services set forth in this Agreement, provided there is no breach by the Team Owner of the obligations under the Noncompetition/Non-Relocation Agreement or a material breach by the Arena Manager of the obligations under this Agreement, the City shall pay to the Arena Manager, by wire transfer of immediately available funds to an account specified by the Arena Manager, a Management Fee, paid in quarterly (on a three calendar month basis) installments commencing on the Closing Date and thereafter on or before each October 1<sup>st</sup>, January 1<sup>st</sup>, April 1<sup>st</sup> and July 1<sup>st</sup> during the Term:

For the period beginning on the Closing Date and ending on June 30, 2013, \$11,000,000;

10.1.1 Beginning on July 1, 2013 and ending on June 30, 2014, \$14,000,000;

10.1.2 Beginning on July 1, 2014 and continuing each year until June 30, 2016, \$15,000,000 per year;

10.1.3 Beginning on July 1, 2016 and continuing each year until June 30, 2017, \$16,000,000 per year;

10.1.4 Beginning on July 1, 2017 and continuing each year until June 30, 2022, \$18,000,000 per year

10.1.5 Beginning on July 1, 2022 and continuing each year until June 30, 2023, \$17,000,000 per year;

10.1.6 Beginning on July 1, 2023 and continuing each year until June 30, 2027, \$16,000,000 per year; and

10.1.7 Beginning on July 1, 2027 and continuing each year until June 30, 2028, \$14,000,000 per year.

10.1.8 Beginning on July 1, 2028 and continuing each year until the Termination Date, \$13,000,000 per year.

10.2 Status Discussions. Within 90 days following March 1, 2022, the City and the Arena Manager will meet in good faith to discuss the subject matter of this Agreement.

10.2.1 Neither party is under any obligation to take any action in response to, or as a consequence of, such meeting, and this Agreement shall remain unchanged, in full force and effect and binding upon the parties, notwithstanding and irrespective of the results of such meeting.

10.2.2 If, during such meeting, the Arena Manager requests that the City modify this Agreement or any of the other transactions contemplated by this Agreement, and such a request is tentatively approved by the City's staff (acting in its sole discretion), the City's staff will then present the Arena Manager's request to the Glendale City Council for formal consideration in compliance with all applicable notice and public meeting requirements.

10.2.3 The Glendale City Council may in its sole discretion approve, modify, or reject any Arena Manager request; and, to the extent this Agreement remains unchanged, this Agreement, the Related Agreements, and all other agreements, if any, between the parties will continue in full force and effect for the remainder of the Term.

10.3 Taxation of Transactions and Activities at Arena. The parties acknowledge and agree that transactions and activities at the Arena Facility (including without limitation Arena Manager revenues described in Sections 8.2.1(d) and 8.5.2) (i) are, and shall continue during the Term to be, subject to taxes of uniform application throughout the City, (ii) will be subject to such uniform, City-wide taxes as apply to retail and entertainment activities conducted in the City, and (iii) will be subject to future changes in the tax rates that apply throughout the City.

## **11. CAPITAL IMPROVEMENTS.**

11.1 Arena Manager's Obligation. The Arena Manager shall, in addition to the Arena Manager's obligation for on-going repair and maintenance of the Arena Facility, have the obligation to make necessary and prudent Capital Improvements to the Arena Facility in accordance with this Section, provided however, that the Arena Manager's obligation to undertake and complete Capital Improvement projects under this Section is limited by the availability of funds in the Renewal and Replacement Account or, in the event funds are not available in the Renewal and Replacement Account, additional assured funding provided by the City.

11.2 Renewal and Replacement Schedule. The current Renewal and Replacement Schedule for the Arena is attached hereto as Exhibit “L” and reflects project capital expenditures (but not routine repair and maintenance which remains the obligation of the Arena Manager) that are anticipated for the Arena Facility.

11.2.1 The City and Arena Manager shall meet and confer within the first six months following the Closing Date to make any adjustments to the Renewal and Replacement Schedule that the parties mutual agree to be necessary or reasonable prudent and advisable.

11.2.2 In the event the City and Arena Manager cannot agree upon adjustments, if any, to the Renewal and Replacement Schedules that are necessary or reasonable prudent and advisable, the dispute will be submitted to Arbitration in accordance with this Agreement.

11.3 Funding of Capital Improvements. In order to fund the Renewal and Replacement Schedule, the City shall appropriate the following amounts (collectively, the “**Capital Improvement Contributions**”), which shall be paid into and held in the Renewal and Replacement Account on the first day of the applicable Fiscal Year (and for the first year of the Term, on the Closing Date):

11.3.1 \$500,000 during each year of the Term; and

11.3.2 An additional \$500,000 during each Fiscal Year beginning July 1, 2020 and ending June 30, 2024.

11.3.3 Any portion of the Capital Improvement Contribution made in a given Fiscal Year that is not utilized for Capital Improvement Expenditures in such Fiscal Year shall be retained in the Renewal and Replacement Account and may be utilized by the Arena Manager for Capital Improvement Expenditures in subsequent Fiscal Years. Such unused Capital Improvement Contribution shall not be credited towards the Capital Improvement Contribution for any subsequent Fiscal Year.

11.4 Budgeting for Capital Improvements. The Arena Manager shall in each Annual Budget identify all Capital Improvement expenditures (“**Capital Improvement Expenditures**”), including those that will require Capital Improvement Contributions, that are: (a) necessary to comply with mandatory governmental requirements; (b) necessary or appropriate for the safe operation of the Arena Facility or its maintenance or repair; (c) required by any License, Concessions Agreement, Suite License Agreement or Premium Seat Agreement (it being understood that these Capital Improvement Expenditures shall not be an expense chargeable to the City); or (d) in the Arena Manager’s reasonable opinion, will improve the Arena Facility, increase Operating Revenues or reduce Operating Expenses or which are reasonably expected to ensure the economic competitiveness of the Arena Facility. Upon installation, any modifications or installations funded by the Capital Improvement Contributions shall become a part of the Arena Facility and the property of the City.

11.5 Renewal and Replacement Account.

11.5.1 The Arena Manager shall, prior to the Closing Date, establish and maintain the Renewal and Replacement Account which shall at all times remain the property of the City until disbursed in accordance with this Section.

(a) Interest earned on the Renewal and Replacement Account shall not be Operating Revenues and shall be considered part of the Renewal and Replacement Account.



(b) Monies shall be disbursed from the Renewal and Replacement Account for Capital Improvement Expenditures pursuant to the provisions of this Agreement.

(c) The City shall take such actions as are required to cause such disbursements to be made as and when required by the provisions of this Agreement.

(d) The amounts on deposit in the Renewal and Replacement Account pursuant to this Section shall not be Operating Revenues.

(e) The City shall appropriate Capital Improvements Contributions subject to and in accordance with the City's capital improvements budget process.

11.6 Emergencies. In the event of an Emergency:

11.6.1 The Arena Manager shall make the repairs necessary to alleviate such Emergency, in which event the Arena Manager shall pay for or be reimbursed for the cost of the work from the Renewal and Replacement Account or such other City funds that may be legally expended. Such payment or reimbursement shall be made to the Arena Manager within seven business days from the Arena Manager's submission of appropriate documentation.

11.6.2 The City and the Arena Manager will meet immediately to determine the extent of the work necessary and the funding for such work.

11.6.3 The Arena Manager shall comply with all of the governmental requirements pertaining to the work performed.

11.6.4 The Arena Manager may use monies from any Arena Account (other than the Renewal and Replacement Account) to pay for Capital Improvement Expenditures in the event of an Emergency requiring Capital Improvements.

11.7 City Rights.

11.7.1 The City shall have the right, without the prior consent of the Team Owner, but with the prior consent of the Arena Manager, to make Capital Improvements or other repairs to the Arena Facility (other than the Exclusive Team Spaces) using the Renewal and Replacement Account if the Capital Improvements or other repairs are in the City's estimation reasonable and necessary and improve the structural integrity of the Arena Facility and do not fundamentally alter the character or suitability of the Arena Facility for use as a multi-purpose arena facility in compliance with all applicable NHL requirements and Applicable Law, and are done in a manner as to not unreasonably interfere with the operation of the Arena Facility.

11.7.2 The City shall provide the Arena Manager with not less than 30-day notice of, and a schedule for, any such Capital Improvements or other repairs.

11.7.3 All work shall be performed pursuant to a schedule reasonably approved in advance by Arena Manager to minimize any interference with operations of the Arena Facility. The location of any staging area shall be subject to approval by Arena Manager, which shall not be unreasonably withheld, conditioned or delayed.

11.7.4 The City's design and construction contractors and subcontractors shall comply with reasonable security and identification procedures established by Arena Manager for access to the Arena.

11.7.5 The City will prevent any type of encumbrance, security interest, pledge, claim, mechanics' or other lien arising out of work performed for, materials furnished to, or obligations incurred by the City in the construction of any permitted Capital Improvements or repairs and will cause any such encumbrance, security interest, pledge, claim, mechanics' or other lien to be removed or bonded over within 15 days after receipt of notice thereof.

11.7.6 Upon installation, any such Capital Improvement shall become a part of the Arena Facility and the property of the City, subject to the Arena Manager's and the Team's rights under this Agreement.

11.7.7 The City shall maintain and require all contractors and subcontractors to maintain insurance and bond coverages during construction as described on Exhibit "H".

11.7.8 The City shall defend, indemnify and hold the Arena Manager and Arena Sub-Manager, and their agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the performance of such Capital Improvements or repairs by or on behalf of the City in accordance with Section 20.1. Any and all costs and expenses incurred by the Arena Manager to discharge its obligations under this Section shall be included as Operating Expenses.

11.8 Exclusive Team Spaces. The Team Owner may have the right to make, or cause to be made, certain nonstructural alterations, installations, decorations, additions and improvements to the Exclusive Team Spaces, provided that all such alterations, installations, decorations, additions and improvements, including the preparation of plans, specifications and engineering reports therefore, shall be done solely at the Team Owner's expense, in a good and workmanlike manner, shall not weaken or impair the structural integrity of the Arena Facility or fundamentally alter the character or suitability of the Arena Facility for use as a multipurpose arena facility, shall be in compliance with all applicable NHL requirements and Applicable Law and shall be done in a manner as to not unreasonably interfere with the operation of the Arena Facility.

11.9 Non-Budgeted Capital Improvements.

11.9.1 In addition to the Capital Improvements detailed in the Renewal and Replacement Schedule and approved in the Annual Budget, the Arena Manager shall further have the right to make Capital Improvements if necessary to comply with governmental requirements appropriate for the safe operation of the Arena Facility or its maintenance or repair.

11.9.2 The Arena Manager may give notice to the City that it intends to make Capital Improvement Expenditures that were not authorized in the Annual Budget and, in the Arena Manager's reasonable opinion, will improve the Arena Facility, increase Operating Revenues or reduce Operating Expenses or which are reasonably expected to ensure the economic competitiveness of the Arena Facility. If the City does not object within 30 days, the Arena Manager may make the Capital Improvement Expenditure from any available and non-allocated funds in the Renewal and Replacement Account. If the City objects within 30 days, the matter will be submitted to Arbitration as provided for in this Agreement. The City may only object after 30 days if it finds that the proposed Capital

Improvement would violate Applicable Law, in which case the Arena Manager may cease making the Capital Improvement, or the matter shall be submitted to Arbitration as provided for in this Agreement. In any event, the Arena Manager may undertake any Capital Improvement at its sole expense.

11.9.3 For the avoidance of doubt, no decision by the Arbitrator with respect to a matter described in this Section 11.9 shall require the City to deposit funds in the Renewal and Replacement Account other than as required in Section 11.3, as it may be amended from time to time.

11.10 Ownership of the Capital Improvements. Upon installation, any capital improvement shall become a part of the Arena Facility and the property of the City, subject to the Arena Manager's or the Team Owner's rights under this Agreement.

11.11 Compliance with City Code. Nothing in this Agreement with respect to any work performed on the Arena Facility by the Arena Manager or the Team Owner limits, restricts, or waives any requirement of law with respect to construction on public buildings or limits, restricts, or waives the City's building safety requirements, including, but not limited to, permitting, inspections, and plan review.

11.12 Arena Manager or Team Owner Caused Lien.

11.12.1 The Arena Manager and the Team Owner shall, prior to any work being performed, inform any entity performing work on the Arena Facility that the Arena Facility is a public facility and that Arizona law prohibits any lien being placed against the Arena Facility.

11.12.2 The Arena Manager or the Team Owner will prevent any type of encumbrance, security interest, pledge, claim, mechanics' or other lien arising out of work performed for, materials furnished to, or obligations incurred by the Arena Manager or Team Owner in the construction of any permitted Capital Improvements or other alterations, installations, decorations, additions and improvements and will immediately cause any such encumbrance, security interest, pledge, claim, mechanics' or other lien to be removed.

**12. LENDER'S PROTECTION.**

12.1 Team Owner Lender's Protection.

12.1.1 City Estoppel Certificates for Team Owner. The City shall from time to time, within 15 Business Days after receipt from the Team Owner of a request, deliver to the Team Owner (or to such other party as the Team Owner may designate in such request, including any lender providing or considering providing financing to the Team Owner), a certificate, signed by the City Representative designated in accordance with Section 2.1, stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the City Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Team Owner Default and, if so, the nature of such Team Owner Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Team Owner may reasonably request in such request. The Team Owner may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.1.2 Arena Manager Estoppel Certificates for Team Owner. The Arena Manager shall from time to time, within 15 Business Days after receipt from the Team Owner of a request, deliver to the Team Owner (or to such other party as the Team Owner may designate in such request, including any lender providing or considering providing financing to the Team Owner), a certificate, signed by the Arena Manager Representative designated in accordance with Section 2.2, stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Arena Manager Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Team Owner Default by the Team Owner and, if so, the nature of the Team Owner Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Team Owner may reasonably request in such request. The Team Owner may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.1.3 Assignment of Team Owner Rights. Subject to the terms and conditions of the Noncompetition/Non-Relocation Agreement, the Team Owner shall have the right, without any additional consent or approval of the other parties, to assign, pledge, transfer or sell to any lender providing financing to the Team Owner or any of its Affiliates, as security for such financing, the rights of the Team Owner under this Agreement, provided that, if applicable, the NHL has approved or consented to such assignment.

(a) The Team Owner shall, not later than 30 days after such assignment becomes effective, give the other parties notice (the "**Notice of Team Owner Assignment**") of such assignment, and the Notice of Team Owner Assignment shall include the name and address of the Team Owner Assignee.

(b) Each of the other parties agrees to, upon request from the Team Owner or the Team Owner Assignee, deliver to the Team Owner Assignee an acknowledgement, executed by the City Representative and the Arena Manager Representative of receipt of a given Notice of Team Owner Assignment; provided however, nothing in this Section shall alter, amend, reduce or excuse the Team Owner from performing the Team Owner's obligations under this Agreement.

(c) Following receipt of a Notice of Team Owner Assignment, none of the City and the Arena Manager shall enter into or consent to any amendment, waiver, modification or termination of this Agreement by agreement of the parties hereto without the prior consent of the Team Owner Assignee named in such Notice of Team Owner Assignment.

(d) The Team Owner hereby authorizes and directs each of the other parties, following such other party's receipt of (i) a Notice of Team Owner Assignment; (ii) the Team Owner Assignee's notice of a default by the Team Owner under the terms and conditions of the financing secured by the assignment described in such Notice of Team Owner Assignment; and (iii) the Team Owner Assignee's request for payment, to make any payments to be made by such other party to the Team Owner under this Agreement directly to the Team Owner Assignee. No such other party shall have any obligation to verify or investigate the existence of any claimed default described in the Team Owner Assignee's notice.

12.1.4 Notices to Team Owner Assignee. Following receipt from the Team Owner of a Notice of Team Owner Assignment, each of the other parties shall, contemporaneously with giving any notice to the Team Owner under this Agreement, send a copy of such notice to the Team Owner Assignee

named in such Notice of Team Owner Assignment and addressed to such Team Owner Assignee at the address of such Team Owner Assignee set forth in such Notice of Team Owner Assignment.

12.1.5 Team Owner Assignee's Right to Cure Team Owner Default. Following the receipt by a party hereto (other than the Team Owner) from the Team Owner of a Notice of Team Owner Assignment, the Team Owner Assignee named therein shall have the right, but not the obligation, to cure any Team Owner Default, whether then existing or thereafter arising.

(a) No such party shall exercise any remedy under this Agreement or otherwise with respect to any such Team Owner Default until at least 60 days after such party has given such Team Owner Assignee notice of the Team Owner Default and the Team Owner Assignee's right to cure the Team Owner Default; provided, however, that if such Team Owner Assignee commences such a cure within such 60 day period, such party shall not exercise any such remedy with respect to the Team Owner Default so long as such Team Owner Assignee is diligently pursuing such cure.

(b) If a Team Owner Assignee succeeds to the interest of the Team Owner under this Agreement, such Team Owner Assignee shall not be (i) bound by any amendment, modification or termination of this Agreement by agreement of the parties hereto (entered into after the date on which the Notice of Team Owner Assignment was given) made without such Team Owner Assignee's written consent, or (ii) bound by, or liable for the cure of, any failure by the Team Owner to perform any obligation under this Agreement that arose prior to the date on which such Team Owner Assignee succeeded to the interest of the Team Owner under this Agreement (except to the extent such obligation continues after the date on which such Team Owner Assignee succeeded to the interest of the Team Owner under this Agreement).

## 12.2 Arena Manager Lender's Protection.

12.2.1 City Estoppel Certificates for Arena Manager. The City shall from time to time, within 15 Business Days after receipt from the Arena Manager of a request, deliver to the Arena Manager (or to such other party as the Arena Manager may designate in such request, including any lender providing or considering providing financing to the Arena Manager), a certificate, signed by the City Representative designated in accordance with Section 2.1 stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the City Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Arena Manager Default and, if so, the nature of the Arena Manager Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Arena Manager may reasonably request in such request. The Arena Manager may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.2.2 Team Owner Estoppel Certificates for Arena Manager. The Team Owner shall from time to time, within 15 Business Days after receipt from the Arena Manager of a request, deliver to the Arena Manager (or to such other party as the Arena Manager may designate in such request, including any lender providing or considering providing financing to the Arena Manager), a certificate, signed by the Team Owner Representative designated in accordance with Section 2.3 stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Team Owner Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Arena Manager Default and, if so, the nature of the Arena Manager

Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Arena Manager may reasonably request in such request. The Arena Manager may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.3 Subordination to City Encumbrance. The rights of each of the Arena Manager and the Team Owner under this Agreement shall, at the City's option, be made subordinate to any City Encumbrance. For purposes of this Section, "**City Encumbrance**" shall mean means any ground or other lease, mortgage, deed of trust or other hypothecation for security placed on all or any portion of the City's interest in the Arena Facility, and all advances thereunder, all renewals, modifications, consolidations, replacements and extensions thereof.

12.3.1 Such subordination shall be effective only if the holder of the City Encumbrance agrees, by written subordination, non-disturbance and attornment agreement in form and with substance reasonably satisfactory to the Arena Manager and the Team Owner to be bound by this Agreement and to recognize and not disturb the rights of the Arena Manager or the Team Owner, (or the rights of other users of the Arena Facility) under this Agreement.

12.3.2 The Team Owner and the Arena Manager shall, within a reasonable time after the City's request, execute any agreement reasonably required to implement or evidence the subordination of this Agreement in the manner described in this Section.

12.3.3 If the holder of any City Encumbrance desires that this Agreement have priority over the lien of such City Encumbrance, such holder shall give notice of such priority to the Arena Manager and the Team Owner and this Agreement shall thereafter be deemed to have priority over such lien.

### **13. INSURANCE.**

13.1 Arena Manager Insurance. The Arena Manager shall, as an Operating Expense and during the Term, obtain and cause to be maintained in full force and effect, the insurance and bond coverages described in Exhibit "H" attached hereto.

13.2 City Insurance. The City shall, at the City's expense and during the Term, obtain and cause to be maintained in full force and effect, the insurance coverages or self-insurance arrangements described in Exhibit "I" attached hereto.

13.3 Team Owner Insurance. The Team Owner shall, at the Team Owner's expense and during the Term, obtain and cause to be maintained in full force and effect, the insurance coverages described in Exhibit "J" attached hereto.

13.4 Waiver of Recovery. Notwithstanding any provision to the contrary in this Agreement, no party shall be liable to any other party to this Agreement, or to any insurance company (by way of subrogation or otherwise) insuring any other party to this Agreement, for any Claim or Loss, even though such Claim or Loss might have been occasioned by the responsible party's negligence, or the negligence of its agents or employees, if and to the extent such Claim or Loss is covered by insurance benefiting the party suffering such Claim or Loss or against whom such Claim or Loss is made.

13.5 Failure to Maintain Insurance.

13.5.1 Arena Manager Failure. If the Arena Manager fails or refuses to procure or maintain the required insurance, after notice by the City or the Team Owner to the Arena Manager of such failure, the City or the Team Owner shall have the right, but not the obligation, to procure and maintain such insurance, and any reasonable premium paid by the City or the Team Owner, plus interest thereon at the Interest Rate computed from the date such premium is paid, shall be due and payable and reimbursed by the Arena Manager to the City or the Team Owner as an Operating Expense, on the first day of the month following the date on which the City or the Team Owner provides to the Arena Manager written evidence of payment of such premium.

13.5.2 City Failure. If the City fails or refuses to procure or maintain the required insurance or maintain an appropriate self-insurance retention, the Arena Manager shall have the right, but not the obligation, to seek equitable relief from a court of competent jurisdiction mandating the required insurance be procured or an appropriate self-insurance retention be established.

13.5.3 Team Owner Failure. If the Team Owner fails or refuses to procure or maintain the required insurance, after notice by the Arena Manager or the City to the Team Owner of such failure, the Arena Manager or the City shall have the right but not the obligation to procure and maintain insurance, in which event, any reasonable premium paid by the Arena Manager or the City, plus interest thereon at the Interest Rate computed from the date such premium is paid, shall:

(a) If paid by the Arena Manager, be an Operating Expense, and (i) the Arena Manager shall make a demand on the Team Owner for reimbursement of such payment by the Team Owner to the Arena Manager; (ii) the Team Owner shall make such reimbursement to the Arena Manager; and (iii) the Arena Manager shall deposit such reimbursement in the Operating Account and include such amount in Operating Revenues; or

(b) If paid by the City be reimbursed by the Arena Manager to the City as an Operating Expense on demand by the City accompanied by evidence of payment of such premium, after which (i) the Arena Manager shall make a demand on the Team Owner for reimbursement of such payment by the Team Owner to the Arena Manager; (ii) the Team Owner shall make such reimbursement to the Arena Manager; and (iii) the Arena Manager shall deposit such reimbursement in the Operating Account and include such amount in Operating Revenues.

13.6 Notice. A party procuring insurance on behalf of another party as a result of the failure of the other party shall promptly give notice of such procurement to each other party hereto.

13.7 Provisions.

13.7.1 All insurance required hereby shall be by valid and enforceable policies issued by insurance companies rated not lower than A-VII in Best's Rating Guide (most current edition) and authorized to do business in Arizona.

13.7.2 Each such policy of insurance obtained by a party hereto shall be endorsed: (a) to provide that the coverage shall not be invalid due to any act or omission of any other party hereto or its agents or employees; (b) except for worker's compensation, to name each other party hereto as an additional insured; (c) to be primary as to any insurance maintained by each other party hereto, so that the latter shall be excess and not contributory to insurance provided by the insuring party; and (d) to provide

that the waiver of subrogation set forth above shall not invalidate or have any adverse effect on such insurance policy or liability of the insurer under such policy.

13.7.3 The insurance companies issuing such policy shall agree to notify each other party hereto in writing of any cancellation, alteration or nonrenewal of such policy at least 30 days prior thereto.

13.7.4 Within 30 days before the Closing Date and thereafter before a policy period expires, each party required to obtain insurance hereunder shall deliver to each other party hereto certificates evidencing the insurance coverage required of the delivering party and consenting to the waiver of subrogation as herein provided.

13.8 Periodic Review and Adjustment.

13.8.1 The parties agree that the insurance required by this Section shall be subject to adjustment from time to time at the reasonable request of the Arena Manager, the Team Owner or the City so as to be in such amounts as are customarily provided with respect to comparable multi-purpose sports and entertainment arena facilities.

13.8.2 Further, regardless of whether any such requests have been made, the parties shall in good faith review the insurance coverages required by this Section no less frequently than every three years during the Term, with such reviews to be conducted concurrently with the preparation and review of the Annual Budget.

**14. DAMAGE OR DESTRUCTION.**

14.1 Terms: For the purposes of this Section, the following terms shall have the meanings set forth below:

14.1.1 **“Insurance Proceeds”** means all monies paid by an insurer under a casualty insurance policy as a result of a casualty event, the money paid from a party responsible for the casualty, and any money paid directly by a party required under this Agreement to maintain insurance and failed to do so.

14.1.2 **“Casualty Deficiency”** means the amount of the difference between (i) the cost to restore the Arena Facility to the Casualty Restoration Standard in the event of damage or destruction, and (ii) the amount available in the Renewal and Replacement Account, after deposit of all available insurance proceeds.

14.1.3 **“Casualty Restoration Standard”** means a condition as nearly the same as the condition of the Arena Facility immediately prior to an event of damage or destruction as is reasonably possible and which is in compliance with all applicable NHL requirements and Applicable Law.

14.2 Adequately Insured Damage. If, on or after the Closing Date, any portion of the Arena Facility is damaged or destroyed, and such damage or destruction is covered by a casualty insurance policy maintained hereunder, Insurance Proceeds, which for the purposes of this Section refers to all insurance proceeds paid (or to be paid) under such casualty insurance policy, shall be deposited into the Renewal and Replacement Account.



14.2.1 If the Insurance Proceeds are, in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City), sufficient to restore the damaged or destroyed portion of the Arena Facility to the Casualty Restoration Standard, such Insurance Proceeds shall be disbursed from the Renewal and Replacement Account to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Noncompetition/Non-Relocation Agreement shall continue in full force and effect.

14.2.2 Any Insurance Proceeds remaining after the payment of the costs of such restoration in accordance with the Casualty Restoration Standard shall be deposited in the Renewal and Replacement Account.

14.3 Insurance Deficiency and Termination. If, on or after the Closing Date, any portion of the Arena Facility is damaged or destroyed, and such damage or destruction is not covered by a casualty insurance policy maintained hereunder or, if so covered, the Insurance Proceeds are insufficient, in the reasonable estimation of the Arena Manager, to pay the costs of restoration of such damage or destruction in accordance with the Casualty Restoration Standard, and if there are amount in the Renewal and Replacement Account other than the Insurance Proceeds deposited pursuant to Section 11, in an amount sufficient, in the reasonable estimation of the Arena Manager, to pay the costs of such restoration that exceed the Insurance Proceeds, the Insurance Proceeds and such amount in the Renewal and Replacement Account shall be disbursed to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Noncompetition/Non-Relocation Agreement shall continue in full force and effect.

14.3.1 If the amount in the Renewal and Replacement Account (after the deposit of the Insurance Proceeds) are insufficient to pay the costs of such restoration, then, within 90 days after the date such damage or destruction occurred, the Arena Manager shall give the other parties notice of the Casualty Deficiency, and the Arena Manager shall, within 30 days after providing such notice, give notice to the other parties that either (i) the Arena Manager will provide, within 30 days after providing such notice, additional monies in the amount of the Casualty Deficiency, or (ii) the Arena Manager intends to terminate this Agreement and the Noncompetition/Non-Relocation Agreement.

14.3.2 If the Arena Manager gives notice that the Arena Manager will provide the amount of the Casualty Deficiency, the Arena Manager shall provide such amount within such thirty-day period. The Arena Manager shall deposit such amount, and the monies shall be disbursed to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Noncompetition/Non-Relocation Agreement shall continue in full force and effect. The Arena Manager shall be reimbursed from amounts in the Renewal and Reimbursement Account for the amounts provided pursuant to this Section (plus interest at the Interest Rate from the date of provision to the date of reimbursement), as monies become available.

14.3.3 If the Arena Manager gives notice of the Arena Manager's intent to so terminate this Agreement and the Noncompetition/Non-Relocation Agreement, the City shall have the right (within 30 days after the City's receipt of the Arena Manager's notice) to give notice to the other parties of the City's intent to pay the amount of the Casualty Deficiency, in which event, the City shall deliver, within 30 days after the date of the City's notice, the amount of the Casualty Deficiency to the Arena Manager for deposit. Upon such deposit, the Arena Manager's notice of the Arena Manager's intent to terminate shall be deemed rescinded and void, and monies so deposited shall be disbursed to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In

such event, this Agreement and the Noncompetition/Non-Relocation Agreement shall continue in full force and effect.

14.3.4 If the City does not give such notice of the City's intent to pay the Casualty Deficiency amount within 30 days after the City's receipt of the Arena Manager's notice of the Arena Manager's intent to terminate, or does not deliver the Casualty Deficiency amount to the Arena Manager within the thirty-day period for delivery described above, then the Arena Manager shall, within 15 days after the expiration of the applicable thirty-day period, give notice to the other parties that either (i) the Arena Manager will provide, within 30 days thereafter, additional monies in the amount of the Casualty Deficiency, or (ii) this Agreement and the Noncompetition/Non-Relocation Agreement shall be terminated.

14.3.5 If the Arena Manager gives notice that this Agreement and the Noncompetition/Non-Relocation Agreement shall be terminated, then this Agreement and the Noncompetition/Non-Relocation Agreement shall, without further action or notice by any party hereto, terminate, and the Insurance Proceeds, if any, shall be distributed to the Arena Manager.

14.4 Damage or Destruction Near End of Term. If, during the last two Fiscal Years of the Term, the Arena Facility or any portion thereof is destroyed or damaged to the extent that restoration to the Casualty Restoration Standard will, in the Arena Manager's or the City's reasonable estimation, not be completed prior to the commencement of the last Hockey Season during the Term, then the Arena Manager or the City shall have the right to terminate this Agreement and the Noncompetition/Non-Relocation Agreement by giving notice of such termination to the other parties, and the Insurance Proceeds, if any, shall be distributed to the City.

14.5 Abatement of Certain Team Owner Obligations. If the damage or destruction of the Arena Facility or any portion thereof, or the restoration of such damage or destruction to the Casualty Restoration Standard, prevents or materially interferes with the playing of Home Games at the Arena Facility (including by reason of the inadequacy of parking), then, until the Arena Facility has been restored to the Casualty Restoration Standard, the Team Owner shall not be required pursuant to the Noncompetition/Non-Relocation Agreement to play Home Games at the Arena Facility.

## **15. EMINENT DOMAIN.**

15.1 Terms. For the purposes of this Section, the following terms shall have the meanings set forth below:

15.1.1 **"Condemnation Award"** means the payment or other award to be paid by the condemnor attributable to the value of the Arena Facility.

15.1.2 **"Condemnation Deficiency"** means the amount of the difference between (i) the cost to restore the Arena Facility in the event of condemnation, and (ii) the amount available in the Renewal and Replacement Account, after deposit of all available insurance proceeds.

15.1.3 **"Condemnation Restoration Standard"** means a condition as nearly the same as the condition of the Arena Facility immediately prior to an event of damage or destruction as is reasonably possible and which is in compliance with all applicable NHL requirements and Applicable Law.

15.2 Substantial Taking. If during the Term the Arena Facility is subject to a Taking, and the Taking is a Substantial Taking, the Arena Manager shall have the right, at its option exercisable at any time within 90 days after the date of the Taking to terminate this Agreement and the Noncompetition/Non-Relocation Agreement by notice of termination given by the Arena Manager to the other parties. The Condemnation Award shall be paid to the parties as their interests may appear.

15.3 Partial Taking.

15.3.1 If during the Term the Arena Facility is the subject of a Taking that is not a Substantial Taking, or if a Substantial Taking occurs but this Agreement and the Noncompetition/Non-Relocation Agreement are not terminated and the Condemnation Award is, in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City), sufficient to restore the remainder of the Arena Facility to the Condemnation Restoration Standard, such Condemnation Award shall be deposited in an account specified by Arena Manager. In such event, the Condemnation Award shall be disbursed from said account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard, as soon as is reasonably possible and this Agreement and the Noncompetition/Non-Relocation Agreement shall continue in full force and effect.

15.3.2 If during the Term (a) the Arena Facility is the subject of a Taking that is not a Substantial Taking; (b) the Condemnation Award is, in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City), insufficient to pay the costs of restoration of the Arena Facility to the Condemnation Restoration Standard; and (c) monies received under Sections 15.3.4 and 15.3.5 below (together with the Condemnation Award), are sufficient in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City) to pay the amount by which the costs of such restoration exceed the Condemnation Award, the Condemnation Award and such monies shall be disbursed from the account into the foregoing account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Noncompetition/Non-Relocation Agreement shall continue in full force and effect.

15.3.3 If the monies in the account specified by Arena Manager (after the deposit of the Condemnation Award therein), are insufficient to pay the costs of such restoration, then, within 90 days after the date of the Taking, the Arena Manager shall give the Team Owner and the City notice of the Condemnation Deficiency, and the Arena Manager shall elect to either (i) provide, within 30 days after providing such notice, additional monies in the amount of the Condemnation Deficiency, or (ii) terminate this Agreement and the Noncompetition/Non-Relocation Agreement by notice of termination to the other parties.

15.3.4 If the Arena Manager elects to provide the amount of the Condemnation Deficiency, the Arena Manager shall deposit such amount in the account specified by Arena Manager, and monies shall be disbursed from said account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Noncompetition/Non-Relocation Agreement shall continue in full force and effect. The Arena Manager shall be reimbursed for the amount provided to the Arena Manager pursuant to this Section (plus interest at the Interest Rate from the date of provision to the date of reimbursement) from the specified account, as monies become available from such account.

15.3.5 If the Arena Manager is entitled to and does elect to so terminate this Agreement and the Noncompetition/Non-Relocation Agreement, the City shall have the right (within 30 days after

the City's receipt of notice of the Arena Manager's election to so terminate) to give notice to the other parties of the City's intent to pay the amount of the Condemnation Deficiency, in which event the City shall deliver, within 30 days after the date of the City's notice, the amount of the Condemnation Deficiency to the Arena Manager for deposit into the Arena Manager's specified account. Upon such deposit, the Arena Manager's election to terminate shall be deemed rescinded and void, and monies shall be disbursed from such account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Noncompetition/Non-Relocation Agreement shall continue in full force and effect.

15.3.6 If the City does not give such notice to the City's intent to pay the Condemnation Deficiency amount within 30 days after the City's receipt of the Arena Manager's notice of election to terminate, or does not deliver the Condemnation Deficiency amount to the Arena Manager within the thirty-day period for delivery described above, this Agreement and the Noncompetition/Non-Relocation Agreement shall be terminated at the expiration of the applicable thirty-day period, and the Condemnation Award shall be paid to the parties as their interests may appear.

15.4 Partial Taking Near End of Term. If the Arena Facility is the subject of a Taking during the last two Fiscal Years of the Term that is not a Substantial Taking, and restoration of the Arena Facility to the Condemnation Restoration Standard will, in the Arena Manager's reasonable estimation, not be completed prior to the commencement of the last Hockey Season during the Term, then the Arena Manager shall have the right to terminate this Agreement and the Noncompetition/Non-Relocation Agreement by giving notice of such termination to the other parties, and the Condemnation Award shall be paid to the parties as their interest may appear.

15.5 Abatement of Certain Team Owner Obligations. If a Taking, or the restoration of the Arena Facility to the Condemnation Restoration Standard, prevents or materially interferes with the playing of Home Games at the Arena Facility (including by reason of the inadequacy of parking), then, until the Arena Facility has been restored to the Condemnation Restoration Standard, the Team Owner shall not be required pursuant to the Noncompetition/Non-Relocation Agreement to play Home Games at the Arena Facility.

15.6 No Condemnation by City. Notwithstanding the foregoing, or any other provision of this Agreement, the City covenants, warrants, represents and agrees that it shall not, at any time during the Term, initiate, engage in, undertake, attempt or pursue, either singly or in combination with any other governmental entity(ies), a condemnation proceeding by right of eminent domain with respect to any portion of the Arena Facility, except for Takings that are for the purpose of acquiring additional right-of-way or utility easements and that do not involve a Substantial Taking.

## **16. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

All covenants, representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the Closing. No action taken pursuant to or related to this Agreement shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, condition or agreement herein.

16.1 Arena Manager Representations and Warranties. The Arena Manager represents and warrants to the other parties that, as of the Effective Date and the Closing Date:

16.1.1 Organization: Authorization. The Arena Manager is a limited liability company, duly organized and validly existing under the laws of the State of Delaware; the Arena Manager has all requisite power and authority to enter into this Agreement; and the execution, delivery and consummation of this Agreement by the Arena Manager have been duly authorized.

16.1.2 No Violation. The execution, delivery and performance of this Agreement by the Arena Manager will not result in the breach of or constitute a default under any loan or credit agreement, or any other agreement, instrument, judgment or decree, to which the Arena Manager is a party or by which the Arena Manager or its assets may be bound or affected. All consents and approvals of any Person (including members of the Arena Manager) required in connection with the Arena Manager's execution, delivery and performance of this Agreement have been obtained.

16.1.3 Litigation. Other than as disclosed by the Arena Manager to the other parties, no suit is pending against the Arena Manager which could reasonably have a material adverse affect upon the Arena Manager's performance under this Agreement. There are no outstanding judgments against the Arena Manager which could reasonably have a material adverse affect upon the Arena Manager's performance under this Agreement.

16.1.4 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which the Arena Manager is a party or is otherwise subject.

16.1.5 No Violation of Laws. As of the Closing Date, the Arena Manager has received no notice asserting any noncompliance in any material respect by the Arena Manager with Applicable Law relating to the transactions contemplated hereby; and the Arena Manager 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.

16.2 Team Owner Representations and Warranties. The Team Owner represents and warrants to the other parties that, as of the Effective Date and the Closing Date:

16.2.1 Organization: Authorization. The Team Owner is a limited liability company, duly organized and validly existing under the laws of the State of Delaware, and is duly authorized to do business in Arizona; the Team Owner has all requisite power and authority to enter into this Agreement; and the execution, delivery and consummation of this Agreement by the Team Owner have been duly authorized.

16.2.2 No Violation. The execution, delivery and performance of this Agreement by the Team Owner will not violate the NHL Constitution or Bylaws or any written rule, regulation or policy of the NHL, or result in the breach of or constitute a default under any loan or credit agreement, or any other agreement, instrument, judgment or decree, to which the Team Owner is a party or by which the Team Owner or its assets may be bound or affected. All consents and approvals of any Person (including members of the Team Owner) required in connection with the Team Owner's execution, delivery and performance of this Agreement have been obtained.

16.2.3 Litigation. Other than as disclosed by the Team Owner to the other parties, no suit is pending against the Team Owner which could reasonably have a material adverse affect upon the Team Owner's performance under this Agreement. There are no outstanding judgments against the Team Owner which could reasonably have a material adverse affect upon the Team Owner's performance under this Agreement.

16.2.4 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which the Team Owner is a party or is otherwise subject.

16.2.5 No Violation of Laws. As of the Closing Date, the Team Owner has received no notice asserting any noncompliance in any material respect by the Team Owner with Applicable Law relating to the transactions contemplated hereby; and the Team Owner 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.

16.2.6 Team Ownership; NHL Good Standing. The Team Owner, concurrently with the closing of the NHL Purchase, shall be a member in good standing of the NHL, shall hold the Franchise and shall operate the Team.

16.3 City Representations and Warranties. The City represents and warrants to the other parties that, as of the Effective Date and the Closing Date:

16.3.1 Authority. The execution, delivery and performance of this Agreement by the City have been duly authorized by the Glendale City Council, and no additional or further act by any other Governmental Authority is required to authorize such execution, delivery and performance; provided however that the performance of certain obligations under this Agreement shall remain subject to approvals required under Applicable Law (such as the approval of annual budgets by the Glendale City Council for amounts to be paid hereunder); further provided that, for clarity, the failure of any such Governmental Authority to grant such approval shall not excuse nonperformance of any obligation of the City under this Agreement.

16.3.2 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which the City is a party or is otherwise subject.

16.3.3 No Violation of Laws. (a) The execution, delivery and performance of this Agreement by the City will not violate the City Charter, the Glendale City Code or any other ordinance or resolution of the City. (b) As of the Closing Date, the City has not received any notice asserting any noncompliance in any material respect by the City with Applicable Law relating to the transactions contemplated hereby; 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 issued to the City or with respect to the Arena Facility which is in any respect material to the transactions contemplated hereby.

16.3.4 Litigation. Other than as disclosed by the City to the other parties, no suit is pending against the City which could reasonably have a material adverse affect upon the City's performance under this Agreement. There are no outstanding judgments against the City that could reasonably have a material adverse affect upon the City's performance under this Agreement.

16.3.5 Condition of the Arena Facility.

(a) The City has not received notice from any governmental agency or official, whether federal, state or local, that the Arena Facility or any part thereof or any operations conducted thereon, is or may be in violation of any Applicable Law, including without limitation the Americans with Disabilities Act.

(b) The City has not received notice from any governmental agency or official, whether federal, state or local, that the Arena Facility or any part thereof or any operations conducted thereon, is or may be in violation of any Applicable Law, including without limitation the Americans with Disabilities Act.

(c) The City has not received notice from any official or representative of the NHL that the Arena Facility or any part thereof fails to comply or may not comply with any NHL rule or regulation.

(d) To the City's Knowledge, there is no item of maintenance, repair, or replacement which is or may be required to rectify any non-compliance of the Arena Facility with Applicable Law, including without limitation the Americans with Disabilities Act, or the NHL rules and regulations.

(e) To the City's Knowledge, there are no defects associated with the condition of the Arena Facility that would materially adversely affect with Arena Manager's intended use thereof.

(f) To the City's Knowledge, no Hazardous Materials have been used, generated, manufactured, stored or disposed of in, on, or under the Arena in violation of Applicable Law, and there are on the Closing Date no claims, litigation, administrative or other proceedings, whether actual or threatened, or judgments or orders relating to the use, generation, manufacture, storage or disposal of Hazardous Materials in or on the Arena.

(g) There are no actions, suits, proceedings or investigations pending against the City by any person or entity, including, without limitation, any owner or occupant of property located adjacent to the Arena Facility, with respect to or in any manner affecting ownership or operation of all or any portion of the Arena Facility or any Arena Parking Area.

(h) There are no tenancies or other rights of parties in possession affecting all or any portion of the Arena Facility other than the Permitted Exceptions.

(i) The City is not a party to any concession agreement, service or maintenance contract, or other contract with respect to or affecting the Arena Facility or any Arena Parking Area which will not be terminated prior to the Closing Date.

16.4 Team Owner Covenant. The Team Owner covenants with the other parties that the Team Owner shall maintain the Franchise and Team in good standing with the NHL at all times during the Term.

16.5 City Covenants. The City covenants with the other parties as follows:

16.5.1 Third Party Warranties. City shall assign to or enforce for the benefit of Arena Manager any construction warranties for the Arena and any manufacturer's warranties for any Arena Facilities which remain in effect on the Closing Date.

16.5.2 Arena Facility Records. City shall make available to Arena Manager throughout the Term during business hours, for inspection and copying, at City's office address or some other location mutually convenient to the parties, reasonably requested books, records, and other information

relating to the use, ownership or operation of the Arena Facility reasonably within the City's possession or control.

16.6 Other Covenants of the Parties. The parties covenant and agree as follows:

16.6.1 Notice of Matters. If any of the parties acquires knowledge of any matter that may constitute a breach of any of its representations, warranties or covenants set forth herein which arises after the Closing Date, it shall promptly give notice of the same to the other parties.

16.6.2 Compliance With Laws. During the Term, each of the parties shall, in connection with this Agreement and its respective use of, and the exercise of its respective rights with respect to, the Arena Facility, comply with all Applicable Law.

## **17. DUE DILIGENCE; CONDITIONS TO CLOSING.**

17.1 Due Diligence.

17.1.1 Arena Manager Due Diligence Review. The Arena Manager shall have until 5:00 p.m. (Mountain Time) on the December 15, 2012 (the "**Due Diligence Review Period**") to conclude its due diligence review (the "**Arena Manager Due Diligence Review**") of all aspects of the Team and the Arena, including without limitation all financial, legal, regulatory, business and operational matters, and to obtain any third party consents required under leases, service or maintenance contracts and agreements or other agreements of the NHL, its Affiliates, and the City affecting the Team and the Arena (the "**Key Contracts**"). During the Due Diligence Review Period, the City shall reasonably cooperate with such due diligence as reasonably requested by the Arena Manager, including, but not limited to, permitting the Arena Manager and its agents reasonable access to materially relevant information reasonably requested by the Arena Manager. The Arena Manager shall have the right, in its sole discretion, to terminate this Agreement and the Noncompetition/Non-Relocation Agreement by written notice to the City at any time on or before the end of the Due Diligence Review Period if it is not satisfied with the results of its Due Diligence Review or if it is unable to obtain, on reasonable terms, any third party consents required under any Key Contracts (a "**Due Diligence Termination Notice**"). Delivery by the Arena Manager of a Due Diligence Termination Notice under this Section 17.1.1 shall terminate all obligations of the parties under this Agreement and the Noncompetition/Non-Relocation Agreement. In the event that the Arena Manager does not provide such Due Diligence Termination Notice by or before the end of the Due Diligence Review Period, the Arena Manager shall be deemed to have waived all rights of termination set forth in this Section 17.1.1 and the Arena Manager shall thereafter have no right to terminate this Agreement or the Noncompetition/Non-Relocation Agreement based on the Arena Manager Due Diligence Review; provided however that such waiver of these termination rights shall be without prejudice to the Arena Manager's other termination rights provided for in this Agreement.

17.1.2 Team Owner Due Diligence Review. The Team Owner shall have the Due Diligence Review Period to conclude its due diligence review (the "**Team Owner Due Diligence Review**") of all aspects of the Team and the Arena, including without limitation all financial, legal, regulatory, business and operational matters, and to obtain any third party consents required under the Key Contracts. During the Due Diligence Review Period, the City shall reasonably cooperate with such due diligence as reasonably requested by the Team Owner, including, but not limited to, permitting the Team Owner and its agents reasonable access to materially relevant information reasonably requested by the Team Owner. The Team Owner shall have the right, in its sole discretion, to terminate this Agreement and the Noncompetition/Non-Relocation Agreement by a Due Diligence Termination Notice



to the City at any time on or before the end of the Due Diligence Review Period if it is not satisfied with the results of its Due Diligence Review or if it is unable to obtain, on reasonable terms, any third party consents required under any Key Contracts. Delivery by the Team Owner of a Due Diligence Termination Notice under this Section 17.1.2 shall terminate all obligations of the parties under this Agreement and the Noncompetition/Non-Relocation Agreement. In the event that the Team Owner does not provide such Due Diligence Termination Notice by or before the end of the Due Diligence Review Period, the Team Owner shall be deemed to have waived all rights of termination set forth in this Section 17.1.2 and the Team Owner shall thereafter have no right to terminate this Agreement or the Noncompetition/Non-Relocation Agreement based on the Team Owner Due Diligence Review; provided however that such waiver of these termination rights shall be without prejudice to the Team Owner's other termination rights provided for in this Agreement.

17.2 Conditions to Closing. The Closing and Closing Date shall occur upon the satisfaction or waiver of the following conditions to the obligations of the parties:

17.2.1 Conditions to the Obligations of the Arena Manager. The Arena Manager's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent having been satisfied on and as of the Closing Date, to the reasonable satisfaction of Arena Manager or the waiver thereof by Arena Manager, which waiver shall be binding upon Arena Manager only to the extent made in writing and dated as of the Closing Date:

(a) The City shall have duly and timely performed and fulfilled in all material respects its duties, obligations, promises, covenants and agreements hereunder with respect to the period between the Effective Date and the Closing.

(b) The representations and warranties given by the City to the Arena Manager hereunder shall be true and correct in all material respects as of the Closing Date.

(c) No condition shall have changed or event shall have occurred which can reasonably be expected to have a Material Adverse Effect on the Arena or the operating, maintenance or other expenses or obligations relating to the operation of the Arena. "**Material Adverse Effect**" means an event, change or occurrence that individually, or together with any other event, change or occurrence, has a material adverse impact on the financial position, business or results of operations of such business; provided, however, that the term "Material Adverse Effect" shall not include (i) changes in the overall industry or markets in which the business operates, (ii) changes in GAAP; (iii) actions or omissions of such business taken with the prior written consent of the other party to this Agreement, (iv) any change relating to the economy or securities markets in general, (v) the effect of any change in any applicable law or GAAP, or (vi) any change, effect, event, occurrence, state of facts or development resulting from any action required to be taken or performed by the parties hereto after execution of this Agreement.

(d) Arena Manager and Team Owner shall have (a) entered into the NHL Purchase Agreement on terms acceptable to them in their sole discretion for the acquisition of the Team and the Franchise and the assumption of such related agreements as shall be acceptable to them in their sole discretion, and (b) shall have secured financing on terms acceptable to them in their sole discretion sufficient to consummate the transactions set forth under the NHL Purchase Agreement, this Agreement, to pay all related expenses, and to operate the Arena and the Team post-Closing (collectively, the "**NHL Purchase and Financing Condition**").

(e) All conditions to the consummation of the transactions contemplated under the NHL Purchase and Financing Condition shall have been satisfied or waived.

(f) The Related Agreements shall have been executed and delivered by the City and the Team Owner.

17.2.2 Conditions to the Obligations of the Team Owner. The Team Owner's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent having been satisfied on and as of the Closing Date, to the reasonable satisfaction of Team Owner or the waiver thereof by Team Owner, which waiver shall be binding upon Team Owner only to the extent made in writing and dated as of the Closing Date:

(a) The City shall have duly and timely performed and fulfilled in all material respects its duties, obligations, promises, covenants and agreements hereunder with respect to the period between the Effective Date and the Closing.

(b) The representations and warranties given by the City to the Team Owner hereunder shall be true and correct in all material respects as of the Closing Date.

(c) No condition shall have changed or event shall have occurred which can reasonably be expected to have a Material Adverse Effect on the Arena or the operating, maintenance or other expenses or obligations relating to the operation of the Arena.

(d) The NHL Purchase and Financing Condition.

(e) All conditions to the consummation of the transactions contemplated under the NHL Purchase and Financing Condition shall have been satisfied or waived.

(f) The Related Agreements shall have been executed and delivered by the City and the Arena Manager.

17.2.3 Conditions to the Obligations of the City. The City's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent having been satisfied on and as of the Closing Date, to the reasonable satisfaction of the City or the waiver thereof by the City, which waiver shall be binding upon the City only to the extent made in writing and dated as of the Closing Date:

(a) The Arena Manager and the Team Owner shall have duly and timely performed and fulfilled in all material respects its duties, obligations, promises, covenants and agreements hereunder with respect to the period between the Effective Date and the Closing..

(b) The representations and warranties given by Arena Manager and the Team Owner to the City hereunder shall be true and correct in all material respects as of the Closing Date.

(c) The NHL Purchase and Financing Condition.

(d) All conditions to the consummation of the transactions contemplated under the NHL Purchase and Financing Condition shall have been satisfied or waived.

(e) The Related Agreements shall have been executed and delivered by the Arena Manager and the Team Owner.

(f) The Closing Date shall have occurred on or before January 31, 2012 (the “**Outside Closing Date**”), unless extended by the City.

## **18. CHALLENGES.**

18.1 The parties shall, in good faith contest any challenge to the validity, authorization, and enforceability of this Agreement (each, a “**Challenge**”).

18.2 If the Challenge occurs on or after the Effective Date, each party shall bear the costs and expenses of contesting the Challenge incurred by that party.

18.3 Each of the parties shall take all ministerial actions and proceedings necessary or appropriate to remedy any apparent invalidity of, lack or defect in authorization of, or illegality of, or to cure any other defect of, this Agreement which has been asserted or threatened in any Challenge, provided that no party shall be obligated to forego, defer, or accept the forfeiture of any substantial economic benefit or legal right that is a part of the bargained-for consideration for the transactions contemplated by this Agreement.

18.4 Each of the parties shall promptly give notice to the other parties of any Challenge of which the party giving notice acquires knowledge.

## **19. REMEDIES.**

### 19.1 Team Owner Remedies.

19.1.1 For City Default. Following a City Default, the Team Owner shall, in addition to all other remedies at law and in equity, have the right to seek compensatory damages, but not indirect damages or punitive damages (which are in any event prohibited against the City under Arizona law), arising out of such City Default.

(a) In furtherance, and not in limitation, of the foregoing, the Team Owner shall have the right to (i) seek an award or order requiring specific performance by the City of the City’s obligations under this Agreement and (ii) solely with respect to a “City Default” which occurs under subclause (a) of the definition thereof in this Agreement, terminate this Agreement, upon 90 days’ written notice to the City during which time the City shall have the right to cure.

(b) The Team Owner hereby waives, with respect to any City Default, any claim or right to indirect damages or punitive damages (which may not be awarded in any event) and acknowledges that the other parties are relying on such waiver in entering into this Agreement.

19.1.2 For Arena Manager Default. Following an Arena Manager Default, the Team Owner shall, in addition to all other remedies at law and in equity, have the right to seek compensatory damages, but not indirect damages or punitive damages, arising out of such Arena Manager Default.

(a) In furtherance, and not in limitation, of the foregoing, the Team Owner shall have the right to seek an award or order requiring specific performance by the Arena Manager of the Arena Manager’s obligations under this Agreement.

(b) The Team Owner hereby waives, with respect to any Arena Manager Default any right to terminate this Agreement (or any other agreement among the parties) or the rights of the Arena Manager under this Agreement (or under any other agreement among the parties), and acknowledges that the other parties are relying on such waiver in entering into this Agreement.

(c) The Team Owner further acknowledges that the Team Owner may seek damages from the Arena Manager only from the Arena Manager's own funds and shall not have any right to recover damages from the Arena Manager from the City or out of Arena Accounts.

(d) The Team Owner hereby waives, with respect to any Arena Manager Default, any claim or right to indirect damages or punitive damages and acknowledges that the other parties are relying on such waiver in entering into this Agreement.

## 19.2 Arena Manager Remedies.

19.2.1 For Team Owner Default. Following a Team Owner Default, the Arena Manager shall, in addition to all other remedies at law and in equity, have the right to seek compensatory damages, but not indirect damages or punitive damages, arising out of the Team Owner Default by the Team Owner.

(a) In furtherance, and not in limitation, of the foregoing, the Arena Managers shall have the right to (i) seek an award or order requiring specific performance by the City of the City's obligations under this Agreement and (ii) solely with respect to a "City Default" which occurs under subclause (a) of the definition thereof in this Agreement, terminate this Agreement, upon 90 days' written notice to the City during which time the City shall have the right to cure.

(b) The Arena Manager hereby waives, with respect to any Team Owner Default, any right to terminate this Agreement (or any other agreement among the parties) or the rights of the Team Owner under this Agreement (or under any other agreement among the parties), and acknowledges that the other parties are relying on such waiver in entering into this Agreement.

(c) The Arena Manager hereby waives, with respect to any Team Owner Default, any claim or right to indirect damages or punitive damages and acknowledges that the other parties are relying on such waiver in entering into this Agreement.

19.2.2 For City Default. Following a City Default, the Arena Manager shall, in addition to all other remedies at law and in equity, have the right to seek compensatory damages, but not indirect damages or damages punitive (which are in any event prohibited against the City under Arizona law), arising out of such City Default.

(a) In furtherance, and not in limitation, of the foregoing, the Arena Manager shall have the right to seek an award or order requiring specific performance by the City of the City's obligations under this Agreement.

(b) The Arena Manager hereby waives, with respect to any City Default, any claim or right to indirect damages or punitive damages (which may not be awarded in any event) and acknowledges that the other parties are relying on such waiver in entering into this Agreement.

## 19.3 City Remedies.

19.3.1 For Team Owner Default. Following a Team Owner Default, the City shall, in addition to all other remedies at law and in equity, have the right to seek compensatory damages, but not indirect damages or punitive damages, arising out of such Team Owner Default.

(a) In furtherance, and not in limitation, of the foregoing, the City shall have the right to seek an award or order requiring specific performance by the Team Owner of the Team Owner's obligations under this Agreement.

(b) The City hereby waives, with respect to any Team Owner Default, any claim or right to indirect damages or punitive damages and acknowledges that the other parties are relying on such waiver in entering into this Agreement.

19.3.2 For Arena Manager Default. Following an Arena Manager Default, the City shall, in addition to all other remedies at law and in equity, have the right to seek compensatory damages, but not indirect damages or punitive damages, arising out of such Arena Manager Default.

(a) In furtherance, and not in limitation, of the foregoing, the City shall have the right to seek an award or order requiring specific performance by the Arena Manager of the Arena Manager's obligations under this Agreement.

(b) The City hereby waives, with respect to any Arena Manager Default, any claim or right to indirect damages or punitive damages and acknowledges that the other parties are relying on such waiver in entering into this Agreement.

19.3.3 Replacement Arena Manager.

(a) In the event of an Arena Manager Withdrawal, the City may elect to secure a Replacement Arena Manager and with respect to the Arena Manager's obligation to the Team Owner, provided the Team Owner has not breached its obligations under the Noncompetition/Non-Relocation Agreement, shall remain in effect in accordance with its terms and subject to Applicable Law, and the Replacement Arena Manager will assume the obligations to the Team Owner of the Arena Manager under this Agreement.

(b) If the City elects to secure a Replacement Arena Manager, the City shall so notify the Team Owner in writing and grant the Team Owner a first option to secure a Replacement Arena Manager (which may be the Team Owner, an Affiliate of the Team Owner, or a Third Party) within 30 days following such notice; provided however that the City shall not be required to grant a first option to the Team Owner more than three times during the Term. Any agreement by which the Team Owner secures a Third Party as a Replacement Arena Manager pursuant to this Section 19.3.3(b) shall not be subject to the requirement at the beginning of Section 8.11.4(a) or the City's right to demand compliance with Section 8.11.4(b)-(d). To the extent the Team Owner has waived its first option hereunder, the applicable thirty-day period expires without the securing by the Team Owner of a Replacement Arena Manager or the Team Owner otherwise no longer has a first right under this Section 19.3.3(b), the City shall be entitled to secure a Replacement Arena Manager.

(c) Upon designation of a Replacement Arena Manager pursuant to this Agreement, the Arena Manager shall:

(i) Deliver to the City, the Team Owner and the Replacement Arena Manager, immediately after the Arena Manager's receipt of notice of the designation of the Replacement Arena Manager (or such termination), a final accounting reflecting the balance of income and expenses as of the effective date of such designation (or such termination);

(ii) Deliver to the Replacement Arena Manager, immediately after the Arena Manager's receipt of notice of such designation (or such termination), all monies in Arena Accounts or otherwise held by the Arena Manager on behalf of the Team Owner or the City, together with an accounting therefor;

(iii) Deliver to the Replacement Arena Manager, immediately after the Arena Manager's receipt of notice of such designation (or such termination), all keys, security codes, books and records of account, agreements and contracts, Licenses, receipts for deposits, unpaid bills and other papers or documents relating to the Arena Facility and this Agreement; and

(iv) For a reasonable period of time after the effective date of such designation (or such termination), make itself available to consult with and advise the City, the Team Owner, and the Replacement Arena Manager regarding the operation, management and maintenance of the Arena Facility.

(d) The City, the Replacement Arena Manager, and the Team Owner shall thereafter be bound by the terms, conditions and agreements set forth herein, with the same force and effect as if the Replacement Arena Manager were the original Arena Manager hereunder, including the need for any subsequent Replacement Arena Manager as a result of an Arena Manager Withdrawal.

(e) The City, the Arena Manager and the Team Owner shall take such actions as are required to cause the Replacement Arena Manager to succeed to all rights, and assume all existing contracts of the current Arena Manager under this Agreement all Licenses and all other contracts or agreements entered into by the Arena Manager pursuant to this Agreement.

19.4 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, including the waivers of indirect and punitive damages and the waivers of termination rights set forth therein, 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 or different times, of any other rights or remedies under Applicable Law for the same Event of Default or any other Event of Default.

19.5 Costs, Expenses and Fees. In the event of any litigation, arbitration or other dispute resolution proceeding (including Arbitration proceedings required by this Agreement) in connection with this Agreement, involving a claim by any party hereto against any other party hereto (a "**Proceeding**"), (i) no party shall be entitled to advances from or to be reimbursed from Operating Revenues for any costs or expenses incurred by it in such Proceeding, including reasonable attorneys' fees or costs; (ii) no such costs and expenses shall be treated as Operating Expenses; (iii) the prevailing party in such Proceeding shall be entitled to be reimbursed (but not from Operating Revenues) for all costs and expenses incurred in such Proceeding, including reasonable attorneys' fees and costs as may be fixed by the court or the Arbitrator, in such manner and from such parties as may be directed by such court or Arbitrator; and (iv) any award granted to a party in such Proceeding shall be treated as the sole property of such party.

19.6 Acceptance of Legal Process.

19.6.1 Service on the Arena Manager. In the event any legal or equitable action is commenced against the Arena Manager by any other party hereto, service of process on the Arena Manager shall be made by personal service upon the President of the Arena Manager or in such other manner as may be authorized by law.

19.6.2 Service on the Team Owner. In the event any legal or equitable action is commenced against the Team Owner by any other party hereto, service of process on the Team Owner shall be made by personal service upon the Chairman or Chief Executive Officer of the Team Owner or in such other manner as may be authorized by law.

19.6.3 Service on City. In the event that any legal or equitable action is commenced against the City by any other party hereto, service of process on the City shall be made by personal service upon the City Clerk of the City of Glendale, Arizona or in such other manner as may be authorized by law.

## **20. INDEMNIFICATION.**

20.1 Arena Manager Indemnification of City. Except to the extent attributable to the negligence or willful misconduct of the City or any Arena Manager Default (for which the City shall have the remedies described in Section 19), the Arena Manager shall defend, indemnify and hold the City and its city council members, elected officials, agents, employees, other officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the Arena Manager's management, operation, use or occupancy of the Arena Facility or any portion thereof. Any and all costs and expenses incurred by the Arena Manager to discharge its obligations under this Section shall be included as Operating Expenses.

20.2 Team Owner Indemnification of City. Except to the extent attributable to the negligence or willful misconduct of the City or any Team Owner Default (for which the City shall have the remedies described in Section 19), the Team Owner shall defend, indemnify and hold the City and its city council members, elected officials, agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the Team Owner's use or occupancy of the Arena Facility or any portion thereof.

### 20.3 City Indemnifications.

20.3.1 Arena Manager. Except to the extent attributable to the negligence or willful misconduct of the Arena Manager or any of its agents, employees, officials or other representatives or any City Default (for which the Arena Manager shall have the remedies described in Section 19), the City shall defend, indemnify and hold the Arena Manager and its agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the City's sole use or occupancy of the Arena Facility or any part thereof, including any City Sponsored Event.

20.3.2 Team Owner. Except to the extent attributable to the negligence or willful misconduct of the Team Owner or any of its agents, employees, officials or other representatives or any City Default by the City (for which the Team Owner shall have the remedies described in Section 19), the City shall defend, indemnify and hold the Team Owner and its agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the City's sole use or occupancy of the Arena Facility or any portion thereof, including any City Sponsored Event.

**21. DISPUTE RESOLUTION.**

21.1 Arbitration. Any Arbitration Dispute, including any dispute as to whether a proposed Capital Improvement is necessary to ensure the economic competitiveness of the Arena Facility pursuant to Section 11.9.2, shall be submitted to Arbitration in accordance with this Section.

21.2 Arbitration Procedure.

21.2.1 Arbitrators. The parties to the Arbitration Dispute shall submit to the others the names of three qualified and independent persons who have previously indicated an availability and willingness to serve as an Arbitrator of the dispute.

(a) If any one name appears on all of the lists, that person shall be the Arbitrator for purpose of deciding the Arbitration Dispute.

(b) If two or more names appear on each of the parties' lists, the parties shall select one of these persons to serve as the Arbitrator.

(c) If no name appears on each of the parties' lists or the parties are unable to agree on an Arbitrator, each party to the dispute will select one name from each of the others parties' lists and those names will be place into a blind drawing by a independent party, and the person whose name is drawn will serve as the Arbitrator.

21.2.2 Location. The Arbitration shall be conducted by the Arbitrator at a location in Maricopa County, Arizona selected by the Arbitrator.

21.2.3 Rules. The Arbitration shall be subject to the Arizona Arbitration Act unless the provisions of that Act have been modified by this Agreement or a subsequent agreement of the parties. The Arbitrator shall follow the commercial rules of the American Arbitration Association, but shall have discretion to vary from such rules in light of the nature or circumstances of a given Arbitration Dispute; provided that the Arbitrator shall, in all events, be required to assure the process is fair and equitable and not unreasonably inconsistent with the rules, customs, and practices of litigation conducted in Maricopa County, Arizona.

21.2.4 Discovery. The parties shall make reasonable efforts to agree on the scope of discovery with respect to any Arbitration Dispute. In the event the parties are not able to agree on such rules and the extent and the scope of such discovery, all issues relating to such discovery shall be resolved by the Arbitrator in accordance with the standard established above.

21.2.5 Hearing. The parties shall make reasonable efforts to agree on the scope of discovery with respect to any Arbitration Dispute.

(a) Unless waived by each of the parties participating in the Arbitration, the Arbitrator shall conduct an Arbitration hearing at which the participating parties and their respective counsel may be present and have the opportunity to present evidence and examine and cross-examine witnesses.

(b) Witnesses shall, unless waived by all the parties to the Arbitration Dispute, present testimony under oath.



21.2.6 Experts Retained by Arbitrator.

(a) If the Arbitrator determines that the matters or issues involved in any Arbitration Dispute are outside the scope of the Arbitrator's expertise, the Arbitrator shall have the right to retain and rely on experts with respect to such matters and issues.

(b) The cost of any expert retained by the Arbitrator shall be a cost of the Arbitration to be paid as directed by the Arbitrator.

(c) Any information obtained by the Arbitrator from an expert engaged by the Arbitrator shall be disclosed by the Arbitrator to the parties to such Arbitration Dispute, and each such party shall have the right to present evidence and testimony from such party's own expert with respect to such matter or issue.

21.2.7 Timing. The parties shall cooperate in good faith to permit a conclusion of the Arbitration hearing within 30 days following the submission of the Arbitration Dispute to the Arbitrator.

21.2.8 Notices. Neither the requirement to utilize nor the pendency of any Arbitration shall in any way invalidate any notices or extend any cure periods applicable to an Event of Default.

21.3 Arbitration Decision.

21.3.1 Remedies and Waivers Cannot be Altered by Arbitrator. If the Arbitration results in a determination by the Arbitrator that an Event of Default has occurred, the provisions of Section 19, including the waivers of indirect and punitive damages and termination rights set forth therein, shall govern the damages and other remedies which may be implemented or ordered by the Arbitrator.

21.3.2 Disputes Regarding Awards or Settlements. The parties agree that any disputes which arise out of such a written settlement agreement or award shall be resolved exclusively by Arbitration pursuant to this Section, provided that any party may institute legal proceedings in a court of competent jurisdiction to enforce judgment upon an Arbitration award in accordance with Applicable Law.

21.3.3 Fees and Expenses.

(a) The Arbitrator shall provide to the parties an invoice for fees and expenses incurred during each 30-day period in which the Arbitration proceeding is pending.

(b) The parties shall each pay in one-half of the Arbitrator's invoice within 15 days of receipt.

(c) The prevailing party or parties in any Arbitration shall be entitled to reimbursement for any costs of such proceeding, reasonable attorneys' fees, reasonable costs of investigation and any other expenses incurred in connection with such Arbitration in the manner directed by the Arbitrator.

21.4 Equitable Litigation. Notwithstanding any other provision of this Section to the contrary, any party may engage an Equitable Litigation to seek interim equitable relief with respect to an Arbitration Dispute.

21.4.1 Nothing herein shall be construed to suspend or terminate the obligation of any party hereto to promptly proceed with the Arbitration concerning the Arbitration Dispute that is the subject of such Equitable Litigation while such Equitable Litigation (and any appeal therefrom) is pending.

21.4.2 Regardless of whether such interim relief is granted or denied, or whether such Equitable Litigation is pending or any appeal is taken from the grant or denial of such relief, the parties shall at all times diligently proceed to complete the Arbitration.

21.4.3 Any interim relief granted in such Equitable Litigation, or any appeal therefrom, shall remain in effect until, and only until, the Arbitration concerning the Arbitration Dispute that is the subject of such Equitable Litigation results in a settlement agreement or the issuance of an award following Arbitration.

21.4.4 Such written settlement agreement or award shall be the binding, final determination on the merits of the Arbitration Dispute (including any equitable relief but excluding any award of attorneys' fees or costs awarded or granted in the Equitable Litigation), shall supersede and nullify any decision in the Equitable Litigation on the merits of the Arbitration Dispute, 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.

21.4.5 The parties agree that any Equitable Litigation shall be filed exclusively in the state or federal courts in Maricopa County, Arizona. The parties consent and agree to the exclusive jurisdiction of the courts located in Maricopa County, Arizona for any Equitable Litigation. No party will argue or contend that it is not subject to the jurisdiction of the courts located in Maricopa County, Arizona or that venue in Maricopa County, Arizona is improper with respect to any Equitable Litigation.

21.4.6 For the purposes of this Section, "**Equitable Litigation**" means an action to secure a temporary restraining order, preliminary injunction or other interim equitable relief concerning an Arbitration Dispute, including specific performance, provisional remedies, stay of proceedings in connection with special action relief or any similar relief of an interim nature.

## **22. ASSIGNMENT.**

### **22.1 Arena Manager Assignment.**

22.1.1 The Arena Manager may not assign, pledge, transfer or otherwise attempt to transfer the Arena Manager's duties and obligations under this Agreement, without the prior consent of each of the City and the Team Owner and any such transfer or attempted transfer to which the City or the Team Owner does not consent pursuant to this Section is void.

22.1.2 Nothing in this Section shall be construed or deemed to limit or restrict the rights of the Arena Manager to delegate all or a portion of the Arena Manager's duties and responsibilities hereunder in accordance with the terms of this Agreement or limit the Arena Manager's rights to assign, pledge or otherwise transfer the Arena Management Fee.

22.1.3 The Arena Manager may not assign, transfer, convey or encumber the Arena Parking Area or the Arena Parking Rights without the prior written consent of the City, which may be withheld in the City's sole discretion.

22.2 Team Owner Assignment.

22.2.1 Subject further to the terms and conditions of the Noncompetition/Non-Relocation Agreement, the Team Owner shall have the right to assign, pledge and otherwise transfer the rights and obligations of the Team Owner under this Agreement (in whole or in part), without the consent of the City, to any Person so long as (i) the Franchise is included in such assignment, pledge or transfer and (ii) such assignment, pledge or transfer is approved by the NHL or permitted by the Hockey Rules.

22.2.2 The Team Owner shall give the City and the Arena Manager notice of the submission of any request for the NHL's approval of any such assignment promptly after the Team Owner acquires knowledge of such submission, which notice shall include the name of the proposed transferee.

22.2.3 Immediately upon any such transfer becoming effective, the transferor and the transferee of the Team Owner's obligations under this Agreement shall execute an assignment and assumption agreement evidencing such transferee's assumption of such obligations in such form and content as is reasonably acceptable to the City and the Arena Manager.

22.2.4 Any other transfer of the rights and obligations of the Team Owner under this Agreement shall require the prior consent of the City, and any such transfer or attempted transfer to which the City does not consent is void.

**23. ARENA PURCHASE OPTION.**

23.1 Option. The City grants to the Arena Manager during the Term the option to purchase the Arena Facility (the "**Arena Option**") and in the event that the Arena Manager chooses to exercise the Arena Option, the City shall be obligated to sell the Arena Facility to the Arena Manager, free and clear of all liens not created by Arena Manager or the Team Owner, for the Option Purchase Price.

23.2 Option Price. The purchase price for the Arena Option shall be an amount equal to the fair market value of the Arena as determined by the mutual agreement of the City and the Arena Manager less any unamortized value of any capital expenditures and improvements solely paid for (without payment or reimbursement therefor by the City) by the Arena Manager or the Team Owner and approved by the City ("**Option Price**").

23.3 Appraisal. To assist with the purchase transaction, the parties will retain an independent appraiser to provide an appraisal as to the full value of the Arena.

23.3.1 The parties will share the cost of the appraiser equally.

23.3.2 If either party desires another appraisal, that costs for that appraisal will be borne by the party requesting another appraisal.

23.4 Minimum Option Price. Notwithstanding the above, the Option Price shall not be less than the full amount required to redeem all of the City's outstanding Arena Revenue Bonds or, in the event the Arena Revenue Bonds have been refinanced at the time the Arena Manager exercises the Arena Option, an amount equal to the calculated principal balance of the Arena Revenue Bonds at the time the Arena Manager will close on the purchase of the Arena assuming that no refinancing been undertaken and

that the Arena Revenue Bonds had been paid in accordance with their terms and established payment schedules.

**24. MISCELLANEOUS.**

24.1 Amendment; Waiver.

24.1.1 No alteration, amendment or modification hereof shall be valid unless evidenced by a written instrument executed by the parties with the same formality as this Agreement.

24.1.2 The failure of any party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect.

24.1.3 No waiver by any party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such party.

24.2 Consents and Approvals. Unless otherwise specifically provided herein, no consent or approval by any party permitted or required under the terms of this Agreement shall be valid unless the same shall be in writing, signed by the party by or on whose behalf such consent or approval is given. Unless a higher standard is expressly provided for pursuant to any provision of this Agreement, any consent or approval required to be given or otherwise provided for in this Agreement shall not be unreasonably withheld, delayed or conditioned by the party giving such consent or approval.

24.3 Additional Documents and Approval. Each of the parties, whenever and as often as each shall be reasonably requested to do so by any other party hereto, shall execute or cause to be executed any additional documents, take any additional actions and grant any additional approvals consistent with the provisions of this Agreement as may be necessary or expedient to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement.

24.4 Severability. If any provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of the provision, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining provisions shall be valid and enforceable to the fullest extent permitted by law, provided that the obligations of the City to pay the Management Fee are so material that such obligations shall not be severable and this Agreement shall terminate if any portion or amount of the Management Fee shall be invalid (or avoided or recovered pursuant to A.R.S. § 44-1007).

24.5 Binding Effect. Except as may otherwise be provided herein to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of the parties, and their respective permitted successors and assigns.

24.6 Relationship of Parties. No partnership or joint venture is established between or among the parties under this Agreement, or any other agreement referred to in this Agreement. Neither the Team Owner nor the Arena Manager, nor any of their respective Affiliates, employees, agents, contractors nor

guests, shall be considered agents or employees of the City or to have been authorized to incur any expense on behalf of the City or to act for or to bind the City.

24.7 Notices.

24.7.1 All notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices to be given under this Agreement shall be in writing, signed by the party or officer, agent or attorney of the party giving such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response, or invoice, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) upon delivery or the date of refusal if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To the Arena Manager: Arizona Hockey Arena Partners LLC  
c/o Hopkins & Carley  
The Letitia Building  
70 South First Street  
San Jose, CA 95113  
Attn: Clarence A. Kellogg, Jr.

with copy to: Hopkins & Carley  
The Letitia Building  
70 South First Street  
San Jose, CA 95113  
Attn.: Clarence A. Kellogg, Jr.

To the City: City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

with copy to: City Attorney  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

To the Team Owner: Arizona Hockey Partners LLC  
c/o Hopkins & Carley  
The Letitia Building  
70 South First Street  
San Jose, CA 95113  
Attn: Clarence A. Kellogg, Jr.

with copy to: Hopkins & Carley  
The Letitia Building

70 South First Street  
San Jose, CA 95113  
Attn.: Clarence A. Kellogg, Jr.

24.7.2 Any party hereto may from time to time, by notice given to the other parties pursuant to the terms of this Section 24.7, change the address to which notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices to such party are to be sent or designate one or more additional Persons to whom notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices are to be sent. A party giving a notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice under this Agreement shall, contemporaneously with the giving of the same, give a copy of such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice to each party hereto that is not a named recipient thereof.

24.8 Applicable Law. This Agreement has been prepared in the State of Arizona and shall be governed in all respects by the laws of the State of Arizona.

24.9 Time is of the Essence. Time is of the essence of this Agreement and every term or performance hereunder. The parties agree that a City Default for the failure pay any portion of the Management Fee would be a material breach of this Agreement, and that Arena Manager and Team Owner are expressly relying upon the timely payment of the Management Fee as a material inducement to enter into this Agreement.

24.10 Antidiscrimination Clause. The Arena Manager and the Team Owner shall comply with all applicable state, local and federal laws, rules, regulations, executive orders and agreements pertaining to discrimination in employment and unlawful employment practices.

24.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

24.12 Entire Agreement: Conflict. This Agreement and the Related Agreements supersede any prior understanding or written or oral agreements between the parties respecting the within subject matter and contains the entire understanding among the parties with respect thereto. In the event of any conflict between any provision in the Recitals to this Agreement and any provision in the Agreement, the provision in the Agreement shall govern.

24.13 Conflicts of Interest.

24.13.1 Each member, official, representative and employee of the City shall, at all times while this Agreement is in effect, be bound by all Applicable Law pertaining to conflicts of interest, and, to the extent prohibited by such laws, not have any personal interest, direct or indirect, in this Agreement or participate in any decision relating to this Agreement that relates to his or her personal interest or the interest of any entity in which he or she is, directly or indirectly, interested.

24.13.2 A.R.S. § 38-511 provides political subdivisions of the State of Arizona, including the City, with the right to cancel contracts under certain circumstances.

24.13.3 The parties acknowledge that the provisions of A.R.S. § 38-511, which are hereby incorporated in this Agreement by this reference, may create a situation in which the City might have a right to cancel this Agreement pursuant to A.R.S. §38-511.

24.13.4 The Arena Manager or the Team Owner shall knowingly take any action that could create a right of cancellation under A.R.S. § 38-511 with respect to this Agreement. The parties hereby agree to the following procedures with respect to A.R.S. § 38-511, to the extent permitted by A.R.S. § 38-511.

24.14 Saturday, Sunday or Holiday. If the final date of any period provided for herein for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day.

24.15 Confidentiality of Proprietary Information.

24.15.1 The parties acknowledge that certain records and information of or in possession of the Arena Manager and the Team Owner relating to the use, management, and operation of the Arena Facility (including the terms and conditions of Licenses and Concessions Agreements, and any Arena Manager Affiliate Contracts inspected pursuant to Section 8.11.4(a)) and budgets, financial results of operations, and financial projections that are delivered to, audited, examined or inspected by the City pursuant to this Agreement, are or will be proprietary and will place the Team Owner and the Arena Manager at a competitive disadvantage if disclosed to any third party, including competitors and potential users of the Arena.

24.15.2 The parties shall, at all times during the Term and subject to applicable law, take all precautions reasonably necessary to ensure that such proprietary information is not released or disclosed to Persons other than the parties without the prior consent of the party to which such information pertains.

24.15.3 Each of the parties further agrees to notify the other parties upon receipt of a request for disclosure of any such proprietary information so that each party hereto may take appropriate actions to protect such proprietary information.

24.15.4 In the event of any claim or litigation related to the City's efforts to protect from disclosure the private, propriety information of any other party to this Agreement, the party desiring the information be protected will accept the tender of the defense of this claim, defend the City against the claim, and fully indemnify and hold the City and each of its officials harmless from all costs, fees, penalties that may be assessed.

24.16 Attorneys' Fees.

24.16.1 Each party shall bear its own costs and expenses (including attorneys' fees and costs) incurred with respect to the negotiation, execution, delivery and this Agreement, the Related Agreements and the consummation of the transactions at Closing contemplated hereby and thereby ("**Transaction Costs**"); provided however that if the City does not vigorously defend any Challenge by a Third Party under the Constitution of the State of Arizona then the City shall reimburse the Arena Manager and the Team Owner for their respective out-of-pocket Transaction Costs up to an aggregate amount not to exceed \$100,000.

24.16.2 In the event of any controversy, claim or dispute between or among the parties arising from or relating to this Agreement, the prevailing party or parties shall be entitled to recover reasonable costs, expenses, court costs, expert witness fees, litigation-related expenses and attorneys' fees.

24.16.3 For all purposes of this Agreement and any other documents relating to this Agreement, the terms "attorneys' fees" or "counsel fees" shall be deemed to include paralegals and legal assistants' fees, and wherever provision is made herein or therein for the payment of attorneys' or counsel fees or expenses, such provision shall include such fees and expenses (and any applicable sales taxes thereon) incurred in any and all Arbitration, judicial, bankruptcy, reorganization, administrative or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced or after entry of a final judgment.

24.17 Force Majeure. Failure in performance by any party hereunder shall not be deemed an Event of Default, and the non-occurrence of any condition hereunder shall not give rise to any right otherwise provided herein, when such failure or non-occurrence is due to Force Majeure. To the extent a party believes any failure or non-occurrence is due to Force Majeure, such party shall promptly notify the other parties accordingly. An extension of time for the performance by any party hereunder attributable to Force Majeure shall be limited to the period of delay due to such Force Majeure, which period shall be deemed to commence from the time of the commencement of the Force Majeure. Notwithstanding the foregoing, however, no Force Majeure shall discharge the Arena Manager's obligation to pay the rent at the time required by this Agreement.

24.18 Agreed Extensions. Times of performance under this Agreement may also be extended as mutually agreed upon in writing by the parties. However, any failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default hereunder.

24.19 Survival. All duties and obligations of each party that by their terms are to be performed after the Termination Date or which set forth rights or obligations that are effective after the Termination Date shall survive the expiration or other termination of this Agreement.

24.20 Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the parties expressly named in this Agreement and not for the benefit of any third person, and this Agreement shall not be deemed to have conferred any rights, express or implied, upon any third Person.

24.21 Memorandum. No party shall record this Agreement or a copy thereof; instead, each party hereto shall, contemporaneously with its execution of this Agreement, execute the Memorandum of Agreement in the form attached hereto as Exhibit "K", and the parties shall cause such executed Memorandum of Agreement to be recorded in the Official Records of Maricopa County, Arizona within 10 days after the Closing Date (with the legal descriptions being inserted in Schedule "1" to Exhibit "K" attached hereto).

24.22 Provisions That Are Subject to Other Agreements. Given that various provisions in this Agreement indicate that they are subject to the provisions of any one or more of the following agreements: Licenses, Concessions Agreements, Suite License Agreements, Premium Seat Agreements, Advertising Agreements and Naming Rights Agreements, the parties agree that no such agreement shall be inconsistent with any provision of this Agreement and that no such agreement shall unreasonably



interfere with the Arena Manager's performance of its obligations under this Agreement or with the City's rights under this Agreement.

24.23 Immigration Law Compliance.

24.23.1 The Arena Manager and the Team Owner, on behalf of themselves and any subcontractor, warrant, to the extent applicable under A.R.S. §41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. §23-214(A) which requires registration and participation with the E-Verify Program.

24.23.2 Any breach of warranty under this Section shall be considered a material breach of this Agreement and will be subject to penalties up to and including termination of this Agreement.

24.23.3 The City retains the legal right to inspect the papers of the Arena Manager and the Team Owner or subcontractor employee who performs work under this Agreement to ensure that the Arena Manager and the Team Owner or any subcontractor is compliant with the warranty under this Section.

(a) The City may conduct random inspections, and upon the request of the City, the Arena Manager and the Team Owner will provide copies of papers and records of the Arena Manager and the Team Owner demonstrating continued compliance with the warranty under this Section.

(b) The Arena Manager and the Team Owner agree to keep papers and records available for inspection by the City during normal business hours and will cooperate with the City in the exercise of its statutory duties and not deny access to their business premises or applicable papers or records for the purposes of enforcement of this Section.

24.23.4 The Arena Manager and the Team Owner agree to incorporate into any subcontracts under this Agreement the same obligations imposed upon the Arena Manager and the Team Owner and expressly accrue those obligations directly to the benefit of the City. The Arena Manager and the Team Owner also agree to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

(a) The Arena Manager and the Team Owner's warranty and obligations under this Section to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this Section is no longer a requirement.

(b) The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

24.24 Iran and Sudan Prohibitions. The Arena Manager and the Team Owner certify under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, (the "Act") that neither have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined By the Act, in the countries of Sudan or Iran.

*[Signatures appear on following pages.]*

**IN WITNESS WHEREOF**, the parties have hereunto set their hands to be effective as of the Effective Date.

**ARENA MANAGER:**

ARIZONA HOCKEY ARENA PARTNERS LLC, a  
Delaware limited liability company

By: ARIZONA HOCKEY PARTNERS LLC, a  
Delaware limited liability company  
Its: Sole Member

By: JAMISON ENTERTAINMENT GROUP  
LLC, a California limited liability  
company  
Its: Managing Member

By: \_\_\_\_\_  
Name: Greg Jamison  
Its: Manager

**TEAM OWNER:**

ARIZONA HOCKEY PARTNERS LLC, a Delaware  
limited liability company

By: JAMISON ENTERTAINMENT GROUP  
LLC, a California limited liability company  
Its: Managing Member

By: \_\_\_\_\_  
Name: Greg Jamison  
Its: Manager

**CITY:**

CITY OF GLENDALE, an Arizona municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Pam Hanna, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Craig D. Tindall, City Attorney

**DRAFT 11/15/12 22:08**  
**FOR COUNCIL REVIEW 11-20-12**