

7.0 KEY NBA COVENANTS

This Section 7.0 is organized as follows:

- 7.1 Key NBA Arena Development Covenants
- 7.2 Key NBA Arena Lease & Management Covenants

Subject to the assumptions, terms, restrictions and limitations detailed in this section and elsewhere in the report, the major findings of this Section 7.0 are:

FINDING # 1 :	An analysis of the NBA markets most comparable to Sacramento shows that the public sector has provided public funds and financing in the range of 75-85% of the overall cost of the arenas.
FINDING # 2 :	Throughout the NBA, even in top 10 markets where the NBA team privately financed and privately developed the arena, public sector entities generally assumed responsibility for financing and installation of needed off-site public infrastructure.
FINDING # 3 :	In every NBA arena project since 1990 in a comparable market, the NBA team has retained the right to select the architect and key design consultants.
FINDING # 4 :	The average length of lease for NBA teams that lease their respective arenas is approximately 20 years.
FINDING # 5:	Generally, NBA teams manage the arenas in which the team plays its games. By 2006, 25 of the 30 NBA teams will manage their respective arenas.
FINDING # 6:	A study of comparable NBA arena projects indicates that

approximately 3,600 parking spaces (structured), on average, are provided on a dedicated basis for premium seating at arena events and activities.

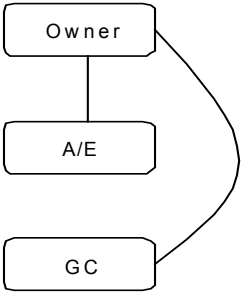
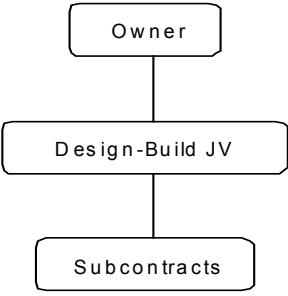
Phase 1 of this study identified six comparable NBA markets to Sacramento: Memphis, San Antonio, Orlando, Salt Lake City, Charlotte and Indianapolis. Since the time of the conclusion of the Phase 1 study (March 15, 2002), the Charlotte Hornets have relocated from Charlotte to New Orleans¹⁷ and the NBA has very recently (December 2002) granted an expansion NBA franchise, the 30th franchise, for the City of Charlotte and a new ownership group led by Robert Johnson (d/b/a RLJ Basketball, LLC, hereinafter the “New Team”). Effective January 13, 2003 the City of Charlotte entered into a series of agreements with New Team pertaining to the development and operation of a new arena in Charlotte to be ready for the 2005-06 season. The study team sees no reason to drop Charlotte as a comparable NBA market. Therefore, this Section 7.0 will include the new Charlotte in place of the old Charlotte deal whenever sufficient information exists to make a substitution possible.

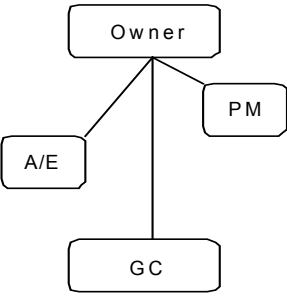
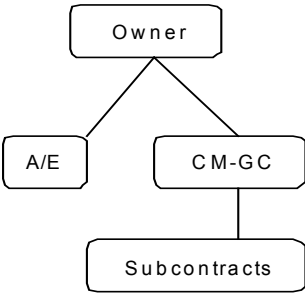
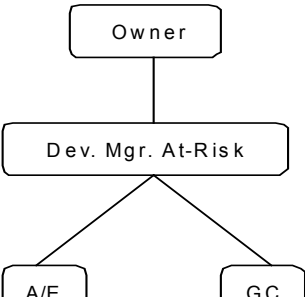
7.1 KEY NBA ARENA DEVELOPMENT COVENANTS

7.1.1 Overview

Sports venues can be developed in a number of different ways depending upon a number of factors. The key considerations have to do with the control of the design process and the desire to control the end product; control of the budget allocations and the ability to move funds across different sub-budgets; the time period available in order to deliver substantial completion; the knowledge and skill sets of the parties; and the assumption of risk for cost overruns. On the following pages are descriptions of five different delivery methods by which sports venue development projects have been delivered:

¹⁷ Three years ago, in October 1999, the City of New Orleans completed construction and opened a brand new arena without a major tenant. While the Charlotte Hornets moved to New Orleans in 2002, the history of the arena is markedly different than any other NBA arena. The New Orleans Arena was 100 percent publicly funded and publicly developed at a cost of \$112 million. It is not a state of the art arena when compared with other recent arenas in Indianapolis and San Antonio. While the New Orleans market may hold some similarity to Sacramento because they are two of the softest NBA markets (e.g., population, households, individual wealth and corporate wealth and depth), the scenario that created this arena and, in fact, the end product arena itself is so different from what would need to occur in Sacramento that the study team has elected not to insert New Orleans into the group of comparable NBA markets.

1. DESIGN-BID-BUILD	2. DESIGN-BUILD
<p>Traditional approach. Owner contracts with an architect and engineers (A/E) to program & design prior to cost estimating or bidding. Then, upon substantial completion of construction documents, Owner bids out to General Contractors (GC) and contracts with lowest bidder.</p>	<p>Owner contracts with a single entity (typically a joint venture between A/E and GC). The joint venture contracts directly with subcontractors and is responsible for designing & building the entire project.</p>
 <pre> graph TD Owner[Owner] --- A/E[A/E] A/E --- GC[GC] Owner --- GC </pre>	 <pre> graph TD Owner[Owner] --- DBJV[Design-Build JV] DBJV --- Subcontracts[Subcontracts] </pre>
<p><u>Pros:</u></p> <ul style="list-style-type: none"> ▪ Safest approach ▪ Delivers lowest price ▪ Fewest uncertainties <p><u>Cons:</u></p> <ul style="list-style-type: none"> ▪ Owner expertise needed ▪ Contractor input is late ▪ Pricing late in process ▪ Lacks design flexibility ▪ Slowest delivery method ▪ Tends to be adversarial 	<p><u>Pros:</u></p> <ul style="list-style-type: none"> ▪ Single Source ▪ Earlier cost guarantee ▪ Earlier schedule guarantee ▪ Fewer disputes ▪ Less Owner involvement ▪ Less Owner exposure <p><u>Cons:</u></p> <ul style="list-style-type: none"> ▪ Owner has less control ▪ Lose checks & balances ▪ Can lack design flexibility ▪ Can lack design quality ▪ New RFP process needed
	<p>Denver (Invesco Field – Broncos new stadium); Washington (MCI)</p>

3. AGENCY CM OR PM	4. CM-AT-RISK (CM-GC)	5. DEVELOPMENT MGR-AT-RISK
<p>Owner retains an agent - an Owner's Representative (OR) – to serve the owner's best interests. OR can be a Construction Manager (CM) or a Program Manager (PM). A PM would have a broader scope. The CM or PM does not self-perform any work; is not at-risk; and does not hold any contracts. Owner would then contract with A/E and GC.</p>	<p>Owner contracts with a CM early in the design process to get pre-construction services (cost estimating, alternative designs & systems, etc.). During design development CM provides a guaranteed maximum price (GMP) and self-performs work as the GC holding the subcontracts.</p>	<p>Hybrid of 3 & 4. Owner contracts with a developer at the start of the process to develop the project. Developer (and not the Owner) contracts with A/E and GC and any other consultants. Upon completion of design development, developer provides Owner with GMP. Developer does not self-perform.</p>
 <pre> graph TD Owner[Owner] --- A/E[A/E] Owner --- PM[PM] Owner --- GC[GC] </pre>	 <pre> graph TD Owner[Owner] --- A/E[A/E] Owner --- CMGC[CM-GC] CMGC --- Subcontracts[Subcontracts] </pre>	 <pre> graph TD Owner[Owner] --- DevMgr[Dev. Mgr. At-Risk] DevMgr --- A/E[A/E] DevMgr --- GC[GC] </pre>
<p><u>Pros:</u></p> <ul style="list-style-type: none"> ▪ Trust – non-adversarial ▪ Expertise brought in early ▪ Select/negotiate A/E & CG ▪ Informed decision-making ▪ Extends Owner staff ▪ Fast-track if needed <p><u>Cons:</u></p> <ul style="list-style-type: none"> ▪ No single source ▪ PM provides no guarantees ▪ No bond ▪ Penalties/incentives needed 	<p><u>Pros:</u></p> <ul style="list-style-type: none"> ▪ Expertise brought in early ▪ Informed decision-making ▪ Earlier cost guarantee ▪ Fewer cost surprises ▪ Fast-track if needed <p><u>Cons:</u></p> <ul style="list-style-type: none"> ▪ Can be adversarial ▪ Owner expertise needed ▪ Incremental cost ▪ Can lack design flexibility if CM-GC holds A/E contract 	<p><u>Pros:</u></p> <ul style="list-style-type: none"> ▪ Expertise brought in early ▪ Strong cost guarantee ▪ Relieve Owner of some risk ▪ Little Owner expertise needed <p><u>Cons:</u></p> <ul style="list-style-type: none"> ▪ Can be adversarial ▪ Owner has less control ▪ Team has less input ▪ Timing of cost guarantee? ▪ Higher fees than others ▪ Can lack design flexibility ▪ Can lack design quality
<p>Anaheim (The Pond); Broward County (Office Depot Center); Charlotte (Coliseum); Indiana (Conseco); Nashville (Gaylord Arena); Pittsburgh (Heinz Field); Raleigh (RBC Center); Tampa (St. Pete Times Forum); Milwaukee (Miller Park); Memphis (FedEx Forum)</p>	<p>Alltel Arena; Boston (Fleet Center); Chicago (United Center); Cleveland (Gund); Columbus (Nationwide Arena); Dallas (AAC); Indiana (Conseco); Los Angeles (Staples); Miami (AAA); Philadelphia (Wachovia Center); Portland (Rose); San Antonio (SBC Center); Houston</p>	<p>San Francisco (Pac Bell Park)</p>

There are many variations of these five delivery systems and many nuances within each one. Also, the delivery system can be a matter of perspective. For example, in three NBA markets, Cleveland, Houston and Memphis, the delivery system listed above reflects the technical/legal relationship where the public sector is the “owner.” However, in Cleveland, Houston and Memphis, the NBA team contained *de facto* control over the design process and, in effect, acted like the “owner” and viewed the public sector development entity more like a Construction Manager. In Houston, the team retained control over the design process and also assumed responsibility for cost overruns. In Cleveland and Memphis, however, while the team gained great control over the design process, the public sector entities assumed responsibility for cost overruns. This is discussed in greater detail further ahead in this Section 7.1.

Of the 29 NBA franchises (excluding the Sacramento Kings), 19 play their home games in an arena developed by a private entity – normally the NBA team, or a joint venture including the NBA team, or another major user of the facility (e.g., the NHL team if there is one).

Arena Developed By	
Public Sector	Private Sector
Charlotte	Atlanta
Cleveland	Boston
Golden State	Chicago
Houston	Dallas
Indianapolis	Denver
Memphis	Detroit
New Jersey	Los Angeles
New Orleans	Los Angeles
Orlando	Miami
Seattle	Milwaukee
	Minnesota
	New York
	Philadelphia
	Phoenix
	Portland
	Salt Lake City
	San Antonio
	Toronto
	Washington

Highlighted cases are the comparable NBA markets

The reasons for this trend are plentiful but tend to fall into two categories: financial and operational. First, most NBA teams have wanted to make absolutely sure that the end product arena is capable of generating the revenues they need to stay competitive in the NBA. To ensure that, NBA teams have wanted to control the myriad of tiny decisions necessary to make sure they allocate the construction budget accordingly. The second major reason has to do with the nature of the arena as a place for not only basketball but also many other types of sports and entertainment. Unlike a baseball stadium, which is developed solely for baseball games, an arena must be built very carefully and very smartly to ensure that it will be able to accommodate all the different types of sports and entertainment users – those known today and those that might come into existence in the future. Therefore, it has been logical and pragmatic for the major users (the NBA and/or NHL teams that operate these facilities) to take control of the arena development in order to ensure that the end product arena is built exactly in a way that is most likely to accommodate their own operational vision. While there are other reasons across the NBA, including financing reasons, political reasons, individual personalities and others, more often than not NBA teams and similar private entities have elected to develop their own arenas to give themselves the best possible chance to achieve their financial and operational objectives.

Of the 10 publicly developed projects, four provided the NBA team with very extensive development control rights: Cleveland, Houston, Indianapolis and Memphis. These four arena development projects are examples of what amounts to a “build-to-suit” relationship between the public sector and the NBA

team, i.e., in each case the public sector had a special purpose entity¹⁸ to manage the development of the arena in order to suit the programmatic and design wishes of their “client,” the NBA team. These are the only four instances in the NBA where the NBA team has enjoyed effective control of the development without having to sign the construction contracts and Houston and Memphis are the second and third most recent arena projects, respectively, of this type in the NBA.

7.1.2 Cost Overruns

In 25 of 29 cases across the NBA, it is clear cut that the developing party assumed the risk of cost overruns to go along with the right to control the design process and construction budget. In four other cases, (Cleveland, Houston, Indianapolis, and Memphis) the cost overrun picture is subtler.

The public sector in Houston had an existing entity, the Harris County Sports Authority, which had previously constructed new stadiums for the Houston Astros and Houston Texans and had an existing staff in place with substantial sports venue construction expertise. The private side in Houston, the Houston Rockets, had no arena development or arena operations experience (they were a tenant at the Compaq Center) and had endured a very difficult historical relationship with public sector entities in Houston. The Rockets were prepared to recognize and utilize the public sector construction expertise but were not prepared to release any control whatsoever with respect to the design of the project. For this reason, even though the Harris County Sports Authority signed, holds, and manages the construction contracts and remains responsible for delivering substantial performance within a budget and timeline, the Rockets assumed the risk of certain costs overruns in order to retain design control. This project is really a “build-to-suit” in which the Harris County Sports Authority is, in effect, serving in the role of Agency Construction Manager for the client – the Rockets (except that the Authority is holding the construction contracts). The project will be complete in fall 2003.

The projects in Cleveland, Indianapolis, and Memphis were more like Development Manager At-Risk delivery systems because the NBA teams in those cases were accorded wide latitude and control in the design process and in the oversight of the development of those projects well beyond the normal battery of approval rights typically granted to a party not at risk. Therefore, with the NBA teams having the rights of a normal “owner,” the public authorities were viewed as Development Managers – but with the risk of cost overruns. In Cleveland, Indianapolis, and Memphis, those public sector entities signed, held and managed the construction contracts and remained responsible for cost overruns at all times. While Memphis is under construction, the public in Cleveland sustained and paid for cost overruns that were not immaterial. While there were cost overruns in Indianapolis, those overruns were not material.

It should be noted that in every comparable NBA market project since 1990, regardless of who is in control of the development, the NBA team has retained the right to select the architect and key design consultants.

Below is a summary of the development responsibility and cost overrun responsibility for the NBA comparable markets.

¹⁸ In Cleveland the Gateway Authority was created in order to manage and coordinate the design and development of not only Gund Arena but also Jacobs Field, shared parking, necessary infrastructure and common areas between each of these structures. In Houston, the Harris County Sports Authority was already in place, having constructed a new stadium for the Houston Astros and a new stadium for the Houston Texans. In Indianapolis, the Capital Improvements Board was already in place. In Memphis, the Public Building Authority of Memphis and Shelby County has been set up to manage the design and development of FedEx Forum.

Summary of Comparable NBA Markets		
Market	Developed By	Overrun Responsibility
Charlotte (1988)	Public	Public
Orlando (1989)	Public	Public
Salt Lake City (1991)	Private	Private
Indianapolis (2000)	Private	Private
San Antonio (2002)	Private	Private
Charlotte (2005)	Public	Public
Memphis (2005)	Public	Public

7.1.3 Competitive Bidding & Special Participation

The comparable NBA markets show a clear trend toward competitive bidding and special participation in sports arena developments projects that involve material funding by the public sector. The key here is not who the developer is and/or holds the construction contracts from a technical perspective, but the level of public financial participation in the project.

At one end of the spectrum, in each of the *publicly developed, publicly financed* projects in the NBA comparable markets, Charlotte (1988), Orlando (1989), Indianapolis, (2000), Memphis (2005), and Charlotte (2005), the projects required public bidding on contracts and certain threshold levels of participation from certain groups, for example, residents, minority- and women-owned businesses, etc. These requirements tend to track those in place at these municipalities at the time of the development. Other NBA arena projects that required compliance with existing municipal special participation requirements include Cleveland, Houston, and New Orleans.

At the other end of the spectrum, in the lone NBA comparable market in which the arena was *privately developed and privately financed*,¹⁹ Salt Lake City (1991), it is our understanding without having access to the development documents, which are not public record, that the project was not subject to public bidding requirements and did not require levels of participation from special groups. Other NBA projects that were privately developed and privately financed show a similar lack of these special participation requirements: Atlanta, Boston, Chicago, Denver, Detroit, Philadelphia, and Washington.

In the middle of the range is the lone comparable NBA arena project that was privately developed but which secured significant public financing: San Antonio. In San Antonio, the Spurs development entity agreed to enter into a Project Labor Agreement (PLA) with the San Antonio Building and Construction Trades Council (AFL-CIO) outlining the wages and benefits for all workmen employed on the project. The Spurs also agreed to develop and implement a program to include local, small and minority owned business participation and to develop an equal opportunity program. It is our understanding that these programs tracked closely with the guidelines promulgated by the City of San Antonio and Bexar County. It should also be noted that the American Airlines Arena in Miami, the American Airlines Center in Dallas, and America West Arena in Phoenix are three additional examples of arena development projects

¹⁹ The Salt Lake City Redevelopment Agency did contribute \$20 million to the project to be used mostly for the construction of additional access roads and on-site infrastructure.

that were privately developed by their NBA teams (or in the case of Dallas by a joint venture owned in part by the NBA team) with public funding that were subject to local municipal special participation requirements for minority and women owned businesses.

In Sacramento, the City is dedicated to assisting small and emerging businesses and would want any development project to conform to those guidelines. Moreover, the State of California passed Senate Bill 975 in 2002 to require projects with public investment to maintain the prevailing wage for union workers and this legislation would apply to any prospective arena project with public funding.

7.1.4 Capital Repairs, Replacements & Improvements

In all projects of this magnitude the parties set aside funds on an annual basis in order to be prepared for the eventuality of capital improvements. Capital improvements are distinguished from ordinary wear and tear needs and ordinary maintenance and upkeep requirements, both of which are funded from operating expenses. While every single lease is different, to the extent one can generalize, capital improvements are broken down into major and minor capital improvements. While these provisions are often thought of as operating covenants and not part of the development agreement, they are really more connected with development because the party in control of the design and development process has the ability to control the quality (and therefore the useful life) of the arena foundation, structure, major systems and equipment.

Of the NBA comparable markets, it is our opinion that Charlotte (1988), Orlando (1989), and Salt Lake City (1991) are too old to look to for guidance on this particular issue. The age, small size and lack of complexity in those arena projects do not make them a good benchmark on this particular issue for a Sacramento arena that would likely not open until 2006. On the other hand, the three most recent NBA comparable arena projects do provide good benchmarking on this issue.

In Indianapolis, Conseco Fieldhouse is owned by the public sector entity called the Capital Improvement Board (CIB) and is operated by the Indiana Pacers under a 20-year lease and operating agreement. The CIB was responsible for developing the arena, although the team enjoyed very significant control over the process. The CIB is responsible for funding repairs and repairing all structural, building exterior, and roof components as well as all other “Major Systems” or any component of a Major System and all other “Major Repairs” defined as any repair in any fiscal year over \$50,000 (escalated by CPI in the out years). The CIB also agreed to replace all carpeting in the arena every seven years. The CIB sets aside \$480,000 annually in a capital reserve fund to meet these obligations.

In Memphis, the Public Building Authority of Memphis and Shelby County are constructing the new arena that is to be owned by the Memphis Sports Authority and operated by the Memphis Grizzlies. The Grizzlies are responsible for funding, from operations, all normal and routine maintenance and all “Minor Repairs,” which are all items not included in the definition of “Capital Repairs.” The City and County are responsible for funding all Capital Repairs. Capital Repairs is defined as:

Those items listed below which individually cost more than \$35,000 (which amount shall be adjusted every five (5) years by the CPI Percentage Adjustment) or which in the aggregate cost more than \$75,000 (which amount shall be adjusted every five (5) years by the CPI Percentage Adjustment) during any consecutive twelve (12) month period.

- 1. Repairs or replacement to structural and roof components.*
- 2. Repairs or replacement of components of the HVAC system, domestic hot and cold water system, ice making system, sanitary or storm drainage, de-icing systems, sprinkler system, steam, gas and water delivery systems.*

3. *Repairs or replacement of components of the electrical supply and distribution systems, emergency power system, fire alarm and life safety system including, but not limited to, transformers, switch gears, meters, switches, conduits, feeders, wires and bus duct.*
4. *Repairs or replacement of elevator, escalator, and vertical lift components.*
5. *Repairs or replacement of all or a portion of the basketball floor, the event floor, practice basketball court or the dasher boards and spectator shielding.*
6. *Repair or replacement of concrete, precast concrete, tile, terazzo, epoxy flooring and all other types of flooring.*
7. *Repair or replacement of seats, whether portable, movable or stationary, retractable seating platforms, portable seating platforms and replacement of seat standards or the concrete into which the seats are affixed.*
8. *Necessary changes or improvements required by television stations, radio stations, "superstations," cable operators, video program distributors or syndications having contracts with the NBA and to the extent such changes or improvements are required of all teams in the NBA.*
9. *Changes or improvements required by the NBA, which requirements are set forth in the published rules and regulations of the NBA and which changes or improvements are binding upon and applicable to all NBA teams.*
10. *Changes or improvements required by laws, ordinances, orders, or regulations or requirements of any governmental authority.*
11. *Replacement of carpet once every ten (10) years.*
12. *Replacement of scoreboard, video replay and display equipment, broadcast equipment, exterior video or message boards, reader boards, advertising boards or panels, fixtures, dimmers, shutters, or controls for event illumination including spotlights, sportsights, house lights, theatrical or event presentation lights which have reached the end of their functional life and no longer meet the required minimum performance levels or temperature requirements; provided, however, that such replacement shall not be required prior to the fourth year of the Initial Term, and may not require funding by CITY/COUNTY in excess of (x) the number of elapsed years in the Initial Term after the third year, multiplied by (y) \$500,000, minus (ii) the cumulative amount expended for replacements described in this category 12.*

The City and County established at the closing of the bonds a Capital Improvement Reserve Fund and simultaneously deposited in that fund \$10 million from the proceeds of the bonds. If at any time the Fund lacks sufficient funds to satisfy the City/County Capital Repair obligations, then City/County appropriation will be necessary.

In San Antonio, the SBC Center is owned by Bexar County but was developed and is operated by the San Antonio Spurs. In this case, even though the arena is owned by the public sector like in Memphis, the team agreed to be responsible for all capital repairs in order to maintain the arena in a first class condition. In order to make certain that sufficient funds would be available for this, the Team is contractually obligated to contribute \$1 million annually to a Capital Repair Fund and is permitted to establish a \$1.00 per car and \$1.00 per ticket user fee on all events except NBA games and rodeo events in order to generate up to \$300,000 of the \$1 million annually. The Capital Reserve Fund is an escrow account managed by the team with all funds remaining in the fund at the conclusion of the term reverting back to the team. All repairs and improvements paid for by monies from the Capital Reserve Fund become the property of the County.

In the new Charlotte deal, the City and the team agreed to each contribute \$250,000 per year starting in the second year of their term and for the entire length of the term of their agreement (25 years), increasing

5 percent per year compounded annually but not to exceed \$500,000 for either party in any single year. The team and the authority in Charlotte must mutually agree on expenditures of the reserve fund.

In the new Houston arena deal, the Harris County Sports Authority contributes \$1.6 million annually to the Capital Fund that is controlled and disbursed by the NBA team. At the end of the term in Houston, any funds remaining in the fund belong to the NBA team.

7.1.5 Project Budget

The Phase 1 Report presented hard cost data from Turner Construction Company for recently completed NBA arenas. Below we present that same data contained in Phase 1, except now with the addition of Memphis NBA arena that is breaking ground in Memphis:

Summary of Recent NBA Arena Hard Costs													
	Cleveland		Miami		San Antonio		Indianapolis		Memphis		Average		
	\$/SF	HC	\$/SF	HC	\$/SF	HC	\$/SF	HC	\$/SF	HC	\$/SF	HC	
Demolition & Site Clearing	\$0.00	\$0	\$0.29	\$226	\$0.00	\$0	\$0.00	\$0	\$1.53	\$1,233	\$0.36	\$292	
Utility Relocation/New Services	\$0.00	\$0	\$0.00	\$0	\$0.00	\$0	\$0.27	\$205	\$0.00	\$0	\$0.05	\$41	
Excavation and Foundation	\$18.38	\$13,732	\$12.18	\$9,631	\$17.78	\$13,332	\$11.63	\$8,726	\$30.54	\$24,642	\$18.10	\$14,013	
Structural Frame	\$41.21	\$30,786	\$67.23	\$53,176	\$50.05	\$37,534	\$60.96	\$45,723	\$59.98	\$48,402	\$55.89	\$43,124	
Roofing and Waterproofing	\$2.98	\$2,222	\$3.31	\$2,620	\$1.54	\$1,152	\$2.74	\$2,057	\$4.72	\$3,812	\$3.06	\$2,373	
Exterior Wall	\$19.85	\$14,832	\$21.37	\$16,904	\$12.18	\$9,133	\$17.67	\$13,256	\$8.80	\$7,105	\$15.98	\$12,246	
Interior Finishes	\$50.78	\$37,932	\$40.49	\$32,027	\$34.41	\$25,810	\$40.20	\$30,154	\$46.48	\$37,508	\$42.47	\$32,686	
FF&E	\$3.43	\$2,561	\$4.74	\$3,752	\$5.95	\$4,460	\$3.36	\$2,524	\$3.02	\$2,438	\$4.10	\$3,147	
Scoreboard	\$7.44	\$5,560	\$6.85	\$5,421	\$7.93	\$5,946	\$6.42	\$4,816	\$16.11	\$12,996	\$8.95	\$6,948	
Ice Floor Package	\$3.29	\$2,461	\$2.16	\$1,711	\$1.59	\$1,195	\$2.38	\$1,787	\$2.78	\$2,242	\$2.44	\$1,879	
Equipment	\$4.12	\$3,079	\$4.67	\$3,694	\$2.08	\$1,562	\$4.92	\$3,691	\$9.84	\$7,943	\$5.13	\$3,994	
Food Service Equipment	\$13.05	\$9,751	\$12.62	\$9,983	\$11.89	\$8,919	\$9.82	\$7,368	\$9.70	\$7,829	\$11.42	\$8,770	
Seating	\$8.32	\$6,217	\$9.84	\$7,781	\$8.32	\$6,238	\$6.45	\$4,836	\$6.31	\$5,092	\$7.85	\$6,033	
Vertical Transportation	\$4.86	\$3,630	\$5.72	\$4,528	\$4.24	\$3,180	\$3.51	\$2,634	\$2.94	\$2,373	\$4.26	\$3,269	
Plumbing	\$7.53	\$5,629	\$6.71	\$5,305	\$8.43	\$6,324	\$7.01	\$5,255	\$11.15	\$8,995	\$8.17	\$6,302	
Fire Protection	\$3.41	\$2,549	\$2.05	\$1,621	\$2.87	\$2,156	\$1.82	\$1,365	\$2.94	\$2,373	\$2.62	\$2,013	
HVAC	\$28.15	\$21,027	\$19.75	\$15,621	\$23.00	\$17,253	\$21.29	\$15,964	\$26.08	\$21,041	\$23.65	\$18,181	
Electrical	\$30.85	\$23,046	\$29.66	\$23,463	\$22.46	\$16,843	\$22.21	\$16,657	\$29.19	\$23,551	\$26.87	\$20,712	
Audio Visual	\$7.59	\$5,666	\$2.11	\$1,672	\$4.16	\$3,122	\$5.76	\$4,320	\$8.06	\$6,502	\$5.54	\$4,256	
Plaza and Site	\$11.67	\$8,715	\$12.43	\$9,834	\$20.29	\$15,215	\$2.01	\$1,506	\$5.04	\$4,064	\$10.29	\$7,867	
Direct Work Subtotal		\$199,394		\$208,970		\$179,374		\$172,842		\$230,142		\$198,144	
Indirect Costs		\$15,609		\$24,145		\$19,455		\$14,765		\$28,064		\$20,407	
Hard Cost		\$215,003		\$233,115		\$198,829		\$187,607		\$258,206		\$218,552	
Gross Square Feet		747,000		791,000		750,000		750,000		806,920		768,984	
Cost Per Square Foot		\$287.82		\$294.71		\$265.10		\$250.14		\$319.99		\$283.55	
Fixed Seats		20,562		21,000		18,399		18,345		18,194		19,300	
Cost per Seat		\$10,456		\$11,101		\$10,806		\$10,227		\$14,192		\$11,356	

Note: Costs have been adjusted from the subject market to Sacramento and then escalated forward assuming a 2004 construction start. The data for Memphis are estimates, not actual costs. The costs do not include soft costs, contingencies, land, parking, off-site infrastructure costs and other non-hard construction costs.

Source: Turnkey Sports Estimates; Turner Construction Company

Turner's "Hard Cost" summaries above include a fully fitted-out arena with a comprehensive affixed and non-affixed furniture, fixtures and equipment budget. They do not include: (1) the cost of land acquisition, land carrying costs, site demolition, site preparation and/or site remediation; (2) soft costs (e.g., architects, engineers, consultants, sub-specialty consultants, etc.); (3) contingency funds; (4) the cost of parking facilities; and/or (5) off site infrastructure costs; and (6) transactional costs.

Land Acquisition. In Memphis, San Antonio, Orlando, Salt Lake City, Charlotte (old deal and new deal), as well as in Cleveland and Miami, the land underneath the arena sites remains owned by the public sector and was contributed to each project by the public sector. In each market except Salt Lake City, the arenas are exempt from property taxes. In Memphis, the \$4 million cost of land acquisition was included

in the overall \$250 million budget for the project. In Indianapolis, the land was sold to the City by Eli Lilly at an under market rate, and then the City charged the overall project budget for that cost (\$9.4 million). In San Antonio, Bexar County already owned the 175-acre arena site and did not charge the \$175 million project budget for their acquisition or carrying cost of the land. In the most recent Charlotte deal, the City of Charlotte had to acquire title to the uptown arena site by March 1, 2003. The cost of the site is not yet determined.

Site Preparation. In Memphis, San Antonio, Orlando, Salt Lake City, Charlotte (old deal and new deal), and Indianapolis, the cost to prepare the site for construction was included in the overall project budget. In each of these markets, except Salt Lake City, the public sector agreed to assume the contingent liability and/or expense pertaining to unknown subsurface conditions including conditions requiring environmental remediation. In Salt Lake City, the SLC Redevelopment Agency provided a \$20 million grant to the NBA team that was used by the team to acquire and prepare the site.

Soft Costs. In Memphis, San Antonio, Orlando, Salt Lake City, Charlotte (old deal and new deal), and Indianapolis, the cost of all “Soft Costs” was included in the overall project budget. Normally, soft costs would include not only architectural, engineering and all project consultants, but also the cost for owners’ representatives. The following is a list of costs that are often points of negotiation between the parties to determine whether these costs should be includable as soft costs within the project budget: costs incurred by the parties prior to entering into a binding contractual agreement; the fees and expenses of specialty consultants, accountants, and attorneys to assist one or more of the parties in the negotiation of a MOA and the resulting formal documents; the cost of marketing and sales staff in the rollout of the sales campaign for the new arena; the cost of public relations staff in the introduction of the new arena; the cost of polling firms, P.R. firms, and other advisors pertaining to a campaign to pass a referendum for a new arena, etc.

Contingency Reserves. Development projects of the magnitude and complexity being considered here require large contingency reserves in order to be prepared for the unexpected. It is common to include a site contingency, a design contingency and then an overall project contingency. Contingencies often range between five and ten percent. In all the comparable markets, the contingency is included in project budget.

Parking Facilities. In today’s sports world, dedicated parking for premium seat patrons is needed. In many arenas, dedicated premium parking spaces are “value-added” benefits provided to premium seat holders rather than incremental revenue streams for the team or arena. In addition to dedicated parking for premium seat patrons, and in-house parking for management and staff, arenas must also have abundant general public parking for all the different types of customers that come to sports and entertainment events at the arena. On the following page is a list of the on-site or adjacent-site parking that is dedicated and available at the most recent NBA arenas:

Summary of Recent NBA Arena Parking

Arena	Open	Parking
Charlotte	1988	8,000
Charlotte	2005	517
Cleveland	1994	3,200
Dallas	2001	2,000
Denver	1999	6,000
Houston	2003	2,500
Indianapolis	2000	2,500
Los Angeles	1999	6,000
Memphis	2005	1,800
Miami	1999	1,000
New Orleans	1999	5,000
Orlando	1989	3,500
Salt Lake City	1991	1,500
San Antonio	2002	7,000
Overall Average	1998	3,608
Comparable Market Average	1996	3,545

In the comparable NBA markets, Memphis, San Antonio, Orlando, Salt Lake City, Charlotte (old deal) and Indianapolis, the cost of parking facilities was included as part of the overall project budget. Section 3.4 of this report describes the recommended parking set for a Railyards SED arena complex and Section 4.3 of this report describes the recommended parking set for a replacement North Natomas arena complex.

Off-Site Infrastructure. In Memphis, San Antonio, Orlando, Salt Lake City²⁰, Charlotte (old deal and new deal), and Indianapolis, as well as in Cleveland and Miami, the public sector assumed the cost of off-site infrastructure improvements. Such improvements have taken many forms and are unique to each arena site's requirements (e.g., utility relocations and improvements; street closing or relocations; new streets, sidewalks, ramps, enclosed or open pedways, etc.; necessary, new, or incremental lighting, traffic lights, directional signage, etc). Throughout the NBA, even in top 10 markets where the NBA team privately financed and privately developed the arena, public sector entities assumed responsibility for needed off-site public infrastructure.

Transactional Costs. Transactional costs are borne by the party incurring them. Attorney's fees for bond counsel, financing/issuance costs, capitalized interest, debt service reserve costs, and other costs related to the structuring or issuance of debt are borne by the party issuing. Section 6.0 of this report details the transactional costs anticipated for this potential project.

7.2 KEY NBA ARENA LEASE & MANAGEMENT COVENANTS

7.2.1 Overview

NBA arena agreements can take many forms. Most often, public sector entities and NBA teams will first enter into a preliminary document called a Memorandum of Agreement ("MOA") or Memorandum of Understanding ("MOU"), which is a binding contractual document, but can and often does contain contingencies to each party's obligations. While those contingencies play out, the parties often undertake to convert the MOA or MOU into final, formal documents, which can include a Lease, an Operating

²⁰ In Salt Lake City the SLC Redevelopment Agency granted \$20 million to the team and the team undertook development of land acquisition, site preparation, and off-site infrastructure.

Agreement for the operation of the arena, a Non-Relocation Agreement, and other documents. In a case where a NBA team is not only going to play their home games at an arena, but also operate the arena for all events, the Lease and Operating agreement often merge into a single document. This section seeks to describe the key covenants found in arena agreements in the comparable NBA markets.

7.2.2 Arena Management

Currently 17 out of the 30 NBA teams play in arenas owned by the public sector. Many arena deals are structured with public ownership structures due to the tax implications and the desire of the operator to not be subject to property taxes. But even though ownership of the arenas is pretty evenly split across the NBA, operational control is much more one-sided.

There is a very clear-cut trend across the NBA that NBA teams are in the business of managing/operating their own arenas. In the NBA, 22 out of the 30 NBA teams (including the Charlotte expansion team, which begins play in 2004) currently manage their own arenas. This represents 25 out of 29 buildings because the LA Lakers and LA Clippers both play at Staples Center. However, in a short time that ratio will increase to 25 of the 30 NBA teams - 3 of the 5 non-operators (Memphis, Charlotte, and New Jersey) will be taking over management and operations of their own new arenas as shown in the table on the following page. Assuming that MSE wishes to continue operating any new arena in the same way they have operated ARCO Arena, then that will leave only Boston, Golden State, New Orleans, and the two Los Angeles teams as the last remaining NBA teams existing as tenants and not operators:

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NBA Arena Ownership & Operation (2005)			
NBA Markets	Year Open	Owner	Operator
Atlanta	1999	Public	Teams
Boston	1995	NHL Team	NHL Team
Charlotte	2005	Public	Team
Chicago	1994	Teams	Teams
Cleveland	1994	Public	Team
Dallas	2001	Public	Teams
Denver	1999	Public	Teams
Detroit	1988	Team	Team
Golden State	1966/1997	Public	Public
Houston	2003	Public	Team
Indianapolis	2000	Public	Team
LA Clippers	1999	NHL Team	NHL Team
LA Lakers	1999	NHL Team	NHL Team
Memphis	2005	Public	Team
Miami	2000	Public	Team
Milwaukee	1988	Team	Team
Minnesota	1990	Team	Team
New Orleans	2002	Public	Public
NJ Nets	2005	Public	Teams
NY Knicks	1968/1991	Teams	Teams
Orlando	1989	Public	Team
Philadelphia	1996	Teams	Teams
Phoenix	1992	Public	Team
Portland	1995	Team	Team
Sacramento	1988/1997	Public	Team
San Antonio	2002	Public	Team
Seattle	1983/1995	Public	Team
Toronto	1999	Teams	Teams
Utah	1991	Team	Team
Washington	1997	Teams	Teams

Two dates reflect original construction and then renovation

Note: The LA Clippers and LA Lakers both play at Staples Center

7.2.3 Play Covenant

It is common for an NBA lease and/or operating agreement to contain an affirmative contractual obligation of the NBA team (and perhaps other commonly owned franchises) to play their home games in the subject arena for the term of the document. It is now commonplace for the NBA to require such agreements to include language that allows the NBA team to play some “home” games away from the subject arena. In Memphis, the agreements include language that allows the NBA team to play up to

three “home” pre-season games in an arena other than the subject arena. In the new Charlotte deal, the agreements contain language that allows the NBA team to play up to half of its pre-season “home” games in another arena and up to two regular season “home” games in another arena.

7.2.4 Rent or Other Private Payments

7.2.4.1 Memphis

In July, 2001, the City of Memphis and Shelby County (“City/County”) agreed to terms with the Vancouver Grizzlies to move the team to Memphis and construct a new arena and a new parking garage for the franchise. The agreement required City and County approval, but no public referendum. The arena is currently in construction. The table below shows the different sources of funding in Memphis as contained in the agreements between the parties:

City Appropriation	\$12.0
County Appropriation	\$12.0
State Appropriation	\$20.0
State Sales Tax Rebate	\$65.2
Seat License Fee	\$13.3
Car Rental Tax	\$21.2
City Hotel/Motel Tax	\$15.2
County Hotel/Motel Tax	\$36.3
MLGW PILOT	\$34.8
Private Support Bonds	\$20.0
TOTAL (in millions)	\$250.0

Source: Public Financial Management, Inc.

The City/County will own title to the land, the arena, all FF&E in the arena and the parking garage and, as such, the Grizzlies will pay no real property taxes, personal property taxes or leasehold interest taxes; provided, however, that the Grizzlies are responsible for personal property taxes on Grizzlies’ personal property located within the arena and on leasehold interests of any tenants or users operating in the arena under rights granted by the Grizzlies. The Grizzlies will operate and manage the arena and the parking garage. The City/County agreed to construct the arena and parking facilities and assume exposure for cost overruns other than those overruns resulting from change requests made by the Grizzlies. The City/County agreed to lease the arena to the Grizzlies and allow the Grizzlies to manage and control all aspects of the operation of the arena and parking facilities for all Grizzlies’ games and all other events. The rent paid by the Grizzlies is a \$1.15 seat use fee on each and every paid ticket for all arena events. The Grizzlies retain all other arena operating revenues and are responsible for all other arena operating expenses from the arena and parking. The City/County is responsible for major capital improvements. The City/County agreed to a strict non-compete on events so that the Grizzlies would not have to compete with the Pyramid or the Mid-South Coliseum in order to book events into the new arena.

The City/County agreed to allow the Grizzlies to leave Memphis after 13 seasons (3 in the Pyramid and 10 in the new arena) if the Grizzlies are unable to achieve certain attendance thresholds, if the market does not “cure” such attendance shortfalls within 60 days, if the Grizzlies sell the franchise to an unaffiliated third party, and if the Grizzlies pay liquidated damages in an amount starting at \$107 million after the 10th NBA season in the new arena.

The City/County in Memphis contributed \$230 million of the \$250 million project budget (92 percent) from public sources. In addition, the City/County will spend additional monies for off-site infrastructure improvements. Private sector entities in Memphis – but not the Grizzlies – contributed the remaining \$20 million (8 percent) from private sources. After factoring in the Grizzlies’ yearly investments from the \$1.15 seat use fee that have been estimated by Memphis officials to generate approximately \$1.3 million annually, a net present value of the respective investments can be calculated. The table below shows a comparison of the respective investments of the public sector and private sector in Memphis over a 30-year term, calculated as a net present value (“NPV”), assuming a discount rate of 7 percent.

<i>(dollars in millions)</i>	<u>Public</u>	<u>Private</u>
Initial Funding Investments:	\$230.00	\$20.00
Total NPV Investments:	\$214.85	\$35.15
Total NPV Allocations:	85.94	14.06
	percent	percent

Source: Turnkey Sports Estimates

7.2.4.2 San Antonio

In March 2000, a public-private partnership was created between the San Antonio Spurs, Bexar County (the “County”), and the San Antonio Livestock & Exposition (“SALE”) to fund and build a new arena for the Spurs. In November 2000, the voters of the County overwhelmingly approved the arrangement by a 61 percent majority. The table below shows the different sources of funding in San Antonio as contained in the agreements between the parties:

Motor Vehicle Rental Tax	\$53.9
Hotel Occupancy Tax	\$89.3
Spurs Investment	\$28.5
Spurs Annual License Fee	\$10.8
TOTAL (in millions)	\$182.5

Source: Bexar County

The County will own title to the site and the arena and, as such, the Spurs will pay no property or leasehold taxes. The Spurs will operate and manage the arena. The County has licensed the Spurs to develop the arena and they assume any and all cost overruns. The County agreed to lease the arena to the Spurs and allow the Spurs to manage and control all aspects of the operation. The County will receive 20 percent of arena net operating income that exceeds \$4.75 million. The rent (“license fee”) paid by the Spurs is a flat \$1.3 million annually to the County which is to be recovered by the team through a \$1.00 ticket surcharge on all paid tickets and a \$1.00 parking fee on all cars parking in the parking lot. The Spurs retain all other arena operating revenues and are responsible for all other arena operating expenses from the arena and parking. The Spurs are responsible for major capital improvements, although SALE will contribute \$300,000 annually to the capital improvement reserve fund. The County agreed to a strict non-compete on events. The term of the agreements between the parties is for 25 NBA seasons in the new arena. The County agreed to a non-relocation agreement, which provides a specific liquidated damages amount (in lieu of all other damages) starting at \$250 million in year 1.

Bexar County contributed land for the site, off-site infrastructure improvements and \$146.5 million of the \$175 million project budget (84 percent) from public sources. The Spurs contributed the remaining \$28.5 million (16 percent) into the construction budget from private sources. If the project exceeds the \$175 million budget, then the Spurs' investment will grow. The Spurs have also agreed to pay a flat \$1.3 million annually to Bexar County as a license fee to manage the arena and also contribute another \$1.3 million annually to a capital improvement reserve fund. After factoring-in the Spurs yearly investments of \$2.6 million annually, a NPV of the respective investments can be calculated. In making these calculations, we have assumed that the Spurs' obligation to share with the County 20 percent of arena net operating income exceeding \$4.75 million does not, in fact, yield any payment to the County during the 25-year term of the agreements. The table shows a comparison of the respective investments of the public sector and private sector in San Antonio over the 25-year term, calculated as a NPV, assuming a discount rate of 7 percent.

<i>(dollars in millions)</i>	<u>Public</u>	<u>Private</u>
Initial Funding Investments:	\$154.00	\$28.50
Total NPV Investments:	\$127.20	\$55.30
Total NPV Allocations:	69.70 percent	30.30 percent

Source: Turnkey Sports Estimates

7.2.4.3 Orlando

The local business community in Orlando began pursuit of a NBA expansion franchise in 1986 and was granted the franchise now known as the Orlando Magic in 1987. The Orlando Arena (now known as the TD Waterhouse Centre) was then constructed by the City of Orlando at a cost of \$102 million and hosted its first event on January 29, 1989. The table below shows the different sources of funding in Orlando as contained in the agreements between the parties:

City Hotel/Motel Tax	\$55.0
City General Fund	\$43.0
Owner Purchased FF&E	\$4.0
TOTAL (in millions)	\$102.0

Source: Orlando Magic

The City owns title to the land and the arena and, as such, the Magic pay no property taxes or leasehold taxes. The City is the operator and manager of the arena and is responsible for all arena operating expenses. The Magic is the primary tenant in the arena. The Magic pay rent to the City as follows: flat rental of \$14,260 per home game since 1999; plus 25 percent of gross suite lease revenue; plus \$100,000 annually for the right to sell building signage; plus a share of naming rights. The naming rights revenue sharing arrangement is as follows: 50/50 up to the first \$350,000 gross annually; 75/25 club/city between \$350,000 and \$700,000 annually; 80/20 club/city above \$700,000 annually. The City also retains the following revenues from Magic home games: 100 percent of parking and 50 percent of the net revenues from concessions and catering. From their own home games, the Magic retain (net of sales tax): 100 percent of the retail merchandise sales; 100 percent of the ticket sales; 50 percent of the net concession and catering revenues; and 75 percent of their suite revenue. The Magic received the right to relocate the team if season ticket sales dip below 7,000 for any single season. The Magic lease ends at the conclusion of the 2003-2004 season.

The City of Orlando contributed the land for the site, off-site infrastructure improvements, and \$98 million of the \$102 million project budget (96 percent) from public sources. The Magic contributed the remaining \$4 million (4 percent) in the form of owner purchased furniture, fixtures, and equipment from private sources. Calculating a net present value (“NPV”) of the respective subsequent investments is difficult in the case of the Magic because the team has had four amendments to their lease that have each materially changed the economic allocations between the parties. Moreover, calculating prior year investments requires the making of assumptions for certain operating statistics that are no longer available. In making our calculations, we have made the following assumptions. First, the daily use payment started at \$5,000 per home game in 1990. We assumed an 11 percent growth rate to 1998 and then a flat \$14,260 since 1999. Second, the Magic have sold out 24 of the 26 suites (2 are retained by the City) each year in the arena. We have calculated prior year annual gross suite lease revenues at 5 percent growth that yields current average suite pricing. Third, the Magic pay an annual fee of \$100,000 to the city for the right to sell building signage. Fourth, for the year 2000-2001 the Magic paid to the city \$442,500 as part of the new naming rights deal with TD Waterhouse. Fifth, the city retains 100 percent of parking revenues from 3,500 spaces. We have assumed an increase every third season starting at \$6.00 per vehicle and growing to \$10 per vehicle. Sixth, the city has always retained 50 percent of the Magic’s net food service revenues. We have assumed a 50 percent operating margin and have assumed a \$5.05 per cap commencing in 1990 and growing at six percent per season.²¹ The table below shows a comparison of the respective investments of the public sector and private sector in Orlando over the first 12 years of the term, calculated as a NPV, discounted at 7 percent.

<i>(dollars in millions)</i>	<u>Public</u>	<u>Private</u>
Initial Funding Investments:	\$98.00	\$4.00
Total NPV Investments:	\$73.68	\$28.32
Total NPV Allocations:	72.24	27.76
	percent	percent

Source: Turnkey Sports Estimates

7.2.4.4 Salt Lake City

The Utah Jazz privately financed and developed their current arena, the Delta Center. In June 1990, the Jazz began construction of the Delta Center and completed construction (in just 16 months) on October 4, 1991. The Delta Center opened on October 7, 1991. The table below shows the different sources of funding in Salt Lake City:

Jazz Bank Debt	\$66.0
Jazz Owner Equity	\$8.0
SLCRA - TIF Bonds	\$20.0
TOTAL (in millions)	\$94.0

Source: Utah Jazz, Kagan World Media, Inc.

²¹ The analysis is taken through the 2000-2001 season. This season, the Magic pay to the City a flat \$14,260 per home game, plus game day staffing expenses, plus 50 percent of the net revenue per home game from food service, parking, suites, and arena signage.

The Salt Lake City Redevelopment Agency (the “SLCRA”) owns title to the land upon which the arena sits. The Utah Jazz owns title to the improvements (the arena and all of its furniture, fixtures, and equipment). The Jazz leases the land from the SLCRA for \$1 per year. The Jazz are responsible for all personal property taxes for their leasehold interests in the arena which have historically been in the range of \$1 million annually. The Jazz operate and manage the Delta Center, pay all arena operating expenses and capital reserve funds, and retain all arena revenues.

The Delta Center was privately financed and developed by the Utah Jazz. The Jazz contributed \$74 million of the \$98 million project budget (75.5 percent) from private sources. The SLCRA contributed the remaining \$24 million (24.5 percent) for land acquisition and preparation and off-site infrastructure connections. The Jazz also agreed to pay property taxes on their leasehold interests in the arena, which reach approximately \$1 million annually. The table below shows a comparison of the respective investments of the public sector and private sector in Salt Lake City over the first 10 years of the term, calculated as a NPV, at a discount rate of 7 percent.

<i>(dollars in millions)</i>	<u>Public</u>	<u>Private</u>
Initial Funding Investments:	\$20.00	\$74.00
Total NPV Investments:	\$12.98	\$81.02
Total NPV Allocations:	17.32 percent	82.68 percent

Source: Turnkey Sports Estimates

7.2.4.5 Indianapolis

In November 1999 the Pacers entered into a set of agreements with the Marion County Convention and Recreational Facilities Authority (“MCCRFA”) and the Capital Improvement Board of Marion County for the development and management of a new arena now known as Conseco Fieldhouse. Groundbreaking for Conseco Fieldhouse took place in July 1997 and the arena opened in November 1999. The table below shows the different sources of funding in Indianapolis:

Capital Interest Bonds	\$195.1
Capital Appreciation Bonds	\$5.9
Current Interest Bonds	\$21.5
PSDA Revenues	\$10.8
City Grant	\$4.7
TOTAL (in millions)	\$238.0

Source: Capital Improvements Board of Marion County

The 1997 bonds are supported by lease rentals received by the MCCRFA and secured by the one percent Countywide Food & Beverage Tax; a portion of the 6 percent County Innkeeper’s Tax; the 5 percent County Admissions Tax; the two percent County Supplemental Auto Rental Tax; the County Professional Sports Development Area revenues; \$350,000 annually from the State Cigarette Tax; and other revenue streams of the MCCRFA.

The CIB owns title to the land, the arena and the parking garage and, as such, the Pacers will pay no property or leasehold taxes. The CIB developed the project and was responsible for cost overruns. The Pacers operate and manage the arena and connected parking garage; pay all operating expenses and retain

all arena and parking garage revenue. The rent (“license fee”) paid by the Pacers is a flat \$1 annually, plus the 5 percent admissions tax, plus \$3.4 million annually to use the parking garage. The \$3.4 million annual payment is only due in years in which the Pacers achieve a cumulative, compounded annual rate of return of at least 18 percent on a basis of a \$100 million franchise in 1997. As such, the payment to the CIB has not yet been made and is unlikely ever to be made. The CIB is responsible for major capital improvements and the Pacers are responsible for minor repairs and maintenance. The CIB agreed to release the Pacers from the lease after 10 years under a complicated formula requiring sale of the team and proceeds used to defray a schedule of bond defeasance.

The arena was designed by the architecture firm of Ellerbe, Becket and was constructed in 27 months after approximately 10 months of design. The table below shows the budget parameters for the project.

Land Budget:	\$13.4
Hard Budget:	\$123.6
Soft Budget:	\$26.1
FF&E Budget:	\$25.8
Parking & Streetscape:	\$21.1
Transactional Costs:	\$28.0
Total Budget (in millions):	\$238.0

Source: Capital Improvements Board of Marion County

The MCCRFA issued bonds for \$238 million of the \$248 million project budget. \$10 million was contributed from private sources in the form of land and other grants. The City and the County contributed the off-site infrastructure improvements. The Pacers have also agreed to pay a flat \$3.4 million annually to the CIB if their cumulative, compounded annual rate of return exceeds 18 percent, as well as the 5 percent admissions tax. For the flat annual payment of \$3.45 million, we have assumed that the payment to the CIB will never be made. For the admissions tax, we assumed a five percent growth rate in ticket revenues with an average paid attendance of 17,000. The table below shows a comparison of the respective investments of the public sector and private sector in Indianapolis over the 20-year term, calculated as a NPV, at a discount rate of 7 percent.

<i>(dollars in millions)</i>	<u>Public</u>	<u>Private</u>
Initial Funding Investments:	\$238.00	\$10.00
Total NPV Investments:	\$208.94	\$39.06
Total NPV Allocations:	84.25	15.75
	percent	percent

Source: Turnkey Sports Estimates

7.2.4.6 Charlotte – The Old Deal

The Charlotte Coliseum was built by the City of Charlotte. Groundbreaking took place in August 1985 before the City was awarded a NBA franchise; the Hornets franchise was then awarded by the NBA in April 1987; the Charlotte Coliseum was completed in August 1988 and the first Hornets game took place in November 1988. The Coliseum was originally budgeted to cost \$52 million and then the City invested another \$8 million in 1988 to bring the facility up to NBA standards. The table below shows the different sources of funding in Charlotte:

City GO Bonds	\$40.0
City Appropriation	\$12.0
City Revenue Bonds	\$8.0
TOTAL (in millions)	\$60.0

Source: City of Charlotte

The City of Charlotte owns title to the land upon which the arena sits. The City also owns the arena and operates all facets of the arena including food service. The Hornets were the primary tenant in the Coliseum. The Hornets currently play under a year-to-year lease at the Coliseum. In 2001-2002, the Hornets paid the City a flat \$9,000 per home game, plus game day staffing expenses, plus 50 percent of the net revenue per home game from food service, parking, suites, and arena signage.

The City of Charlotte contributed the land for the site, off-site infrastructure improvements and \$60 million of the \$60 million project budget (100 percent) from public sources. Calculating a NPV of the respective subsequent investments is extremely difficult in the case of the Hornets because the team has had four very different leases: the first lease was in effect 1988-1991; the second lease ran from 1992-1997; the third lease ran between 1998-2000 and was terminated by the team; and the fourth lease is in effect for 2001-02 season and on a year-to-year basis if the team had remained in Charlotte. The common threads through these leases pertain to ticket rent, parking, and food service. In making our calculations, we have made the following assumptions. First, until the 2001-02 season, the Hornets paid to the City the lesser of 12 percent of gross ticket sales versus a flat, capped fee that has increased from \$2,500 in 1988-89 to \$12,500 in 2000-01. We have assumed the capped amount in each season. Second, until 2001-02, the City had always retained 100 percent of the Hornets' parking revenue. We have assumed 2.3 attendees per vehicle and increased parking rates every third season. Third, until the 2001-02 season, the City had always retained 100 percent of the Hornets' food service revenues. We have assumed a 50 percent operating margin and have assumed a \$4.50 per cap commencing in 1988 and growing at six percent per season.²² The table below shows a comparison of the respective investments of the public sector and private sector in Charlotte over the first 13 years of the term, calculated as a NPV, at a discount rate of 7 percent.

<i>(dollars in millions)</i>	<u>Public</u>	<u>Private</u>
Initial Funding Investments:	\$60.0	\$0.0
Total NPV Investments:	\$15.89	\$44.11
Total NPV Allocations:	26.49	73.51
	percent	percent

Source: Turnkey Sports Estimates

7.2.4.7 Charlotte – The New Deal

Effective January 13, 2003, the City of Charlotte entered into a series of agreements with the New Team pertaining to the development and operation of a new arena in Charlotte to be ready for the 2005-06 season. The City of Charlotte is working with two major local banking partners, Bank of America and Wachovia (the "Banking Partners") to fund the new arena project. The new arena in Charlotte is planned to be approximately 780,000 gross square feet with approximately 18,500 seats in the basketball

²² The analysis is taken through the 2000-2001 season.

configuration. Premium seating inventory has not yet been determined. The arena will have the right to use 517 dedicated parking spaces in a nearby city-owned and operated parking lot. The City was obligated to acquire the arena site by March 1, 2003 and is responsible for developing the project and delivering substantial completion on or before November 1, 2005. This City is responsible for all environmental remediation on the site and is also responsible for all off-site infrastructure (which is not included in the project budget below).

The City is funding a total of \$231.8 million of the \$265 million total project budget. The City is funding this obligation from the following sources: (1) \$165 million from an increase in the hotel/motel tax and existing revenue streams from the three percent rental car tax; (3) \$50 million through the City's conveyance of certain agreed upon land to the Banking Partners; and (4) \$16.8 million through the City's financing of its share of arena food and beverage revenues from the new arena.

The remaining \$33.2 million of the \$265 million total is coming from a \$10 million contribution from the corporate community and a \$23.2 million loan from the Banking Partners, which will be repaid by the New Team over a ten-year repayment period with interest at 2 percent per annum. The New Team is not making any capital contribution to the arena project.

The Banking Partners have taken a significant role in assisting their city in funding the project. In addition to the \$23.2 million being loaned to the City (and repaid by the New Team), the Banking Partners are also loaning the City of Charlotte an additional \$76.8 million to be repaid by the City as follows: \$50 million through the City's conveyance of certain agreed upon land to the Banking Partners; \$16.8 million through the City's share of arena food and beverage revenues; and the previously mentioned \$10 million in grants which the City must secure from the corporate community. The table below shows the different sources of funding in Charlotte:

City Hotel/Motel and Rental Car	\$165.0
City Land Bank Sale	\$50.0
Team Loan Repayment over 10 Years	\$23.2
City Share of F&B Revenue	\$16.8
Corporate Community Grants	\$10.0
TOTAL (in millions)	\$265.0

Source: City of Charlotte

The City of Charlotte will acquire and hold title to the land upon which the arena sits and the improvements. The City, through its existing Coliseum Authority, will operate all "back of house" facets of the arena operation and also retained the right to operate the food services. The New Team will operate all of the "front of house" facets of the operation. The Coliseum Authority will serve in a role similar to a private management company, except that its responsibility will be limited to "back of house" operations. The Authority will submit a "back of house" operating budget each year to the New Team and will be paid by the New Team, as operator of the arena, from operating expenses. The New Team is responsible for all other management and operations, booking, marketing, sales, etc., and must pay all operating expenses. The New Team has the right to retain all operating revenues. The only annual payment required from the New Team is that they must repay to the Banking Partners a \$23.2 million loan over a 10-year period at 2 percent per annum. For all intents and purposes, the New Team has no rent or other license payment to the City.

As mentioned above, the City is obligated to acquire the arena site by March 1, 2003 and is responsible for developing the project and delivering substantial completion on or before November 1, 2005. The

City is responsible for all environmental remediation on the site and is also responsible for all off-site infrastructure (which is not included in the project budget below).

Environmental:	\$0.8
Hard Budget:	\$138.4
Soft Budget:	\$19.1
FF&E Budget:	\$21.0
Contingency:	\$20.7
Land & Transactional Costs:	\$65.0
Total Budget (in millions):	\$265.0

Source: City of Charlotte

The City, as developer, has assumed responsibility for all cost overruns except those caused by the New Team change orders and excess team costs like certain non-attached furniture in the New Team exclusive spaces. The development agreement grants significant access and participation rights to the New Team in the process of designing and developing the new arena. The New Team holds approval rights equal to that of the City for the construction budget and for each element of the schematic drawings, design development documents, critical path schedule, construction documents, and other documents that set forth in detail the requirements for the development and construction of the project.

The deal in Charlotte represents a rather significant change from the old deal for the Hornets. The tables below show a comparison of the respective investments of the public sector and private sector in Charlotte, at a discount rate of 7 percent. The first table is the old deal and the second table is the new deal, which became effective on January 13, 2003.

Charlotte – The Old Deal		
<i>(dollars in millions)</i>	<u>Public</u>	<u>Private</u>
Initial Funding Investments:	\$60.0	\$0.0
Total NPV Investments:	\$15.89	\$44.11
Total NPV Allocations:	26.49 percent	73.51 percent

Source: Turnkey Sports Estimates

Charlotte – The New Deal		
<i>(dollars in millions)</i>		
	<u>Public</u>	<u>Private</u>
Initial Funding Investments:	\$231.80	\$33.20
Total NPV Investments:	\$231.80	\$50.98
Total NPV Allocations:	81.97	18.03
	percent	percent

Source: Turnkey Sports Estimates

The changes to the capital structure and rental structure in Charlotte have a slight effect on the analysis that was performed in Phase 1. Section 3 of the Phase 1 report concluded that the six comparable markets, combined together and taken as an average, are 25 percent deeper than the Sacramento marketplace; or, said another way, Sacramento is 75 percent as strong as the average of NBA comparable markets. In order to calibrate the findings from these comparable NBA markets to Sacramento, in Phase 1 the study team took the final step of adjusting the private sector investments by 25 percent to recognize the market challenges faced in Sacramento compared with the other, deeper NBA comparable markets. The first table on the left below shows the adjusted NPV investment parameters that were suggested for the Sacramento market in Phase 1 and second table on the right below shows the new adjusted NPV investment parameters in light of the new deal that became effective in Charlotte in January 2003.

Phase 1 Analysis				Revised Analysis		
Calibration to Sacramento = 75%		Public	Private	Calibration to Sacramento = 75%		
Post-1990 Deals	84.97%		15.03%	Post-1990 Deals	85.35%	14.65%
Post-1990 Deals without Memphis	82.73%	R A N G E	17.27%	Post-1990 Deals without Memphis	84.97%	15.03%
Range Average	77.90%		22.10%	Range Average	80.29%	19.71%
5-Market Composite without Charlotte	74.42%		25.58%	6-Market Composite	76.43%	23.57%
6-Market Composite	69.49%		30.51%	5-Market Composite without Charlotte	74.42%	25.58%

The approximate range suggested above remains reasonable when checked from the following perspective. At the high-end of the range, a Sacramento public sector investment of approximately 85 percent matches quite closely the public sector investment in Charlotte, the NBA’s most recent deal, and also Indianapolis and Memphis. The low end of the range matches closely with the NBA deal in San Antonio. Taken together, Charlotte, Memphis, San Antonio and Indianapolis are the four most recent arena deals that have been negotiated in the NBA – including all 30 NBA markets – and all fall within this study team’s analysis as comparable NBA markets.

7.2.5 Noncompetition

Development of a new multipurpose sports and entertainment venue is a large capital investment and a large operating investment. The parties investing capital either in the development or the operations of the venue generally enter into covenants protecting themselves from outside competition. While the parties recognize that the marketplace can always create competition and that there is nothing that can limit the marketplace, the parties do take pains to make certain that the parties themselves do not undercut the viability of the subject arena project. In San Antonio and Memphis, both with existing arenas (Freeman Coliseum and the Pyramid), the parties agreed to limit competition between the existing arena and the new arena. Below is an example of language used in the Memphis agreements:

CITY/COUNTY and HOOPS acknowledge and agree that an important element of the success of the Arena Complex is to limit direct competition from The Pyramid and the Coliseum in the booking of events that could take place in the Arena Complex. In furtherance of the foregoing, CITY/COUNTY and HOOPS acknowledge and agree that all prospective Arena Events shall be classified into the following four (4) categories (the "Event Categories"): (i) Franchise Events, (ii) National Events, (iii) Local Community Events, and (iv) Excluded Events. Such prospective events shall be held as follows:

- 1. Franchise Events and National Events shall be held in the Arena Complex, but may also be held in The Pyramid or the Coliseum upon the prior written mutual consent of HOOPS and either the manager of The Pyramid, or the Coliseum, as the case may be. National Events shall not be pursued by the manager of The Pyramid or the Coliseum without the prior written consent of HOOPS.*
- 2. Local Community Events may be held in the Arena Complex, The Pyramid or the Coliseum, as determined by the promoter of such Local Community Event; provided, however, that CITY/COUNTY shall cause each agreement that schedules a Local Community Event to be held in either The Pyramid or the Coliseum to contain a covenant allowing the manager of the Arena Complex, within five (5) business days of receiving notice of the scheduling of the applicable Local Community Event, to match the terms of such agreement in all material respects, in which event the applicable Local Community Event shall be held in the Arena Complex.*
- 3. Excluded Events shall be held in the Arena Complex, The Pyramid or the Coliseum, as determined by the promoter of such Excluded Event.*
- 4. If a prospective event could reasonably be characterized as included within more than one Event Category, such event shall be deemed to be included within the first applicable Event Category, considered in the following order: (A) Franchise Events, (B) Excluded Events, (C) National Events, and (D) Local Community Events. In the event a prospective event is a Conflict Event, such event shall be referred by the manager of the Arena Complex to the manager of The Pyramid and the manager of the Coliseum.*

With respect to any prospective event that is not a Franchise Event, a National Event, an Excluded Event or a Local Community Event, HOOPS or its designated operator, the manager of The Pyramid and the manager of the Coliseum, shall, in a manner consistent with Section 21 of this Operating Agreement, confer for the purpose of determining what is the appropriate venue for staging such prospective event, taking into account the following factors (in addition to other reasonable factors): the anticipated date for the event, the estimated number of spectators, the ticket price, and whether such event is of a nature that is suitable for the Arena Complex. It is the understanding of the Parties that, to the extent possible, if such event is suitable for the Arena Complex and meets the other criteria referred to herein, then such event should be staged in the Arena Complex.

In addition, there is normally additional language that prohibits the public sector from building a facility which can compete with the arena for available dates, suiteholders, sponsors, etc. The new arena agreement in Charlotte provides, in part: *“during the period of this Agreement, to the extent permitted by applicable law, shall not, directly or indirectly (including through the Authority), provide financial assistance or incentives to or request any other government body to provide financial assistance or incentives to, the construction or operation of any new facility having a capacity of more than five thousand (5,000) that could host events competitive with those to be conducted at the Arena other than a major or minor league baseball facility or facilities, a soccer facility . . .”*

7.2.6 Public Purpose Covenants

Development of a new multipurpose sports and entertainment venue must meet the threshold objectives of public purpose. In the new Charlotte deal, as well as in Memphis, Indianapolis and San Antonio, the NBA team agreed to provide some form of public access to the new arena facility. In Memphis, the NBA team is to provide “public meeting rooms” that can be used by the City/County or political subdivisions thereof for special meetings, presentations, etc. The most common ways to achieve public purposes has been for public sector bodies to receive rent-free (event costs only) event dates for non-publicly-ticketed events; to receive hospitality at the arena like a suite or club seats, or; to receive the right to control certain pieces of advertising inventory in the arena at no fee (production cost only).

7.2.7 Term and Early Termination

The length of the relationship between a NBA team and its public sector partners is often related to the debt service obligations on the bonds used to finance the venue. Historically, teams used to agree to terms that ran concurrently with the life of the bonds used to finance the arena. But in the last 10 years, NBA teams have begun to seek shorter and shorter terms for a variety of reasons. First and most importantly, teams do not want to be confined to a marketplace that is no longer economically viable. Second, teams do not want to be confined to a marketplace that is no longer supporting the team. The recent relocations of the Vancouver team to Memphis and the Charlotte team to New Orleans highlight this second, more subtle, point. Even though the marketplace itself may be economically viable, if community support dries up for the team, like it did in Vancouver and Charlotte, then the team ideally wants to have the ability to relocate. Third, professional sports teams have learned that the value of the asset, the franchise, can be enhanced through mobility and flexibility. For these reasons, and others, professional sports teams in general, and NBA teams specifically, have begun to seek shorter lease terms overall, shorter “lock-in” periods, and early termination rights.

There are eight NBA teams that have no “term” at all because they have, in effect, no landlord: the Chicago Bulls, Detroit Pistons, New York Knicks, Philadelphia 76ers, Portland Trailblazers, Toronto Raptors, Utah Jazz, and the Washington Wizards. These teams privately financed and developed and privately own and operate their own arenas. However, for NBA teams that have used public funds to build their arenas, there are Term covenants. The table below shows the initial term length for the following NBA teams:

Summary of NBA Lease Terms			
NBA Team	Term (Years)	Buyout	Trigger Out
Atlanta	30.0	No	No
Boston	15.0	No	No
Charlotte (new)	25.0	Year 1	Trigger
Cleveland	30.0	No	No
Dallas	30.0	No	No
Denver	25.0	No	No
Golden State	16.0	Year 10	No
Houston	30.0	No	No
Indianapolis	20.0	No	Trigger
L.A. Clippers	3.0	No	No
Memphis	25.0	Year 10	Trigger
Miami	30.0	No	No
Milwaukee	3.0	No	No
Minnesota	30.0	Year 1	No
New Orleans	10.0	No	No
NJ Nets	0.5	No	No
Orlando	6.0	No	No
Phoenix	40.0	No	Trigger
San Antonio	25.0	Year 1	No
Seattle	15.0	No	No
Overall Average	20.4		
Comparable Market Average	20.2		

Buyout Provisions. Several leases in the NBA have definitive liquidated damages provisions and schedules. These leases expressly state that the team cannot relocate and that if the team attempts to relocate in the absence of a material breach, then the public sector entity can secure specific performance of the agreement. However, there is law to support the notion that any such liquidated damages provision in a document like a lease, by definition, attaches a sum-specific to the damages incurred in the event of a team relocation. Therefore, the very presence of such a liquidated damages provision runs counter to the notion of specific performance because the equitable remedy requires that quantifiable damages cannot be ascertained.

The issue is difficult because public sector entities need to recover the debt service on their debt and also recognize the strength of the deterrent that a robust liquidated damages provision can provide. At the same time, however, a public sector entity does not want to impede their own ability to secure their preferred remedy: specific performance of the agreement. This study team views a liquidated damages provision as, in effect, a buyout provision. The below table shows several recent buyout provisions in the comparable NBA markets and, for informational purposes, recent NHL and NFL buyout provisions.

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Summary of Lease Buyout Schedules						
(000)	Charlotte New Deal	Memphis Grizzlies	San Antonio Spurs	Minnesota T-Wolves	Nashville Predators	Tennessee Titans
1	200,000		250,000	60,000	35,000	117,000
2	200,000		244,000	57,000	34,000	117,000
3	200,000		238,000	54,000	33,000	117,000
4	200,000		232,000	51,000	32,000	117,000
5	200,000		226,000	48,000	31,000	117,000
6	150,000		220,000	45,000	30,000	117,000
7	150,000		214,000	42,000	29,000	117,000
8	150,000		208,000	39,000	28,000	117,000
9	150,000		202,000	36,000	27,000	117,000
10	150,000		196,000	33,000	26,000	117,000
11	85,000	105,059	190,000	30,000	25,000	117,000
12	80,000	100,382	184,000	30,000	24,000	117,000
13	75,000	95,358	178,000	30,000	23,000	87,000
14	70,000	89,948	172,000	30,000	22,000	87,000
15	65,000	84,134	166,000	30,000	21,000	87,000
16	58,000	77,883	160,000	30,000	20,000	87,000
17	55,000	71,163	154,000	30,000	19,000	87,000
18	47,000	63,935	148,000	30,000	18,000	87,000
19	42,000	56,174	142,000	30,000	17,000	87,000
20	36,000	47,842	136,000	30,000	16,000	87,000
21	30,000	38,898	130,000		15,000	87,000
22	25,000	31,215	124,000		14,000	87,000
23	19,000	23,943	118,000		13,000	34,000
24	13,000	16,034	112,000		12,000	34,000
25	7,000	8,352	106,000		11,000	34,000
26					10,000	34,000
27					10,000	34,000
28					10,000	34,000
29					10,000	34,000
30					10,000	34,000

Trigger Out Provision. A trigger out provision is different from a buyout provision because it recognizes from the start that circumstances may arise which would provide the team with an “acceptable” justification and reason for early terminating the agreements and leaving the arena (and perhaps even the marketplace). Trigger out provision were very rare until recently. There are currently four trigger out provisions in effect in the NBA – three in the comparable markets.

Phoenix. The Phoenix Suns have the right to early terminate out of the last 10 years of their 40-year lease in the event that their arena is deemed to be obsolete. Note that the early termination rights in Phoenix are rather mild since all the bonds were amortized over 30 years and that the NBA team agreed to an initial term (40 years) that was 10 years longer in duration than the average lease length at the time.

Indianapolis. The Authority in Indianapolis agreed to a provision that allows the NBA team to early terminate the arena agreements and relocate *any time after the 10th year in the arena* in the event that the community support for the team (reflected in sales of suites, club seats, and gate receipts) drop below certain floors.

Memphis. City/County in Memphis agreed to allow the NBA team to early terminate the arena agreements and relocate any time after the 10th year in the arena if the following triggering provisions were to become satisfied:

Early Termination Right. Beginning with the tenth (10th) NBA Full Season of the Initial Term, HOOPS shall, in addition to any other rights expressly granted herein, have the right, but not the obligation, provided there is no existing Event of Default by HOOPS hereunder, to terminate this Operating Agreement and the other Arena Documents (the "Early Termination Right"), on the terms and conditions set forth.

- (a) In the event of a Shortfall Season, HOOPS shall notify CITY/COUNTY of the occurrence of same within thirty (30) days after the last day of any Shortfall Season (the "Shortfall Season Notice"). If, as of any Shortfall Determination Date, the following conditions exist: (A) the previous NBA Regular Season was a Shortfall Season, and (B) there is a Regular Seat Shortfall, a Suite Shortfall or a Club Seat Shortfall, then HOOPS shall notify CITY/COUNTY in writing within thirty (30) days after such Shortfall

Determination Date (the "Shortfall Seat Notice") of its determination that condition (B) above exists, including a statement of the amount of the applicable shortfall. CITY/COUNTY shall have the right to have an independent (in that it receives no significant revenue from HOOPS or CITY/COUNTY or either of their respective Affiliates) certified public accounting firm reasonably acceptable to HOOPS review HOOPS's books and records during normal business hours to the extent necessary in order to verify the information set forth in the Shortfall Season Notice and/or the Shortfall Seat Notice, such review to be completed within thirty (30) days after the date of receipt of the applicable notice. All disputes respecting the shortfall calculation shall be resolved pursuant to the Dispute Resolution Procedure.

- (b) *CITY/COUNTY, the public sector and/or the community of Memphis and Shelby County shall have the right, within sixty (60) days after CITY/COUNTY's receipt of the Shortfall Seat Notice (the "Cure Period"), to purchase, or cause to be purchased, the required number of Suites and/or season tickets to cure the Regular Seat Shortfall, the Suite Shortfall and/or the Club Seat Shortfall, as applicable (such purchase(s), hereafter called the "Cure"), and if the Cure is effected within the Cure Period, HOOPS shall have no right to terminate this Operating Agreement and the other Arena Documents pursuant to Section 31(a)(iii), but only as such right was triggered as a result of the previous NBA Regular Season constituting a Shortfall Season. Notwithstanding the foregoing, the Cure may also be effected by the satisfaction in full of all obligations under written commitments in a form acceptable to HOOPS executed by members of the public sector and/or the community of Memphis and Shelby County (the "Commitments"), which Commitments shall be delivered to HOOPS. Upon execution and delivery to HOOPS of the Commitments, HOOPS shall acknowledge receipt of same and deliver such acknowledgement to CITY/COUNTY.*
- (c) *If, however, the Cure is not effected prior to the end of the Cure Period, and the owners of HOOPS intend to sell the Franchise in whole to an unaffiliated third party, and HOOPS complies with all terms and conditions of Section 29 and Section 32 hereof, HOOPS shall have the right, but not the obligation, to exercise the Early Termination Right, by sending written notice of such termination to CITY/COUNTY within thirty (30) days after the expiration of the Cure Period (the "Early Termination Notice"), effective as of the end of the NBA Full Season stated in the Early Termination Notice (the "Termination Effective Date").*
- (d) *The Early Termination Right shall remain in full force and effect for every NBA Full Season after the tenth (10th) NBA Full Season of the Initial Term, whether or not exercised by HOOPS, and whether or not a Cure has previously been effected.*

Charlotte – The New Deal. The New Team has the right to early terminate the arena agreements and relocate away from Charlotte *any time after the 20th year in the arena* if the following trigger occurs at any time commencing in the 18th year in the new arena: (1) New Team sustains two consecutive years (the "Loss Period") of operating losses greater than \$8 million each year and greater than \$25 million in the aggregate; and (2) in each year during the Loss Period less than 60 percent of the premium seating has been sold; and (3) in each year during the Loss Period gross gate receipts yield less than 65 percent of the NBA league-wide median; and (4) the New Team has met the minimum player salary threshold requirements of the NBA collective bargaining agreement.

7.2.8 Non-Relocation Provisions

Until 20 years ago there was no such thing as a non-relocation provision. Since that time, with the advent of professional sports teams becoming more mobile, leases and other similar agreements have begun to include non-relocation provisions. The provisions have grown in size and complexity and have also begun to migrate into their own documents, separate and apart from lease documents. Moreover, these non-relocation covenants are often guaranteed by the assets of the team, the operator, and/or the general partner of those entities. Below is an extract from the Memphis Non-relocation agreement:

Effective immediately, HOOPS affirmatively covenants to: (i) use and occupy the Arena Complex when substantially completed; (ii) cause the Franchise to continue to play Home Basketball Games at the Arena Complex; (iii) not relocate or attempt to relocate its HOOPS Franchise in contravention of the Use and Operating Agreement; (iv) not initiate discussions for the sale and

relocation or relocation of HOOPS Franchise with any third party in contravention of the Use and Operating Agreement; and/or (v) not undertake or cause to be undertaken or support any act or omission, directly or indirectly, in whole or in part, causing or leading to the relocation of the Franchise in contravention of the Use and Operating Agreement. By way of example and not limitation, HOOPS agrees not to make any application to the NBA to relocate the Franchise in contravention of the express terms and conditions of the Use and Operating Agreement, none of which are waivable, dischargeable or excusable by any other party or entity without the prior express written consent of CITY/COUNTY. Such consent may be withheld in the sole and absolute discretion of the CITY/COUNTY.

The NBA teams in Charlotte, Memphis, and San Antonio each agreed to extremely tight non-relocation agreements, backed by the guarantee of the team and team owners.