

Revenues, all revenue therefrom. Accordingly, neither the Arena Manager nor the City shall take any action with respect to, or have any authority over, the posting, exhibition, display, sale or license of Advertising and/or Advertising Agreements, other than at the express direction of the Team. Notwithstanding any other provision of this Agreement, the Team agrees that it shall cause each Advertising Agreement to include the Advertising Exclusivity Carve-Out; provided, however, that the Team shall have the right, to be exercised in the Team's sole discretion, to exclude the Advertising Exclusivity Carve-Out from certain Advertising Agreements and/or Naming Rights Agreements that, at any given time, do not exceed, in the aggregate, five (5) in number.

The parties hereto acknowledge that, pursuant to the Mixed-Use Development Agreement, the Entertainment Developer has the sole and exclusive rights to post, exhibit, display and otherwise present, and to sell and license, all Parking Advertising to be posted, exhibited, displayed and presented during the Agreement Term.

5.10 Naming Rights. The Team shall have the sole and exclusive rights to sell and license all Naming Rights to be effective during the Agreement Term 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 the sale or license of Naming Rights and/or Naming Rights Agreements, other than at the express direction of the Team. Notwithstanding any other provision of this Agreement, the Team agrees that it shall cause each Naming Rights Agreement to include the Advertising Exclusivity Carve-Out; provided, however, that the Team shall have the right, to be exercised in the Team's sole discretion, to exclude the Advertising Exclusivity Carve-Out from certain Advertising Agreements and/or Naming Rights Agreements that, at any given time, do not exceed, in the aggregate, five (5) in number.

The Team shall strive to, but does not guarantee that it will be able to, cause the name Glendale to be included in the name of the Arena Facility or a major component thereof.

The parties hereto acknowledge that, pursuant to the Mixed-Use Development Agreement, the Entertainment Developer has the sole and exclusive rights to sell and license all Parking Naming Rights to be effective during the Agreement Term.

5.11 Names, Logo and Schedule. At the request of the Team, the Arena Manager shall prominently display the Team's name, logo and schedule in areas around the Arena. The size, location and appearance of such displays shall be developed and mutually agreed upon by the Team and the Arena Manager. At the request of the City, the Arena Manager shall display the City's name and logo at the Arena in a manner and at a location(s) from time to time agreed upon by the City and the Team.

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's prior consent, which consent may be given or withheld by the Team in its sole discretion. No display or any other material prepared or permitted by the Arena Manager or the Team 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.

5.12 Broadcasts. The Team 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 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. The Team'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. The Team'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 to control and receive revenue from such broadcasts, reproductions, transmittals and distributions.

5.13 Suites and Premium Seats.

(a) Suite License Agreements. The Team shall have the sole and exclusive right to enter into contracts or agreements for the license and/or use of Suites during the Agreement Term (each, a "Suite License Agreement") upon such terms and conditions as the Team, in its sole discretion, deems appropriate; provided, however, that no Suite License Agreement shall include the right to use the corresponding Suite for Community Events. Accordingly, other than as provided in this Section 5.13(a), neither the Arena Manager nor the City shall take any action or have any authority with respect to the license and/or use of Suites. The Team shall have the sole and exclusive right to receive, as Exclusive Team Revenues, all Suite License Revenues.

Notwithstanding the foregoing paragraph, the Team shall cause each Suite License Agreement to include the following:

- (i) the Exculpatory Language, as required by Section 5.26.1;
- (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, the Retail/Residential Developer, the Entertainment Developer and/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/or 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 caused by or attributable to any act or omission of such licensee and/or 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, the Retail/Residential Developer, the Entertainment Developer, the City and the NHL, and their respective agents, directors, employees, 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.

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.

The City shall have the right to use one (1) Suite at a location to be agreed upon from time to time by the City, the Arena Manager and the Team, including Tickets (for seating in such Suite) to Events equal to the number of Tickets included in the base price of such Suite, all at no cost to the City. Food and beverage service for such Suite shall be provided at the same cost as food and beverage service provided to the Team's Suite. Each Suite from time to time made available to the City pursuant to this Section 5.13(a) shall be finished and furnished in a manner comparable to that of other similar Suites.

(b) Premium Seat Agreements. The Team shall have the sole and exclusive right to enter into 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 (other than Community Events), during the Agreement Term (each, a "**Premium Seat Agreement**") upon such terms and conditions as the Team, in its sole discretion, deems appropriate. Accordingly, other than as provided in this Section 5.13(b), neither the Arena Manager nor the City shall take any action or have any authority with respect to the use of such Premium Seats. The Team shall have the sole and exclusive right to receive, as Exclusive Team Revenues, all Hockey Ticket Receipts payable under Premium Seat Agreements.

Notwithstanding the foregoing paragraph, the Team shall cause each Premium Seat Agreement to include the following:

- (i) the Exculpatory Language, as required by Section 5.26.1;
- (ii) 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, the Retail/Residential Developer, the Entertainment Developer and/or the City, accurate estoppel certificates regarding such Premium Seat Agreement;
- (iii) 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, the Retail/Residential Developer, the Entertainment Developer, the City and the NHL, and their respective agents, directors, employees, officials and 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

(iv) 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 Parking Fee and Arena Recovery Fee), pursuant to the procedures from time to time established by the Arena Manager for the exercise of such right.

The Arena Manager shall establish and from time to time revise the procedures to which clause (iv) of the immediately preceding sentence refers. Such procedures shall require 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.

5.14 Scheduling. The Arena Manager shall schedule all Events and other activities at the Arena in accordance with the Scheduling Procedures.

5.15 Hockey Event Responsibilities.

5.15.1 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 to be in a condition suitable for the Team's use of the Arena for such Hockey Event, including, to the extent applicable:

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

(b) 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 Communication System, remote broadcast systems, coach phone hookups and all other special equipment and facilities necessary or desirable for the Hockey Event.

5.15.2 Ice Surface. 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. In addition, the Arena Manager, as an Operating Expense, shall (i) 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 (ii) restore the ice surface to meet NHL requirements and all of the Hockey Rules following an Event other than a Hockey Event.

5.15.3 Hockey Tickets. The Team (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 and/or through agencies and/or other designees authorized by the Team; and (ii) shall receive and retain, as Exclusive Team Revenues, all Hockey Ticket Receipts. 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.

5.16 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 (other than the Exclusive Team Spaces) for not to exceed four (4) Events (each a “**City Sponsored Event**”) each Fiscal Year (i) which is sponsored or co-sponsored by the City; (ii) which may feature performers or performances which are normally booked in arenas comparable to the Arena Facility; and (iii) for which admission may be charged, all as determined by the City in its sole discretion.

Prior to the scheduling of a City Sponsored Event that is a Fee Activity, the City shall give the Arena Manager and the Team notice of whether or not the City elects to waive with respect to such City Sponsored Event (i) the City Parking Fees, (ii) the Supplemental Recovery Fees (if any), and (iii) from and after such time as the Base Recovery Fees are payable solely to the City, the Base Recovery Fees. Any election by the City to waive any of the fees described in the immediately preceding sentence shall be deemed an election by the City to waive all such fees. The failure of the City to give such notice prior to the scheduling of a given City Sponsored Event shall be deemed an election by the City not to waive such fees with respect to such City Sponsored Event. The City shall not have the right to waive Base Recovery Fees until such time as Base Recovery Fees are payable solely to the City.

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 Parking Fees and Arena Recovery Fees for such City Sponsored Event, except to the extent the City has properly waived, pursuant to this Agreement, any such fees.

The Arena Manager shall maintain separate records of all Operating Revenues and all Operating Expenses attributable (or allocated) to each City Sponsored Event, and all amounts received for deposit and deposited into the City Parking Fee Account and the Arena Recovery Fee Account with respect to each City Sponsored Event.

If the aggregate of the Operating Expenses for the City Sponsored Events (if any) held during a given Fiscal Quarter exceeds the aggregate of the Operating Revenues for such Events (if any), the Arena Manager shall, at the time the quarterly financial report for such Fiscal Quarter is

submitted to the parties hereto pursuant to Section 5.3.3(b)(ii), (1) set-off against any distributions or payments to be made to the City for such Fiscal Quarter pursuant to Section 7.3.1 the amount by which the aggregate of such Operating Expenses exceeds the aggregate of such Operating Revenues (the "**City Sponsored Event Shortfall**"), and (2) submit an invoice to the City for reimbursement of the amount, if any, by which the City Sponsored Event Shortfall exceeds the amount actually set-off pursuant to clause (1) of this sentence. The City shall reimburse the Arena Manager for the amount set forth in such invoice within thirty (30) days after the date of such invoice. If the City fails to make such reimbursement within such thirty-day period, the Arena Manager shall, in addition to any other rights or remedies of the Arena Manager with respect thereto, have the right to set-off such amount against any future distributions or payments to the City under this Agreement. The Arena Manager shall deposit all amounts received by the Arena Manager pursuant to such invoices in the Operating Account.

5.17 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 (other than the Exclusive Team Spaces) for Events (each a "**Community Event**") (i) which are sponsored or co-sponsored by the City; (ii) which are conducted or presented as a service to the City, its residents or a non-profit organization; (iii) which do not feature performers or performances which are normally booked in arenas comparable to the Arena Facility; (iv) the financial benefits (if any) of which are received or distributed to a non-profit, civic or other community organization; and (v) which are approved by the Arena Manager.

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.

Prior to the scheduling of a Community Event that is a Fee Activity, the City shall give the Arena Manager and the Team notice of whether or not the City elects to waive with respect to such Community Event (i) the City Parking Fees, (ii) the Supplemental Recovery Fees (if any), and (iii) from and after such time as the Base Recovery Fees are payable solely to the City, the Base Recovery Fees. Any election by the City to waive any of the fees described in the immediately preceding sentence shall be deemed an election by the City to waive all such fees. The failure of the City to give such notice prior to the scheduling of a given Community Event shall be deemed an election by the City not to waive such fees with respect to such Community Event. The City shall not have the right to waive Base Recovery Fees until such time as Base Recovery Fees are payable solely to the City.

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 Parking Fees and Arena Recovery Fees for such Community Event, except to the extent the City has properly waived, pursuant to this Agreement, any such fees.

The Arena Manager shall maintain separate records of all Community Event Expenses, and all amounts received for deposit and deposited into the City Parking Fee Account and the Arena Recovery Fee Account with respect to each Community Event.

The Arena Manager shall, at the time the monthly financial report for the month during which such Community Event occurs is submitted to the parties hereto pursuant to Section 5.3.3(b)(i), submit an invoice to the City for reimbursement of the amount of such Community Event Expenses. The City shall reimburse the Arena Manager for the amount set forth in such invoice within thirty (30) days after the date of such invoice. If the City fails to make such reimbursement within such thirty-day period, the Arena Manager shall, in addition to any other rights or remedies of the Arena Manager with respect thereto, have the right to set-off such amount against any distributions or payments to the City under this Agreement. The Arena Manager shall deposit all amounts received by the Arena Manager pursuant to such invoices in the Operating Account.

5.18 Traffic Control and Parking Security. To the extent not required of a Licensee with respect to a given Event, the Arena Manager shall arrange for traffic control and security reasonably necessary to (i) direct traffic on, to and from the Parking Improvements, and (ii) provide security for the Parking Improvements in connection with such Event. The Arena Manager shall cooperate with the City and the Team 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 parking areas for, Events. All costs incurred in connection with the provision of traffic control and security in parking areas pursuant to this Section 5.18, and in implementing such traffic management and parking security plan, to the extent not paid by a Licensee with respect to a given Event, shall be Operating Expenses. The Arena Manager shall obtain staffing required by this Section 5.18 pursuant to the Safety and Security Agreement.

5.19 Staffing for Events. The Arena Manager shall furnish trained event staff and personnel sufficient for the operation and maintenance of the Arena for Events (and with respect to Hockey Events, in such number and with such qualifications as the Team may reasonably require consistent with NHL requirements and procedures) and other activities at the Arena, 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, which expenses shall be Operating Expenses. All personnel that the Arena Manager is required to provide for Events and other activities at the Arena pursuant to this Section 5.19 are referred to herein as "**Event Staff**".

The Arena Manager shall adopt and enforce such grooming, dressing, 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 as the Team may from time to time reasonably require. The Arena Manager shall implement such customer service, security and hospitality training for Event Staff as the Team may from time to time reasonably require. All expenses incurred by the Arena Manager in connection with the Event Staff shall be Operating Expenses.

5.20 Goals; Quality Standard. The Arena Manager shall, in managing the Arena pursuant to this Agreement, solicit the Team'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.

In performing its obligations under this Agreement and subject to the Annual Budget, the Arena Manager shall manage and operate the Arena in a first-class manner, consistent with the Management Performance Standards and the Arena Maintenance Standard.

5.21 Team Approvals.

(a) Approval Rights. In addition to any other approval right set forth in this Agreement, the Team shall have the right to approve the following prior to the Arena Manager incurring any obligation with respect thereto:

(i) Any agreement or contract for goods or services that provides for a term in excess of twelve (12) months, or aggregate consideration to the provider of the goods or services in excess of \$100,000 during the term of the agreement or contract;

(ii) Any Additions and Capital Repairs other than those that are included in the applicable Annual Budget or that are permitted pursuant to Section 5.2;

(iii) Any grant to any employee of the Arena Manager of signatory power over any of the Arena Accounts; and

(iv) Any engagement or termination of the chief executive officer, chief administrative officer, chief financial officer, general manager, senior event coordinator or senior building technician or any other employee of the Arena Manager who performs any equivalent functions.

(b) Approval Process. Prior to incurring any obligation with respect to any agreement or contract, or the engagement of any employee, described in Section 5.21(a), the Arena Manager shall give the Team notice of the proposed agreement, contract or engagement. The Team shall give the Arena Manager notice of the Team's approval or disapproval of the proposed agreement, contract or engagement promptly after the Team's receipt of the Arena Manager's notice. If the Team fails to give such notice to the Arena Manager within thirty (30) days after the Team's receipt of the Arena Manager's notice, the Team shall be deemed to have disapproved the proposed agreement, contract or engagement.

5.22 Affiliate Contracts and Team Provision of Food and Beverage Services.

5.22.1 Arena Manager Affiliate Contracts. The Arena Manager shall provide the City and the Team with a copy of each Arena Manager Affiliate Contract not later than ten (10) days after execution thereof. Each of the City and the Team shall have fifteen (15) Business Days after receipt of such copy to give the Arena Manager (and the other parties hereto) 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 non-Affiliate third party, or (ii) the party giving notice claims that such terms and conditions are less favorable than could be obtained from a non-Affiliate third party. If a party does not give such notice within such fifteen (15) Business Day period, then such party shall be deemed to have agreed that such terms and conditions are no less favorable than could be obtained from a non-Affiliate third party.



If either the City or the Team notifies the Arena Manager that the notifying party claims that the terms and conditions of an Arena Manager Affiliate Contract are less favorable than could be obtained from a non-Affiliate third party, the determination of whether such terms and conditions actually are less favorable than could be obtained from a non-Affiliate third party shall be made by Arbitration. If the Arbitrator determines that the terms and conditions of the Arena Manager Affiliate Contract are less favorable than could be obtained from a non-Affiliate third party, the Arbitrator shall also determine (a) the amount (if any) by which the aggregate consideration (1) to be paid to the Affiliate of the Arena Manager under such Arena Manager Affiliate Contract is in excess of the amount that would be paid to a non-Affiliate third party, or (2) to be paid by the Affiliate of the Arena Manager under such Arena Manager Affiliate Contract is less than the amount that would be paid by a non-Affiliate third party, and (b) the time or times at which such amount would be paid if the terms and conditions of such Arena Manager Affiliate Contract were no less favorable than could be obtained from a non-Affiliate third party. Promptly following the Arena Manager's receipt of such determination from the Arbitrator, the Arena Manager shall, in its sole discretion, elect to (x) terminate the Arena Manager Affiliate Contract (and pay any termination fees and other costs associated with such termination from the Arena Manager's own funds); (y) modify the Arena Manager Affiliate Contract to be consistent with the Arbitrator's decision; or (z) from the Arena Manager's own funds and at the time or times described in the Arbitrator's decision, deposit in the appropriate Arena Account the amount so determined by the Arbitrator.

When considering whether and to what extent the terms and conditions of an Arena Manager Affiliate Contract are less favorable than could be obtained from a non-Affiliate third party, the City, the Team and the Arbitrator shall consider not only price, but also quality, reliability, experience, expertise, ability to perform and similar factors.

5.22.2 Team Affiliate Concessions Agreements. The Team shall provide the City with a copy of each Team Affiliate Concessions Agreement not later than ten (10) days after execution thereof. The City shall have fifteen (15) Business Days after receipt of such copy to give the Team (and the other parties hereto) notice that either (i) the City agrees that the terms and conditions of the Team Affiliate Concessions Agreement with respect to (and only with respect to) City/Team Revenue Events, City Sponsored Events, Community Events and City Revenue Events are no less favorable than could be obtained from a non-Affiliate third party, or (ii) the City claims that such terms and conditions are less favorable than could be obtained from a non-Affiliate third party with respect to such Events. If the City does not give such notice within such fifteen (15) Business Day period, the City shall be deemed to have agreed that such terms and conditions are no less favorable than could be obtained from a non-Affiliate third party with respect to such Events.

If the City notifies the Team that the City claims that the terms and conditions of a Team Affiliate Concessions Agreement are less favorable than could be obtained from a non-Affiliate third party with respect to such Events, the determination of whether such terms and conditions actually are less favorable than could be obtained from a non-Affiliate third party with respect to such Events shall be made by Arbitration. If the Arbitrator determines that the terms and conditions of the Team Affiliate Concessions Agreement are less favorable than could be obtained from a non-Affiliate third party with respect to such Events, the Arbitrator shall also determine (a) the amount (if any) by which the aggregate consideration (1) to be paid to the

Affiliate of the Team with respect to such Events under such Team Affiliate Concessions Agreement is in excess of the amount that would be paid to a non-Affiliate third party with respect to such Events, or (2) to be paid by the Affiliate of the Team with respect to such Events under such Team Affiliate Concessions Agreement is less than the amount that could be obtained from a non-Affiliate third party with respect to such Events, and (b) the time or times at which such amount would be paid if the terms and conditions of such Team Affiliate Concessions Agreement were no less favorable than could have been obtained from a non-Affiliate third party with respect to such Events. Promptly following the Team's receipt of such determination from the Arbitrator, the Team shall, in its sole discretion, elect to (x) terminate the Team Affiliate Concessions Agreement (and pay any termination fees and other costs associated with such termination from the Team's own funds); (y) modify the Team Affiliate Concessions Agreement to be consistent with the Arbitrator's decision; or (z) at the time or times described in the Arbitrator's decision, pay to the Arena Manager for deposit in the Operating Account the amount so determined by the Arbitrator.

When considering whether and to what extent the terms and conditions of a Team Affiliate Concessions Agreement are less favorable than could be obtained from a non-Affiliate third party with respect to such Events, the City and the Arbitrator shall consider not only price, but also quality, reliability, experience, expertise, ability to perform and similar factors.

**5.22.3 Team Provision of Food and Beverage Services.** If the Team elects to provide food and beverage services at the Arena pursuant to Section 5.7.2(b), the Team shall, at least fifteen (15) Business Days prior to the commencement of the Team's provision of any such food and/or beverage services, give the other parties hereto notice of the services to be offered by the Team, together with reasonable evidence that the benefits to the City from the Team's offering of such services with respect to (and only with respect to) City/Team Revenue Events, City Sponsored Events, Community Events and City Revenue Events will be no less favorable than could be obtained from a third party (other than the Team or an Affiliate of the Team).

The City shall have fifteen (15) Business Days after receipt of such notice to give the Team notice that either (i) the City agrees that the benefits to the City from the Team's offering of such services with respect to (and only with respect to) City/Team Revenue Events, City Sponsored Events, Community Events and City Revenue Events are no less favorable than could be obtained from a third party (other than the Team or an Affiliate of the Team), or (ii) the City claims that such benefits are less favorable than could be obtained from a third party (other than the Team or an Affiliate of the Team) with respect to such Events. If the City does not give such notice within such fifteen (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 (other than the Team or an Affiliate of the Team) with respect to such Events.

If the City notifies the Team that the City claims that such benefits are less favorable than could be obtained from a third party (other than the Team or an Affiliate of the Team) with respect to such Events, the determination of whether such benefits actually are less favorable than could be obtained from such a third party with respect to such Events shall be made by Arbitration. If the Arbitrator determines that such benefits are less favorable than could be obtained from a third party (other than the Team or an Affiliate of the Team) with respect to such Events, the Arbitrator shall also determine (a) the amount by which such benefits with respect to such Events

are less than those that could be obtained from such a third party, and (b) the time or times at which such benefits would have been available to the City. Promptly following the Team's receipt of such determination from the Arbitrator, the Team shall, in its sole discretion, elect to (x) discontinue the provision of such food and/or beverage services; (y) modify the terms and conditions under which the Team will offer such services to be consistent with the Arbitrator's decision; or (z) at the time or times described in the Arbitrator's decision, pay to the Arena Manager for deposit in the Operating Account the amount so determined by the Arbitrator.

When evaluating benefits to the City under this Section 5.22.3. the City and the Arbitrator shall consider not only price, but also quality, reliability, experience, expertise, ability to perform and similar factors.

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

Subject to the terms of any License, the City shall have the right to use (without charge) the Communication System 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 Community Events, City Revenue Events or City Sponsored Events. The City acknowledges that Licenses for Events (other than Hockey Events) may prohibit the City's use of the Communication System during such Events.

No announcement permitted by this Section 5.23 shall exceed a reasonable time (to be mutually agreed upon by the City and the Team 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 5.23.

5.24 City Advertisements. The Team shall cause all printed game programs sold at Home Games and, subject to the Hockey Rules, at All-Star Games to include a one-page advertisement acknowledging the City's role in providing facilities for the Team and/or promoting attributes of the City. No advertisement permitted by this Section 5.24 shall increase the cost 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 with sufficient lead time to allow the Team a commercially reasonable time to arrange for the inclusion of such advertisement in such program. The Team shall have the right to approve the text and design of each such advertisement.

5.25 Compliance with Community Decency Standards. Neither the Arena Manager nor the Team shall knowingly cause or permit the use of the Arena in a manner that violates Applicable Law or conflicts with community decency standards from time to time actually prevailing in the City.

5.26 Contracts and Agreements.

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

5.26.2 Assignment and Transfer. 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/or use of the Arena, (b) provides for consideration in excess of \$100,000, and (c) has a term of more than one (1) 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) shall provide:

(x) for 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 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

(y) 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.

5.26.3 City's Right to Cure. If a default is asserted against the Arena Manager or the Arena Sub-Manager (as applicable) under any contract or agreement entered into by the Arena Manager or the Arena Sub-Manager (as applicable) with respect to the management, operation and use of the Arena (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 (as applicable)), which agreement or contract provides for consideration in excess of \$100,000 and has a term of more than one (1) year (including any option to renew or extend), then the City shall have the right, but not the obligation, to cure such default, as set forth in the immediately following sentence; provided, however, that the City shall not exercise such right if the Arena Manager or the Arena Sub-Manager (as applicable) is taking action to contest the asserted default. Each such contract or agreement shall provide that (i) any default asserted against the Arena Manager or the

Arena Sub-Manager (as applicable) shall require written notice to the Arena Manager or the Arena Sub-Manager (as applicable) and to the Team, the Retail/Residential Developer, the Entertainment Developer and the City; and (ii) the City shall have ten (10) days after the expiration of the cure time permitted the Arena Manager or the Arena Sub-Manager (as applicable) to exercise the City's right to cure any asserted default. If the City fails to timely exercise its right to cure, the City shall have waived such right. If the City elects to cure an asserted default in accordance with this Section 5.26.3, the City shall be entitled to reimbursement of the reasonable costs and expenses incurred by the City in curing such default from Operating Revenues.

## ARTICLE 6

### ADDITIONS AND CAPITAL REPAIRS

6.1 By Arena Manager. The Arena Manager shall have the right to make Additions and Capital Repairs included in the applicable Annual Budget or permitted by Section 5.2 if: (a) necessary to comply with governmental requirements; (b) necessary or appropriate for the safe operation of the Arena or its maintenance or repair; (c) required by any License, Concessions Agreement, Suite License Agreement or Premium Seat Agreement; or (d) in the Arena Manager's reasonable opinion, such Additions and Capital Repairs will improve the Arena, increase Operating Revenues and/or reduce Operating Expenses. Upon installation, any Additions and Capital Repairs shall become a part of the Arena and the property of the City, subject to the Team's rights under this Agreement.

The Arena Manager may use monies available in the Renewal and Replacement Account to pay for Additions and Capital Repairs. The Arena Manager may use monies from any other Arena Account to pay for Additions and Capital Repairs in the event of an Emergency requiring Additions and Capital Repairs.

6.2 By City.

6.2.1 Emergency and Repairs. Except as otherwise provided by Section 6.2.2, the City shall have no right to make Additions and Capital Repairs or other repairs to the Arena unless (i) an Emergency exists and the Arena Manager has not made the repairs necessary to alleviate such Emergency, or (ii) the Arena Manager has failed, after twenty (20) days' notice by the City to the Arena Manager (with a copy to the other parties hereto) to commence and thereafter diligently pursue repairs required by this Agreement. In exercising its rights under this Section 6.2.1, the City shall make commercially reasonable efforts to avoid interference with the operation of the Arena, and shall take only such actions as are necessary to alleviate such Emergency or make such repairs. To the extent feasible, the City shall contact the Arena Manager and the Team prior to the City's taking any action pursuant to this Section 6.2.1 to discuss the actions to be taken with respect to the Emergency or such repairs, and to attempt to avoid the duplication of efforts by the City, the Team and/or the Arena Manager. Any expenditure made by the City pursuant to this Section 6.2.1 shall be reimbursed by the Arena Manager to the City from the Arena Accounts, to the extent of monies available therein. Depending on the nature of the repair, such reimbursement shall be an Operating Expense

payable from the Operating Account or the Operating Reserve Account, or an expenditure for Additions and Capital Repairs payable from the Renewal and Replacement Account.

6.2.2 Limited City Rights. The City shall have the right, without the prior consent of the Team or the Arena Manager, to make Additions and Capital Repairs or other repairs to the Arena (other than the Exclusive Team Spaces) at the City's expense if such Additions and Capital Repairs or other repairs are done in a good and workmanlike manner, do not weaken or impair the structural strength of the Arena or fundamentally affect the character or suitability of the Arena for use as a multi-purpose arena facility, are in compliance with all applicable NHL requirements and Applicable Laws and are done in a manner as to not unreasonably interfere with the operation of the Arena. The City shall provide the Arena Manager with timely notice of, and a schedule for, any such Additions and Capital Repairs or other repairs.

The City shall keep the Arena free from, and shall indemnify the Arena Manager and the Team with respect to, all City Caused Liens relating to such Additions and Capital Repairs or other repairs. If within sixty (60) days following the filing or other assertion of any such City Caused Lien, the City does not cause such City Caused Lien to be released in a manner reasonably satisfactory to the Arena Manager and the Team (such as by posting a bond or other acceptable security), each of the Arena Manager and the Team shall have the right, but not the obligation, to cause the City Caused Lien to be released by any means it reasonably deems proper, including payment of the City Caused Lien. All reasonable sums paid and expenses incurred by the Arena Manager or the Team in connection therewith (together with interest thereon from the date incurred until paid at the Interest Rate), including attorneys' fees and costs, shall be payable by the City to the Arena Manager and/or the Team (as applicable) upon demand by the Arena Manager and/or the Team (as applicable).

### 6.3 By Team.

6.3.1 Emergency and Repairs. Except as otherwise provided by Section 6.3.2, the Team shall have no right to make Additions and Capital Repairs or other repairs to the Arena unless (i) an Emergency exists, and the Arena Manager has not made the repairs necessary to alleviate such Emergency, or (ii) the Arena Manager has failed, after twenty (20) days' notice by the Team to the Arena Manager (with a copy to the other parties hereto), to commence and thereafter diligently pursue repairs required by this Agreement. In exercising its rights under this Section 6.3.1, the Team shall make commercially reasonable efforts to avoid interference with the operation of the Arena, and shall take only such actions as are necessary to alleviate such Emergency or make such repairs. To the extent feasible, the Team shall contact the City and the Arena Manager prior to the Team's taking any action pursuant to this Section 6.3.1 to discuss the actions to be taken with respect to the Emergency or such repairs, and to attempt to avoid the duplication of efforts by the Team, the City and/or the Arena Manager. Any expenditure made by the Team pursuant to this Section 6.3.1 shall be reimbursed by the Arena Manager to the Team from the Arena Accounts, to the extent of monies available therein. Depending on the nature of the repair, such reimbursement shall be an Operating Expense payable from the Operating Account or the Operating Reserve Account, or an expenditure for Additions and Capital Repairs payable from the Renewal and Replacement Account.

6.3.2 Exclusive Team Spaces. Except as provided in Section 6.3.1 and in the immediately following paragraph of this Section 6.3.2, the Team shall not, without the City's prior consent, make Additions and Capital Repairs to any portion of the Arena. In seeking such consent, the Team shall provide the City and the Arena Manager with notice of, and construction plans and specifications for, the proposed Additions and Capital Repairs, as well as a proposed schedule of construction for such Additions and Capital Repairs.

The Team shall have the right, without the prior consent of the City, to make (i) nonstructural alterations, installations, decorations, additions and improvements to the areas of the Arena in which Concessions are or are to be located; and (ii) nonstructural alterations, installations, decorations, additions and improvements to the Exclusive Team Spaces. All such alterations, installations, decorations, additions and improvements, including the preparation of plans, specifications and engineering reports therefor, shall be done at the Team's expense, shall be done in a good and workmanlike manner, shall not weaken or impair the structural strength of the Arena or fundamentally affect the character or suitability of the Arena for use as a multi-purpose arena facility, shall be in compliance with all applicable NHL requirements and Applicable Laws and shall be done in a manner as to not unreasonably interfere with the operation of the Arena. The Team shall provide the Arena Manager with timely notice of, and a schedule for, any such alterations, installations, decorations, additions and improvements.

Upon installation, any Additions and Capital Repairs permitted by this Section 6.3.2 shall become a part of the Arena and the property of the City, subject to the Team's rights under this Agreement. The Team shall keep the Arena free from, and shall indemnify the City with respect to, all Team Caused Liens relating to such Additions and Capital Repairs. If within sixty (60) days following the filing or other assertion of any such Team Caused Lien, the Team does not cause such Team Caused Lien to be released in a manner reasonably satisfactory to the City (such as by posting a bond or other acceptable security), the City shall have the right, but not the obligation, to cause the Team Caused Lien to be released by any means the City reasonably deems proper, including payment of the Team Caused Lien. All reasonable sums paid and expenses incurred by the City in connection therewith (together with interest thereon from the date incurred until paid at the Interest Rate), including attorneys' fees and costs, shall be payable by the Team to the City upon demand by the City.

6.4 By Retail/Residential Developer or Entertainment Developer. Neither the Retail/Residential Developer nor the Entertainment Developer shall make Additions and Capital Repairs or other repairs to any portion of the Arena.

## ARTICLE 7

### ARENA ACCOUNTS

7.1 Operating Revenues. The Arena Manager shall, prior to the Operations Start Date, establish and maintain (for the benefit of the Team and the City, as their interests may appear) one or more depository accounts at a federally-insured institution(s) having offices in the State of Arizona for the deposit and disbursement of Operating Revenues (collectively, the "**Operating Account**"), make commercially reasonable efforts to collect Operating Revenues

and, upon collection, deposit all Operating Revenues collected into the Operating Account not later than the Business Day after receipt.

7.2 Application of Monies in Operating Account. The Arena Manager shall cause the monies in the Operating Account (subject to availability as further described in Section 7.4) to be applied in the following order of priority, and at the following times:

(a) First, to the payment of Operating Expenses as and when they become due and payable (subject to the restriction on the payment of Management Fees set forth in Section 7.10);

(b) Second, to the payment of monies to the Operating Reserve Account until the Operating Reserve Account is "fully-funded" as described in Section 7.5, payable within forty-five (45) days after the end of each Fiscal Quarter (other than the last Fiscal Quarter of the Agreement Term);

(c) Third, to the extent there are, as of the last day of each Fiscal Quarter, any monies remaining in the Operating Account after all of the payments described in clauses (a) and (b) of this Section 7.2 have been made, then such remaining monies shall be distributed in the manner and at the time set forth in Section 7.3.

### 7.3 Distribution of Monies.

7.3.1 Quarterly Distributions. Within forty-five (45) days after the end of each Fiscal Quarter (starting with the first Fiscal Quarter after the Operations Start Date), the Arena Manager shall cause the monies to be distributed pursuant to Section 7.2(c) for such Fiscal Quarter to be distributed in the following order:

(a) First, to the City in an amount equal to the aggregate unpaid Guaranteed Amount (if any) due and payable by the Team to the City under the Team Guaranty as of the end of the Fiscal Quarter for which the distribution is being made;

(b) Second, in the following order:

(i) to the Retail/Residential Developer, the Entertainment Developer and/or the Arena Sub-Manager (as applicable) in an amount equal to the aggregate amount of advances (plus interest, if the party who made the advance was not, on the date of the advance, an Affiliate of the Team) made by the Retail/Residential Developer, the Entertainment Developer and/or the Arena Sub-Manager (as applicable) pursuant to Section 7.4 in and prior to such Fiscal Quarter, less any reimbursements of such advances previously made by the Arena Manager to the Retail/Residential Developer, the Entertainment Developer and/or the Arena Sub-Manager (as applicable) pursuant to this Section 7.3.1(b);

(ii) to the Arena Manager in an amount equal to the aggregate amount of advances (plus interest, if the Arena Manager was not, on the date of the advance, an Affiliate of the Team) made by the Arena Manager pursuant to Section 7.4 in and prior to such Fiscal Quarter, less any reimbursements of such advances previously received by the Arena Manager pursuant to this Section 7.3.1(b); and



(iii) to the Team in an amount equal to the aggregate amount of advances made by the Team pursuant to Section 7.4 in and prior to such Fiscal Quarter, less any reimbursements of such advances previously made by the Arena Manager to the Team pursuant to this Section 7.3.1(b);

(c) Third,

(i) the amount that is the lesser of (x) the Outstanding City Carry-forward Amount, or (y) the amount calculated by multiplying the total amount available for distribution under this Section 7.3.1(c) by the City Carry-forward Distribution Percentage, shall be distributed to the City; and

(ii) the amount that is the lesser of (x) the Outstanding Team Carry-forward Amount, or (y) the amount calculated by multiplying the total amount available for distribution under this Section 7.3.1(c) by the Team Carry-forward Distribution Percentage, shall be distributed to the Team; and

(d) Fourth,

(i) the amount (the “**Actual City Distribution**”) that is the lesser of (x) the sum of the City’s Share of City/Team Excess Cash Flow and the City Excess Cash Flow for such Fiscal Quarter, or (y) the amount calculated by multiplying the total amount available for distribution under this Section 7.3.1(d) by the City Current Distribution Percentage, shall be distributed to the City; and

(ii) the amount (the “**Actual Team Distribution**”) that is the lesser of (x) the sum of the Team’s Share of City/Team Excess Cash Flow and the Team Excess Cash Flow for such Fiscal Quarter, or (y) the amount calculated by multiplying the total amount available for distribution under this Section 7.3.1(d) by the Team Current Distribution Percentage, shall be distributed to the Team.

7.3.2 Annual Reconciliation of Distributions. Within ninety (90) days after the end of each Fiscal Year, the Arena Manager shall calculate the sum of the City’s Share of City/Team Excess Cash Flow and the City Excess Cash Flow for such Fiscal Year. If the aggregate Actual City Distributions for such Fiscal Year exceed the sum of the City’s Share of City/Team Excess Cash Flow and the City Excess Cash Flow as so calculated for such Fiscal Year, the Arena Manager shall submit an invoice to the City for the reimbursement of such excess amount, accompanied by evidence reasonably satisfactory to the City establishing such excess. The City shall pay the amount due and owing under the immediately preceding sentence within thirty (30) days after the City’s receipt of the Arena Manager’s invoice. If the City fails to make such payment within such thirty-day period, the Arena Manager shall, in addition to any other rights or remedies of the Arena Manager with respect thereto, have the right to set-off such amount against any distributions or payments to the City under this Agreement. The Arena Manager shall promptly deposit in the Operating Account all payments received by the Arena Manager from the City pursuant to such invoice.

Within ninety (90) days after the end of each Fiscal Year, the Arena Manager shall calculate the sum of the Team’s Share of City/Team Excess Cash Flow and the Team Excess Cash Flow for

such Fiscal Year. If the aggregate Actual Team Distributions for such Fiscal Year exceed the sum of the Team's Share of City/Team Excess Cash Flow and the Team Excess Cash Flow as so calculated for such Fiscal Year, the Arena Manager shall submit an invoice to the Team for the reimbursement of such excess amount, accompanied by evidence reasonably satisfactory to the Team establishing such excess. The Team shall pay the amount due and owing under the immediately preceding sentence within thirty (30) days after the Team's receipt of the Arena Manager's invoice. If the Team fails to make such payment within such thirty-day period, the Arena Manager shall, in addition to any other rights or remedies of the Arena Manager with respect thereto, have the right to set-off such amount against any distributions or payments to the Team under this Agreement. The Arena Manager shall promptly deposit in the Operating Account all payments received by the Arena Manager from the Team pursuant to such invoice.

7.4 Operating Expense Shortfalls. Except as otherwise set forth in this Section 7.4, the Arena Manager shall have no obligation to make any payment described in Section 7.2 in excess of the monies in the Operating Account at the time such payment is required by Section 7.2. If the Operating Account does not contain sufficient monies to pay any Operating Expenses as they become due in the ordinary course of business, the Arena Manager shall make a demand on the Team for the advance of sufficient monies to pay such Operating Expenses, accompanied by evidence reasonably satisfactory to the Team establishing the need for the amount demanded. The Team shall advance the amount demanded and due and owing under the immediately preceding sentence within ten (10) days after the Team's receipt of the Arena Manager's demand. The Arena Manager shall promptly deposit in the Operating Account all advances received by the Arena Manager from the Team pursuant to such demand. The Team shall be entitled to receive reimbursement for such advances pursuant to Section 7.3.1(b).

If the Team fails to pay the amount demanded within such ten-day period, then the Arena Manager shall advance the Arena Manager's own monies to pay such amount within five (5) days after the expiration of such ten-day period. The Arena Manager shall be entitled to receive reimbursement for such advances (plus interest at the Interest Rate from the date of advance to the date of reimbursement, if the Arena Manager was not, on the date of the advance, an Affiliate of the Team), pursuant to Section 7.3.1(b).

If the Arena Manager fails to advance such amount within such five-day period, then:

(a) if the Arena Manager has delegated its duties and responsibilities to an Arena Sub-Manager pursuant to Section 4.1, and such Arena Sub-Manager has executed the guaranty described in Section 4.1 with respect to the period during which such Operating Expenses were incurred, the Arena Manager shall make a demand on the Arena Sub-Manager, pursuant to such guaranty, for the advance of sufficient monies to pay such Operating Expenses, accompanied by evidence reasonably satisfactory to the Arena Sub-Manager establishing the need for the amount demanded. Such demand shall provide that the Arena Sub-Manager advance the amount demanded and due and owing under such guaranty within five (5) days after the Arena Sub-Manager's receipt of the Arena Manager's demand. The Arena Manager shall promptly deposit in the Operating Account all advances received by the Arena Manager from the Arena Sub-Manager pursuant to such demand. The Arena Sub-Manager shall be entitled to receive reimbursement for such advances (plus interest at the Interest Rate from the date of

advance to the date of reimbursement, if the Arena Sub-Manager was not, on the date of the advance, an Affiliate of the Team), pursuant to Section 7.3.1(b); or

(b) if the Arena Manager has not delegated its duties and responsibilities to an Arena Sub-Manager pursuant to Section 4.1, or if the Arena Manager has delegated its duties and responsibilities to an Arena Sub-Manager but such Arena Sub-Manager has not executed the guaranty described in Section 4.1 with respect to the period during which such Operating Expenses were incurred, the Arena Manager shall make a demand on the Retail/Residential Developer and the Entertainment Developer for the advance of sufficient monies to pay such Operating Expenses, accompanied by evidence reasonably satisfactory to the Retail/Residential Developer and the Entertainment Developer establishing the need for the amount demanded. The Retail/Residential Developer and/or the Entertainment Developer shall be jointly and severally responsible for advancing the amount demanded and due and owing under the immediately preceding sentence within five (5) days after their respective receipt of the Arena Manager's demand. The Arena Manager shall promptly deposit in the Operating Account all advances received by the Arena Manager from the Retail/Residential Developer and/or the Entertainment Developer pursuant to such demand. The Retail/Residential Developer and/or the Entertainment Developer shall be entitled to receive reimbursement for such payments (plus interest at the Interest Rate from the date of advance to the date of reimbursement, if the party who made the advance was not, on the date of the advance, an Affiliate of the Team), pursuant to Section 7.3.1(b).

**7.5 Operating Reserve Account; Operating Reserve Contribution.** The Arena Manager shall, prior to the date of Substantial Completion, establish and thereafter maintain (for the benefit of the City and the Team, as their interests may appear) one or more trust accounts (requiring the signature of the Arena Manager and the City for withdrawals) at a federally-insured institution(s) having offices in the State of Arizona for the deposit and disbursement of Operating Reserve Contributions (the "**Operating Reserve Account**"), and shall make deposits to such account as required by Section 7.2(b) and this Section 7.5. All interest earned on the Operating Reserve Account shall be Operating Revenues. For purposes of this Agreement, the Operating Reserve Account shall be "fully funded" when the balance of the Operating Reserve Account equals One Million Dollars (\$1,000,000) (the "**Minimum Required Operating Reserve Account Balance**").

After the Arena Manager has made the demands required by Section 7.4, and the Team, the Arena Manager, the Arena Sub-Manager, the Retail/Residential Developer and the Entertainment Developer (as applicable) have failed to make the payments or advances as and when required by Section 7.4, the Arena Manager, after obtaining the consent of the City, shall have the right to cause withdrawals from the Operating Reserve Account to be made in the event that there are insufficient monies in the Operating Account to pay Operating Expenses as they become due in the ordinary course of business. Any such withdrawals shall be reimbursed to the Operating Reserve Account out of Operating Revenues pursuant to Section 7.2(b).

Not later than the date of Substantial Completion, the Team shall pay One Million Dollars (\$1,000,000) to the Arena Manager for deposit in the Operating Reserve Account. If, as of the end of any Fiscal Quarter, the balance in the Operating Reserve Account is less than the Minimum Required Operating Reserve Account Balance, the Arena Manager shall make a

demand on the Team for the payment of sufficient monies to cause the amount in the Operating Reserve Account to be not less than the Minimum Required Operating Reserve Account Balance. The Team shall pay the amount demanded and due and owing under the immediately preceding sentence within thirty (30) days after the Team's receipt of the Arena Manager's demand. The Arena Manager shall promptly deposit in the Operating Reserve Account all payments received by the Arena Manager from the Team pursuant to such demand.

7.6 Renewal and Replacement Account; Renewal and Replacement Contribution. The Arena Manager shall, prior to the Operations Start Date, establish and maintain (for the benefit of the City) one or more trust accounts (requiring the signature of the Arena Manager and the City for withdrawals) at a federally-insured institution(s) having offices in the State of Arizona for the deposit and disbursement of Renewal and Replacement Contributions (the "**Renewal and Replacement Account**"). Interest earned on the Renewal and Replacement Account shall not be Operating Revenues and shall be held in the Renewal and Replacement Account. Monies shall be disbursed from the Renewal and Replacement Account for Additions and Capital Repairs pursuant to the provisions of this Agreement, and 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.

The City shall, within fifteen (15) days after the City's receipt of the Additional Team Fee for a given Fiscal Quarter, deliver the Renewal and Replacement Contribution for such Fiscal Quarter to the Arena Manager for deposit into the Renewal and Replacement Account. The Arena Manager shall promptly deposit all amounts received from the City pursuant to this Section 7.6 into the Renewal and Replacement Account. The amounts received by the Arena Manager pursuant to this Section 7.6 shall not be Operating Revenues.

7.7 City Parking Fee Account. The Arena Manager shall, prior to the Operations Start Date, establish and maintain (for the benefit of the City) one or more trust accounts (requiring 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 Parking Fees (the "**City Parking Fee Account**"), and shall make deposits into the City Parking Fee Account as required by Section 8.1. Interest earned on amounts held in the City Parking Fee Account shall not be Operating Revenues and shall be the property of the City. The City may make withdrawals from the City Parking Fee Account at any time and from time to time in the City's sole discretion.

7.8 Arena Recovery Fee Account. The Arena Manager shall, prior to the Operations Start Date, establish and maintain (for the benefit of the City, the Team and the Arena Developer, as their interests may appear) one or more trust accounts at a federally-insured institution(s) having offices in the State of Arizona for the deposit and disbursement of Arena Recovery Fees (the "**Arena Recovery Fee Account**"), and shall make deposits into and disbursements from the Arena Recovery Fee Account as required by Section 8.2. Interest earned on amounts held in the Arena Recovery Fee Account shall not be Operating Revenues. The portion of such interest relating to Arena Recovery Fees payable to the Arena Developer shall be the property of and paid to the Arena Developer, the portion of such interest relating to Arena Recovery Fees payable to the Team shall be the property of and paid to the Team, and the

portion of such interest relating to Arena Recovery Fees payable to the City shall be the property of and paid to the City.

7.9 Distribution of Monies from Arena Accounts at End of Agreement Term. Monies in the Arena Accounts on the Agreement Termination Date shall, after all distributions required by this Agreement with respect to periods prior to the Agreement Termination Date have been made in the manner set forth in this Agreement, be distributed as follows:

(a) after payment of all Operating Expenses incurred prior to the Agreement Termination Date, the Arena Manager shall distribute to the Team all monies then remaining in the Operating Account and the Operating Reserve Account;

(b) after payment of all expenditures for Additions and Capital Repairs incurred prior to the Agreement Termination Date, the Arena Manager shall distribute to the City all monies then remaining in the Renewal and Replacement Account; and

(c) the Arena Manager shall distribute all monies then remaining in the Arena Recovery Fee Account in the manner provided by Section 8.2.3.

7.10 Restriction on Payment of Management Fees. Notwithstanding any provision to the contrary in this Agreement, the Arena Manager shall not pay itself any Management Fees that are otherwise due and payable unless, at the time of such payment. (i) there are sufficient monies in the Operating Account to pay all accrued and unpaid Operating Expenses; and (ii) the Arena Manager has not received from the City notice (and has not otherwise acquired knowledge) of the failure of the Team to pay any Additional Team Fee as and when due and payable, which failure has not been cured. The Arena Manager shall not pay any Management Fees from monies in any Arena Account other than the Operating Account.

## ARTICLE 8

### PARKING; ARENA RECOVERY FEES

#### 8.1 Parking.

8.1.1 Management and Operation. From and after the Operations Start Date, the Arena Manager shall take all actions necessary for the management and operation of the Parking Improvements, as an integral part of the Arena, in accordance with this Agreement and subject to the applicable Annual Budget, the Cross Easements and the Mixed-Use Development Agreement. The Arena Manager shall cause the Parking Improvements 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, subject to the Cross Easements. All costs and expenses incurred by the Arena Manager in managing and operating the Parking Improvements shall be Operating Expenses.

8.1.2 City Parking Fee; Amount. The Arena Manager shall take the following actions to collect monies for and to deposit into the City Parking Fee Account, a fee (the "City Parking Fee") in the amount described in this Section 8.1.2 for each Qualified Ticket:

(a) Hockey Events. The Arena Manager shall, with respect to each Hockey Event that is a Fee Activity, deposit into the City Parking Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts received by the Arena Manager from the Team pursuant to Section 9.3.4 with respect to such Hockey Event. The amounts so deposited by the Arena Manager for and on behalf of the City shall not be Operating Revenues.

(b) Team Revenue Events, City/Team Revenue Events and City Revenue Events. The Arena Manager shall, with respect to each Team Revenue Event, City/Team Revenue Event and City Revenue Event that is a Fee Activity, deposit into the City Parking Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts received by the Arena Manager from the Licensee under the License for such Event; provided, however, that the amount so deposited shall not exceed the aggregate City Parking Fee for such Event. The amount so deposited by the Arena Manager for and on behalf of the City shall not be Operating Revenues.

(c) City Sponsored Events and Community Events. The Arena Manager shall, with respect to each City Sponsored Event and Community Event that is a Fee Activity and for which the City has not waived the City Parking Fee, deposit into the City Parking Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts the City causes to be paid to the Arena Manager pursuant to Section 5.16 or 5.17 (as applicable) for the City Parking Fees for such Event. The amounts so deposited by the Arena Manager for and on behalf of the City shall not be Operating Revenues.

(d) Licenses for Other Fee Activities. The Arena Manager shall, with respect to each Fee Activity that is not an Event, deposit into the City Parking Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts received by the Arena Manager from the Licensee under the License for such Fee Activity; provided, however, that the amount so deposited shall not exceed the aggregate City Parking Fee for such Fee Activity. The amount so deposited by the Arena Manager for and on behalf of the City shall not be Operating Revenues.

To facilitate the verification of City Parking Fees and Arena Recovery Fees:

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

(ii) Each License for a Team Revenue Event, a City/Team Revenue Event or a City Revenue Event shall require that the retail price of each Ticket for such Event be stated on the face of such Ticket, and that admission to Suites and Premium Seats for each such Event be pursuant to a Ticket;

(iii) The City shall cause the retail price of each Ticket for a City Sponsored Event or Community Event to be stated on the face of such Ticket, and shall require that admission to Suites and Premium Seats for each City Sponsored Event and Community Event be pursuant to a Ticket; and

(e) 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.

The City Parking Fee shall be in the amount of Two Dollars and Forty-Five Cents (\$2.45) per Qualified Ticket with respect to each Fee Activity (for which the City has not waived the City Parking Fee) that occurs during the Fiscal Year in which the Operations Start Date occurs or the first full Fiscal Year thereafter, and shall be increased by Five Cents (\$0.05) for each and every Fiscal Year thereafter, beginning with the second full Fiscal Year after the Fiscal Year in which the Operations Start Date occurs (i.e., the City Parking Fee shall be \$2.45 during the Fiscal Year during which the Operations Start Date occurs and during the first full Fiscal Year thereafter, \$2.50 during the second full Fiscal Year after the Fiscal Year in which the Operations Start Date occurs, \$2.55 during the third full Fiscal Year after the Fiscal Year in which the Operations Start Date occurs, and so forth). The City Parking Fee shall not, however, apply to or be due and payable with respect to any Ticket other than a Qualified Ticket.

8.1.3 User Parking Charge; Deposit of City Parking Fee.

(a) Hockey Events. The Team shall have the sole and exclusive right, with respect to each Hockey Event, to determine whether there will be a User Parking Charge for such Hockey Event, and if there will be a User Parking Charge for such Hockey Event, the amount of such User Parking Charge.

(b) Team Revenue Events, City/Team Revenue Events, City Revenue Events. Each License for a Team Revenue Event, City/Team Revenue Event or City Revenue Event shall state whether there will be a User Parking Charge for such Event and, if there will be a User Parking Charge for such Event, the amount of such User Parking Charge.

(c) City Sponsored Events and Community Events. The City shall have the sole and exclusive right, with respect to each City Sponsored Event and each Community Event, to determine whether there will be a User Parking Charge for such Event and, if there will be a User Parking Charge for such Event, the amount of such User Parking Charge.

(d) Other Fee Activities. Each License for a Fee Activity that is not an Event shall state whether there will be a User Parking Charge for such Fee Activity and, if there will be a User Parking Charge for such Fee Activity, the amount of such User Parking Charge.

8.1.4 Rules and Regulations. The Arena Manager shall have the rights to, from time to time, establish and enforce reasonable rules and regulations, consistent with this Agreement and Applicable Law and subject to the Mixed-Use Development Agreement and the Cross Easements.

8.1.5 Designation of Reserved Parking Areas. The Arena Manager shall, prior to the Operations Start Date, designate, and may from time to time revise the designation of, the following:

(a) A reasonable number of parking spaces (the “**Team Parking Spaces**”) in reasonably convenient locations (to be approved by the Team) on or in the Parking

Improvements, for the exclusive use by the Team, without charge, at all times during the Agreement Term;

(b) A reasonable number of parking spaces in reasonably convenient locations (to be approved by the Arena Manager) on or in the Parking Improvements, for the exclusive use by the Arena Manager (and any Arena Sub-Manager), without charge, at all times during the Agreement Term.

(c) At the direction of the Team, at least two (2) parking spaces for each Suite, in reasonably convenient locations (to be approved by the Team), on or in the Parking Improvements, for use by the licensee of such Suite (including use by such licensee's guests and invitees) during Events;

(d) At the direction of the Team, not to exceed one (1) parking space for each two (2) Premium Seats in reasonably convenient locations (to be approved by the Team), on or in the Parking Improvements for use by licensees under Premium Seat Agreements during Events;

(e) At the direction of the Team, not to exceed one (1) parking space for each two (2) Home Game season ticket seats in reasonably convenient locations (to be approved by the Team), on or in the Parking Improvements, for use by Home Game season ticket holders during Home Games; and

(f) A reasonable number of parking spaces in reasonably convenient locations (to be approved by the Team), on or in the Parking Improvements for use during Events, without charge, by the media.

## 8.2 Arena Recovery Fees.

8.2.1 Base Recovery Fee; Amount. The Arena Manager shall take the following actions to collect monies for and to deposit into the Arena Recovery Fee Account. a fee (the "**Base Recovery Fee**") in the amount described in this Section 8.2.1 for each Qualified Ticket.

(a) Hockey Events. The Arena Manager shall, with respect to each Hockey Event that is a Fee Activity, deposit into the Arena Recovery Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts received by the Arena Manager from the Team pursuant to Section 9.3.5 with respect to such Hockey Event. The amounts so deposited by the Arena Manager for and on behalf of the City, the Arena Developer and the Team (as their interests may appear) shall not be Operating Revenues.

(b) Team Revenue Events, City/Team Revenue Events and City Revenue Events. The Arena Manager shall, with respect to each Team Revenue Event, City/Team Revenue Event and City Revenue Event that is a Fee Activity, deposit into the Arena Recovery Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts received by the Arena Manager from the Licensee under the License for such Event that remain after the Arena Manager's deposit of City Parking Fees pursuant to Section 8.1.2; provided, however, that the amount so deposited shall not exceed (i) the aggregate Base Recovery Fees for such Event if (x) there is no Supplemental Recovery Fee, or (y) there is a



Supplemental Recovery Fee but such remaining amounts are sufficient to pay both the Base Recovery Fees and the Supplemental Recovery Fees for such Event, or (ii) one-half (½) of such remaining amounts if there is a Supplemental Recovery Fee and such remaining amounts are not sufficient to pay both the Base Recovery Fees and the Supplemental Recovery Fees for such Event. The amounts so deposited by the Arena Manager for and on behalf of the City, the Arena Developer and the Team (as their interests may appear) shall not be Operating Revenues.

(c) City Sponsored Events and Community Events. The Arena Manager shall, with respect to each City Sponsored Event and Community Event that is a Fee Activity (for which the City has not waived the Base Recovery Fee pursuant to Section 5.16 or 5.17, as applicable), deposit into the Arena Recovery Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts the City causes to be paid to the Arena Manager pursuant to Section 5.16 or 5.17 (as applicable) for the Base Recovery Fees for such Event. The amounts so deposited by the Arena Manager for and on behalf of the City, the Arena Developer and the Team (as their interests may appear) shall not be Operating Revenues.

(d) Licenses for Other Fee Activities. The Arena Manager shall, with respect to each Fee Activity that is not an Event, deposit into the Arena Recovery Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts received by the Arena Manager from the Licensee under the License for such Fee Activity that remain after the Arena Manager's deposit of City Parking Fees pursuant to Section 8.1.2; provided, however, that the amount so deposited shall not exceed (i) the aggregate Base Recovery Fees for such Fee Activity if (x) there is no Supplemental Recovery Fee, or (y) there is a Supplemental Recovery Fee but such remaining amounts are sufficient to pay both the Base Recovery Fees and the Supplemental Recovery Fees for such Fee Activity, or (ii) one-half (½) of such remaining amounts if there is a Supplemental Recovery Fee and such remaining amounts are not sufficient to pay both the Base Recovery Fees and the Supplemental Recovery Fees for such Fee Activity. The amounts so deposited by the Arena Manager for and on behalf of the City, the Arena Developer and the Team (as their interests may appear) shall not be Operating Revenues.

The Base Recovery Fee shall be in the following amounts:

(i) for the first sixty (60) months after the Operations Start Date, \$1.00 per Qualified Ticket;

(ii) for the 61<sup>st</sup> through 120<sup>th</sup> months after the Operations Start Date, \$1.50 per Qualified Ticket; and

(e) commencing with the 121<sup>st</sup> month after the Operations Start Date and continuing for each month thereafter until the last month of the 30<sup>th</sup> Full Hockey Season after the Home Game Obligation Effective Date, \$2.00 per Qualified Ticket.

Notwithstanding the foregoing, the City and the Team may by joint agreement, from time to time prior to the 121<sup>st</sup> month after the Operations Start Date, increase the amount of the Base Recovery Fee; provided, however, that the Base Recovery Fee shall not at any time exceed \$2.00 per Qualified Ticket, and the sum of the Base Recovery Fee and the Supplemental Recovery Fee (if any) shall not at any time exceed \$2.00 per Qualified Ticket. Accordingly, if there is a

Supplemental Recovery Fee, the Base Recovery Fee shall be \$1.00 per Qualified Ticket notwithstanding the schedule of Base Recovery Fees set forth above.

The Base Recovery Fee shall not, however, apply to or be due and payable with respect to any Ticket other than a Qualified Ticket.

8.2.2 Base User Recovery Charge; Deposit of Base User Recovery Fee.

(a) Hockey Events. The Team shall have the sole and exclusive right, with respect to each Hockey Event, to determine whether there will be a Base User Recovery Charge for such Hockey Event and, if there will be a Base User Recovery Charge for such Hockey Event, the amount of such Base User Recovery Charge.

(b) Team Revenue Events, City/Team Revenue Events and City Revenue Events. Each License for a Team Revenue Event, City/Team Revenue Event and City Revenue Event shall state whether there will be a Base User Recovery Charge for such Event and, if there will be a Base User Recovery Charge for such Event, the amount of such Base User Recovery Charge.

(c) City Sponsored Events and Community Events. The City shall have the sole and exclusive right, with respect to each City Sponsored Event and each Community Event, to determine whether there will be a Base User Recovery Charge for each such Event and, if there will be a Base User Recovery Charge for each such Event, the amount of such Base User Recovery Charge.

(d) Other Fee Activities. Each License for a Fee Activity that is not an Event shall state whether there will be a Base User Recovery Charge for such Fee Activity and, if there will be a Base User Recovery Charge for such Fee Activity, the amount of such Base User Recovery Charge.

8.2.3 Payment of Base Recovery Fees. The Arena Manager shall cause the Base Recovery Fees to be distributed from the Arena Recovery Fee Account to the Arena Developer, the Team and the City (as applicable), within forty-five (45) days after the end of the Fiscal Quarter during which such Base Recovery Fees were deposited into the Arena Recovery Fee Account, as follows:

(a) First, to the Arena Developer, until the earlier of (1) the date on which the Arena Developer has received from such distributions (i) reimbursement of the portion of the Developer's Deposits not disbursed to the Arena Developer pursuant to Section 9.8 of the Arena Development Agreement until such portion is fully reimbursed; and (ii) payment or reimbursement of the Development Fee, but not to exceed \$5,400,000; or (2) the date that is the 13<sup>th</sup> annual anniversary of the Operation Start Date;

(b) Second, to the Team until the earlier of (1) the date on which the Team has received from such distributions reimbursement of the expenses paid or incurred by the Team pursuant to the Pre-Opening Budget, but not to exceed \$2,500,000; or (2) the date that is the 13<sup>th</sup> annual anniversary of the Operation Start Date; and

(c) Thereafter, to the City until the last month of the 30<sup>th</sup> Full Hockey Season after the Home Game Obligation Effective Date.

8.2.4 Supplemental Recovery Fee; Amount. If, as of the Operations Start Date, (i) the Arena Developer has failed to make the Developer's Deposits as and when required by the Arena Development Agreement and, as a result of such failure, the City has expended monies in excess of the City Commitment Amount to pay costs of designing and constructing the Arena Development Project; and/or (ii) if the Team (or the Arena Manager or the Arena Sub-Manager) has failed to pay pre-opening expenses incurred pursuant to the Pre-Opening Budget, and, as a result of such failure, the City has expended monies in excess of the City Commitment Amount to pay pre-opening expenses provided for in the Pre-Opening Budget, then the Arena Manager shall take the following actions to collect monies for and to deposit into the Arena Recovery Fee Account, a fee (the "**Supplemental Recovery Fee**") in the amount of \$1.00 per Qualified Ticket, as follows:

(a) Hockey Events. The Arena Manager shall, with respect to each Hockey Event that is a Fee Activity, deposit into the Arena Recovery Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts received by the Arena Manager from the Team pursuant to Section 9.3.6 with respect to such Hockey Event. The amounts so deposited by the Arena Manager for and on behalf of the City shall not be Operating Revenues.

(b) Team Revenue Events, City/Team Revenue Events and City Revenue Events. The Arena Manager shall, with respect to each Team Revenue Event, City/Team Revenue Event and City Revenue Event that is a Fee Activity, deposit into the Arena Recovery Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts received by the Arena Manager from the Licensee under the License for such Event that remain after the Arena Manager's deposit of City Parking Fees pursuant to Section 8.1.2; provided, however, that the amount so deposited shall not exceed (i) the aggregate Supplemental Recovery Fees for such Event, if such remaining amounts are sufficient to pay both the Base Recovery Fees and the Supplemental Recovery Fees for such Event, or (ii) one-half (½) of such remaining amounts, if such remaining amounts are not sufficient to pay both the Base Recovery Fees and the Supplemental Recovery Fees for such Event. The amount so deposited by the Arena Manager for and on behalf of the City shall not be Operating Revenues.

(c) City Sponsored Events and Community Events. The Arena Manager shall, with respect to each City Sponsored Event and Community Event that is a Fee Activity (for which the City has not waived the Supplemental Recovery Fee pursuant to Section 5.16 or 5.17, as applicable), deposit into the Arena Recovery Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts the City causes to be paid to the Arena Manager pursuant to Section 5.16 or 5.17 (as applicable) for the Supplemental Recovery Fees for such Event. The amounts so deposited by the Arena Manager for and on behalf of the City shall not be Operating Revenues.

(d) Licenses for Other Fee Activities. The Arena Manager shall, with respect to each Fee Activity that is not an Event, deposit into the Arena Recovery Fee Account, within one (1) Business Day after the Arena Manager's receipt thereof, all amounts received by

the Arena Manager from the Licensee under the License for such Fee Activity that remain after the Arena Manager's deposit of City Parking Fees pursuant to Section 8.1.2; provided, however, that the amount so deposited shall not exceed (i) the aggregate Supplemental Recovery Fees for such Fee Activity, if such remaining amounts are sufficient to pay both the Base Recovery Fees and the Supplemental Recovery Fees for such Fee Activity, or (ii) one-half (½) of such remaining amounts, if such remaining amounts are not sufficient to pay both the Base Recovery Fees and the Supplemental Recovery Fees for such Fee Activity. The amount so deposited by the Arena Manager for and on behalf of the City shall not be Operating Revenues.

#### 8.2.5 Collection of Supplemental Recovery Fee from Qualified Ticket Holders.

(a) Hockey Events. The Team shall have the sole and exclusive right, with respect to each Hockey Event, to determine whether there will be a Supplemental User Recovery Charge for such Hockey Event and, if there will be a Supplemental User Recovery Charge for such Hockey Event, the amount of such Supplemental User Recovery Charge.

(b) Team Revenue Events, City/Team Revenue Events and City Revenue Events. Each License for a Team Revenue Event, City/Team Revenue Event and City Revenue Event shall state whether there will be a Supplemental User Recovery Charge for such Event and, if there will be a Supplemental User Recovery Charge for such Event, the amount of such Supplemental User Recovery Charge.

(c) City Sponsored Events and Community Events. The City shall have the sole and exclusive right, with respect to each City Sponsored Event and each Community Event, to determine whether there will be a Supplemental User Recovery Charge for each such Event and, if there will be a Supplemental User Recovery Charge for each such Event, the amount of such Supplemental User Recovery Charge.

(d) Other Fee Activities. Each License for a Fee Activity that is not an Event shall state whether there will be a Supplemental User Recovery Charge for such Fee Activity and, if there will be a Supplemental User Recovery Charge for such Fee Activity, the amount of such Supplemental User Recovery Charge.

8.2.6 Period of Supplemental Recovery Fee. If the circumstances described in clauses (i) and/or (ii) of the first paragraph of Section 8.2.4 exist, the Supplemental Recovery Fee shall be effective until the last month of the 30<sup>th</sup> Full Hockey Season after the Home Game Obligation Effective Date.

### ARTICLE 9

#### GRANT OF USE RIGHTS AND LEASEHOLD INTEREST; TEAM FEES AND OBLIGATIONS

9.1 Grant of Use Rights. In addition to the rights granted by the City to the Team in the other provisions of this Agreement, the City hereby irrevocably grants to the Team, from and after the Operations Start Date to and including the Agreement Termination Date, the exclusive right 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. The Team shall have the exclusive right 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. “**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 activities; and
- (c) The sale and distribution of Hockey Tickets.

Subject to the rights of the Team under this Agreement, the Arena Manager shall retain possession and control of all portions of the Hockey Event Spaces. 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.

9.2 Lease of Exclusive Team Spaces. The City and the Team shall, within ten (10) days after the Operations Start Date, confirm in writing the location of the Exclusive Team Spaces, as actually constructed.

In addition to the rights granted by the City to the Team in the other provisions of this Agreement, (i) the City hereby leases the Exclusive Team Spaces to the Team, and the Team leases the Exclusive Team Spaces from the City subject to the Permitted Exceptions, and (ii) the City hereby irrevocably grants to the Team the non-exclusive right to use the common areas at the Arena to be mutually agreed upon by the City and the Team within ten (10) days after the Operations Start Date for reasonably convenient access to and from the Exclusive Team Spaces, all from and after the Operations Start Date to and including the Agreement Termination Date, and in accordance with and subject to the terms and conditions set forth in this Agreement. The Team shall pay all expenses of furnishing the Exclusive Team Spaces.

The Team shall have the right to use the Exclusive Team Spaces for any lawful purpose, consistent with and subject to the provisions of this Agreement.

The Arena Manager 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 (3) days’ notice to the Team, except in the case of an Emergency, in which event the Arena Manager may enter the Team Spaces upon reasonable notice. In exercising its right of entry to the Exclusive Team Spaces, the Arena Manager shall not interfere in any material respect with the Team’s operations or activities.

9.3 Team Payments.

9.3.1 Base Team Fee and Additional Team Fee.

(a) Base Team Fee. As part of the consideration for the rights granted to the Team under this Agreement, the Team shall pay to the City, the following amounts (the “**Base Team Fee**”):

(i) on the first day of the first month after the Home Game Obligation Effective Date (the “**Fee Commencement Date**”) and on the first day of each month thereafter until (but not including) the 20<sup>th</sup> annual anniversary of the Fee Commencement Date, the amount of \$42,708, plus any transaction privilege and excise taxes that the City is required, by Applicable Law, to pay with respect to the City’s receipt of such amount;

(ii) on the 20<sup>th</sup> annual anniversary of the Fee Commencement Date and on the first day of each month thereafter until (but not including) the 25<sup>th</sup> annual anniversary of the Fee Commencement Date, the amount of \$91,667, plus any transaction privilege and excise taxes that the City is required, by Applicable Law, to pay with respect to the City’s receipt of such amount;

(iii) on the 25<sup>th</sup> annual anniversary of the Fee Commencement Date and on the first day of each month thereafter until the Agreement Termination Date as originally scheduled pursuant to Section 3.1, the amount of \$95,833, plus any transaction privilege and excise taxes that the City is required, by Applicable Law, to pay with respect to the City’s receipt of such amount;

(iv) if the Team exercises its right under Section 3.2.1 to extend the Agreement Term for the First Renewal Term, on the first day of each month during the First Renewal Term, the amount of \$100,000, plus any transaction privilege and excise taxes that the City is required, by Applicable Law, to pay with respect to the City’s receipt of such amount;

(v) if the Agreement Term is extended for the Second Renewal Term pursuant to Section 3.2.2, on the first day of each month during the Second Renewal Term, the amount to be set forth in the amendment to this Agreement to be entered into by the parties hereto pursuant to Section 3.2.2, plus any transaction privilege and excise taxes that the City is required, by Applicable Law, to pay with respect to the City’s receipt of such amount; and

(vi) if the Agreement Term is extended for the Third Renewal Term pursuant to Section 3.2.3, on the first day of each month during the Third Renewal Term, the amount to be set forth in the amendment to this Agreement to be entered into by the parties hereto pursuant to Section 3.2.3, plus any transaction privilege and excise taxes that the City is required, by Applicable Law, to pay with respect to the City’s receipt of such amount.

(b) Additional Team Fee. As part of the consideration for the rights granted to the Team under this Agreement, the Team shall pay to the City, within ten (10) days after the end of each Fiscal Quarter during the Agreement Term (beginning with the first full Fiscal Quarter after the Operations Start Date), an amount equal to the Renewal and Replacement Contribution for such Fiscal Quarter, plus any transaction privilege and excise taxes that the City is required, by Applicable Law, to pay with respect to the City’s receipt of such amount (the “**Additional Team Fee**”).

9.3.2 Game Payment. As part of the consideration for the rights granted to the Team under this Agreement, the Team shall pay to the Arena Manager, on the first day of each month during the Agreement Term, the amount determined by multiplying the Game Payment by the sum of the number of Home Games and All-Star Games (if any) in the immediately

preceding calendar month. Each such payment shall be Operating Revenues and shall be deposited by the Arena Manager in the Operating Account. The parties hereto acknowledge that the Team's payment of the Game Payment is intended to and shall be in lieu of any payment or reimbursement by the Team of Operating Expenses incurred in connection with Home Games and All-Star Games (if any), and that the amount of the Game Payment represents the parties' reasonable estimate of the average amount of such Operating Expenses likely to be incurred with respect to a Home Game or All-Star Game.

9.3.3 Arena Manager Employee Theft Payment. If, at any time while the Team is an Affiliate of the Arena Manager, an officer or employee of the Arena Manager misappropriates monies from any of the Arena Accounts, and the proceeds from any fidelity bond or insurance that covers such misappropriation are less than the full amount of the misappropriated monies, then the Team shall pay to the Arena Manager for deposit into the appropriate Arena Account the amount by which such misappropriated monies exceed such proceeds.

9.3.4 City Parking Fee Payment. The Team shall pay to the Arena Manager, within two (2) Business Days after a given Hockey Event, for deposit into the City Parking Fee Account pursuant to Section 8.1.2, the aggregate amount of the City Parking Fees due and payable for such Hockey Event.

9.3.5 Base Recovery Fee Payment. The Team shall pay to the Arena Manager, within two (2) Business Days after a given Hockey Event, for deposit into the Arena Recovery Fee Account pursuant to Section 8.2.3, the aggregate amount of the Base Recovery Fees due and payable for such Hockey Event.

9.3.6 Supplemental Recovery Fee Payment. The Team shall pay to the Arena Manager, within two (2) Business Days after a given Hockey Event, for deposit into the Arena Recovery Fee Account pursuant to Section 8.2.4, the aggregate amount of the Supplemental Recovery Fees (if any) due and payable for such Hockey Event.

9.4 Taxes on Team's Interest. The Team shall pay prior to delinquency any government property lease excise taxes and similar taxes that may be lawfully imposed on the leasehold interest of the Team under this Agreement.

9.5 Team Use Covenant. Except as expressly provided otherwise in this Agreement and subject to Section 9.6, the Team covenants and agrees with the City that the Team shall play all Home Games at the Arena Facility and shall not play any Home Games at any other location, from and after the Home Game Obligation Effective Date and continuing until (i) the last day of the 30<sup>th</sup> Full Hockey Season after the Home Game Obligation Effective Date if the Team does not exercise its rights under Section 3.2 to extend the Agreement Term for the First Renewal Term; (ii) the last day of the last Hockey Season in the First Renewal Term, if the Team exercises its rights under Section 3.2 to extend the Agreement Term for the First Renewal Term, but does not exercise its rights under Section 3.2 to extend the Agreement Term for the Second Renewal Term; (iii) the last day of the last Hockey Season in the Second Renewal Term, if the Team exercises its rights under Section 3.2 to extend the Agreement Term for both the First Renewal Term and the Second Renewal Term, but does not exercise its rights under Section 3.2

to extend the Agreement Term for the Third Renewal Term; or (iv) the last day of the last Hockey Season in the Third Renewal Term, if the Team exercises its rights under Section 3.2 to extend the Agreement Term for the First Renewal Term, the Second Renewal Term and the Third Renewal Term.

The failure by the Team to observe or perform any of the Team's obligations under this Section 9.5 shall be a "Team Use Covenant Default".

Each of the following shall be deemed to be a Team Use Covenant Default:

(a) except as permitted by the provisions of this Agreement, the Team plays or takes any action to play any Home Game at any location other than the Arena Facility during the Agreement Term (as may be extended pursuant to Section 3.2);

(b) except as permitted by the provisions of this Agreement, the Team enters into any contract or agreement which purports to obligate the Team to play any Home Game at any location other than the Arena Facility during the Agreement Term (as may be extended pursuant to Section 3.2);

(c) except as permitted by the provisions of this Agreement, the Team notifies the NHL of the Team's intent, or requests the NHL's permission, to play any Home Game at any location other than the Arena Facility during the Agreement Term (as may be extended pursuant to Section 3.2); or

(d) except as permitted by the provisions of this Agreement, the Team takes any action that constitutes an anticipatory breach of this Section 9.5.

9.6 Suspension of Team Use Covenant. The covenant of the Team to play Home Games at the Arena Facility set forth in Section 9.5 shall be suspended (and the Team shall have the right to play Home Games in any other location) pursuant to Sections 11.4 and 12.4, and during any other time during which Force Majeure prevents or materially interferes with the playing of Home Games at the Arena Facility and/or prevents or materially interferes with the attendance by the public at such Home Games.

If the Team claims that the obligation of the Team to play Home Games at the Arena Facility is suspended under this Section 9.6, the Team shall give notice of such claim to the City within fifteen (15) days after the date on which the Team claims the suspension period commenced. The Team may suspend such obligations immediately upon giving such notice. Any dispute regarding any claim that the Team is entitled to such a suspension, or the effect of such a suspension, shall be submitted to Arbitration.

If, prior to the last day of the 30<sup>th</sup> Full Hockey Season after the Home Game Obligation Effective Date, the Team's covenant to play Home Games at the Arena Facility is suspended pursuant to this Section 9.6, and, as a result, the Hockey Season during which such suspension occurs is not a Full Hockey Season, the Agreement Term shall, without action of any party hereto, be extended for a period sufficient to cause the scheduled Agreement Termination Date to be the date that is ninetieth (90<sup>th</sup>) day after the last day of the 30<sup>th</sup> Full Hockey Season after the Home Game Obligation Effective Date.



9.7 Team Equipment. The Team may, at the Team's expense and risk, place such Team Equipment as the Team 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 has the right to use the Hockey Event Spaces pursuant to Section 9.1. The Team Equipment shall be and remain the property of the Team and may be removed by the Team at any time. The Team shall be responsible for obtaining, at the Team's expense, whatever insurance covering the Team Equipment the Team deems appropriate.

The City hereby disclaims and waives (to the maximum extent permitted by law) any right to claim a landlord's or any similar lien (including any lien under A.R.S. §§33-361 and 33-362 and any successor provisions) on or with respect to such Team Equipment and other personal property of the Team as may from time to time be placed at the Arena.

9.8 Quiet Enjoyment. So long as the Team performs all of the Team's obligations under this Agreement, the City shall do nothing (other than the acts permitted or required by this Agreement) that will prevent the Team or its licensees from peaceably and quietly enjoying, using, and occupying the Arena during the Agreement Term in the manner described in this Agreement, and shall defend the Team's quiet enjoyment, use and occupancy of the Arena 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.

9.9 City Access. The City, through appropriate designees, reserves the right to enter the Exclusive Team Spaces, upon reasonable advance notice to the Team and during the Team's regular business hours, to exercise the City's governmental powers and the City's rights under this Agreement; provided, however, that in exercising the City's rights under this Section 9.9, (i) the City shall not unreasonably interfere with the operations of the Team; and (ii) the rights granted to the City hereunder shall not be deemed to either waive or relinquish in any manner any right of the Team under the United States or Arizona Constitutions, or limit in any way the Team's rights to contest the City's actions or findings with respect to any such exercise of the City's governmental powers.

The City, through appropriate designees, reserves the right to enter the portions of the Arena (other than the Exclusive Team Spaces), upon reasonable advance notice to the Team and the Arena Manager and during the Arena Manager's regular business hours or other hours when the Arena Manager is open for business (other than during Events), to exercise the City's governmental powers and the City's rights under this Agreement; provided, however, that in exercising the City's rights under this Section 9.9, (i) the City shall not unreasonably interfere with the operations of the Arena; and (ii) the rights granted to the City hereunder shall not be deemed to either waive or relinquish in any manner any right under the United States or Arizona Constitutions of the Arena Manager, the Team or any Person to whom the Team has granted rights under this Agreement, or limit in any way the Arena Manager's, the Team's or any such Person's rights to contest the City's actions or findings with respect to any such exercise of the City's governmental powers.

9.10 Taxation of Transactions and Activities at Arena. The parties hereto acknowledge and agree that transactions and activities at the Arena (i) are, and shall continue during the Agreement 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. The parties further acknowledge and agree that if (a) the City imposes any tax on transactions and activities at the Arena other than a tax described in the preceding sentence, and (b) the rate of such a tax on transactions and activities at the Arena exceeds the greater of (1) the rate of such a tax applicable to the America West Arena in Phoenix, Arizona, as of the Agreement Effective Date, or (2) the rate of such a tax applicable to the America West Arena as of the date of determination, then the City shall pay to the Team (with respect to Hockey Events) and to the Arena Manager as Operating Revenues (with respect to other Events), within thirty (30) days after the end of the calendar month during which such transactions and activities occur, an amount calculated as follows:

(x) the rate of such a tax on transactions and activities at the Arena,

minus

(y) the greater of (1) the rate of such a tax applicable to the America West Arena as of the Agreement Effective Date, or (2) the rate of such a tax applicable to the America West Arena as of the date of determination,

with the result of the subtraction of (y) from (x) being multiplied by

(z) the taxable revenues generated by transactions and activities subject to such a tax (if the tax rate is a percentage) or the number of such transactions or activities subject to such a tax (if the tax rate is a stated amount per transaction).

## ARTICLE 10

### INSURANCE

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

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

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

10.4 Waiver of Recovery. Notwithstanding any provision to the contrary in this Agreement, including the provisions of Article 15, no party hereto (a "**Released Party**") shall be liable to any other party hereto, or to any insurance company (by way of subrogation or otherwise) insuring any other party hereto, for any Claim or Loss, even though such Claim or Loss might have been occasioned by the negligence of the Released Party, 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.

#### 10.5 Failure to Maintain Insurance.

10.5.1 Arena Manager Failure. If the Arena Manager fails or refuses to procure or maintain the insurance required by this Article 10, after notice by the City, the Team, the Retail/Residential Developer or the Entertainment Developer to the Arena Manager of such failure, each of the City, the Team, the Retail/Residential Developer and the Entertainment Developer shall have the right, at its election and at any time prior to its receipt from any other party hereto of evidence of the procurement of such insurance, to procure and maintain such insurance. In such event, any reasonable premium paid by the City, the Team, the Retail/Residential Developer or the Entertainment Developer (as applicable), 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, the Team, the Retail/Residential Developer or the Entertainment Developer (as applicable) as an Operating Expense, on the first day of the month following the date on which the City, the Team, the Retail/Residential Developer or the Entertainment Developer (as applicable) provides to the Arena Manager written evidence of payment of such premium.

10.5.2 City Failure. If the City fails or refuses to procure or maintain the insurance required by this Article 10, after notice by the Arena Manager, the Team, the Retail/Residential Developer or the Entertainment Developer to the City of such failure, each of the Arena Manager, the Team, the Retail/Residential Developer and the Entertainment Developer shall have the right, at its election and at any time prior to its receipt from any other party hereto of evidence of the procurement of such insurance, to procure and maintain such insurance, in which event, any reasonable premium paid by the Arena Manager, the Team, the Retail/Residential Developer or the Entertainment Developer (as applicable), 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 submit an invoice to the City for reimbursement of such payment by the City to the Arena Manager; (ii) the City shall make such reimbursement to the Arena Manager; and (iii) the Arena Manager shall deposit such reimbursement in the Operating Account; or

(b) if paid by the Team, the Retail/Residential Developer or the Entertainment Developer, be reimbursed by the Arena Manager to the Team, the Retail/Residential Developer or the Entertainment Developer (as applicable) as an Operating Expense on demand by the Team, the Retail/Residential Developer or the Entertainment Developer (as applicable) accompanied by evidence of payment of such premium, after which (i) the Arena Manager shall submit an invoice to the City for reimbursement of such payment by the City to the Arena Manager; (ii) the City shall make such reimbursement to Arena Manager; and (iii) the Arena Manager shall deposit such reimbursement in the Operating Account.

10.5.3 Team Failure. If the Team fails or refuses to procure or maintain the insurance required by this Article 10, after notice by the Arena Manager, the City, the Retail/Residential Developer or the Entertainment Developer to the Team of such failure, each of

the Arena Manager, the City, the Retail/Residential Developer and the Entertainment Developer shall have the right, at its election and at any time prior to its receipt from any other party hereto of evidence of the procurement of such insurance, to procure and maintain such insurance, in which event, any reasonable premium paid by the Arena Manager, the City, the Retail/Residential Developer or the Entertainment Developer (as applicable), 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 for reimbursement of such payment by the Team to the Arena Manager; (ii) the Team shall make such reimbursement to the Arena Manager; and (iii) the Arena Manager shall deposit such reimbursement in the Operating Account; or

(b) if paid by the City, the Retail/Residential Developer or the Entertainment Developer, be reimbursed by the Arena Manager to the City, the Retail/Residential Developer or the Entertainment Developer (as applicable) as an Operating Expense on demand by the City, the Retail/Residential Developer or the Entertainment Developer (as applicable) accompanied by evidence of payment of such premium, after which (i) the Arena Manager shall make a demand on the Team for reimbursement of such payment by the Team to the Arena Manager; (ii) the Team shall make such reimbursement to the Arena Manager; and (iii) the Arena Manager shall deposit such reimbursement in the Operating Account.

10.6 Notice. Any party procuring insurance required by this Article 10 pursuant to Section 10.5 after any party hereto fails or refuses to do so shall promptly give notice of such procurement to each other party hereto.

10.7 Provisions. 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. 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. 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 thirty (30) days prior thereto. Within thirty (30) days before the Operations Start 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 pursuant to this Article 10, and consenting to the waiver of subrogation as herein provided.

10.8 Periodic Review and Adjustment. The parties agree that the insurance required by this Article 10 shall be subject to adjustment from time to time at the reasonable request of the Arena Manager, the Team, the Retail/Residential Developer, the Entertainment Developer 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. Further, regardless of whether any such requests have been made, the parties shall in good faith review the insurance coverages required by this Article 10 no less frequently than every three (3) years during the Agreement Term, with such reviews to be conducted concurrently with the Annual Budget process described in Section 5.2.

## ARTICLE 11

### DAMAGE OR DESTRUCTION

11.1 Adequately Insured Damage. If, on or after the Operations Start Date, any portion of the Arena is damaged or destroyed, and such damage or destruction is covered by a casualty insurance policy maintained hereunder, all insurance proceeds paid under such casualty insurance policy (the “**Insurance Proceeds**”) shall be deposited into the Renewal and Replacement Account. If the Insurance Proceeds are, in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the Team and the City), sufficient to restore the damaged or destroyed portion of the Arena (i) to a condition as nearly the same as the condition of the Arena immediately prior to such damage or destruction as is reasonably possible; and (ii) in compliance with all applicable NHL requirements and Applicable Law (with the requirements stated in clauses (i) and (ii) being collectively, the “**Casualty Restoration Standard**”), such Insurance Proceeds shall, subject to Section 11.3, 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 shall continue in full force and effect, subject to Section 11.4.

11.2 Insurance Deficiency and Termination. If, on or after the Operations Start Date, any portion of the Arena 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 (which estimation is reasonably approved by the Team and the City), to pay the costs of restoration of such damage or destruction in accordance with the Casualty Restoration Standard, and if there are monies in the Renewal and Replacement Account (other than the Insurance Proceeds deposited therein pursuant to Section 11.1), in an amount sufficient, in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the Team and the City), to pay the costs of such restoration that exceed the Insurance Proceeds, the Insurance Proceeds and such monies shall, subject to Section 11.3, 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 shall continue in full force and effect, subject to Section 11.4.

If the monies in the Renewal and Replacement Account (after the deposit of the Insurance Proceeds therein) are insufficient to pay the costs of such restoration, then, within ninety (90) days after the date such damage or destruction occurred (the “**Destruction Date**”), the Arena Manager shall give the other parties hereto notice of the amount of the deficiency (the “**Casualty Deficiency**”), and the Team shall, within thirty (30) days after the Team’s receipt of the Arena Manager’s notice, give notice to the other parties hereto that either (i) the Team will provide,

within thirty (30) days after the Team's receipt of the Arena Manager's notice, additional monies to the Arena Manager in the amount of the Casualty Deficiency, or (ii) the Team intends to terminate this Agreement.

If the Team gives notice that the Team will provide the amount of the Casualty Deficiency, the Team shall provide such amount to the Arena Manager within such thirty-day period. The Arena Manager shall, upon receipt of the amount of the Casualty Deficiency, deposit such amount in the Renewal and Replacement Account, and monies shall, subject to Section 11.3, 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 shall continue in full force and effect, subject to the provisions of Section 11.4. The Team shall be reimbursed for the amounts provided to the Arena Manager by the Team pursuant to this Section 11.2 (plus interest at the Interest Rate from the date of provision to the date of reimbursement) from the Renewal and Replacement Account, as monies become available from such account.

If the Team gives notice of the Team's intent to so terminate this Agreement, the City shall have the right (within thirty (30) days after the City's receipt of the Team's notice) to give notice to the other parties hereto of the City's intent to pay the amount of the Casualty Deficiency, in which event, the City shall deliver, within thirty (30) days after the date of the City's notice, the amount of the Casualty Deficiency to the Arena Manager for deposit into the Renewal and Replacement Account. Upon such deposit, the Team's notice of the Team's intent to terminate shall be deemed rescinded and void, and monies in the Renewal and Replacement Account shall, subject to Section 11.3, 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 shall continue in full force and effect, subject to the provisions of Section 11.4.

If the City does not give such notice of the City's intent to pay the Casualty Deficiency amount within thirty (30) days after the City's receipt of the Team's notice of the Team'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 Team shall, within fifteen (15) days after the expiration of the applicable thirty-day period, give notice to the other parties hereto that either (i) the Team will provide, within thirty (30) days thereafter, additional monies to the Arena Manager in the amount of the Casualty Deficiency, or (ii) this Agreement shall be terminated.

If the Team gives notice that the Team will provide the amount of the Casualty Deficiency, the Team shall provide such amount to the Arena Manager within such thirty-day period. The Arena Manager shall, upon receipt of the amount of the Casualty Deficiency, deposit such amount in the Renewal and Replacement Account, and monies shall, subject to Section 11.3, 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 shall continue in full force and effect, subject to the provisions of Section 11.4. The Team shall be reimbursed for the amounts provided to the Arena Manager by the Team pursuant to this Section 11.2 (plus interest at the Interest Rate from the date of provision to the date of reimbursement) from the Renewal and Replacement Account, as monies become available from such account.

If the Team gives notice that this Agreement shall be terminated, then this Agreement shall, without further action or notice by any party hereto, terminate, and the Insurance Proceeds, if any, shall be distributed to the City.

11.3 Damage or Destruction Near End of Agreement Term. If, during the last two (2) Fiscal Years of the Agreement Term, the Arena or any portion thereof is destroyed or damaged to the extent that restoration to the Casualty Restoration Standard will, in the Team's or the City's reasonable estimation, not be completed prior to the commencement of the last Hockey Season during the Agreement Term (as may be extended pursuant to Section 3.2), then the Team or the City shall have the right to terminate this Agreement by giving notice of such termination to the other parties hereto, and the Insurance Proceeds, if any, shall be distributed to the City.

11.4 Abatement of Certain Team Obligations. If the damage or destruction of the Arena 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 has been restored to the Casualty Restoration Standard, the Team shall not be required pursuant to Section 9.5 to play Home Games at the Arena Facility.

## ARTICLE 12

### EMINENT DOMAIN

12.1 Substantial Taking. If, on or after the Operations Start Date, the Arena is taken by right of eminent domain, with or without litigation, or transferred in lieu of or under threat of eminent domain (any such taking or transfer is referred to herein as a "**Taking**"), and the Taking is a Substantial Taking, the Team shall have the right, at its option exercisable at any time within ninety (90) days after the date (the "**Taking Date**") on which the Team receives notice of such Substantial Taking, to terminate this Agreement by notice of termination given by the Team to the other parties hereto. The payment or other award to be paid by the condemnor attributable to the value of the Arena ("**Condemnation Award**") shall be paid to the parties hereto as their interests may appear. "**Substantial Taking**" means a Taking of the Arena that, in the reasonable estimation of Team, will render the Arena unsuitable for the Team's operations as contemplated by this Agreement.

12.2 Partial Taking. If, on or after the Operations Start Date, the Arena is the subject of a Taking that is not a Substantial Taking, or if a Substantial Taking occurs but this Agreement is not terminated as provided in Section 12.1, and the Condemnation Award is, in the reasonable estimation of the Arena Manager (which estimation is approved by the Team), sufficient to restore the remainder of the Arena (i) to a condition as nearly the same as the condition of the Arena immediately prior to such Taking as is reasonably possible; and (ii) in compliance with all applicable NHL requirements and Applicable Law (with the requirements stated in clauses (i) and (ii) being collectively, the "**Condemnation Restoration Standard**"), such Condemnation Award shall, subject to Section 12.3, be deposited in the Renewal and Replacement Account. In such event, the Condemnation Award shall, subject to Section 12.3, be disbursed from the Renewal and Replacement 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 shall continue in full force and effect, subject to Section 12.4.

If (a) the Arena 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 approved by the Team), insufficient to pay the costs of restoration of the Arena to the Condemnation Restoration Standard; and (c) monies in the Renewal and Replacement Account (other than the Condemnation Award deposited therein pursuant to the immediately preceding paragraph), are sufficient in the reasonable estimation of the Arena Manager (which estimation is approved by the Team) to pay the amount by which the costs of such restoration exceed the Condemnation Award, the Condemnation Award and such monies shall, subject to Section 12.3, be disbursed from the Renewal and Replacement 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 shall continue in full force and effect, subject to Section 12.4.

If the monies in the Renewal and Replacement Account (after the deposit of the Condemnation Award therein), are insufficient to pay the costs of such restoration, then, within ninety (90) days after the Taking Date, the Arena Manager shall give the Team notice of the amount of the deficiency (the "**Condemnation Deficiency**"), and the Team shall, within thirty (30) days after the Team's receipt of the Arena Manager's notice, elect to either (i) provide, within thirty (30) days after the Team's receipt of the Arena Manager's notice, additional monies to the Arena Manager in the amount of the Condemnation Deficiency, or (ii) terminate this Agreement by notice of termination to the other parties hereto.

If the Team elects to provide the amount of the Condemnation Deficiency to the Arena Manager, the Arena Manager shall, upon receipt of the amount of the Condemnation Deficiency, deposit such amount in the Renewal and Replacement Account, and monies shall, subject to Section 12.3, be disbursed from the Renewal and Replacement 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 shall continue in full force and effect, subject to Section 12.4. The Team shall be reimbursed for the amount provided to the Arena Manager by the Team pursuant to this Section 12.2 (plus interest at the Interest Rate from the date of provision to the date of reimbursement) from the Renewal and Replacement Account, as monies become available from such account.

If the Team is entitled to and does elect to so terminate this Agreement, the City shall have the right (within thirty (30) days after the City's receipt of notice of the Team's election to so terminate) to give notice to the other parties hereto of the City's intent to pay the amount of the Condemnation Deficiency, in which event the City shall deliver, within thirty (30) days after the date of the City's notice, the amount of the Condemnation Deficiency to the Arena Manager for deposit into the Renewal and Replacement Account. Upon such deposit, the Team's election to terminate shall be deemed rescinded and void, and monies shall, subject to Section 12.3, be disbursed from the Renewal and Replacement 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 shall continue in full force and effect, subject to Section 12.4.