

**ARENA MANAGEMENT, OPERATIONS, AND LEASE AGREEMENT**

between

CITY OF SACRAMENTO

and

SACRAMENTO DOWNTOWN ARENA LLC

Dated as of: May 20, 2014

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## **LIST OF EXHIBITS AND SCHEDULES**

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EXHIBIT C	Form of Subordination, Non-Disturbance, and Attornment Agreement
EXHIBIT D-1	Annual Fee: Sample Calculations
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## **ARENA MANAGEMENT, OPERATIONS, AND LEASE AGREEMENT**

This ARENA MANAGEMENT, OPERATIONS, AND LEASE AGREEMENT (this "**Agreement**") is made and entered into as of May 20, 2014 (the "**Effective Date**"), between the CITY OF SACRAMENTO, a municipal corporation of the State of California (the "**City**"), and SACRAMENTO DOWNTOWN ARENA LLC, a Delaware limited liability company ("**ArenaCo**"). The City and ArenaCo are sometimes referred to in this Agreement as the "**Parties**" and each as a "**Party**".

### **BACKGROUND**

Sacramento Kings Limited Partnership, a California limited partnership ("**TeamCo**"), owns and operates the National Basketball Association ("**NBA**") franchise currently known as the Sacramento Kings (the "**Team**").

Concurrently with the Parties' execution of this Agreement, the Parties, TeamCo, and Sacramento Basketball Holdings LLC, a Delaware limited liability company and the direct or indirect controlling owner of each of ArenaCo and TeamCo ("**HoldCo**"), are entering into the Comprehensive Project Agreement for the Sacramento Entertainment and Sports Center (the "**Comprehensive Agreement**") and all other "**Project Agreements**" (as such term is defined in the Comprehensive Agreement). The Project Agreements include the Arena Design and Construction Agreement between the City and ArenaCo (the "**Design and Construction Agreement**"), pursuant to which ArenaCo has agreed to design and construct a multipurpose entertainment and sports center, including administrative offices, practice facility, plazas, walkways, parking, and outdoor entertainment areas (the "**Arena**"), on the land described in Exhibit A (the "**Arena Land**"), and the Team Use Agreement between ArenaCo and TeamCo (the "**Team Agreement**"), pursuant to which ArenaCo has agreed to operate, maintain, and repair the Arena for, and license the use of the Arena to, TeamCo.

The City and ArenaCo desire to enter into this Agreement, pursuant to which (i) the City will grant to ArenaCo an Early Use License during the Early Use License Term (as such terms are hereinafter defined), (ii) the City will lease to ArenaCo, and ArenaCo will lease from the City, the Arena Land and the Arena during the Leasehold Term, and (iii) ArenaCo has the option to purchase the Arena Land and the Arena from the City, in each case on the terms and conditions set forth in this Agreement.

**With these background facts in mind, the Parties agree as follows:**

#### **1. Lease and Grant of Use; Reservation of Rights; Term**

##### **1.1 *Lease and Grant of Use.***

- (A) *Lease.* Subject to the terms, conditions and reservations of this Agreement, including Section 1.2, the City hereby leases to ArenaCo, and ArenaCo hereby leases from the City, the Arena Land and the Arena

during the Leasehold Term. The Parties agree that, during the Leasehold Term, ArenaCo is permitted hereunder to use the Arena Land and the Arena for any and all uses that are permitted by Applicable Law, including (i) the "Permitted Uses" under the Team Agreement, (ii) the playing, exhibiting, presenting, and holding of Events, including other professional or amateur sporting and competitive events, exhibitions, and tournaments (which may include serving as the home arena of another professional, semi-professional, or collegiate sports team), concerts and other musical performances, theater performances, family shows, other forms of live entertainment, conventions, exhibitions, markets, fairs, and community- or civic-oriented events (other than City Events), and (iii) any other use that is ancillary or incidental to any of the foregoing uses; provided, however, ArenaCo shall not (x) create or cause any public or private nuisance in, on, or about the Arena or Arena Land or (y) use the Arena or Arena Land for any Prohibited Uses.

- (B) *Compliance with Applicable Law.* ArenaCo's use and occupancy of the Arena and the Arena Land shall comply with all Applicable Laws at all times and nothing in this Agreement shall constitute or be deemed to constitute a waiver by the City of the performance of its governmental functions or of any such Applicable Laws or of the duty of ArenaCo to comply with such Applicable Laws. The City shall comply with all Applicable Laws at all times in connection with its performance of this Agreement.
- (C) *Third Parties.* Subject to the terms and conditions of this Agreement, any of the rights (including exclusive rights) or obligations granted to ArenaCo under this Agreement regarding using, operating, managing, or maintaining the Arena Land and the Arena may be exploited or satisfied directly by ArenaCo or indirectly through other Persons (including Affiliates of ArenaCo) pursuant to contracts with ArenaCo or any of its Affiliates; provided, however, that ArenaCo may not assign or delegate its obligation to manage the Arena to a third party (other than an Affiliate of ArenaCo), except in accordance with Section 4.3. All such contracts shall be subject to all Applicable Laws (including all applicable bonding and licensing requirements) and all terms and conditions of this Agreement and any other applicable Project Agreements. The Parties acknowledge and agree that the Team Agreement has been approved by the City and satisfies the foregoing conditions.
- (D) *Acquisition and Aggregation of Arena Land.* As of the Effective Date, (i) the City owns a portion of the Arena Land, (ii) SG Downtown LLC, a Delaware limited liability company (and an Affiliate of HoldCo), owns a portion of the Arena Land (such portion, the "**SG Land**") and SG

Downtown LLC has agreed to convey the SG Land to the City pursuant to, and subject to the terms and conditions of, the Property Conveyance Agreement and Joint Escrow Instructions, dated as of the Effective Date, between the City, SG Downtown LLC, HoldCo, and certain additional Affiliates of HoldCo, and (iii) the remainder of the Arena Land (the "**Order for Possession Land**") is subject to the Order for Possession pursuant to which the City has the right to fully possess and use the Order for Possession Land. The City will use its commercially reasonable efforts to obtain as soon as practical after the Effective Date fee title to the Order for Possession Land. The lease of the Arena Land and the Arena from the City to ArenaCo pursuant to this Agreement (which lease is distinct from the Early Use License) is conditioned on the City's acquisition of fee title to the SG Land and the Order for Possession Land and the aggregation of all of the Arena Land into a single parcel pursuant to and as evidenced by the recordation of a final map therefor, mutually acceptable to the Parties, by ArenaCo, at ArenaCo's cost, in accordance with the State of California's Subdivision Map Act and the City's subdivision ordinance supplementing and implementing the same. The City shall, at no cost to the City, cooperate with ArenaCo in connection with the recordation of such final map and sign such documents as may be required by Applicable Law as the owner of the Arena Land.

(E) *City Financing Documents.*

- (1) In connection with obtaining the "City Financing" as defined in the Funding Agreement, the City and the JPA intend to enter into (i) a Site Lease pursuant to which the City will lease all or a portion of the Arena Land and all or a portion of the Arena to the JPA (the "**Site Lease**"), and (ii) a Project Lease (the "**Project Lease**") pursuant to which the JPA will sublease the same to the City.
- (2) The City shall have the right, from time to time, to enter into any City Financing Documents (including the Site Lease and the Project Lease), subject to the following:
  - (a) The City shall cause the City Financing Documents to provide that the outside maturity date for the payment of the City Financing (including any refinancings thereof) will be no later than, and shall use commercially reasonable efforts to cause no portion of the City Financing to be outstanding after, the Initial Expiration Date (as such term is defined in the Team Agreement).

- (b) The City shall (i) provide true, correct, and complete copies of the City Financing Documents, the applicable bond purchase agreement described in Section 2.1 of the Funding Agreement, and any other material documents that pertain to the City Financing to ArenaCo and TeamCo (and ArenaCo shall promptly provide to the Leasehold Mortgagee) promptly after the execution thereof, (ii) not terminate, amend, or modify any of the City Financing Documents, the applicable bond purchase agreement described in Section 2.1 of the Funding Agreement, and any other material documents that pertain to the City Financing to the extent such termination, amendment, or modification would adversely affect the rights or obligations of ArenaCo under this Agreement, TeamCo under the Team Agreement, or ArenaCo or TeamCo under any other Project Agreement, (iii) promptly notify ArenaCo and TeamCo (and ArenaCo shall promptly notify the Leasehold Mortgagee) of any material defaults under any of the City Financing Documents, the applicable bond purchase agreement described in Section 2.1 of the Funding Agreement, and any other material documents that pertain to the City Financing, and (iv) promptly notify ArenaCo and TeamCo (and ArenaCo shall promptly notify the Leasehold Mortgagee) of any termination, amendment, or modification of any of the City Financing Documents, the applicable bond purchase agreement described in Section 2.1 of the Funding Agreement, and any other material documents that pertain to the City Financing.

(F) *Subordination, Nondisturbance, and Attornment.*

- (1) ArenaCo agrees to subordinate and subject this Agreement (including the Leasehold Estate) to the City Financing Documents regardless of the date of execution or the date or order of recording of any of such agreements or any memoranda thereof; provided, however, that as condition precedent to the effectiveness of any such subordination, (i) the City shall, and shall cause the JPA, the Trustee, each holder of an interest senior to the City's or the JPA's interest, and each lender to any of the foregoing parties that holds a security interest in the Arena Land, the Arena, the Site Lease, or the Project Lease (collectively, "**Interest Holder**") to, and (ii) ArenaCo shall, and shall cause TeamCo to, enter into subordination, non-disturbance, and

attornment agreements, in a commercially reasonable and recordable form, with and for the benefit of TeamCo and ArenaCo ("SNDAs"). Such SNDAs shall provide, among other things, that: (w) ArenaCo acknowledges that this Agreement is subordinate to the City Financing Documents, including the Site Lease and the Project Lease; (x) TeamCo acknowledges that the Team Agreement is subordinate to this Agreement, the Site Lease, and the Project Lease; (y) except where an ArenaCo Default continues to exist beyond any applicable notice and cure periods, including those available to any then-existing Leasehold Mortgagees, (I) ArenaCo shall not be disturbed and its right to possession of the Arena Land and the Arena for the entire term of this Agreement shall continue in full force and effect even if for any reason the Site Lease or the Project Lease terminates before expiration of this Agreement and (II) TeamCo shall not be disturbed and its right and the Team's right to use the Arena Land and the Arena for the entire term of the Team Agreement shall continue in full force and effect even if for any reason the Site Lease or the Project Lease terminates before expiration of the Team Agreement; and (z) in the event that this Agreement terminates by reason of City exercising any right it has under this Agreement to terminate, a rejection in ArenaCo's bankruptcy, or option of ArenaCo to treat this Agreement as terminated under 11 U.S.C. § 365(h)(1)(A)(i), or any comparable provision of Applicable Law, and a New Agreement or the Step-In Agreement (as defined in the Team Agreement) is entered into (or deemed to have been entered into), TeamCo shall not be disturbed and its right and the Team's right to use the Arena Land and the Arena for the entire term of the Team Agreement shall continue in full force and effect for so long as there is no event of default that occurs and continues to exist beyond any applicable notice and cure periods under a Step-In Agreement that replaces this Agreement or a Step-In Agreement that replaces a New Agreement. Promptly after obtaining a fully-executed copy of any such SNDA, ArenaCo shall record the same in the recorder's office for the County of Sacramento.

- (2) Notwithstanding anything to the contrary contained in Section 1.1(F)(1), in connection with (and as a condition to) the City and the JPA signing the Site Lease and the Project Lease, the Parties agree to execute and deliver, and ArenaCo shall cause TeamCo to execute and deliver, and the City shall cause the JPA and the Trustee to execute and deliver, the SNDA in the form attached hereto as Exhibit C. Promptly after obtaining a fully-executed

copy of such SNDA, ArenaCo shall record the same in the recorder's office for the County of Sacramento. The Parties acknowledge and agree that such execution, delivery, and recordation of such SNDA will satisfy the Parties' obligations under Section 1.1(F)(1) with respect to the Site Lease and the Project Lease.

- (3) Without limiting the Parties' foregoing obligations under Sections 1.1(F)(1)-(2), if required by the title company in connection with any City Financing, ArenaCo shall use its commercially reasonable efforts to cause the Leasehold Mortgagees to execute and deliver a commercially reasonable acknowledgement or similar instrument whereby such Leasehold Mortgagees consent to the subordination of ArenaCo's Leasehold Estate to the City Financing Documents as provided in this Section 1.1(F).

## **1.2    *Reservation of Rights: City Events.***

- (A) *City Civic Events.* Notwithstanding anything to the contrary contained in this Agreement, but subject to the other provisions in this Section 1.2, the City hereby reserves for itself the non-assignable right to use the Arena (including the Premium Seating) for up to nine civic-oriented Events (each, a "**City Civic Event**" and collectively, the "**City Civic Events**") each Operating Year (i) that are sponsored or co-sponsored by the City; (ii) that are civic or charitable in nature or are conducted or presented as a service by the City to its residents or a non-profit organization; (iii) which may be ticketed, provided that the financial benefits therefrom (if any) are retained by the City or distributed to a non-profit, civic or other community organization; and (iv) that do not use the Floor in any manner that, in the reasonable judgment of TeamCo, could reasonably be expected to materially interfere with the operations of the Team or cause damage to the Floor, without the prior written consent of TeamCo. The City shall give ArenaCo reasonable prior written notice of any City Civic Event that is expected to include a performance by a performer that is normally booked in entertainment centers (whether arenas, stadiums, or otherwise), and, if such performance is a primary feature of such City Civic Event (as opposed to an ancillary performance booked by a third party for the City Civic Event), ArenaCo shall have the right to require the City to not include such performance by such performer as part of the City Civic Event if ArenaCo demonstrates that ArenaCo is actively attempting to attract, or has within the past 6 months actively attempted to attract, such performer to perform at the Arena.

- (B) *City Minor Event.* In addition to the rights reserved in Section 1.2(A), the City shall have the non-assignable right to use the Arena (including the Premium Seating) on an as available basis for up to 24 meetings (including employee meetings), luncheons, banquets, seminars, and other substantially similar events (each, a "**City Minor Event**" and collectively, the "**City Minor Events**") each Operating Year that (i) are limited to no more than 450 individuals, and (ii) do not use the Floor in any manner that, in the reasonable judgment of TeamCo, could reasonably be expected to materially interfere with the operations of the Team or cause damage to the Floor, without the prior written consent of TeamCo.
- (C) *Team Exclusive Spaces.* Notwithstanding anything to the contrary contained in this Section 1.2, the City shall have no right to use any of the TeamCo Exclusive Spaces during any City Event without the prior written consent of TeamCo; provided, however, that to the extent reasonably necessary for a City Civic Event, the City shall have the right to use the visiting team locker rooms and the officials' locker room. ArenaCo shall have the right, and may grant the right to TeamCo, in accordance with Section 15.2 of the Team Agreement, to make non-structural alterations, installations, decorations, additions, and improvements to the Team Exclusive Spaces.
- (D) *Scheduling of City Events.*
- (1) The Parties acknowledge that within the framework for scheduling TeamCo Events under the Team Agreement and the framework established by this Section 1.2(D), the scheduling of Events at the Arena must be a cooperative endeavor and the City and ArenaCo agree to recognize and, in good faith, attempt to accommodate the legitimate interests of the other with respect to the scheduling of Events within such framework.
- (2) As between the City and ArenaCo, ArenaCo shall have the first priority for scheduling Events as set forth in this Section 1.2(D). On the first Business Day of each calendar month, ArenaCo shall deliver a current and updated schedule of Events (the "**Event Schedule**") to the City for each Operating Year for which any Events have been scheduled or reserved (including dates that have been reserved for other professional, semi-professional, and collegiate sporting events). In addition, ArenaCo shall promptly provide written updates to the Event Schedule to the City reflecting all changes of which ArenaCo is aware, including previously available dates that have become reserved dates and

previously reserved dates that have become available. At all times, ArenaCo shall cause the Event Schedule to cover at least the succeeding 365 days.

(3) Subject to Section 1.2(A), the City may schedule City Civic Events as follows:

(a) With respect to any date between October 1st and June 30th of any Operating Year, the City may schedule a City Civic Event on a date that ArenaCo has not previously scheduled or reserved for an Event on the then-current Event Schedule (including dates that have been reserved for Home Games or other professional, semi-professional, and collegiate sporting events), by delivering written notice to ArenaCo no later than 14 days in advance and as early as follows:

(i) one City Civic Event may be scheduled as early as 36 months in advance;

(ii) up to two City Civic Events may be scheduled as early as 24 months in advance (which two-Event limit includes any City Civic Event previously scheduled under clause (i) above);

(iii) up to three City Civic Events may be scheduled as early as 12 months in advance (which three-Event limit includes any City Civic Events previously scheduled under clauses (i) or (ii) above); and

(iv) up to nine City Civic Events may be scheduled as early as 90 days in advance (which nine-Event limit includes any Civic Events previously scheduled under clauses (i)-(iii) above).

(b) With respect to any date between July 1st and September 30th of any Operating Year, the City may schedule City Civic Events on dates that ArenaCo has not previously scheduled or reserved for an Event on the then-current Event Schedule (including dates that have been reserved for other professional, semi-professional, and collegiate sporting events), by delivering written notice to ArenaCo no later than 14 days in advance and as early as follows:



- (i) up to two City Civic Events may be scheduled as early as 36 months in advance;
  - (ii) up to four City Civic Events may be scheduled as early as 24 months in advance (which four-Event limit includes any City Civic Events previously scheduled under clause (i) above);
  - (iii) up to six City Civic Events may be scheduled as early as 12 months in advance (which six-Event limit includes any City Civic Events previously scheduled under clauses (i) or (ii) above); and
  - (iv) up to nine City Civic Events may be scheduled as early as six months in advance (which nine-Event limit includes any Civic Events previously scheduled under clauses (i)-(iii) above).
- (4) The City may schedule City Minor Events by delivering written notice thereof to ArenaCo (which notice will include the City's reasonable and good faith estimate of the number of attendees of such City Minor Event) at least seven days in advance of such City Minor Event, subject to availability of desired space within the Arena and subject to such City Minor Event not interfering with any Event that has been scheduled on the applicable date, or for which a date has been reserved, on the Event Schedule, all as reasonably determined by ArenaCo at the time of ArenaCo's receipt of such written notice; provided, that ArenaCo shall have the right to reschedule any such City Minor Event upon no less than 30 days' prior written notice to the City if such City Minor Event conflicts with any Event scheduled by ArenaCo after the scheduling of such City Minor Event (and, in connection therewith, ArenaCo shall use commercially reasonable efforts to locate an alternative location for such City Minor Event if the City is unable to reschedule such City Minor Event to an alternate available date at the Arena).
- (5) The City may, prior to the Leasehold Commencement Date, schedule City Events as set forth above; provided, however, if the scheduled date for such City Event occurs before the Leasehold Commencement Date, then such City Event will be automatically cancelled. If the cancelled City Event was a City Civic Event, such City Civic Event will be disregarded for purposes of determining

the number of City Civic Events occurring in any given Operating Year pursuant to Section 1.2(A).

- (6) Notwithstanding anything to the contrary in this Agreement, with respect to any date during a Basketball Season (as defined in the Team Agreement) (i) the scheduling of Home Games shall have absolute priority over the scheduling of any City Event unless the City has reserved an available date for such City Event in accordance with Section 1.2(D)(3)(a) and (ii) the City may not schedule any City Event that uses the Arena in excess of five consecutive days in succession (excluding move in and move out periods) without the prior written consent of ArenaCo and TeamCo.

- (E) *Management and Operation of City Events.* ArenaCo shall manage and operate each City Event for the City in the same manner as ArenaCo manages other Events for third parties; provided that (i) ArenaCo and the City shall agree to the specific services and levels of service to be provided by ArenaCo to the City for each City Event (the "**City Event Services**"), (ii) the City is entitled to use the Arena for City Events free of any rent or other use charges, (iii) ArenaCo shall provide access to the Arena during each City Event for media personnel and equipment at no charge by ArenaCo to the City or the media, and (iv) revenues and expenses from City Events shall be allocated and otherwise dealt with in accordance with Sections 1.2(F) and 1.2(G). To the extent food and beverages are made available at such City Event (a) the prices for such food and beverages shall be consistent with the prices charged during comparable Events that are not City Events, and (b) the City acknowledges that ArenaCo shall or may, as applicable, use the Concessionaire(s) to the extent required or permitted, as applicable, by the Concession Agreement(s) during such City Event.

- (F) *Revenues.*

- (1) Subject to Sections 1.2(G)-(I), the City shall be entitled to retain, or ArenaCo shall pay to the City to the extent received by ArenaCo or any of its Affiliates (expressly including TeamCo), all revenues exclusively relating to City Events, including all revenues from City Event-related tickets (including convenience fee rebates consistent with similar Events that are not City Events), merchandise, concessions, Advertising, and parking (other than parking for City Minor Events) (the "**City Event Revenues**"), in accordance herewith.

- (2) The City shall have the exclusive right, in its sole discretion, to market, promote, sell, and control the pricing of tickets for City Events and to control the seating assignments in the Arena for City Events. In connection therewith, the City shall use the Arena's ticketing system in accordance with the Ticketing Agreement to make such tickets available to the attendees of the City Events.
  - (3) ArenaCo shall have no right to control or to receive the revenue from any broadcasts, reproductions, or transmittals of the pictures, descriptions, or accounts of City Events, whether distributed locally, nationally, internationally, or otherwise, all of which rights and revenues shall be retained by the City.
  - (4) In connection with any given City Event, the City shall have the right to market, price, sell, grant, license, post, exhibit, display, publish, broadcast, and present temporary Advertising that promotes sponsors of such City Event during such City Event on such terms and conditions and pursuant to such policies as determined by the City in its sole discretion; provided, however, that (a) such Advertising shall not be in bad taste or, at the time it is sold, licensed, or granted by the City to an applicable third party, a cause for embarrassment to the ArenaCo or TeamCo, (b) such Advertising shall not include any companies known for tobacco products, guns, adult entertainment, or marijuana or other non-pharmaceutical drugs, and (c) the City shall (i) not cover, block, or otherwise obscure Advertising at the Arena without the prior written consent of ArenaCo (or TeamCo as its designee) and (ii) coordinate such Advertising with ArenaCo (or TeamCo as its designee) so as to not breach any contractual obligations of ArenaCo (or TeamCo as its designee) to third parties that have been granted Advertising rights. ArenaCo shall use its commercially reasonable efforts to cause each sponsorship agreement or other agreement that grants Advertising rights to a third party (whether entered into by ArenaCo or by TeamCo as its designee) to include a provision that exempts the City's temporary Advertising described in this section from the exclusivity provisions of such agreement.
- (G) *Expenses.* While no rent or other use fee shall be paid to ArenaCo with respect to the use of the Arena for any City Event, the City shall reimburse ArenaCo for all out-of-pocket costs (without markup) actually incurred by ArenaCo or any of its Affiliates (expressly including TeamCo) in connection with hosting a City Event (and providing parking therefor)

that would not have been incurred by ArenaCo or any of its Affiliates but for the Arena hosting a City Event (the "**City Event Expenses**"), including the following expenses to the extent attributable to a City Event and the City Event Services provided therefor:

- (1) Direct costs for set-up and breakdown of facilities, systems, and equipment, including Floor or seating changeovers, and other costs directly related to such City Event (including costs for ushers, security personnel, facility and system operators, and janitorial personnel), but excluding, in all cases, ArenaCo's overhead costs therefor;
- (2) Direct costs for Municipal Services for such City Event;
- (3) If tickets for a City Event are sold, the costs of ticket sales, including brokers expense, and any fees or expenses incurred pursuant to the Ticketing Agreement; provided, however, that ArenaCo shall be responsible for all costs, including salaries and other costs, related to staffing the Arena's box office; and
- (4) All food and beverage costs directly related to the City Event (including with respect to the use of the Restaurant Areas (as defined in the Team Agreement), to the extent applicable).

(H) *Parking Facilities.* Except as otherwise agreed upon by the City:

- (1) For any given City Minor Event, ArenaCo shall make available to the City, without charge (notwithstanding Section 1.2(G)), a number of parking spaces at the Parking Facilities equal to one-third of the City's reasonable and good faith estimate of the number of attendees at such City Minor Event, but in no event more than 150 parking spaces. ArenaCo shall make such parking available during the period commencing at least 90 minutes prior to, and ending at least one hour after, such City Minor Event.
- (2) Subject to any and all limitations set forth in the POMA (which shall in no event be more restrictive on the City's rights under this subsection than on the Team for Home Games), for any given City Civic Event (i) all attendees of such City Civic Event will be permitted to park at the Parking Facilities during the period commencing at least three hours prior to, and ending at least one hour after, such City Civic Event, and (ii) any parking fees charged for use of the Parking Facilities for attendees of such City Civic Event will be subject to the prior written approval of the City and any revenues therefrom will be City Event Revenues.

Notwithstanding the foregoing sentence, the City acknowledges and agrees that all advertising, sponsorship, and promotional activity at the Parking Facilities will be deemed ArenaCo's Advertising for purposes of this Agreement and ArenaCo is entitled to retain all revenues in connection therewith. The City agrees that it shall not exercise its rights under this Section 1.2(H)(2) with respect to any non-holiday themed City Civic Event during the period between the Friday after Thanksgiving until New Year's Day.

- (I) *Payment; Accounting.* No later than 30 days after each City Event, ArenaCo shall pay to the City an amount equal to the positive difference (if any) between (i) the City Event Revenues for such City Event received by ArenaCo or any of its Affiliates less (ii) the City Event Expenses for such City Event incurred by ArenaCo or any of its Affiliates. Together with such payment, ArenaCo shall deliver to the City a complete and detailed accounting of such City Event Revenues and City Event Expenses and a report of the paid attendance and turnstile attendance count for such City Event. If the City Event Expenses for such City Event incurred by ArenaCo or any of its Affiliates exceed the City Event Revenue received by ArenaCo or any of its Affiliates, the City shall pay the amount of such excess no later than 30 days after its receipt of such detailed accounting (and ArenaCo or any of its Affiliates shall retain such City Event Revenues so received). The City shall promptly reimburse ArenaCo for any unpaid invoices for City Event Expenses incurred by ArenaCo or any of its Affiliates to the extent ArenaCo or any of its Affiliates receives such unpaid invoices after such ten Business Day period.
- (J) *Cooperation for Other Events.* In addition to (and not in lieu of) the City Events and subject to the Event Schedule, ArenaCo shall cooperate in good faith with the City to provide the Sacramento Convention and Visitors Bureau, the Sacramento Convention Center, and similar Persons the opportunity to use the Arena up to three times each Operating Year on terms and conditions similar to those set forth in Sections 1.2(E) through 1.2(I).
- (K) *Multiple-Day City Events.* If any given City Event occurs over a period of two or more days (excluding move in and move out periods), then with respect to the applicable cap on City Civic Events (i.e., nine) or City Minor Events (i.e., 24) in each Operating Year, each day of such City Event (excluding move in and move out periods) will be deemed to be one City Event. Except as provided in the preceding sentence, a multiple-day City Event will be treated under this Agreement as a single City Event. By way of example, if on June 1 of the first Operating Year, the City desires to

schedule a four-day City Civic Event commencing on December 1 of the third Operating Year (i.e., 18 months in advance) and a two-day City Civic Event commencing April 1 of the third Operating Year (i.e., 22 months in advance), the City would be entitled to do so pursuant to Section 1.2(D)(3) but, for the purposes of Section 1.2(A) only, the City will be deemed to have scheduled six of its nine City Civic Events for the third Operating Year.

- (L) *Use of Premium Seating during City Events.* For any given City Event, if the City's use of the Arena will include the use of any Premium Seating for which the users thereof are typically required to enter into a license agreement with ArenaCo or its designee (including TeamCo), then the City shall (or, at the City's option, shall require the users of such Premium Seating to) enter into such a license agreement with ArenaCo or its designee, as appropriate. Any such license agreement must grant the same (but not any greater) privileges to the City and its users, and be on the same terms and conditions, as the licenses that ArenaCo or its designees grant to the majority of third parties for other similarly situated Premium Seating for single Event use (except with respect to concessions, parking, and similar goods and services), provided that such license shall be free of any license fees, ticket charges, or similar fees or charges.

### **1.3    *Term.***

- (A) *Term: Generally.* The term of this Agreement (the "**Term**") commences on the Effective Date and expires on the Expiration Date, unless terminated earlier as expressly provided for in this Agreement. The Term includes both the Early Use License Term and the Leasehold Term.
- (B) *Early Use License Term.* The term of the Early Use License (the "**Early Use License Term**") commences on the later of (i) the Effective Date and (ii) the date that is five Business Days after ArenaCo has provided the City with all evidence of insurance as required by Section 8.7. The Early Use License Term automatically terminates upon the earlier to occur of (x) the termination of this Agreement (subject to any applicable post-termination rights of any Leasehold Mortgagee), and (y) the Leasehold Commencement Date.
- (C) *Leasehold Term.* The term of the City's lease of the Arena Land and the Arena to ArenaCo (the "**Leasehold Term**") commences on the Leasehold Commencement Date and expires on the Expiration Date, unless terminated earlier as expressly provided for in this Agreement.

- (D) *Early Termination.* This Agreement will terminate prior to the Expiration Date only (i) if either Party exercises a termination right expressly provided to it in this Agreement, or (ii) upon the termination of the Comprehensive Agreement in accordance with Section 7.2 thereof.

#### **1.4 Early Use.**

- (A) *Grant of Entry Right.* The City hereby grants to ArenaCo and its Affiliates (including TeamCo) an exclusive license, during the Early Use License Term, to enter upon and across (i) all portions of the Arena Land that are owned by the City at all times during the period of the City's ownership thereof and (ii) all portions of the Arena Land that are subject to the Order for Possession during the period that the Order for Possession is effective, solely for the purpose of performing and engaging in the Work (as defined in the Design and Construction Agreement) and the Pre-Opening Activities and all other ancillary uses in connection therewith (the "**Early Use License**"). The Early Use License is subject to all matters of record affecting the Arena Land and all terms and conditions of the Design and Construction Agreement.
- (B) *Pre-Opening Activities.* Beginning on the date that is 120 days prior to the Leasehold Commencement Date (as such 120 day period is reasonably estimated, in good faith, by ArenaCo) and thereafter during the Early Use License Term, ArenaCo and its Affiliates (including TeamCo) shall have the right (but not the obligation) to access and use any portion of the Arena for move-in, stocking, finishing of the Arena (including installation of furniture, fixtures, and equipment) to prepare the Arena for its intended use, employee training, other customary pre-opening activities, and to provide TeamCo the rights granted to TeamCo pursuant to Section 2.4 of the Team Agreement (collectively, the "**Pre-Opening Activities**"). ArenaCo shall coordinate the Pre-Opening Activities with the applicable contractors performing the Work so as not to materially delay the Leasehold Commencement Date.
- (C) *No Annual Fee.* The Parties acknowledge and agree that (i) the Early Use License Term precedes the first Operating Year; therefore, no Annual Fee will be payable or begin to accrue during the Early Use License Term and (ii) ArenaCo shall not be obligated to pay any other fees or rent payments to the City in connection with the Early Use License; provided, however, that the foregoing subclause (ii) does not limit ArenaCo's other obligations under this Agreement with respect to the Early Use License Term (including those set forth in Section 4).



**1.5 Effectiveness.** Notwithstanding anything in this Agreement to the contrary, the effectiveness of this Agreement is conditioned upon the NBA's approval of this Agreement. ArenaCo shall promptly deliver to the City a copy of the letter from the NBA confirming such approval upon ArenaCo's receipt thereof.

## **2. Intangible Rights**

**2.1 Grant of Non-Exclusive License.** The City, as owner of the Arena and the intellectual property rights associated therewith, hereby grants to ArenaCo during the Term a non-exclusive, irrevocable, royalty-free, paid-up right and license to use any replica, model, artistic, or photographic rendering or other visual representation of the Arena or any portion thereof owned by or licensed to the City in association with any and all goods and services throughout the world (the "**Intangible Rights**"), together with the right to use, enjoy (whether in whole or in part), and sublicense (including any sublicense contained in Article III of the Team Agreement) the right to receive and retain all revenues generated from ArenaCo's or its sublicensees' use of the Intangible Rights.

**2.2 City's Rights; Restrictions on Future Licenses.** ArenaCo acknowledge and agrees that the foregoing license is non-exclusive and the City retains the right, from time to time, to use and enjoy (whether in whole or in part) the Intangible Rights to advertise, market, and promote the City, and to receive and retain all revenues from such use of the Intangible Rights by the City. For the avoidance of doubt, the City shall not have the right to grant any additional licenses of the Intangible Rights to any third party for such third party's commercial gain.

**2.3 Intellectual Property Owned by ArenaCo or TeamCo.** The City acknowledges that the City does not have, nor shall the City assert, any intellectual property rights or any license in any intellectual property rights owned by ArenaCo or TeamCo.

## **3. Annual Fee; City Suite**

**3.1 Annual Fee.** In consideration for ArenaCo's rights under this Agreement, including the lease and use of the Arena Land and the Arena, ArenaCo shall pay to the City an annual fee for each Operating Year (the "**Annual Fee**").

(A) *Generally.* Subject to Sections 3.2 and 3.3, the amount of the Annual Fee is as follows:

- (1) For the first Operating Year, subject to Section 3.1(B), the Annual Fee shall be (i) \$6,500,000 if the "Commencement Date" under the Team Agreement occurs during the first Operating Year or (ii) \$4,700,000 if the "Commencement Date" under the Team Agreement does not occur during the first Operating Year;



- (2) For each of the second, third, fourth, and fifth Operating Years, the Annual Fee shall be \$6,500,000;
  - (3) For the sixth Operating Year, the Annual Fee shall be \$6,500,000, as increased, on a compounding basis, to an amount that would have been the Annual Fee if each of the Annual Adjustments for the second, third, fourth, fifth, and sixth Operating Years had occurred; and
  - (4) For each subsequent Operating Year, the Annual Fee shall be the Annual Fee for the immediately prior Operating Year, as increased by the Annual Adjustment for such subsequent Operating Year.
- (B) *First Operating Year: Sleep Train Event Fees.* In addition to the amount set forth in Section 3.1(A)(1), ArenaCo shall pay to the City, as part the Annual Fee for the first Operating Year, the aggregate amount of Sleep Train Event Fees received by HoldCo or its Affiliates during the period commencing on July 1 immediately preceding the Leasehold Commencement Date and ending on the Leasehold Commencement Date; provided, however, that (i) in no event shall the Annual Fee exceed \$6,500,000 (in the case of Section 3.1(A)(1)(i)) or \$4,700,000 (in the case of Section 3.1(A)(1)(ii)), and (ii) if the Leasehold Commencement Date is actually delayed due to a breach by the City of its obligations contained in this Agreement or any other Project Agreement, then the period during which the Sleep Train Event Fees are tallied for the purpose of this Section 3.1(B) will commence on July 1 immediately preceding the Leasehold Commencement Date and end on the date that the Leasehold Commencement Date would have occurred but for such breach by the City (as reasonably estimated in good faith by the Parties). Within a reasonable time following the Effective Date, the City shall, and ArenaCo shall cause HoldCo to, enter into an amendment to the Sleep Train Arena Event Fee Agreement pursuant to which (x) HoldCo will acknowledge the City's rights and ArenaCo's obligations under this Section 3.1(B), and (y) the City will waive HoldCo's obligations to pay the "Event Fees" under the Sleep Train Arena Event Fee Agreement if and to the extent the City receives corresponding Sleep Train Event Fees under this Section 3.1(B).
- (C) *Sample Calculations.* Sample calculations of the Annual Fee are included in Exhibit D-1 attached hereto. Additionally, the chart attached hereto as Exhibit D-2 shows the Annual Fee that would be payable in each Operating Year if the CPI Index never increased by more than 3% during any given Operating Year.

**3.2 Reductions for Force Majeure Events.** In the event of a Force Majeure Event (other than an NBA work stoppage, including a strike or a lockout) during an Operating Year that results in the Team not playing Home Games that are NBA Regular Season Games in the Arena, the Annual Fee with respect to such Operating Year shall be reduced by an amount equal to the greater of (A) the Annual Fee otherwise owing with respect to such Operating Year (without taking into account the applicable Force Majeure Event) multiplied by a fraction, the numerator of which is the number of Home Games that are NBA Regular Season Games not played by the Team in the Arena due to such Force Majeure Event and the denominator of which is the number of Home Games that are NBA Regular Season Games scheduled during such Operating Year and (B) the amount ArenaCo or its Affiliates must pay another arena to play such Home Games at such other arena. Notwithstanding the foregoing, the reduction in the Annual Fee as permitted by this Section 3.2 is capped for each Operating Year (without carry-over for subsequent Operating Years) such that the sum of the Annual Fee and the proceeds actually received by the City from the City Rental-Interruption Insurance attributable to such Operating Year (the "**Minimum FM Annual Payment**"): (i) will be \$1,000,000 for each of the first, second, third, fourth, and fifth Operating Years, (ii) for the sixth Operating Year, the Minimum FM Annual Payment will be \$1,000,000, as increased, on a compounding basis, to an amount that would have been the Minimum FM Annual Payment if each of the Annual Adjustments for the second, third, fourth, fifth, and sixth Operating Years had occurred, and (iii) for each subsequent Operating Year, the Minimum FM Annual Payment is the Minimum FM Annual Payment for the immediately prior Operating Year, as increased by the Annual Adjustment for such subsequent Operating Year. For the purposes of this Section 3.2 only, the term "Home Games that are NBA Regular Season Games" includes Home Games that are NBA Regular Season Games that are scheduled to be played at the Arena but, due to a Force Majeure Event, are not actually played at the Arena (whether because cancelled or because played at an Alternate Site (as defined in the Team Agreement)).

**3.3 Prorations for Partial Operating Years.** For each of the first and the final Operating Years, the Annual Fee shall be prorated based upon the actual number of days in such partial Operating Year; provided, however, the amount due under Section 3.1(B) shall not be prorated.

**3.4 Timing of Payment.**

- (A) The Annual Fee for the first Operating Year shall be paid in two equal installments. The first installment shall be paid 90 days after the Leasehold Commencement Date. The second installment shall be paid on the later of (i) June 30<sup>th</sup> of the first Operating Year or (ii) 90 days after the Leasehold Commencement Date. If the Leasehold Commencement Date occurs after March 30 of the first Operating Year, then both installments shall be due 90 days after the Leasehold Commencement Date.

- (B) The Annual Fee for any other Operating Year shall be paid in four equal installments. The first installment is due on October 1 of such Operating Year, the second installment is due on January 1 of such Operating Year, the third installment is due on April 1 of such Operating Year, and the fourth installment is due on June 30 of such Operating Year.
- (C) ArenaCo's obligations under this Section 3.4 survive the expiration or earlier termination of this Agreement with respect to any earned but unpaid Annual Fee during the final partial Operating Year.

**3.5 City Suite.** To the extent permitted by Applicable Law, as soon as reasonably practical, but in any event no later than 90 days prior to the Leasehold Commencement Date, ArenaCo or its designee (including TeamCo) and the City shall enter into a license agreement granting the City the right to use one full-sized Suite (the "**City Suite**") during the Leasehold Term, including Event tickets (for seating in such Suite) to all Events (except NBA Playoff Games and certain other Excluded Events as provided below) equal to the maximum capacity of the City Suite, including so-called "Standing Room Only" tickets (if any). If, for any given Excluded Event, the promoter of such Excluded Event (e.g., the NCAA) prohibits ArenaCo from including tickets to such Excluded Event as part of an annual Suite license without an additional charge therefor, and ArenaCo provides the City with documentation from such promoter reasonably evidencing such prohibition, then the City shall not receive any tickets to the City Suite for such Excluded Event unless the City purchases the same. The City shall have the first right to purchase such Excluded Event tickets on the same terms as provided to the majority of third parties for seating in other similarly situated Suites; provided, however, that if such Excluded Event is an NBA Playoff Game then the cost to the City for tickets to the City Suite for such NBA Playoff Game will be the amount by which (A) the aggregate payments required to be made by ArenaCo or TeamCo to the NBA, pursuant to the NBA Rules, that are attributable to the tickets to the City Suite for such NBA Playoff Game, exceeds (B) the aggregate payments that would have been required to be made by ArenaCo or TeamCo to the NBA, pursuant to the NBA Rules, if such NBA Playoff Game was an NBA Regular Season Game (it being understood that no such payments are currently required under the NBA Rules for any NBA Regular Season Game). The City may use the City Suite for any official purpose of the City of Sacramento, including employee recognition and business development events, and the Event tickets associated therewith shall be subject to the City's ticket distribution policy. The location of the City Suite shall be determined by ArenaCo, in its sole discretion; provided, that, unless otherwise mutually agreed to by the Parties, the City Suite will be located on either side of the Arena between the NBA foul lines. The license agreement for the City Suite shall grant the same (but not any greater) privileges to the City, and be on the same terms and conditions, as the annual licenses that ArenaCo grants (whether directly or indirectly through TeamCo) to the majority of third parties for other similarly situated Suites, provided that, to the extent permitted by Applicable Law, the City Suite shall be free of any license fees, ticket charges (including the Capital Fund Ticket Fee, any

surcharges levied pursuant to the Team Agreement, and any other surcharges), or similar fees or charges. Without limiting the generality of the foregoing, (i) the City Suite shall be finished and furnished in a manner comparable to that of other similarly situated Suites, and (ii) ArenaCo shall provide parking passes to the City at no charge for all Events in the same proportion and on the same terms as provided to the majority of third parties for other similarly situated Suites. Notwithstanding the foregoing restrictions on license fees or similar charges, concessions services for the City Suite shall be provided, at the City's sole cost and expense, at the same prices as concessions services are provided under annual licenses to the majority of third parties for other similarly situated Suites.

#### **4. Taxes; Operations; Capital Repairs**

**4.1 *ArenaCo's Sole Cost.*** It is the intent of the Parties that, subject to Section 4.2(A) and except as otherwise expressly provided in this Agreement and the other Project Agreements, (A) the City shall not be required to pay any costs or expenses or provide any services whatsoever in connection with the Arena during the Term and (B) ArenaCo shall be solely responsible for paying, throughout the Term, all costs (including capital costs) necessary to design, construct, manage, and operate the Arena, including all costs of maintenance, repairs, replacements, renovation, remodeling, removal, alterations, improvements, insurance, Taxes, and all other costs, charges, expenses, and obligations of any kind now or at any time imposed upon or with respect to the Arena or the Arena Land.

#### **4.2 *Taxes.***

- (A) Without limiting the generality of Section 4.1, except as provided in the other Project Agreements (including Section 5 of the Comprehensive Agreement), ArenaCo shall be solely responsible for, and shall pay and discharge as and when due, all Taxes, to the extent allocable to the Leasehold Term, (i) upon or with respect to the Arena, or any portion thereof or any interest of ArenaCo therein or under this Agreement, expressly including any possessory interest Tax imposed on ArenaCo or any other occupant or user of the Arena (including any such possessory interest Tax imposed during the Early Use License Term), (ii) upon or with respect to ArenaCo's possession, operation, management, maintenance, alteration, repair, rebuilding, use, occupancy of or employment of personnel in the Arena, or any portion thereof, and (iii) on account of any excise, sales, use, rental, transaction, privilege, or like Taxes now or hereafter levied, assessed, or imposed against or on account of amounts payable by (a) ArenaCo under this Agreement or (b) TeamCo under the Team Agreement or the receipt thereof by ArenaCo. ARENACO ACKNOWLEDGES AND AGREES THAT A POSSESSORY INTEREST SUBJECT TO PROPERTY TAXATION MAY BE CREATED BY ENTERING INTO THIS

AGREEMENT, AND THAT ARENACO SHALL BE LIABLE FOR THE PAYMENT OF ANY POSSESSORY INTEREST TAX AND SHALL BE RESPONSIBLE FOR THE PAYMENT OF ANY TAX ASSOCIATED WITH ARENACO'S BUSINESS ON OR USE OF THE ARENA LAND, INCLUDING POSSESSORY INTEREST AND SALES TAXES.

- (B) ArenaCo shall have the right, at its sole cost and expense, to contest the amount, validity, or applicability, in whole or in part, of any Taxes affecting, against, or attaching to the Arena or Arena Land or any portion thereof by appropriate proceedings conducted in good faith and with due diligence.

**4.3 Operations and Management.** Notwithstanding anything to the contrary in this Agreement, during the Leasehold Term, the operations and management of the Arena shall be performed directly by ArenaCo or an Affiliate of ArenaCo, or by an unrelated third party management company or a New Operator; provided, that, in each case, such unrelated third party management company or New Operator (A) has at least five years' experience in operating and managing at least three other multipurpose entertainment and sports centers that serve as the home venue of an NBA team, and (B) has been approved by the City, such approval not to be unreasonably withheld, conditioned, or delayed. During the Leasehold Term:

- (A) *Generally.* ArenaCo shall have the exclusive right to, and shall, operate and manage (and, except as set forth in Section 1.2(F), shall have the right to allocate, use, and distribute in its sole and absolute discretion (subject to Section 4.6), all revenues with respect to) the Arena on a 24 hour per day, year round basis. ArenaCo shall operate and manage the Arena in accordance with the Operations Standard. Without limiting the foregoing, ArenaCo shall furnish janitorial, security, and Event staffing sufficient to ensure safe, interruption-free, and first-class presentation of all Events.
- (B) *Permits.* ArenaCo shall obtain and maintain (or cause to be obtained and maintained) all necessary licenses and permits required in connection with the operation of the Arena and the City shall use commercially reasonable efforts to expedite the process by which ArenaCo so obtains and maintains such licenses and permits that are to be obtained from the City.
- (C) *Utilities.* Subject to the terms of the other Project Agreements, ArenaCo shall be solely responsible for furnishing sufficient water, sewer, natural gas, heat, air-conditioning, electric, telephone, Internet and other utilities, hookups and capacities as are necessary to operate the Arena.

- (D) *Maintenance and Repair.* ArenaCo shall perform routine and regular maintenance and repairs so as to maintain the Arena Land and the entire Arena and its fixtures, machinery, equipment, improvements, and other components in accordance with the Maintenance and Repair Standard.
- (E) *Security.* Subject to the City's obligations under Section 4.7, ArenaCo shall be responsible for, and pay for all costs associated with, maintaining and ensuring at all times public order and safety and security of the Arena and the Arena Land in a manner that is consistent with the level of safety and security of Comparable Facilities.
- (F) *Agreements.* Subject to Section 1.1 and the rights of TeamCo under the Team Agreement and the City under this Agreement, ArenaCo shall have the exclusive right to negotiate, execute, and perform all use agreements, licenses, and other agreements (a) with Persons who desire to schedule Events, performances, meetings, exhibitions, and telecasts or other transmissions in, from, or to the Arena (or any part thereof) or who desire otherwise to license the use of or to occupy the Arena (or any part thereof) or (b) that otherwise pertain to the use, operation, and occupancy of the Arena (or any part thereof).
- (G) *Additions and Capital Repairs.*
- (1) ArenaCo shall be solely responsible for, and shall timely make with reasonable diligence, all Additions and Capital Repairs required to (i) ensure the level of amenities and technology at the Arena is above the median level (i.e., in the top half) of the other arenas in the United States that serve as home arenas for NBA teams, and (ii) otherwise comply with the Maintenance and Repair Standard. ArenaCo may also make, at its discretion, such other Additions and Capital Repairs as it believes are appropriate.
  - (2) ArenaCo shall replace (and not repair) an item if it (i) is substantially worn out, (ii) has reached the end of its useful life and is either obsolete or uneconomical to maintain and fails to perform to original specifications, (iii) is not functioning correctly and cannot be repaired or cannot be economically repaired or operated, or (iv) is no longer deemed safe. All replacements shall be of at least a quality and functionality consistent with the item being replaced and otherwise comply with the Maintenance and Repair Standard.
  - (3) At least 30 days prior to the first day of each Operating Year, ArenaCo shall provide to the City for the City's review an annual

capital repair plan setting forth all Additions and Capital Repairs work proposed to be performed in such Operating Year, together with (i) a reasonably detailed summary of all the Additions and Capital Repairs performed in the then current Operating Year and (ii) a report identifying, in reasonable detail, the variances from the then current annual capital repair plan. The City shall have the right, without limiting any of its other rights or remedies set forth in this Agreement, to provide comments and objections to any annual capital repair plan (including with respect to items that the City believes must be addressed to ensure compliance with the Maintenance and Repair Standard) and ArenaCo shall consider, in good faith (but subject to ArenaCo's obligations set forth elsewhere in this Agreement (including Sections 4.3(G)(1) and (2))), is not obligated to make changes with respect to) any such comments and objections. ArenaCo may update its annual capital repair plan from time to time and will promptly provide to the City a copy of any updates thereto.

- (4) At least 30 days prior to commencing any Additions and Capital Repairs work, ArenaCo shall provide to the City for the City's review an anticipated schedule for such work, together with the plans and specifications therefor as prepared by an engineer or architect licensed in the State of California. The City shall have the right, without limiting any of its other rights or remedies set forth in this Agreement, to provide comments and objections thereto and ArenaCo shall consider, in good faith (but subject to ArenaCo's obligations set forth elsewhere in this Agreement (including Sections 4.3(G)(1) and (2))), is not obligated to make changes with respect to) any such comments and objections.

- (H) *Emergency and Repairs.* In the event of any Emergency, ArenaCo shall promptly notify the City of such Emergency, and ArenaCo shall take whatever steps are necessary to alleviate the Emergency. If ArenaCo or any of its Affiliates have not promptly made the repairs necessary to alleviate such Emergency, the City may (but is not obligated to), in addition to any other rights and remedies available to the City, make the repairs necessary to alleviate such Emergency. To the extent practicable, the City shall contact ArenaCo prior to the City taking any action pursuant to this Section 4.3(H) 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 ArenaCo (and its Affiliates) and the City. ArenaCo shall, within 15 days after written demand from the City, reimburse the City for all reasonable costs and expenses associated with respect to such Emergency. If the work performed by the City pursuant to this Section



4.3(H) constitutes Additions and Capital Repairs, and funds are available therefor in the Capital Fund, then ArenaCo may, at ArenaCo's option, reimburse the City using the funds in the Capital Fund. Nothing in this Agreement shall be deemed to infringe on or limit the power or duty of the City (including the police and emergency service powers of the City) to act to provide for the health, safety, or welfare of the municipality in an emergency situation.

#### **4.4 Capital Fund.**

- (A) No later than the Leasehold Commencement Date, ArenaCo shall cause to be established (and thereafter shall maintain) a separate, interest-bearing account in ArenaCo's name at a bank or other institution reasonably acceptable to the City (such account, the "**Capital Fund**"); provided, however, that if any Leasehold Mortgagee requires the amounts in the Capital Fund to be deposited in an account with an entity approved by such Leasehold Mortgagee (including if such Capital Fund is to be held by such Leasehold Mortgagee), then ArenaCo shall have the right to comply with such Leasehold Mortgagee's requirements and, during any period that ArenaCo is so complying with such Leasehold Mortgage requirements, ArenaCo shall be deemed to be in compliance with the foregoing provisions of this Section 4.3(A).
- (B) The sole purpose of the Capital Fund is to accumulate and segregate funds to provide a non-exclusive source of payment for, and ArenaCo shall have the right to draw funds from the Capital Fund from time to time to pay for the costs and expenses incurred by ArenaCo solely in connection with, Additions and Capital Repairs that ArenaCo makes in accordance with Section 4.3(G) or 4.3(H) or to reimburse ArenaCo for such costs and expenses in accordance with Section 4.4(D). The funds in the Capital Fund may not be used for any other purpose (except to the extent distributions are made upon the expiration or earlier termination of this Agreement as expressly provided for in this Section 4.4). At the time ArenaCo opens the Capital Fund, the City, ArenaCo, and the institution maintaining the Capital Fund (including a Leasehold Mortgagee if such Leasehold Mortgagee is maintaining the Capital Fund as permitted under Section 4.4(A)) shall enter into an industry-standard escrow agreement or similar agreement setting forth the specific terms and conditions, consistent with the terms and conditions of this Agreement, under which the funds in the Capital Fund may be released. Notwithstanding anything to the contrary contained in this Agreement, or in any Leasehold Mortgage, any security interest of a Leasehold Mortgagee in the Capital Fund (whether or not such Capital Fund is maintained by such Leasehold Mortgagee) shall be subject to the



restrictions on such funds as contained in this Section 4.4 and the terms of the applicable escrow agreement for the Capital Fund. If any Leasehold Mortgagee maintains the Capital Fund as permitted under Section 4.4(A), such Leasehold Mortgagee is deemed to have expressly waived any and all rights of set-off with respect to any funds therein.

- (C) All Qualified Tickets shall be subject to a ticket surcharge equal to the following (the "**Capital Fund Ticket Fee**"): (i) for the first Operating Year, the Capital Fund Ticket Fee shall equal \$1.00 per Qualified Ticket and (ii) for each subsequent Operating Year, the Capital Fund Ticket Fee shall equal the Capital Fund Ticket Fee for the immediately prior Operating Year increased by the Annual Adjustment for such subsequent Operating Year; provided, however, that no Capital Fund Ticket Fee with respect to a Qualified Ticket shall be owing to the extent a holder of such Qualified Ticket receives a refund with respect to such Qualified Ticket. To the extent ArenaCo or any of its Affiliates (expressly including TeamCo) receives payments for Qualified Tickets, on the last Business Day of each calendar month, ArenaCo shall deposit into the Capital Fund an amount equal to the Capital Fund Ticket Fee in respect of the payments so received by all such Persons.
- (D) Because ArenaCo is responsible for all costs and expenses for Additions and Capital Repairs made in accordance with Sections 4.3(G) and 4.3(H), if the Capital Fund is insufficient to cover any such costs and expenses for Additions and Capital Repairs, ArenaCo shall pay when due to the applicable third party all amounts required to cover those costs and expenses that exceed the amount of the funds in the Capital Fund. Any amounts subsequently deposited in the Capital Fund shall be used to promptly reimburse ArenaCo for any and all such amounts so funded by ArenaCo, on the conditions that no such reimbursement may reduce the amount in the Capital Fund below: (i) \$3,000,000 for the first Operating Year and (ii) for each subsequent Operating Year, the minimum amount for the immediately prior Operating Year increased by the Annual Adjustment for such subsequent Operating Year.
- (E) In the event funds in the Capital Fund are used to pay or to reimburse ArenaCo for costs for which ArenaCo has a claim against a third party (including any insurance company), and ArenaCo thereafter receives funds from such other third party in satisfaction of such claims, ArenaCo shall promptly reimburse the Capital Fund out of the funds so received from such third party (minus any costs of collection) to the extent of the amount disbursed out of the Capital Fund for such cost. Such reimbursement to the Capital Fund shall not reduce or affect any future Capital Fund deposit required by this Agreement.

- (F) If this Agreement (i) expires by its terms, the City provides to ArenaCo the City Post-Termination Operation Notice in accordance with Section 17.3(A), and the City Lease is for a term of at least three years, (ii) is terminated by the City pursuant to Section 11.2(C) and (x) no New Agreement is entered into pursuant to Section 16.8 and (y) TeamCo fails to enter into the Step-In Agreement (as such term is defined in the Comprehensive Agreement) pursuant to Section 2 of the Comprehensive Agreement, or (iii) is terminated pursuant to Section 7.2(F) of the Comprehensive Agreement, then, in each case, ArenaCo shall pay to the City an amount equal to the aggregate Capital Fund Ticket Fees deposited into the Capital Fund during the 12 months immediately preceding such termination or expiration (regardless of the amount of funds then remaining in the Capital Fund), which payment must be received prior to, or concurrently with, any distributions pursuant to Section 4.4(G) and, in any event, no later than 30 days after such termination or expiration.
- (G) Upon the expiration or earlier termination of this Agreement, all amounts remaining in the Capital Fund as of such date shall be distributed (i) first to the extent set forth in the Leasehold Mortgage, to Leasehold Mortgagee to pay the amount of outstanding principal and accrued interest to Leasehold Mortgagee under said Leasehold Mortgage, and (ii) second, to ArenaCo.
- (H) Notwithstanding anything to the contrary contained in Section 4.4(G), if this Agreement is terminated and either (i) a New Agreement has been entered into pursuant to Section 16.8 or (ii) TeamCo enters into the Step-In Agreement pursuant to Section 2 of the Comprehensive Agreement, all amounts remaining in the Capital Fund as of the date of such termination shall be distributed to a new escrow agent to be held and used pursuant to the capital fund provisions contained in the New Agreement or the Step-In Agreement, as the case may be, which provisions shall be generally consistent with this Section 4.4.
- (I) This Section 4.4 survives the expiration or earlier termination of this Agreement.

**4.5 Corporate Headquarters.** ArenaCo shall maintain its corporate headquarters and its principal place of business within the city limits of Sacramento, California.

**4.6 Team Agreement: Performance and Enforcement.** ArenaCo shall at all times (A) perform its obligations under the Team Agreement, and (B) use its commercially reasonable efforts to enforce all obligations of TeamCo under the Team Agreement and all related agreements between ArenaCo and TeamCo. ArenaCo shall not terminate the Team Agreement, or approve or permit any amendment to any provision of the Team

Agreement so as to adversely impact the rights or obligations of the City under this Agreement or under any other Project Agreement or ArenaCo's ability to perform its obligations under this Agreement (including the obligation to pay the Annual Fee), in each case without the prior written consent of the City, which consent may be withheld, conditioned, or delayed in the City's sole discretion; provided, however any amendment of the Team Agreement shall not be deemed to adversely impact ArenaCo's ability to perform its obligations to pay the Annual Fee if ArenaCo's projections, prepared in good faith, with reasonable assumptions, and in accordance with industry standards, show ArenaCo continuing to be able to satisfy such obligations after such amendment. ArenaCo shall provide to the City a copy of each amendment to the Team Agreement and, if ArenaCo does not seek the City's prior written consent in connection therewith based on the projections described in the preceding sentence, then, upon the City's request, the City and its attorneys and accountants shall be entitled to inspect such projections (but may not make or retain copies thereof) at the offices of ArenaCo to confirm the same. Additionally, ArenaCo shall provide prompt written notice to the City of (i) any termination of the Team Agreement, (ii) any breach by TeamCo of any provision of the Team Agreement, (iii) any assertion by TeamCo that ArenaCo has breached any provision of the Team Agreement.

**4.7 Municipal Services.** The City shall provide the Municipal Services for each Event at a general level and manner appropriate for such Events and that is consistent with the Operations Standard. Without limiting the generality of the foregoing, with respect to TeamCo Events, the level of Municipal Services shall comply with the NBA Rules. Subject to Section 1.2(G), ArenaCo shall be responsible for any and all costs incurred by the City in providing the Municipal Services that would not have been incurred by the City but for the provision of such Municipal Services for such Event. The Parties shall cooperate in evaluating the appropriate staffing levels for the Municipal Services based upon anticipated attendance for the Events; provided, however, the City shall have final approval regarding such staffing levels so long as the same are reasonably expected to enable the City to fulfill its obligations under this Section 4.7 under the circumstances. Any disputes between ArenaCo and the City arising from the determination of the staffing levels and costs for the Municipal Services shall be settled pursuant to Section 18. Notwithstanding anything to the contrary in this Agreement, if the City reasonably determines that an Emergency exists with respect to a particular Event, the City shall have the right to determine and impose the staffing level for the Municipal Services for that Event in its sole discretion.

**4.8 City's Access Rights.** ArenaCo shall permit the City or its authorized agents or representatives to enter the Arena at all reasonable times during a Business Day (other than times during which an Event is underway and one hour before and after such Event) upon at least one Business Day's prior written notice to ArenaCo for the purposes of (A) inspecting the Arena and ArenaCo's compliance with the terms and conditions of this Agreement, and (B) during the last 36 months of the Leasehold Term, exhibiting the Arena to other Persons who have indicated an interest in operating the Arena for the

City upon expiration of the Leasehold Term (to the extent the City reasonably expects to have the right to operate the Arena upon expiration of the Leasehold Term in accordance herewith); provided, however, that (i) any such entry shall be conducted in such a manner as to minimize interference with the business being conducted in the Arena (whether by ArenaCo, TeamCo, or other authorized Persons); and (ii) a representative from TeamCo shall have the right to accompany the City and any of its authorized agents and representatives at all times while such Persons are accessing any TeamCo Exclusive Spaces. For clarification, nothing contained in this Section 4.8 or in any other provision of this Agreement shall be deemed to infringe on or limit the power or duty of the City (including the police and emergency service powers of the City) to act to provide for the health, safety, or welfare of the municipality in an emergency situation.

## **5. Advertising**

**5.1 Advertising.** Subject to Sections 4.6 and 5.2 and the City's rights under Section 1.2(F)(4), ArenaCo shall have the exclusive right to market, price, sell, grant, license, post, exhibit, display, publish, broadcast, and present, and shall have the right to allocate, use, and distribute, in its sole discretion, all revenues from, Advertising on such terms and conditions and pursuant to such policies as determined by ArenaCo in its sole discretion.

### **5.2 Naming Rights.**

- (A) In furtherance of Section 5.1, ArenaCo shall have the exclusive right to sell, grant, or license, and shall have the right to allocate, use, and distribute, in its sole discretion (subject to Section 4.6), all revenues from, all Naming Rights; provided, that all Naming Rights shall not (i) be in bad taste or, at the time they are sold, licensed, or granted by ArenaCo to an applicable third party, a cause for embarrassment to the City, or (ii) include any companies known for tobacco products, guns, adult entertainment, or marijuana or other non-pharmaceutical drugs. For the avoidance of doubt, the City shall be entitled to seek specific performance to enforce the Naming Rights' satisfaction of the foregoing criteria.
- (B) ArenaCo shall make available to the City a copy of each Naming Rights Agreement entered into by ArenaCo with respect to the Arena. Following receipt by the City of written notice from ArenaCo of the determination of the Arena Name, the City shall use its commercially reasonable efforts to use the Arena Name in all correspondence, communications, advertising, and promotion that the City may undertake with respect to the Arena, including in all press releases and other communication and media in connection with the promotion of City Events.

**5.3 Media Distribution.** ArenaCo shall have the exclusive right to control, and shall have the right to allocate, use, and distribute in its sole discretion all revenues with respect to, all broadcasts, reproductions, and transmittals of the pictures, descriptions and accounts of all Events (other than City Events), whether distributed locally, nationally, internationally or otherwise.

**5.4 Platforms.** ArenaCo shall develop and establish on the primary website, social media platform, and, to the extent feasible, the mobile application and other similar digital platforms for the Arena created by or for ArenaCo a one-step hyper-text link that is graphically represented by prominently displayed icons that allow "one-click" direct access to the primary Internet site of the City. To the extent that such links to third party Internet sites are permitted by Applicable Law and the City's policies in effect from time to time, the City shall develop and establish on its primary website and primary social media platform a one-step hyper-text link that is graphically represented by prominently displayed icons that allow "one-click" direct access to the primary website, social media platform, mobile application, and other similar digital platforms for the Arena created by or for ArenaCo.

**5.5 Signage.** The Parties agree to cooperate in good faith to ensure that, at no or the lowest possible cost to ArenaCo, a sufficient number of signs containing the Arena Name on roadways and at bus stops, light rail locations and other public locations within the City of Sacramento exist to direct individuals to the Arena.

## **6. Reporting; Records and Audits**

**6.1 Reporting.** No later than the 30th day of each calendar month during the Leasehold Term, ArenaCo shall prepare and make available to the City an unaudited report listing, for each Event held in the immediately preceding calendar month, the aggregate Capital Fund Ticket Fees from such Event.

### **6.2 Record Keeping and Audits.**

- (A) *Required Records.* ArenaCo shall maintain correct and complete books and records with respect to the Capital Fund Ticket Fees, as well as City Event Revenues received, and City Event Expenses incurred, by ArenaCo or its Affiliates (the "**Required Records**"). ArenaCo shall keep the Required Records for at least six years after the Operating Year to which they pertain. At the City's expense, the City, and its attorneys and accountants, shall be entitled to inspect the Required Records (and to make and retain copies thereof, but only to the extent related to the City Event Revenues and City Event Expenses) at the offices of ArenaCo one time per Operating Year at a reasonable time during a Business Day upon not less than three Business Days' prior written notice, which inspection shall be in a manner that does not interfere with the operations of

ArenaCo. At the City's expense, the City and its attorneys, consultants, and accountants may, during the Leasehold Term, conduct an audit or review of the Required Records one time per Operating Year with respect to the immediately preceding Operating Year in a manner that does not interfere with the operations of ArenaCo. Upon 15 Business Days' prior written notice from the City, ArenaCo shall provide or make available to the City and its attorneys, consultants, and accountants, all Required Records reasonably requested by such Persons, to conduct such audit or review (provided that copies may only be and retained to the extent the Required Records relate to the City Event Revenues and City Event Expenses). If the audit or review reveals an undisputed overpayment or underpayment of the Capital Fund Ticket Fees, City Event Revenues, or City Event Expenses, ArenaCo shall either pay or collect from the City the undisputed overpayment or the underpayment, as the case may be, within 30 days after the reconciliation of such amounts, and, in the event of any underpayments, ArenaCo shall also pay to the City interest at the Interest Rate on the amount of such underpayments from the date the original payment was due until the date such underpayment is made.

- (B) *Disputes.* Notwithstanding Section 18, in the event of a dispute between the Parties with respect to the results of any such audit or review, the Parties shall refer only the disputed matters set forth in Section 6.2(A) to a mutually agreed upon national independent accounting firm (the "**Accounting Firm**"), and the Parties shall cooperate with such Accounting Firm to enable such Accounting Firm to resolve the dispute as promptly as practicable. The Accounting Firm shall address only those items in dispute and may not assign a value greater than the greatest value for such item claimed by either Party or smaller than the smallest value for such item claimed by either Party. In the absence of manifest error, the resolution of disputed items by the Accounting Firm shall constitute an arbitral award that is final, binding, and non-appealable. The costs and expenses of the Accounting Firm incurred pursuant to this Section 6.2(B) shall be borne by the City, on the one hand, and ArenaCo, on the other hand, in proportion to the allocation by the Accounting Firm of the dollar amount of disputed matters, such that the prevailing Party pays a lesser proportion of such costs and expenses.
- (C) *Survival.* This Section 6.2 survives the expiration or earlier termination of this Agreement.

## **7. Assignment and Subletting**

**7.1 Assignment.** Subject to Section 7.2, neither Party shall make or enter into an Assignment of this Agreement without the prior written consent of the other Party, not

to be unreasonably withheld, conditioned, or delayed. With respect to ArenaCo, an Assignment of this Agreement includes any change in the control of ArenaCo, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of ArenaCo through the ownership or control of voting securities. In connection with any Assignment of this Agreement by ArenaCo (whether or not the City's consent is required therefor), ArenaCo shall provide the City with notice of such Assignment and all information reasonably requested by the City that relates to the ability of the assignee to satisfy the obligations of ArenaCo under this Agreement and, if such Assignment satisfies one of the conditions set forth in Section 7.2, all information reasonably requested by the City to confirm that such condition has been satisfied (provided, that if an Assignment of this Agreement is made pursuant to Section 7.2(D), then such information requested by the City shall be limited to evidence that an acquisition or change in control of the Team has occurred).

**7.2 Permitted Assignments.** Subject to Section 7.3, the following Assignments shall be permitted without the consent of any Party:

- (A) A Party may make an Assignment of this Agreement to any Affiliate of such Party;
- (B) ArenaCo may delegate its rights or obligations with respect to the Arena in accordance with Section 1.1(C);
- (C) Subject to Section 16, ArenaCo may pledge, mortgage, grant a security interest in, encumber, or collaterally assign its interest in this Agreement or the equity interests in ArenaCo to secure indebtedness for borrowed money of ArenaCo;
- (D) ArenaCo may make an Assignment of this Agreement to any Person (or an Affiliate thereof) that acquires, or obtains control of, the Team with the approval of the NBA; and
- (E) (i) Prior to January 1, 2020, ArenaCo shall not make any Assignment of the Purchase Option to any Person, except in connection with the Assignment of this Agreement, and (ii) on January 1, 2020 and any time thereafter, ArenaCo may make an Assignment of the Purchase Option to any Person, provided that such Person shall agree to be bound by all terms and conditions in this Agreement regarding the Purchase Option (including the possible forfeiture thereof).

**7.3 Other Project Agreements.** Notwithstanding anything to the contrary in this Agreement, in connection with and as a condition to any Assignment of this Agreement by either Party (except for changes in the control of ArenaCo), the assignee must concurrently acquire all of the assignor's rights, and expressly assume, in writing, in form and substance reasonably acceptable to the other Party, all of the assignor's



obligations under this Agreement (including assignor's rights in and to any amounts in the Capital Fund) and all other Project Agreements to which the assignor is a party. Notwithstanding the foregoing, if ArenaCo makes an Assignment of this Agreement, ArenaCo will not be required to make a corresponding Assignment of its rights or obligations under the Arena Parking Management Agreement, dated as of the Effective Date, between the City and ArenaCo.

**7.4 Contrary Assignments Void.** Any Assignment of this Agreement made contrary to this Section 7 is void.

**7.5 Fee Mortgages.** The City shall not mortgage or otherwise encumber the City's Fee Estate with any mortgage, deed of trust, security deed, deed to secure debt, or any other similar instrument or agreement constituting a lien upon, or similarly encumbering, the Fee Estate. For the avoidance of doubt, the Parties acknowledge and agree that this Section 7.5 does not restrict the City's right to grant leasehold interests with respect to the Arena and the Arena Land pursuant to the City Financing Documents.

**7.6 Permitted Subleases.** ArenaCo shall not enter into any sublease, license, concession, or other occupancy agreement (including those contemplated by Sections 1.1(C) and 4.3(F)) in a manner that circumvents the restrictions on Assignments set forth in this Section 7. By way of example, a sublease of all or substantially all of the Arena Land or the Arena for of all or substantially all of the then remaining Term will be deemed to be an Assignment of this Agreement and will be subject to the restrictions on Assignments set forth herein. Notwithstanding any subleases, licenses, concessions, or other occupancy agreements, ArenaCo shall at all times remain liable for the performance of all of the covenants and agreements under this Agreement due on ArenaCo's part to be so performed.

## **8. Insurance**

**8.1 Required Insurance.** ArenaCo shall, at its sole expense, unless otherwise expressly agreed by the City in writing, procure and maintain (or cause to be procured and maintained by appropriate contractors or vendors), in full force and effect insurance coverages appropriate for each phase of the Work (including the initial demolition work), occupancy of the Arena after Substantial Completion, and future Additions and Capital Repairs made from time to time during the Leasehold Term. These insurance coverages will include the following:

- (A) Upon completion of construction and thereafter for the remainder of the Term, property insurance for the Arena covering real property, personal property, business income, and extra expense for all risks of physical loss or damage written on the broadest available Cause of Loss Form acceptable to the City in an amount not less than the Minimum Property



Insurance Coverage with no coinsurance penalty provisions. "**Minimum Property Insurance Coverage**" means, at any given time, 100% of the full replacement cost (new without deduction for depreciation) of the Arena. Property coverage shall include earthquake, earthquake sprinkler leakage, and flood, and (i) such earthquake coverage have a limit equal to (or greater than) the Minimum Property Insurance Coverage if such a limit is available at commercially reasonable rates (failing which such earthquake coverage shall have reasonable limits or sub-limits that are determined by "Probable Maximum Loss" calculations which are acceptable to the City) and (ii) such earthquake sprinkler leakage and flood coverage shall have reasonable limits or sub-limits that are determined by "Probable Maximum Loss" calculations which are acceptable to the City. Property coverage shall also include boiler and machinery coverage. Business income and extra expense coverage shall contain limits sufficient to cover all direct and indirect loss of income and additional expenses for Arena business operations for the appropriate period of time necessary to complete repairs of all real and personal property. Business income coverage shall include an extended period of indemnity of at least 12 months. Any deductibles or self-insured retentions must be declared and approved by the City (such approval not to be unreasonably withheld, conditioned, or delayed), provided that in no event will (x) the aggregate amount of such deductibles or self-insured retentions exceed \$100,000, or (y) the amount of coverage, after taking into account any such deductibles or self-insured retentions, be less than the Minimum Property Insurance Coverage.

- (B) At all times during the Term, commercial general liability insurance (CGL) written on an "occurrence" policy form and covering liability for death, bodily injury, personal injury, and property damage with limits of \$10,000,000 per occurrence relating, directly or indirectly, to ArenaCo's business operations, conduct, or use or occupancy of the Arena. Such coverage shall include all activities and operations conducted by any Person on or about the Arena or Arena Land, and any work performed by or on behalf of ArenaCo at the Arena. Coverage should be as broad as ISO policy form CG 0001, or any replacement thereof that becomes standard in the insurance industry, or an equivalent form acceptable to the City. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the Arena project/location or the general aggregate limit shall be twice the required occurrence limit. If a Products/Completed Operations aggregate limit applies, either the Products/Completed Operations aggregate limit shall apply separately to the Arena project/location or the Products/Completed Operations aggregate limit shall be twice the required occurrence limit. ArenaCo shall require Arena Contractor to meet the requirements of this section

at all times during the performance of the Construction Work. ArenaCo shall also require all of ArenaCo's other contractors, subcontractors, vendors, agents, and representatives involved in work or operations at the Arena to meet the CGL requirements of this section with limits of at least \$2,000,000 per occurrence and \$4,000,000 aggregate. Further, if at any time ArenaCo or any of its Concessionaires sells alcoholic beverages at the Arena, ArenaCo's coverage shall include (and ArenaCo shall require its applicable Concessionaire's coverage to include) liquor liability covering liability for death, bodily injury, personal injury, and property damage with a limit of \$5,000,000 per occurrence. Any deductibles or self-insured retentions must be declared and approved by the City (such approval not to be unreasonably withheld, conditioned, or delayed).

- (C) At all times during the Term, Automobile Liability covering death, bodily injury, and property damage for the operation of all owned, non-owned, leased, and hired vehicles with limits of \$5,000,000 per accident. ArenaCo shall require Arena Contractor to meet the Automobile Liability requirements of this section at all times during the performance of the Construction Work. ArenaCo shall also require all of ArenaCo's other contractors, subcontractors, vendors, agents, and representatives involved in work or operations at the Arena to meet the Automobile Liability requirements of this section with limits of \$2,000,000 per accident. Any deductibles or self-insured retentions must be declared and approved by the City (such approval not to be unreasonably withheld, conditioned, or delayed).
- (D) At all times during the Term, Workers' Compensation insurance as required by the State of California with statutory limits and Employers' Liability insurance with a limit of no less than \$3,000,000 per accident for bodily injury or disease. ArenaCo shall require Arena Contractor and all of ArenaCo's other contractors, subcontractors, vendors, agents, and representatives involved in work or operations at the Arena to meet the Workers' Compensation requirements of this section. Any deductibles or self-insured retentions must be declared and approved by the City (such approval not to be unreasonably withheld, conditioned, or delayed).
- (E) Prior to commencing the initial demolition work and thereafter at all times during the Term, pollution insurance for the benefit of ArenaCo and the City covering first and third party claims with limits of \$5,000,000 each occurrence or claim and \$10,000,000 Policy Annual Aggregate. Any deductibles or self-insured retentions must be declared and approved by the City (such approval not to be unreasonably withheld, conditioned, or delayed).

- (F) During any construction phase, Builder's Risk insurance covering real property, personal property, consequential loss of revenue (rents and earnings) and customary "soft costs" for up to 24 months, including interest costs (including interest costs for the "City Financing" as defined in the Funding Agreement) or expenses because of delay of start-up due to an insured loss. Coverage shall be for all risks of physical loss or damage written on the broadest available Cause of Loss Form acceptable to the City for the Minimum Property Insurance Coverage with no coinsurance penalty provisions. Coverage shall include earthquake, earthquake sprinkler leakage, and flood with reasonable limits or sub-limits that are determined by "Probable Maximum Loss" calculations which are acceptable to the City. ArenaCo shall require all of ArenaCo's contractors, subcontractors, vendors, agents, and representatives involved in work or operations on site at the Arena to provide a "Property Installation Floater" covering damage to real property, personal property, machinery, or equipment impaired, broken, or destroyed, including transit to the construction site or while awaiting installation or testing at the construction site. Any deductibles or self-insured retentions must be declared and approved by the City (such approval not to be unreasonably withheld, conditioned, or delayed).
- (G) During any construction phase, Professional Liability insurance covering design errors and omissions with limits no less than \$5,000,000 each occurrence or claim and \$10,000,000 Policy Annual Aggregate. ArenaCo shall also require Arena Contractor and all other contractors, subcontractors, vendors, agents, and representatives involved in any design work related to the Arena or the Arena Land (including the Design Work (as such term is defined in the Design and Construction Agreement)) to meet the Professional Liability insurance requirements of this section. Any deductibles or self-insured retentions must be declared and approved by the City (such approval not to be unreasonably withheld, conditioned, or delayed).

## **8.2 City Rental-Interruption Insurance.**

- (A) In addition to the insurance required by Section 8.1, ArenaCo shall procure and maintain any and all rental-interruption insurance required by the City Financing Documents (collectively, the "**City Rental-Interruption Insurance**"). ArenaCo shall maintain the City Rental-Interruption Insurance in full force and effect at all times that such insurance is so required and with the minimum coverages so required. To ensure the City Rental-Interruption Insurance is procured and maintained in accordance with the City Financing Documents, the City shall (i) no later than 30 days prior to the first day of each Operating Year,

deliver to ArenaCo a written notice setting forth the total payments payable by the City with respect to the City Financing under the City Financing Documents during such upcoming Operating Year and (ii) otherwise provide to ArenaCo, from time to time upon ArenaCo's request therefor, all information reasonably required by ArenaCo in connection with procuring and maintaining the City Rental-Interruption Insurance.

- (B) Notwithstanding anything to the contrary contained in Section 4.1, the City shall be solely responsible for the premiums for the City Rental-Interruption Insurance; provided, however, that for each Operating Year, ArenaCo shall be responsible for an amount equal to the product of (i) the total premiums of the City Rental-Interruption Insurance for such Operating Year, multiplied by (ii) a fraction, the numerator of which is the Annual Fee payable for such Operating Year, and the denominator of which is the total payments payable by the City with respect to the City Financing under the City Financing Documents during such Operating Year. The City shall have the option to pay the premiums for the City Rental-Interruption Insurance (after deducting ArenaCo's share thereof) either (x) by paying such amount directly to ArenaCo no later than ten days prior to the date that such premiums must be paid to the insurer or 30 days after ArenaCo's request therefor, whichever is later, or (y) by way of an off-set against the next installment of the Annual Fee payable under this Agreement.

### **8.3     *General Provisions for ArenaCo's Insurance.***

- (A) The obligations of ArenaCo set forth in this Section 8 are independent of ArenaCo's waiver, indemnification, or other obligations under this Agreement and shall not be construed or interpreted in any way to restrict, limit, or modify ArenaCo's waiver, indemnification, or other obligations or to in any way limit ArenaCo's liability under this Agreement.
- (B) All insurance policies required under Sections 8.1 and 8.2 (including endorsements thereto) shall, unless otherwise expressly agreed by the City in writing, be issued by insurance companies authorized to do business in the State of California and rated "A-VIII" or better by A.M. Best Company (or equivalent).
- (C) All CGL policies required under Section 8.1(B) shall be endorsed to name the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of ArenaCo and its contractors,

subcontractors, agents, representatives, and employees. Such additional insured coverage should include completed operations and be provided by an endorsement (at least as broad as ISO Form CG 20 10 11 85 or through the combination of GC2038 04/13 and CG2037 04/13). For any claims related to the Arena, all CGL policies shall be primary insurance as respects the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, or volunteers shall be excess of the required CGL policies and shall not contribute with them. The liquor liability policies shall be endorsed to name the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, and volunteers as additional insureds with respect to liquor operations of the Arena. For any claims related to the liquor liability policy, the liquor liability policy insurance shall be primary insurance as respects the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, or volunteers shall be excess of the required liquor insurance and shall not contribute with it. ArenaCo shall maintain the above additional insured coverage (including Products/Completed Operations) for an additional ten years beyond the expiration or earlier termination of this Agreement. ArenaCo shall require Arena Contractor and all other contractors, subcontractors, vendors, agents, and representatives involved in work or operations at the Arena to meet the requirements of this section.

- (D) ArenaCo's automobile liability policy shall contain or be endorsed to contain the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, and volunteers as additional insureds with respect to liability arising out of the operation of all owned, non-owned, leased, and hired vehicles. Additional insured coverage can be provided in the form of an endorsement to ArenaCo's insurance (at least as broad as ISO Form CA2048 Designated Insured Endorsement). For any claims related to automobile liability, the automobile liability policy shall be primary insurance as respects the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, and volunteers, shall be excess of the required automobile liability insurance and shall not contribute with it. ArenaCo shall require Arena Contractor and all other contractors, subcontractors, vendors, agents,

and representatives involved in work or operations at the Arena to meet the requirements of this section.

- (E) All policies for property insurance, pollution insurance, and builder's risk insurance required under this Agreement shall name ArenaCo, the City, the Trustee, the Leasehold Mortgagees, and such other Persons who have an insurable interest in the Arena as "loss payees" to the extent of their insurable interest in the Arena. The City Rental-Interruption Insurance policy shall name the Trustee as the "loss payee" thereunder.
- (F) ArenaCo shall require its insurers to waive rights of subrogation against the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, or volunteers, which any insurer of ArenaCo may acquire by virtue of the payment of any loss. ArenaCo shall obtain any endorsements that may be necessary to effect this waiver of subrogation. Workers' Compensation policies required under Section 8.1 shall be endorsed with a waiver of subrogation in favor of the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, and volunteers, for all work performed. ArenaCo waives any claims against the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, and volunteers, to the extent such claims are covered by the insurance required by this Section 8 (or would have been so covered if such insurance was procured and maintained as required in this Section 8), and such insurance shall not prohibit the foregoing waiver. ArenaCo shall require Arena Contractor and all other contractors, subcontractors, vendors, agents, and representatives involved in work or operations at the Arena to (i) to obtain such a waiver of subrogation in favor of ArenaCo, the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, and volunteers, from their respective insurers, and (ii) to waive any claims against ArenaCo, the City, the Trustee, the Leasehold Mortgagees, and their respective officers, officials, employees, agents, and volunteers, to the extent such claims are covered by the insurance required by this Section 8 (or would have been so covered if such insurance was procured and maintained as required in this Section 8), and such insurance shall not prohibit the foregoing waiver.
- (G) If any coverage required is written on a claims-made coverage form:
  - (1) The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.

- (2) Insurance must be maintained and evidence of insurance must be provided for at least ten years after completion of contract work.
  - (3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work, date, ArenaCo must purchase extended reporting period coverage for a minimum of ten years after completion of contract work and require Arena Contractor and all other contractors, subcontractors, vendors, agents, and representatives involved in the applicable work or operations at the Arena to do the same.
- (H) If ArenaCo or any of its contractors, subcontractors, vendors, agents, representatives, or employees involved in work or operations of the Arena maintain higher limits than the minimums shown in Section 8.1, the City, the Trustee, the Leasehold Mortgagees require and shall be entitled to coverage for the higher limits maintained by such Person(s). Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City, the Trustee, the Leasehold Mortgagees. ArenaCo shall require Arena Contractor and all other contractors, subcontractors, vendors, agents, and representatives involved in work or operations at the Arena to comply with this section.
- (I) ArenaCo shall ensure that the Products/Completed Operations coverage in the CGL policy (Section 8.1(B)), the Pollution insurance (Section 8.1(E)), and the Professional Liability insurance (Section 8.1(G)) remain in effect for a period of ten years after the expiration or earlier termination of this Agreement.

**8.4 Adjustment.** The coverages, policy limits, and deductibles described in this Section 8 shall be reviewed every five years and may be adjusted if prudent, considering levels of inflation, risk of loss, premium expenses, and other relevant factors, including the then practice of other prudent property owners in the vicinity of the Arena and other prudent owners of Comparable Facilities; provided, however, that the amount of property damage insurance shall never be less than the Minimum Property Insurance Coverage.

**8.5 Required Insurance Policy Clauses.** Each policy of insurance required to be carried pursuant to the provisions of this Section 8 shall contain (A) a provision that no act or omission of any of the insureds shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, (B) an agreement by the insurer that such policy shall not be canceled, modified, or denied renewal without at least 30 days' prior written notice to each Party and all other named or additional insureds (including



the Trustee), and (C) with respect to property insurance, a waiver of subrogation by the insurer to any right to recover the amount of any loss resulting from the negligence of the City, the Trustee, ArenaCo, Leasehold Mortgagees, or any of their contractors, subcontractors, vendors, agents, representatives, or employees.

**8.6 Blanket or Umbrella Policies.** The insurance required to be carried by ArenaCo pursuant to the provisions of this Section 8 may, at ArenaCo's option, be effected by blanket or umbrella policies issued to ArenaCo covering the Arena and other properties owned or leased by ArenaCo or Affiliates thereof, provided such policies otherwise comply with the provisions of this Agreement and provide to the Arena not less than the specified coverage, including, the specified coverage for all insureds required to be named as insureds under this Agreement.

**8.7 Delivery of Evidence of Insurance.** With respect to each and every one of the insurance policies required to be procured or maintained under the terms of this Agreement, (A) on or before the date that each such policy is required to be first procured, (B) at least 30 days before the expiration of any such policy, (C) with respect to insurance required by Sections 8.1(A) and 8.1(F), prior to the first day of each Operating Year, and (D) otherwise from time to time upon the City's reasonable request therefor, ArenaCo shall deliver to the City, the Trustee, and the Leasehold Mortgagees evidence showing that such insurance (including any endorsements required by this Agreement) is in full force and effect. Such evidence shall include certificates of insurance issued by a responsible officer of the issuer of such policies, or in the alternative, a responsible officer of an agent authorized to bind the named issuer, setting forth the name of the issuing company, the coverage, limits, deductibles, and the term thereon. By no later than (i) 30 days after the effective date of any insurance policy required under this Agreement, ArenaCo shall provide the City, the Trustee, and the Leasehold Mortgagees with reasonable evidence that premiums have either been paid in full or, if the premiums are payable in installments, the installments have been paid to date and (ii) 120 days after the effective date of any issuance policy required under this Agreement, ArenaCo shall provide the City, the Trustee, and the Leasehold Mortgagees with a complete copy of such insurance policy and all endorsements thereto.

**8.8 No Insurable Interest in the City's Insurance.** Notwithstanding any Applicable Law or custom to the contrary, no insurable interest is conferred upon ArenaCo under policies of insurance carried by the City and the City is in no way accountable to ArenaCo regarding the use of any insurance proceeds arising from any claim.

## **9. Damage or Destruction; Condemnation**

### **9.1 Damage; Repair Obligation.**



- (A) In the event of damage to or destruction of the Arena, this Agreement shall remain in full force and effect and ArenaCo shall repair and restore the Arena to the Required Restoration Condition as soon as possible after the date of the damage or destruction, and in any event within 24 months after the date of the damage or destruction (which time shall be extended by such reasonable time as is commensurate with any reasonable delays due to Force Majeure Events, adjustment or recovery of insurance, preparation of plans and specifications, bidding of contracts, and obtaining the necessary approvals from the City). In connection with any such repair or restoration, (i) the City shall have the right to review all construction plans therefor and to participate in the design and construction process to the same extent and in the same manner as provided for in the Design and Construction Agreement, and (ii) ArenaCo shall not approve any material changes in any material aspect of the Arena as originally constructed without the City's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. The City acknowledges and agrees that changes may be desired by ArenaCo to upgrade the Arena to the then-current modern standards of first-class home arenas of NBA teams, to comply with NBA Rules, and the City agrees to cooperate in approving and in permitting all such changes.
- (B) Notwithstanding anything contained in Section 9.1(A), if the Arena is damaged or destroyed (i) during the last five years of the Leasehold Term, and (ii) it is reasonably projected to take longer than 12 months from the date of the damage or destruction to repair and restore the Arena to the Required Restoration Condition, then ArenaCo shall have the right to terminate this Agreement by delivering written notice to the City within 90 days after the determination that the repair and restoration of the Arena will take longer than 12 months.
- (C) Notwithstanding anything contained in Section 9.1(A), if the Arena is damaged or destroyed at any time and the total cost to repair and restore the Arena to the Required Restoration Condition exceeds the sum of (i) the insurance proceeds actually received by ArenaCo on account of the damage or destruction, (ii) the amount of any applicable deductible or self-retention amount, (iii) the amount of funds in the Capital Fund at the time of the damage or destruction, (iv) if insurance does not pay out insurance proceeds because such damage or destruction resulted from (1) the gross negligence or willful misconduct of the senior executive management of ArenaCo or TeamCo or (2) the gross negligence or willful misconduct of any other employee of ArenaCo or TeamCo provided such gross negligence or willful misconduct occurred within the scope of such employee's employment with ArenaCo or TeamCo, the amount of

insurance proceeds that ArenaCo would have received had such damage or destruction not resulted from such gross negligence or willful misconduct, and (v) if ArenaCo failed to satisfy the insurance requirements of Section 8 to the extent commercially available and not approved by the City, any insurance proceeds that ArenaCo would have received but for such failure, then ArenaCo shall have the right to terminate this Agreement by delivering written notice to the City within 90 days after the determination that the forgoing conditions to such termination have occurred. Notwithstanding the foregoing, the City may, by written notice delivered to ArenaCo no later than thirty days following ArenaCo's election to terminate this Agreement pursuant to this Section 9.1(C), elect to pay the amount by which the total cost to repair and restore the Arena to the Required Restoration Condition exceeds the amounts set forth in clauses (i) through (v) above. If the City makes such an election and provides such excess funds in a manner satisfactory to ArenaCo and its lenders (in their reasonable and good faith discretion), then this Agreement will not terminate and ArenaCo shall repair and restore the Arena to the Required Restoration Condition pursuant to Section 9.1(A) at ArenaCo's cost, provided that (x) the City will be responsible for paying the excess amounts as described in the preceding sentence and (y) notwithstanding anything to the contrary contained in Section 9.1(A) or the Design and Construction Agreement, the City shall have the right to review and approve all plans and specifications for such repair and restoration, and all changes thereto (except for plans, specifications, and changes required by the NBA), which approval shall not be unreasonably withheld, conditioned, or delayed. In addition, if ArenaCo is prohibited from repairing the Arena to the Required Restoration Condition due to a final judgment (taking into account all appeals) by a court or due to Applicable Law, then ArenaCo shall have the right, subject to the rights of any Leasehold Mortgagee, to terminate this Agreement upon written notice to the City.

- (D) If ArenaCo terminates this Agreement pursuant to Section 9.1(B) or 9.1(C) any such termination shall be without penalty to ArenaCo, including without loss of any rights by ArenaCo under Section 17. If ArenaCo exercises the Purchase Option following any such termination pursuant to Section 9.1(B) or 9.1(C), the provisions of Section 17.5 shall apply. If ArenaCo does not exercise the Purchase Option following any such termination pursuant to Section 9.1(B) or 9.1(C), the City may, by written notice delivered to ArenaCo no later than 30 days following the expiration of the Purchase Option, require ArenaCo, at ArenaCo's sole expense, to tear down and remove, prior to the termination of this Agreement, all portions of the Arena that were damaged or destroyed, including the debris resulting therefrom, and to otherwise clean and restore the area

affected by such casualty to a level and clean condition; provided, however, ArenaCo shall not be obligated to incur any expenses in connection with such demolition and debris removal in excess of (i) the amount of insurance proceeds that are available therefor (except to the extent insurance proceeds are unavailable because (x) ArenaCo failed to satisfy the insurance requirements of Section 8 to the extent commercially available and not approved by the City, or (y) if insurance does not pay out insurance proceeds because the damage or destruction resulted from the gross negligence or willful misconduct of ArenaCo or TeamCo), plus (ii) all amounts in the Capital Fund at the time of such casualty.

**9.2 Insurance Proceeds.** Any insurance proceeds paid under any property insurance for the Arena required to be maintained pursuant to Section 8 as a result of damage or destruction of the Arena (expressly excluding any insurance proceeds payable under the City Rental-Interruption Insurance, which proceeds shall be paid one hundred percent (100%) to the Trustee) shall be deposited with the Depository, to act as escrow agent. The funds held in escrow shall be administered and disbursed pursuant to the terms of a commercially reasonable escrow agreement, mutually acceptable to the Parties, the Trustee, and the Leasehold Mortgagees, which escrow agreement shall provide for the allocation and distribution of such proceeds as follows:

- (A) *Agreement Terminated.* If this Agreement is terminated pursuant to the provisions of Section 9.1:
  - (1) If the damage or destruction of the Arena occurs prior to there being any amount outstanding under the City Financing, then (i) first, one hundred percent to pay the aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing, respectively, until the full repayment of the aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing and (ii) second, (x) if ArenaCo exercises its Purchase Option or if ArenaCo is not permitted to exercise its Purchase Option because the City Financing remains outstanding, the remainder to ArenaCo (subject to the rights of Leasehold Mortgagee under any Leasehold Mortgage) or (y) if ArenaCo does not otherwise exercise its Purchase Option, (I) to ArenaCo to the extent the City requires ArenaCo to perform the work set forth in Section 9.1(D) and (II) the remainder to the City; or
  - (2) If the damage or destruction of the Arena occurs after any amounts are outstanding under the City Financing, then:

- (a) First, (i) fifty percent (50%) to the Trustee to pay the outstanding amount of the City Financing and (ii) fifty percent (50%) to the Leasehold Mortgagees and the Mezzanine Lenders to pay the aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing, respectively, which "50/50" distributions shall continue until the earlier to occur of (x) the earlier to occur of (I) the full repayment of the outstanding amount of the City Financing or (II) the distributions made to the Trustee under this Section 9.2(A)(2)(a) equal \$325,000,000, or (y) the full repayment of the aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing; then
  - (b) Second, one hundred percent (100%) to either (i) the Trustee, if subclause (y) of Section 9.2(A)(2)(a) is triggered, until the earlier to occur of (I) the full repayment of the outstanding amount of the City Financing or (II) the aggregate distributions made to the Trustee under Section 9.2(A)(2)(a) and this Section 9.2(A)(2)(b) equal \$325,000,000 or (ii) the Leasehold Mortgagees and the Mezzanine Lenders, if subclause (x) of Section 9.2(A)(2)(a) is triggered, until the full repayment of the aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing; then
  - (c) Third, (i) if ArenaCo exercises its Purchase Option or if ArenaCo is not permitted to exercise its Purchase Option because the City Financing remains outstanding, the remainder to ArenaCo (subject to the rights of Leasehold Mortgagee under any Leasehold Mortgage) or (ii) if ArenaCo does not otherwise exercise its Purchase Option, (x) to ArenaCo to the extent the City requires ArenaCo to perform the work set forth in Section 9.1(D) and (y) the remainder to the City.
- (B) *Agreement Not Terminated.* If this Agreement is not terminated pursuant to the provisions of Section 9.1, (i) first, to pay for costs to repair or restore the Arena pursuant to the provisions of Section 9.1 and (ii) second, the remainder to ArenaCo (subject to the rights of Leasehold Mortgagee under any Leasehold Mortgage).

### 9.3 **Condemnation.**

- (A) *Total Condemnation.* In the event of any Condemnation Action, other than a temporary taking, that prevents the use or occupancy of any portion of the Arena that is reasonably necessary for the playing, exhibiting, or viewing of Home Games, then, subject to ArenaCo's rights under Section 17 (which survive the termination of this Agreement), ArenaCo shall have the right to terminate this Agreement by delivering written notice to the City within 90 days after the Condemnation Action becomes final (including all applicable appeals). If this Agreement is so terminated, any such termination shall be without penalty to ArenaCo or the City.
- (B) *Partial Condemnation.* If ArenaCo does not have a right to terminate this Agreement as a result of a Condemnation Action or elects not to do so, ArenaCo will use commercially reasonable efforts to, at no cost to City, as promptly as practicable and in any event within 12 months after such Condemnation Action, repair and restore any damage to the Arena resulting from such Condemnation Action to the Required Restoration Condition (which time shall be extended by such reasonable time as is commensurate with any reasonable delays due to Force Majeure Events, adjustment or recovery of insurance, preparation of plans and specifications, bidding of contracts, and obtaining the necessary approvals from the City).
- (C) *Proceedings.* To the maximum extent permitted by Applicable Law, ArenaCo and the City each shall have the right, at its own expense, to appear in any Condemnation Action and to participate in any and all hearings, trials, and appeals relating thereto even if this Agreement has been terminated. The Trustee and each Leasehold Mortgagee shall also be entitled to appear and participate in any Condemnation Action and in any and all hearings, trials, and appeals relating thereto even if this Agreement has been terminated. Neither Party shall settle or compromise any right of the other Party to receive a Condemnation Award without the prior written consent of the other Party and (i) with respect to the City's rights, the prior written consent of the Trustee and (ii) with respect to ArenaCo's rights, the prior written consent of each Leasehold Mortgagee. Subject to the other provisions of this Section 9.3, in any Condemnation Action ArenaCo and the City shall each have the right to assert a claim for any Condemnation Awards for (x) the value of Arena and the Arena Land, (y) the loss in value of its rights under this Agreement as if this Agreement had not terminated, and (z) any other damages to which the City or ArenaCo, as applicable, may be entitled under Applicable Law.

**9.4 Condemnation Award.** Any Condemnation Awards shall be deposited with the Depository, to act as escrow agent. The funds held in escrow shall be administered and disbursed pursuant to the terms of a commercially reasonable escrow agreement, mutually acceptable to the Parties, the Trustee, and the Leasehold Mortgagees, which escrow agreement shall provide for the allocation and distribution of such Condemnation Awards as follows (notwithstanding any allocations of the Condemnation Awards made by the applicable Governmental Authority):

(A) *Agreement Terminated.* If this Agreement is terminated pursuant to the provisions of Section 9.3:

- (1) If the Condemnation Award is paid prior to there being any amount outstanding under the City Financing, then, (i) first, one hundred percent to pay the aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing, respectively, until the full repayment of the aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing, and (ii) second, (x) if ArenaCo exercises its Purchase Option or if ArenaCo is not permitted to exercise its Purchase Option because the City Financing remains outstanding, the remainder to ArenaCo (subject to the rights of Leasehold Mortgagee under any Leasehold Mortgage) or (y) if ArenaCo does not otherwise exercise its Purchase Option, (I) to ArenaCo to the extent the City requires ArenaCo to perform the work set forth in Section 9.1(D) and (II) the remainder to the City; or
- (2) If the Condemnation Award is paid after any amounts are outstanding under the City Financing, then:
  - (a) First, (i) fifty percent (50%) to the Trustee to pay the outstanding amount of the City Financing and (ii) fifty percent (50%) to the Leasehold Mortgagees and the Mezzanine Lenders to pay the aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing, respectively, which "50/50" distributions shall continue until the earlier to occur of (x) the earlier to occur of (I) the full repayment of the outstanding amount of the City Financing or (II) the distributions made to the Trustee under this Section 9.4(A)(2)(a) equal \$325,000,000, or (y) the full repayment of the

aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing; then

- (b) Second, one hundred percent (100%) to either (i) the Trustee, if subclause (y) of Section 9.4(A)(2)(a) is triggered, until the earlier to occur of (I) the full repayment of the outstanding amount of the City Financing or (II) the aggregate distributions made to the Trustee under Section 9.4(A)(2)(a) and this Section 9.4(A)(2)(b) equal \$325,000,000 or (ii) the Leasehold Mortgagees and the Mezzanine Lenders, if subclause (x) of Section 9.4(A)(2)(a) is triggered, until the full repayment of the aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing; then
- (c) Third, (i) if ArenaCo exercises its Purchase Option or if ArenaCo is not permitted to exercise its Purchase Option because the City Financing remains outstanding, the remainder to ArenaCo (subject to the rights of Leasehold Mortgagee under any Leasehold Mortgage) or (ii) if ArenaCo does not otherwise exercise its Purchase Option, the remainder to the City.

- (B) *Agreement Not Terminated.* If this Agreement is not terminated pursuant to the provisions of Section 9.3, (i) first, to pay for costs to repair and restore the Arena pursuant to the provisions of Section 9.3 and (ii) then, to the Parties pursuant to any allocations of the Condemnation Awards between the Parties made by the applicable Governmental Authority.

**9.5 Special Qualification.** Notwithstanding anything to the contrary set forth in this Section 9, the City's rights under this Agreement (including to any amounts set forth in Sections 9.2 or 9.4) are subject to ArenaCo's rights under Section 17 and shall not affect in any way ArenaCo's rights under Section 17 (which rights survive the expiration or earlier termination of this Agreement).

**9.6 Prompt Notice.** If either Party becomes aware of any damage or destruction of the Arena Land or the Arena, or any actual, contemplated, or threatened Condemnation Action, then such Party shall promptly notify the other Party and the Leasehold Mortgagee.



**9.7 Survival.** This Section 9 survives the expiration or earlier termination of this Agreement, but only insofar as such provisions relate to any damage or destruction of the Arena (or insurance proceeds therefrom) or Condemnation Action (or Condemnation Award therefrom) that arose prior to the expiration or earlier termination of this Agreement.

## **10. Representations, Warranties, and Covenants**

**10.1 Representations and Warranties of ArenaCo.** ArenaCo represents and warrants to the City that, as of the Effective Date:

- (A) *Organization.* ArenaCo is a limited liability company duly organized and validly existing under the laws of the State of Delaware. ArenaCo has all requisite power and authority to enter into this Agreement.
- (B) *Authorization; No Violation.* The execution, delivery and performance by ArenaCo of this Agreement have been duly authorized by all necessary action, will not violate the organizational documents of ArenaCo and will not result in the breach of, or constitute a default under, any material agreement to which ArenaCo is a party or by which ArenaCo or its material assets may be bound or affected. This Agreement has been duly executed and delivered by ArenaCo and constitutes valid and binding obligations of ArenaCo.
- (C) *No Conflicts.* This Agreement is not prohibited by and does not conflict with any judgments or decrees to which ArenaCo is a party or is otherwise subject.
- (D) *Litigation.* No suit is pending or, to the knowledge of ArenaCo, threatened against ArenaCo that could reasonably be expected to have a material adverse effect upon ArenaCo's performance under this Agreement or the financial condition or business of ArenaCo. There are no outstanding judgments against ArenaCo that would have a material adverse effect upon its assets, properties, or franchises.
- (E) *No Broker's Fees or Commissions.* ArenaCo has not incurred or created any liabilities or claims for broker's commissions or finder's fees in connection with the negotiation, execution or delivery of this Agreement.

**10.2 Representations and Warranties of the City.** The City represents and warrants to ArenaCo that, as of the Effective Date:

- (A) *Organization.* The City is a municipal corporation duly organized and validly existing under the laws of the State of California. The City has all requisite power and authority to enter into this Agreement.



- (B) *Authorization; No Violation.* The execution, delivery, and performance by the City of this Agreement have been duly authorized by all necessary action, will not violate the organizational documents of the City and will not result in the breach of, or constitute a default under, any material agreement to which the City is a party (including the City Financing Documents) or by which the City or its material assets may be bound or affected. This Agreement has been duly executed and delivered by the City and constitutes valid and binding obligations of the City.
- (C) *No Conflicts.* This Agreement is not prohibited by and does not conflict with any judgments or decrees to which the City is a party or is otherwise subject.
- (D) *Litigation.* No suit is pending or, to the knowledge of the City, threatened against the City that could reasonably be expected to have a material adverse effect upon the City's performance under this Agreement, the Arena Land, the Arena, or the financial condition or business of the City other than as set forth on Schedule 10.2(D). There are no outstanding judgments against the City that would have a material adverse effect upon the Arena, the Arena Land, or the City's ability to perform its obligations under this Agreement.
- (E) *No Broker's Fees or Commissions.* The City has not incurred or created any liabilities or claims for broker's commissions or finder's fees in connection with the negotiation, execution, or delivery of this Agreement.
- (F) *No Restrictions.* Use of the Arena Land for a multipurpose entertainment and sports center and related uses as contemplated by this Agreement and the Team Agreement is permitted under the zoning ordinances and land use classifications of the City.

**10.3 Mutual Covenants.** Commencing with the Effective Date, each Party covenants and agrees to the other Party as follows:

- (A) *Additional Documents and Approval.* Each Party, whenever and as often as it shall be reasonably requested to do so by the other Party, shall execute or cause to be executed any further documents, take any further actions, and grant any further approvals as may be necessary in order to consummate the transactions provided for in this Agreement.
- (B) *Financing Assurances.* Each Party shall provide the other Party with reasonable-and-customary further assurances in connection with the other Party's financing related to the Arena. These further assurances include reasonable and customary certificates and opinions concerning

the due authorization, execution, and enforceability of the Project Agreements; and certificates concerning the accuracy of information about the Party. In addition, each Party shall respond to reasonable inquiries from the other Party's lenders or underwriters in connection with the other Party's financing related to the Arena.

- (C) *Notice of Matters.* Should ArenaCo or the City receive knowledge about any matter that may constitute a breach of any of its representations, warranties, or covenants set forth in this Agreement, it shall promptly notify the other Party of the same in writing.

**10.4 Non-Participation.** Commencing with the Effective Date, neither the City nor any Affiliate of the City shall, without the prior written consent of ArenaCo, design, develop, construct, fund, provide economic or tax incentives to, or participate in the design, development, construction, or financing of, any new indoor or covered entertainment or sports facility that (A) could reasonably be expected to compete with the Arena for the booking of non-TeamCo Events and (B) seats or will seat more than 5,000 individuals; provided, that the foregoing provisions shall not apply to (i) any hotel or convention ballrooms or meeting rooms; (ii) any facility with a retractable roof that serves (or is expected to serve) as the home venue for a Major League Baseball, National Football League, or Major League Soccer team; or (iii) the City's review and approval of entitlements for any new indoor or covered entertainment or sports facility proposed by any third-party that does not otherwise violate this Section 10.4. The Parties expressly acknowledge and agree that the restrictions contained in this Section 10.4 will not restrict the City's licensing or permitting of the City's billboards (including digital billboards) or other City signage to any third parties in accordance with any Applicable Law of general applicability in effect now or enacted in the future, even if such third parties are designing, developing, constructing, or financing a project that could reasonably be expected to compete with the Arena.

## **11. Default and Remedies**

**11.1 ArenaCo Default.** Each of the following events will, unless otherwise expressly agreed by the City in writing, constitute an "**ArenaCo Default**" under this Agreement:

- (A) Any failure by ArenaCo to pay the Annual Fee within 15 days after receipt of written notice from the City of failure to pay such Annual Fee when due.
- (B) ArenaCo materially breaches or fails to comply with any material provision of this Agreement applicable to ArenaCo other than the obligation to pay the Annual Fee, and such breach or noncompliance continues for a period of 60 days after written notice thereof by the City to ArenaCo; or, if such breach or noncompliance cannot reasonably be

cured within such 60-day period, ArenaCo does not commence to cure such breach or noncompliance within such 60-day period or, after commencing to cure such breach or noncompliance, does not thereafter pursue such cure in good faith to completion.

- (C) Except as otherwise permitted under Section 16, the Leasehold Estate is taken upon execution or by other process of law attached against ArenaCo, or is subject to any attachment by any creditor or claimant against ArenaCo and such attachment is not discharged or disposed of within 90 days after levy.
- (D) ArenaCo files a petition in bankruptcy or insolvency, or for reorganization or arrangement under any Applicable Laws related to bankruptcy or insolvency, or voluntarily takes advantage of any such Applicable Laws by answer or otherwise, or dissolves or makes a general assignment for the benefit of creditors, or involuntary proceedings under any such Applicable Laws or for the dissolution of ArenaCo are instituted against ArenaCo, or a receiver or trustee is appointed for the Arena or for all or substantially all of ArenaCo's property, and such involuntary proceedings are not dismissed or such receivership or trusteeship vacated within 90 days after such institution or appointment.

**11.2 City's Remedies.** If any ArenaCo Default occurs, the City shall have the right, at the City's election, subject to the rights of Leasehold Mortgagees, if any, under Section 16, to exercise any one or more of the remedies described below. Exercise of any of such remedies shall not prevent the concurrent or subsequent exercise of any other remedy provided for in this Agreement or otherwise available to the City at law or in equity, except as otherwise expressly stated in this Agreement.

- (A) The City may, at the City's option but without obligation to do so, and without releasing ArenaCo from any obligations under this Agreement, make any payment or take any action as the City deems necessary or desirable to cure any ArenaCo Default in such manner and to such extent as the City in good faith deems necessary or desirable. ArenaCo shall pay the City, upon demand, all reasonable advances, costs, and expenses of the City in connection with making any such payment or taking any such action, including reasonable attorneys' fees, together with interest on all such amounts at the Default Rate from the date of payment of any such advances, costs, and expenses by the City.
- (B) The City may sue ArenaCo for and obtain damages, specific performance, other equitable relief, or any combination of the foregoing; provided, however, that the City may not terminate this Agreement for an ArenaCo Default except as provided in Section 11.2(C).

- (C) If the City prevails on any suit brought under Section 11.2(B), obtains a judgment for damages, specific performance, other equitable relief, or any combination of the foregoing, and ArenaCo either (i) fails to pay such damages within ten days after such judgment (including all applicable appeals thereto) becomes final, or (ii) fails to otherwise comply with such judgment within the time periods set forth therein or, if no time periods are set forth therein, within a reasonable period of time after such judgment (including all applicable appeals thereto) becomes final but, subject to Force Majeure Events, in no event more than 120 days after such judgment (including all applicable appeals thereto) becomes final, then the City may, by written notice to ArenaCo and the Leasehold Mortgagees (x) terminate this Agreement, which termination shall be effective on the date specified in such notice (which date may not be earlier than 30 days after the date of such notice or, if such notice is given during, or within 30 days prior to the commencement of, a Basketball Season (as defined in the Team Agreement), ten Business Days after the end of such Basketball Season) and following receipt of such notice, ArenaCo shall vacate the Arena on or before the effective date thereof, failing which, the City may institute dispossessory proceedings, or (y) if the ArenaCo Default for which the judgment was obtained relates to a material breach of Section 4.3, the City may, at the City's option, require ArenaCo to engage a new management company to operate and manage the Arena, which management company must (1) have at least five years' experience in operating and managing at least three other multipurpose entertainment and sports centers that serve as the home venue of an NBA team and (2) be approved by the City and the First Leasehold Mortgagee (such approval not to be unreasonably withheld, conditioned, or delayed).

**11.3 City Event of Default.** Unless otherwise expressly agreed by ArenaCo in writing, it shall be a "City Event of Default" under this Agreement if the City materially breaches or fails to comply with any material provision of this Agreement applicable to the City, and such breach or noncompliance continues for a period of 60 days after written notice thereof by ArenaCo to the City; or, if such breach or noncompliance cannot reasonably be cured within such 60-day period, the City does not commence to cure such breach or noncompliance within such 60-day period or, after commencing to cure such breach or noncompliance, does not thereafter pursue such cure in good faith to completion.

**11.4 ArenaCo's Remedies.** If any City Event of Default occurs, ArenaCo shall have the right, at ArenaCo's election, subject to the rights of Leasehold Mortgagees, if any, under Section 16, to exercise any one or more of the remedies described below. Exercise of any of such remedies shall not prevent the concurrent or subsequent exercise of any other remedy provided for in this Agreement or otherwise available to ArenaCo at law or in equity, except as otherwise expressly stated in this Agreement.

- (A) ArenaCo may, at ArenaCo's option but without obligation to do so, and without releasing the City from any obligations under this Agreement, make any payment or take any action as ArenaCo deems necessary or desirable to cure any City Event of Default in such manner and to such extent as ArenaCo in good faith deems necessary or desirable. The City shall pay ArenaCo, upon demand, all reasonable advances, costs, and expenses of ArenaCo in connection with making any such payment or taking any such action, including reasonable attorneys' fees, together with interest on all such amounts at the Default Rate from the date of payment of any such advances, costs, and expenses by ArenaCo.
- (B) ArenaCo may sue the City for and obtain damages, specific performance, other equitable relief, or any combination of the foregoing; provided, however, that ArenaCo may not terminate this Agreement for a City Event of Default, except as provided in Section 11.4(D).
- (C) If ArenaCo prevails on any suit brought under Section 11.4(B), obtains a judgment for damages, and the City fails to pay such damages within ten days after such judgment (including all applicable appeals thereto) becomes final, then ArenaCo may off-set the amount of such unpaid judgment against the next installment(s) of the Annual Fee payable under this Agreement until such judgment has been paid in full.
- (D) If ArenaCo prevails on any suit brought under Section 11.4(B) with respect to a material breach of the City's covenant of quiet enjoyment set forth in Section 14, obtains a judgment for specific performance, and the City fails to comply with such judgment within the time periods set forth therein or, if no time periods are set forth therein, within a reasonable period of time after such judgment (including all applicable appeals thereto) becomes final but, subject to Force Majeure Events, in no event more than 120 days after such judgment (including all applicable appeals thereto) becomes final, ArenaCo may, subject to the rights of Leasehold Mortgagee, if any, terminate this Agreement by written notice to the City, which termination shall be effective on the date specified in such notice (but not less than 30 days after the date of such notice). ArenaCo's rights under Section 17 will survive any termination of this Agreement by ArenaCo pursuant to this Section 11.4(D).

**11.5 Waiver.** The Parties hereby waive any and all rights to consequential, punitive, or exemplary damages for an ArenaCo Default or a City Event of Default, as the case may be.

## **12. Title; Surrender**

**12.1 Title.** ArenaCo acknowledges and agrees that, upon the Leasehold Commencement Date and for the remainder of the Leasehold Term, and subject to ArenaCo's Purchase Option, the City will own and have title (free and clear of any liens, encumbrances, or security interests, other than those matters of record affecting the Arena Land as of the Effective Date, the leasehold interests set forth in the Site Lease and the Project Lease, and such additional matters as described in the Project Agreements) to the Arena Land, the Arena, and all improvements that are now or hereafter permanently fixed to the Arena Land or to the Arena, notwithstanding the fact that the same may have been, or may be, as appropriate, acquired, financed, installed, or placed on the Arena Land or in the Arena by ArenaCo.

**12.2 Surrender.** Subject to Section 9.1(D), upon the expiration of the Leasehold Term or earlier termination of this Agreement, if ArenaCo has, but does not exercise, the Purchase Option pursuant to Section 17, then ArenaCo shall, on or before the Expiration Date or earlier termination, as the case may be, peaceably and quietly leave, surrender, and yield to the City (i) the Arena and the Arena Land, free of subtenancies, in a reasonably clean condition and free of debris and otherwise in the condition required under this Agreement (including the requirements of Section 4.3), (ii) all keys and codes for the Arena, and (iii) all plans and specifications, operating manuals, computer programs and software, and other personal property, tangible or intangible, used in connection with the operation or management of the Arena or the systems within the Arena (to the extent, in the case of any third party's personal property, the same are in the possession or control of ArenaCo or any of its Affiliates). ArenaCo shall remove or cause to be removed at or prior to the Expiration Date any personal property of ArenaCo, TeamCo, or any of ArenaCo's other sublicensees or Concessionaires to the extent the same are not used in connection with the operation or management of the Arena or the systems within the Arena and shall repair, at ArenaCo's sole cost and expense, any damage to the Arena or the Arena Land caused by ArenaCo's removal of such personal property. To the extent ArenaCo fails to surrender the Arena and the Arena Land to the City in the condition required by this Section 12.2, the City shall have the right (in addition to all other rights and remedies under this Agreement), but not the obligation, to put the Arena and the Arena Land in such condition and ArenaCo shall reimburse the City promptly upon demand for any costs incurred by the City with respect thereto (including any costs incurred by the City with respect to removal, transportation, or storage of abandoned items of personal property).

## **13. Indemnification**

**13.1 ArenaCo.** To the extent permitted by Applicable Law, ArenaCo agrees to indemnify and hold harmless the City and the Leasehold Mortgagee, and their respective officers, agents, and employees from and against any and all liabilities, damages, suits, claims, and judgments of any nature (including reasonable attorneys'

fees and expenses) ("**Losses**") arising from or in connection with ArenaCo's, or ArenaCo's Affiliates, or their respective agents', contractors', employees', licensees', or invitees', use of the Arena or the Arena Land, except (A) to the extent such Losses arise from matters for which the City is required to indemnify ArenaCo pursuant to Section 13.2 or (B) if such Losses were caused by the sole negligence of the City.

**13.2 The City.** To the extent permitted by Applicable Law, the City agrees to indemnify and hold harmless ArenaCo, its Affiliates and their owners, its officers, agents, and employees from and against any and all Losses arising from or in connection with (A) any City Event, except to the extent caused by the gross negligence or willful misconduct of ArenaCo or (B) the City's gross negligence or willful misconduct.

**13.3 Procedures.** If any Person that is entitled to indemnification for Losses under this Section 13 (the "**Indemnatee**") discovers or has actual notice of such Losses, the Indemnatee shall, within 20 days, notify (or cause to be notified) the Party that is liable therefor under this Section 13 (the "**Indemnifying Party**") in writing thereof together with a statement of such information respecting such matter as the Indemnatee then has; provided, however, the failure to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability that it may have to the Indemnatee except and solely to the extent that such failure or delay in notification shall have adversely affected the Indemnifying Party's ability to defend against, settle, or satisfy any such Losses. The Indemnifying Party shall be entitled, at its cost and expense, to appoint counsel ("**Defense Counsel**") to defend any such Losses by all appropriate legal proceedings provided the Indemnifying Party shall have first notified the Indemnatee of the Indemnifying Party's intention to do so within 20 days after the Indemnifying Party's receipt of such notice from the Indemnatee. If the Indemnatee elects to join in any defense of Losses (which shall be at the Indemnatee's sole cost and expense), the Indemnifying Party shall have full authority to determine all action to be taken with respect thereto. If, after such opportunity, the Indemnifying Party elects not to defend such Losses, the Indemnatee shall have the right to appoint Defense Counsel to conduct the defense of such Losses in good faith, which defense will be vigorously and diligently prosecuted by the Indemnatee to a final conclusion or, with the consent of the Indemnifying Party (which shall not be unreasonably withheld, conditioned, or delayed), settlement, and the Indemnifying Party shall be bound by such final conclusion or approved settlement. If required by the Indemnifying Party, the Indemnatee shall cooperate fully with the Indemnifying Party and the Indemnifying Party's attorneys in contesting any such Losses or, if appropriate, in making any counterclaim or cross complaint against the Person asserting the Losses against the Indemnatee, but the Indemnifying Party will reimburse the Indemnatee for any expenses incurred by the Indemnatee in so cooperating. The Indemnifying Party shall pay to the Indemnatee in cash all amounts to which the Indemnatee may become entitled by reason of the provisions of this Section 13, such payment to be made within 30 days after such amounts are finally determined either by mutual agreement or by non-appealable judgment of a court of competent jurisdiction. Notwithstanding that the Indemnifying



Party is actively conducting a defense or contest of any Losses against the Indemnatee, such Losses may be settled, compromised or paid by the Indemnatee without the consent of the Indemnifying Party; provided, however, that if such action is taken without the Indemnifying Party's consent, the Indemnifying Party's obligations with respect thereto shall be terminated, and the Indemnifying Party shall have no obligation to the Indemnatee. If the Indemnifying Party elects to defend such Losses, the Indemnifying Party shall have the right to conduct the defense of such Losses in good faith and settle the Losses in good faith without the prior consent of the Indemnatee so long as such settlement or compromise (A) does not cause the Indemnatee to incur any present or future material cost, expense, obligation or liability of any kind or nature, (B) does not require any admission or action or forbearance from action by the Indemnatee, and (C) the Indemnatee is released from all Losses.

**13.4 *Survival.*** The obligations contained in this Section 13 will survive the expiration or earlier termination of this Agreement but only with respect to an event that may give rise to Losses that occur prior to such termination.

**14. *Covenant of Quiet Enjoyment.*** So long as ArenaCo performs in all material respects its obligations under this Agreement, the City shall do nothing (other than the acts permitted or required by this Agreement) that will prevent ArenaCo or its licensees, guests, or invitees from peaceably and quietly enjoying, using, and occupying the Arena in the manner described in this Agreement, and the City shall defend ArenaCo's quiet enjoyment, use, and occupancy of the Arena in the manner described in this Agreement against the claims of all Persons claiming by, under, or through the City.

**15. *Estoppel Certificate; Memorandum of Agreement***

**15.1 *Estoppel Certificate.*** Each of the Parties shall, upon the reasonable request of the other (or any current or prospective source of financing for the City, ArenaCo, or any of their Affiliates or any transferee or assignee), and in each case within ten Business Days after the other Party has requested it, execute and deliver to the appropriate Persons a certificate in recordable form stating:

- (A) That this Agreement is unmodified and is in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications or, if this Agreement is not in full force and effect, that such is the case);
- (B) That, to the knowledge of the Party providing the certificate, there are no defaults by it or the other Party under this Agreement (or specifying each such default as to which it may have knowledge);
- (C) The Effective Date, the Leasehold Commencement Date, and the then-current Expiration Date;



- (D) The date(s) to which any financial obligation of the Party has been paid under this Agreement;
- (E) To the knowledge of the Party providing the certificate, whether there are any counterclaims against the enforcement of any Party's obligations under this Agreement; and
- (F) Any other matters reasonably requested.

## **15.2 Memorandum of Agreement.**

- (A) *Recordation.* At any time ArenaCo may cause a memorandum of this Agreement or any amendment hereto to be recorded in the recorder's office for the County of Sacramento and the Parties shall each pay and discharge fifty percent (50%) of costs, fees, and taxes in connection therewith. The initial form of such memorandum shall be as set forth in Exhibit E attached hereto, and upon any amendment to this Agreement, the form of the memorandum of amendment shall be subject to the approval of the City (not to be unreasonably withheld, conditioned, or delayed) prior to the recordation thereof, and the City shall sign such memorandum when so requested by ArenaCo.
- (B) *Release of Memorandum of Agreement.*
  - (1) ArenaCo shall, at its cost, execute and record a release of any such memorandum within ten Business Days after the expiration of ArenaCo's Purchase Option under Section 17 without the exercise thereof by ArenaCo, which release shall include language whereby ArenaCo acknowledges that the Purchase Option has terminated and ArenaCo quitclaims to the City all rights of ArenaCo in and to the Arena Land.
  - (2) If ArenaCo fails to execute and record the release of any such memorandum of this Agreement as described in Section 15.2(B)(1), then, provided there is no dispute between the Parties at the time regarding the termination of the Purchase Option, the City may, after providing ArenaCo and the First Leasehold Mortgagee not less than ten Business Days' prior written notice thereof, unilaterally execute and record a release of any such memorandum. In addition, the City may, after providing ArenaCo and the First Leasehold Mortgagee not less than ten Business Days' prior written notice thereof, unilaterally execute and record a release of any such memorandum if this Agreement is terminated pursuant to Section 11.2(C) of this Agreement or Sections 7.2(A), 7.2(B), 7.2(E), 7.2(F), or 7.2(G) of the

Comprehensive Agreement. Any third party may rely on any such release unilaterally executed and recorded by the City.

## **16. Leasehold Mortgages**

**16.1 *Right to Obtain Leasehold Mortgages.*** Notwithstanding anything to the contrary contained in this Agreement, ArenaCo shall have the right, without the City's consent, to execute and deliver one or more Leasehold Mortgages encumbering the Leasehold Estate or the direct or indirect ownership interests in ArenaCo at any time and from time to time provided that (A) no such Leasehold Mortgage shall encumber the Fee Estate or the leasehold interests set forth in the Site Lease or the Project Lease, (B) the proceeds from the debt secured by such Leasehold Mortgage will not be used for purposes other than the negotiation of all Project Agreements, the design, development, construction, financing, management, maintenance, repair, replacement, leasing, or operation of the Arena or in connection with the acquisition of the Arena Land and the refinancing of mortgage loans related thereto, and (C) each Leasehold Mortgagee must be an Institutional Lender. The City shall not be required to join in or subordinate the Fee Estate or the leasehold interests set forth in the Site Lease or the Project Lease to any Leasehold Mortgage and no such Leasehold Mortgage shall extend to or affect the Fee Estate. Each Leasehold Mortgage shall provide that the Leasehold Mortgagee shall send to the City copies of all notices of default sent to ArenaCo in connection with the Leasehold Mortgage or the debt secured thereby, provided that the failure to provide any such notice shall not affect the validity of the notice as against ArenaCo.

**16.2 *Effect of a Leasehold Mortgage.*** Notwithstanding anything to the contrary in this Agreement, ArenaCo's making of a Leasehold Mortgage shall not be deemed to constitute an Assignment of the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, or in the exercise of its rights under this Agreement, be deemed to be an assignee or transferee or mortgagee in possession of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume or otherwise be obligated to perform any of ArenaCo's obligations under this Agreement except when, and then only for so long as, such Leasehold Mortgagee has acquired ownership and possession of the Leasehold Estate pursuant to a Foreclosure Event (as distinct from its rights under this Agreement to cure defaults or exercise Mortgagee's Cure Rights). No Leasehold Mortgagee (or other Person acquiring the Leasehold Estate pursuant to a Foreclosure Event) shall have any liability beyond its interest in this Agreement nor shall Leasehold Mortgagee (or any person acquiring the Leasehold Estate pursuant to a Foreclosure Event under a Leasehold Mortgage) be liable under this Agreement unless and until such time as it becomes the owner of the Leasehold Estate. Without further notice to or consent from the City, the City recognizes and agrees that a Leasehold Mortgagee may acquire directly, or may cause its assignee, nominee, or designee to acquire, the Leasehold Estate through a Foreclosure Event and such party shall enjoy all the rights

and protections granted to Leasehold Mortgagee under this Agreement with the same force and effect as if such party were the Leasehold Mortgagee itself.

**16.3 Foreclosure; Further Assignment.** Notwithstanding anything to the contrary in this Agreement, any Foreclosure Event, or any exercise of rights or remedies under any Leasehold Mortgage, shall not be deemed to violate this Agreement or require the consent of the City. If a Leasehold Mortgagee or a successor or assignee of a Leasehold Mortgagee, or an Affiliate thereof acquires ArenaCo's Leasehold Estate following a Foreclosure Event, or if a Leasehold Mortgagee or a successor or assignee of a Leasehold Mortgagee, or an Affiliate thereof enters into a New Agreement, such Leasehold Mortgagee or successor or assignee of a Leasehold Mortgagee, or an Affiliate thereof, successor, assign or Affiliate of Leasehold Mortgagee shall enjoy all of the rights and protections granted to Leasehold Mortgagee under this Agreement with the same force and effect as if such successor, assign or Affiliate were the Leasehold Mortgagee itself and may thereafter assign or transfer this Agreement or such New Agreement without prior notice to or consent of the City's, provided the assignee or transferee expressly agrees in writing to assume and to perform all of the obligations under this Agreement or such New Agreement, as the case may be, from and after the effective date of such assignment or transfer. No Leasehold Mortgagee (or person acquiring the Leasehold Estate pursuant to a Foreclosure Event under a Leasehold Mortgage) shall have any liability beyond its interest in this Agreement nor shall Leasehold Mortgagee (or person acquiring the Leasehold Estate pursuant to a Foreclosure Event under a Leasehold Mortgage) be liable under this Agreement unless and until such time as it becomes, and then only for so long as it remains, the owner of the Leasehold Estate.

**16.4 Notice of Leasehold Mortgages.** Promptly after ArenaCo enters into any Leasehold Mortgage, ArenaCo shall request the Leasehold Mortgagee thereunder to deliver to the City a true and correct copy of the Leasehold Mortgage together with written notification specifying the name and address of the Leasehold Mortgagee. Such Leasehold Mortgagee shall be entitled to all the rights and protections of a Leasehold Mortgagee under this Agreement (as against both the City and any successor holder of the Fee Estate) from and after (and only from and after) such date as the City receives the foregoing materials. The City agrees to acknowledge to ArenaCo and such Leasehold Mortgagee the City's receipt of any such materials and, following notification thereof, notice of any Assignment of such Leasehold Mortgage and to confirm that such Leasehold Mortgagee is or will be, upon closing of its financing or its acquisition of an existing Leasehold Mortgage, entitled to all of the rights and protections granted to Leasehold Mortgagee under this Agreement with the same force and effect as if such successor, assign or Affiliate were the Leasehold Mortgagee itself, in this Agreement, including after any premature termination of this Agreement. If the City has received notice of any Leasehold Mortgage, then such notice shall automatically bind the City's successors and assigns.

**16.5 Modifications Required by Leasehold Mortgagee.** If, in connection with obtaining, continuing, or renewing any financing for which the Leasehold Estate, or the direct or indirect equity interests in ArenaCo, represents collateral in whole or in part, the Leasehold Mortgagee requires any modifications of this Agreement as a condition to such financing, then the City shall, at ArenaCo's or such Leasehold Mortgagee's request, promptly consider any such modifications in good faith. If such modifications do not (A) modify the Annual Fee or the Term, or (B) lessen the City's rights or increase the City's obligations under this Agreement by more than a de minimis amount in the reasonable judgment of the City, then the City shall execute and deliver to ArenaCo an amendment to this Agreement to effect such modifications.

**16.6 Further Assurances.** Upon request by ArenaCo or by any existing or prospective Leasehold Mortgagee, the City shall deliver to the requesting party such documents and agreements as the requesting party shall reasonably request to further effectuate the intentions of the Parties as set forth in this Agreement, including a separate written instrument in recordable form signed and acknowledged by the City setting forth and confirming, directly for the benefit of Leasehold Mortgagee and its successors and assigns, any or all rights of Leasehold Mortgagee; provided, however, that ArenaCo shall reimburse the City immediately upon demand therefor for any and all reasonable third-party costs or expenses actually incurred by the City in complying with this Section 16.6.

**16.7 Protection of Leasehold Mortgagees.** Notwithstanding anything to the contrary set forth in this Agreement, if, and only for so long as, any Leasehold Mortgage is in effect (and the City shall have been notified thereof as provided above), the following shall apply:

- (A) *Lease Impairments.* Any Lease Impairment made without First Leasehold Mortgagee's prior written consent (or any deemed consent under its Leasehold Mortgage) shall be null, void, and of no further force or effect, and shall not bind ArenaCo, Leasehold Mortgagee, or New Operator. For clarification, this Section 16.7(A) shall be inapplicable during any period that no Leasehold Mortgage is in effect.
- (B) *Copies of Notices.* If the City shall give any notice to ArenaCo under this Agreement, then the City shall at the same time and by the same means give a copy of such notice to any Leasehold Mortgagee. No notice to ArenaCo shall be effective unless and until such notice has been duly given to Leasehold Mortgagee, provided the City has received notice of such Leasehold Mortgagee pursuant to Section 16.4. No exercise of the City's rights and remedies under or termination of this Agreement shall be deemed to have occurred or arisen or be effective unless the City has given like notice to each Leasehold Mortgagee as this Section 16.7(B) requires. Any such notice shall describe in reasonable detail the alleged

ArenaCo default or other event allegedly entitling the City to exercise such rights or remedies.

- (C) *ArenaCo's Cure Period Expiration Notice.* If ArenaCo is in default under this Agreement and the cure period applicable to ArenaCo expires without cure of ArenaCo's default, then the City shall promptly give notice of such fact to any Leasehold Mortgagee, which notice shall describe in reasonable detail ArenaCo's default (an "**ArenaCo's Cure Period Expiration Notice**").
- (D) *Right to Perform Covenants and Agreements.* Any Leasehold Mortgagee shall have the right, but not the obligation, to perform any obligation of ArenaCo under this Agreement and to remedy any default by ArenaCo. The City shall accept performance by or at the instigation of a Leasehold Mortgagee in fulfillment of ArenaCo's obligations, for the account of ArenaCo, and with the same force and effect as if performed by ArenaCo. No performance by or on behalf of such Leasehold Mortgagee shall cause it to become a "mortgagee in possession" or otherwise cause it to be deemed to be in possession of the Arena or bound by or liable under this Agreement.
- (E) *Notice of Default and Cure Rights.* Upon receiving any notice of default, any Leasehold Mortgagee shall have the right within the same cure period granted to ArenaCo under this Agreement, plus the additional time provided for below within which to take (if any Leasehold Mortgagee so elects) whichever of the actions set forth below in the remainder of this Section 16.7 shall apply as to the default described in such notice of default (such actions, "**Mortgagee's Cure**"; and a Leasehold Mortgagee's rights to take such actions, including pursuit of an Enforcement Action, collectively, "**Mortgagee's Cure Rights**").
- (F) *Monetary Defaults.* In the case of a monetary default, any Leasehold Mortgagee shall be entitled (but not required) to cure such default within a cure period consisting of ArenaCo's cure period under this Agreement extended through the date 30 days after such Leasehold Mortgagee shall have received ArenaCo's Cure Period Expiration Notice as to such monetary default.
- (G) *Nonmonetary Defaults Curable Without Obtaining Possession.* In the case of any nonmonetary default that any Leasehold Mortgagee is reasonably capable of curing without obtaining possession of the Arena (excluding in any event a Personal Default), such Leasehold Mortgagee, provided that the Annual Fee shall continue to be paid timely during the pendency of

such extended cure period, shall have the right (but not the obligation) to cure such nonmonetary default by taking the following actions:

- (1) Within a period consisting of ArenaCo's cure period for such nonmonetary default, extended through the date 30 days after receipt of ArenaCo's Cure Period Expiration Notice as to such default, such Leasehold Mortgagee shall provide written notice to the City of such Leasehold Mortgagee's intention to take all reasonable steps necessary to remedy such default (it being understood that such notice is a statement of intention and not an obligation); and
  - (2) Duly commence the cure of such nonmonetary default within such extended period, and thereafter (during and after such extended period) diligently prosecute to completion the remedy of such default, but, subject to Force Majeure Events, in no event more than 120 days after Leasehold Mortgagee's receipt of ArenaCo's Cure Period Expiration Notice as to such default.
  - (3) For the purposes of this Section 16.7(G), a nonmonetary default will not be deemed incapable of cure by a Leasehold Mortgagee simply because the timeline for performance of the underlying obligation has passed.
- (H) *Defaults Curable Only by Obtaining Possession and Personal Defaults.* In the case of (i) a nonmonetary default that is not reasonably susceptible of being cured by such Leasehold Mortgagee without obtaining possession of the Arena or (ii) a Personal Default by ArenaCo, such Leasehold Mortgagee shall be entitled (but not required) to proceed as described in Sections 16.7(I) and 16.7(J) (provided that (x) the Annual Fee shall continue to be paid timely during the pendency of such extended cure period, and (y) with respect to any nonmonetary defaults outstanding under Section 16.7(G), such Leasehold Mortgagee shall be exercising its Mortgagee's Cure Rights thereunder).
- (I) *During Cure Period.* At any time during the cure period (if any) that applies to ArenaCo, extended through the date that is 90 days after such Leasehold Mortgagee's receipt of ArenaCo's Cure Period Expiration Notice as to such nonmonetary default, or if no cure period applies to ArenaCo, then within 90 days after such Leasehold Mortgagee's receipt of notice of such default, such Leasehold Mortgagee shall be entitled to institute proceedings, and (subject to any stay in any Bankruptcy Proceedings affecting ArenaCo or any injunction, unless such stay or injunction is lifted) provided that from and after the institution of such

proceedings, such Leasehold Mortgagee shall diligently prosecute the same to completion, to obtain possession of the Arena as mortgagee (including possession by a receiver), or acquire directly, or cause its assignee, nominee, or designee to acquire, the Leasehold Estate through a Foreclosure Event, or foreclose on its pledged collateral, as applicable (the obtaining of such possession or the completion of such acquisition, "**Control of the Arena**").

(1) *Further Cure After Control of Arena.* Upon obtaining Control of the Arena (whether before or after expiration of any otherwise applicable cure period), such Leasehold Mortgagee or, in the event the Leasehold Estate is acquired through a Foreclosure Event, such New Operator, shall then be entitled (but not required) to proceed with reasonable diligence and reasonable continuity to cure such nonmonetary defaults as are then reasonably susceptible of being cured by such Leasehold Mortgage or New Operator (excluding ArenaCo's Personal Defaults, which Leasehold Mortgagee need not cure), within a reasonable time under the circumstances but, subject to Force Majeure Events, in no event more than 120 days after Leasehold Mortgagee obtains Control of the Arena.

(2) *Effect of Cure.* Upon the cure of a default by such Leasehold Mortgagee or New Operator, as the case may be, in accordance with this Agreement, this Agreement shall continue in full force and effect as if no default(s) had occurred. Leasehold Mortgagee's exercise of Mortgagee's Cure Rights shall not be deemed an assumption of this Agreement in whole or in part.

(J) *Forbearance by the City.*

(1) So long as a Leasehold Mortgagee shall be diligently exercising its Mortgagee's Cure Rights, including the commencement and pursuit of an Enforcement Action, within the applicable cure periods set forth above, the City shall not, to the extent permitted under this Agreement, (i) re-enter the Arena to cure the ArenaCo Event of Default, (ii) bring a proceeding on account of such default to (a) re-enter the Arena to cure the ArenaCo Event of Default, (b) dispossess ArenaCo or other occupants of the Arena, (c) terminate the Leasehold Estate, or (d) replace the management company pursuant to Section 11.2(B)), or (iii) accelerate payment of the Annual Fee or any other amounts payable by ArenaCo under this Agreement. Upon (A) any cessation of a Leasehold Mortgagee exercising Mortgagee's Cure Rights, or (B) the expiration of the



applicable cure period, as extended in connection with Mortgagee's Cure Rights, without cure, the City may, upon notice to such Leasehold Mortgagee, exercise any of the City's rights under this Agreement with respect to dispossession or termination. Notwithstanding the foregoing, the City shall have the right to re-enter the Arena, or bring a proceeding to so re-enter the Arena, to cure the applicable ArenaCo Event of Default if the Leasehold Mortgagee that is exercising its Mortgagee's Cure Rights does not have Control of the Arena at such time; provided, however, that (1) the City gives prior written notice thereof to such Leasehold Mortgagee, and (2) no such cure by the City shall be deemed to diminish any of the Mortgagee's Cure Rights. Nothing in this Section 16.7(J)(1) will be deemed to diminish or other restrict the City's access rights under Section 4.8.

- (2) Nothing in this Section 16 shall, however, be construed to either (i) extend the Term beyond the Expiration Date that would have applied if no default had occurred or (ii) require any Leasehold Mortgagee to cure any Personal Default by ArenaCo as a condition to preserving this Agreement or to obtaining a New Agreement (but this shall not limit such Leasehold Mortgagee's obligation to seek to obtain Control of the Arena, and thereafter consummate a Foreclosure Event, by way of Mortgagee's Cure Rights, if such Leasehold Mortgagee desires to preclude the City from terminating this Agreement on account of a Personal Default of ArenaCo).
- (3) Nothing in this Section 16 shall preclude the City from exercising its rights to sue for damages, specific performance, or other equitable relief (excluding "self-help", dispossession, termination, or engagement of new management company) under Section 11.2(B).

- (K) *Leasehold Mortgagee's Right to Enter Arena.* The City and ArenaCo authorize each Leasehold Mortgagee to enter the Arena and the Arena Land as necessary to effect Mortgagee's Cure and take any action(s) reasonably necessary to effect Mortgagee's Cure without such action being deemed to give Leasehold Mortgagee possession of the Arena or the Arena Land.
- (L) *Rights of New Operator Upon Acquiring Control.* If any New Operator shall acquire the Leasehold Estate pursuant to a Foreclosure Event and shall continue to exercise Mortgagee's Cure Rights as to any remaining defaults (other than Personal Defaults, which New Operator need not



cure), then any Personal Defaults by ArenaCo shall no longer be deemed defaults and the City shall recognize the rights of such New Operator hereunder as if such New Operator were ArenaCo.

- (M) *Interaction Between Agreement and Leasehold Mortgage.* ArenaCo's default as mortgagor under a Leasehold Mortgage shall not constitute a default under this Agreement, except to the extent that ArenaCo's actions or failure to act in and of itself constitutes a breach of this Agreement. The exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage, including the consummation of any Foreclosure Event, shall not constitute a default under this Agreement (except to the extent such actions otherwise constitute a breach of this Agreement).

#### **16.8 First Leasehold Mortgagee's Right to a New Agreement.**

- (A) If this Agreement shall terminate by reason of the City exercising any right it has under this Agreement to terminate, a rejection in ArenaCo's bankruptcy, or option of ArenaCo to treat this Agreement as terminated under 11 U.S.C. § 365(h)(1)(A)(i), or any comparable provision of law, the City shall promptly give notice of such termination to any Leasehold Mortgagee of which the City has notice. The City shall, upon a Leasehold Mortgagee's request given within 30 days after such Leasehold Mortgagee's receipt of such notice, enter into (and if the City fails to do so, shall be deemed to have entered into) a new lease of the Arena effective as of (or retroactively to) the date of the termination of this Agreement, for the remainder of the Term, as if no termination had occurred, with a New Operator on the same terms and provisions of this Agreement, including the Purchase Option and all other rights, options, privileges, and obligations of ArenaCo under this Agreement, but excluding any requirements that have already been performed or no longer apply (a "**New Agreement**"), provided that the First Leasehold Mortgagee shall, at the time of execution and delivery of such New Agreement, (i) pay the City any and all Annual Fees and other sums then due under this Agreement (determined as if this Agreement had not been terminated), and (ii) cure any nonmonetary defaults (other than Personal Defaults, which First Leasehold Mortgagee need not cure) under this Agreement (determined as if this Agreement had not been terminated) or, if such nonmonetary default is of a nature that it cannot with due diligence be cured upon such execution and delivery, then the First Leasehold Mortgagee shall (x) upon such execution and delivery, advise the City of its intention to take all steps necessary to remedy such nonmonetary default (other than Personal Defaults, which First Leasehold Mortgagee need not cure), and (y) promptly and duly

commence the cure of such default and thereafter diligently prosecute to completion the remedy of such default, which completion must be achieved within a reasonable time under the circumstances, subject to Force Majeure Events. In no event, however, shall the New Operator be required to cure a Personal Default of ArenaCo as a condition to obtaining or retaining a New Agreement or otherwise. From the date this Agreement terminates until the date of execution and delivery of any such New Agreement (the "**New Agreement Delivery Date**"), the City may, at its option, perform the day-to-day operations, maintenance, and repair of the Arena and the Arena Land; provided, however, the City shall not (1) operate the Arena or the Arena Land in an unreasonable manner, (2) take any affirmative action to cancel any sublease or accept any cancellation, termination, or surrender of a sublease, except due to such subtenant's default, or (3) lease any of the Arena or the Arena Land except to New Operator. Notwithstanding anything to the contrary contained herein, if the provisions of this Section 16.8 are triggered by reason of the City exercising its right to terminate this Agreement pursuant to Section 11.2(C)(i) by reason of ArenaCo's failure to pay damages within ten days after the City obtains a judgment therefor, then all rights of all Leasehold Mortgagees under this Section 16.8 shall automatically terminate if the City has not received payment in full in respect of such judgment by the date that is 60 days after such termination.

(B) The following additional provisions shall apply to any New Agreement:

- (1) *Form and Priority.* Any New Agreement (or, at the City's option, a memorandum thereof) shall be in recordable form. Such New Agreement shall not be subject to any rights, liens, or interests other than permitted exceptions and other exceptions to title existing as of the date of such New Agreement which were not created by the City. The New Agreement shall be expressly made subject to any rights of ArenaCo prior to the termination of this Agreement.
- (2) *Adjustment for Net Income/Net Loss.* On the New Agreement Delivery Date, if during the period from the termination date of this Agreement to the New Agreement Delivery Date the revenue derived from the Arena and actually received by the City (excluding from income the amount of any Annual Fee payable under this Agreement and actually received by the City) exceeds the expenses actually incurred by the City in connection with the Arena, then, on the New Agreement Delivery Date, the City shall pay to the New Operator the amount of such excess.

Alternatively, if during such period the City's expenses exceed the City's revenues, then, on the New Agreement Delivery Date, the New Operator shall pay to the City the amount of such excess. In either event, the New Operator shall, on the New Agreement Delivery Date, pay to the City all sums required to be paid the City pursuant to this Agreement.

- (3) *Assignment of Certain Items.* On the New Agreement Delivery Date, the City shall assign to New Operator all of the City's right, title and interest in and to all moneys (including security deposits, insurance proceeds, and condemnation awards), if any, then held by, or payable to, the City that ArenaCo (or Leasehold Mortgagee) would have been entitled to receive but for termination of this Agreement. On the New Agreement Delivery Date, the City shall also transfer to New Operator all subleases, service contracts, and net income collected by the City in connection with the operation of the Arena during the period between termination of this Agreement and the New Agreement Delivery Date.
- (4) *Preservation of Subleases.* Between the date of the termination of this Agreement and the New Agreement Delivery Date, the City shall not take any affirmative action to cancel any sublease or accept any cancellation, termination, or surrender of a sublease (it being understood that the City shall not be obligated to take any action to keep any subleases in effect). Any sublease which was terminated upon the termination of this Agreement as a matter of law, shall, at New Operator's option, be reinstated upon execution of the New Agreement.
- (5) *Separate Instrument.* The City hereby agrees, at the request of any Leasehold Mortgagee, to enter into a separate instrument (and memorandum thereof in recordable form) memorializing such Leasehold Mortgagee's rights under this Section 16.8.

**16.9 *Priority of Leasehold Mortgages.*** If there is more than one Leasehold Mortgage, then whenever this Agreement provides the holder of a Leasehold Mortgage with the right to consent or approve or exercise any right granted in this Agreement, the exercise or waiver of same by the First Leasehold Mortgagee shall control and be binding upon the holder(s) of all junior Leasehold Mortgages.

**16.10 *Liability of Leasehold Mortgagee.*** If a New Operator shall acquire ArenaCo's Leasehold Estate through a Foreclosure Event or a New Agreement shall be granted to a New Operator pursuant to Section 16.8, such New Operator shall be liable for the performance of all of ArenaCo's covenants under this Agreement or such New

Agreement, as the case may be, from and after the effective date of such Foreclosure Event or New Agreement. If (A) the New Operator is a Leasehold Mortgagee or its assignee, nominee or designee, (B) such Leasehold Mortgagee, or its assignee, designee or nominee, as applicable, then assigns this Agreement or the New Agreement to a third party assignee, and (C) such third party assignee delivers to the City an agreement under which such assignee assumes and agrees to perform all the terms, covenants, and conditions of this Agreement or such New Agreement, in form reasonably acceptable to the City, the Leasehold Mortgagee, or its assignee, designee, or nominee, as applicable, shall be automatically and entirely released and discharged from the performance, covenants, and obligations of the New Operator under this Agreement or the New Agreement, thereafter accruing.

**16.11 Casualty and Condemnation Proceeds.** If a casualty or a Condemnation Action shall occur with respect to all or any portion of the Arena and the Arena Land and restoration is to occur pursuant to the provisions of this Agreement, any insurance proceeds shall be handled in accordance with Section 9. The City understands that ArenaCo may irrevocably appoint Leasehold Mortgagee as its representative to participate in any settlement regarding, and with regard to, the disposition and application of said insurance proceeds or Condemnation Awards. The City will recognize and deal with Leasehold Mortgagee for such purposes. The City hereby acknowledges that no election by ArenaCo not to restore in the event of a casualty or Condemnation Action shall be effective unless Leasehold Mortgagee's consent has been granted to such election.

**16.12 Mezzanine Lenders as Leasehold Mortgagees.** The Parties agree that each lender under a Mezzanine Financing (as hereinafter defined) (each such lender, a "**Mezzanine Lender**") is intended to and shall be entitled to substantially the same protections and rights set forth in this Section 16 as provided to a Leasehold Mortgagee, modified as appropriate to reflect the nature of the limited liability company or limited partnership interest or stock pledge, as applicable, in favor of each such Mezzanine Lender, mutatis mutandis. If requested by ArenaCo in connection with a Mezzanine Financing, the Parties agree to negotiate, in good faith and with due diligence, an amendment to this Agreement or a separate agreement, containing commercially reasonable terms and conditions in order to specifically reflect such protections and rights set forth in this Section 16 as applicable to a Mezzanine Lender. As used herein, a "**Mezzanine Financing**" means a financing transaction which is secured by, inter alia, a pledge or collateral assignment of any or all of the limited liability company or limited partnership interests or the corporate stock of ArenaCo (or any entity holding a direct or indirect interest in ArenaCo), as applicable, either together with or in lieu of a Leasehold Mortgage (provided that if the same lender holds both a Leasehold Mortgage and such a pledge or collateral assignment, such lender shall be a Leasehold Mortgagee, and such financing transaction shall be a Leasehold Mortgage, hereunder).

## **17. Purchase Option**

**17.1 Purchase Option.** Unless this Agreement is terminated pursuant to Section 11.2(C) of this Agreement or Sections 7.2(A), 7.2(B), 7.2(E), 7.2(F), or 7.2(G) of the Comprehensive Agreement, ArenaCo shall either (A) have the option to purchase the Arena and the Arena Land from the City as set forth in Sections 17.2, 17.4, and 17.5 (the "**Purchase Option**") or (B) be required to purchase the Arena and the Arena Land from the City as set forth in Section 17.3.

### **17.2 Exercise after 45 Years.**

- (A) Subject to Section 17.5(A), if TeamCo exercises its rights to extend the Team Agreement for both the First Renewal Term and the Second Renewal Term (as those terms are defined in the Team Agreement), then ArenaCo may exercise the Purchase Option by delivering written notice thereof to the City at any time during the period beginning 18 months prior to the Expiration Date and ending on the date that is 12 months prior to the Expiration Date. If ArenaCo fails to timely exercise the Purchase Option as provided in this Section 17.2(A), the Purchase Option shall automatically terminate.
- (B) If ArenaCo exercises the Purchase Option pursuant to Section 17.2(A), the purchase price for the Arena and the Arena Land, collectively, shall be One Dollar (\$1.00).
- (C) If ArenaCo exercises the Purchase Option pursuant to Section 17.2(A), ArenaCo shall elect to (i) continue to operate the Arena as an entertainment and sports facility in accordance with Applicable Law, (ii) renovate and repurpose the Arena in accordance with Section 17.8, or (iii) demolish the Arena in accordance with Section 17.9. ArenaCo shall provide the City written notice of such election at the closing of the conveyance of the Arena and the Arena Land described in Section 17.7.

### **17.3 The City Lease.**

- (A) If TeamCo fails to exercise its right to extend the Team Agreement for either the First Renewal Term or the Second Renewal Term, then, unless there is another multipurpose entertainment and sports facility located in Sacramento that then serves as the home of an NBA team, the City shall have the option, exercisable in its sole discretion, to give ArenaCo written notice that the City will operate the Arena as an entertainment and sports facility after the Expiration Date pursuant to the City Lease, which notice must be provided at least six months prior to the Expiration Date (the "**City Post-Termination Operation Notice**").

- (B) If the City provides the City Post-Termination Operation Notice to ArenaCo in accordance with Section 17.3(A), then (i) ArenaCo shall purchase the Arena Land (but not the Arena) for One Dollar (\$1.00) and (ii) the City and ArenaCo shall enter into a lease agreement (the "**City Lease**") pursuant to which ArenaCo will lease to the City the Arena Land and all plans and specifications, operating manuals, computer programs and software, and other personal property, tangible or intangible, used in connection with the operation or management of the Arena or the systems within the Arena, including all Concessions equipment, all to the extent the same are in the possession or control of ArenaCo or any of its Affiliates.
- (C) The City Lease shall provide for (i) annual rent equal to the fair market annual rental value of the Arena Land, assuming the use of the Arena Land for an entertainment and sports facility without an NBA team and without consideration of the highest or best use of the Arena Land, and (ii) such length of term as the City desires (provided that the term of the City Lease shall in any event expire upon the earliest of (1) substantial completion of another multipurpose entertainment and sports facility located in Sacramento that serves as the home of an NBA team), (2) the date on which the City Ceases to Operate the Arena, and (3) the ninety-ninth anniversary of the effective date of the City Lease). The Parties hereby agree, and the City Lease shall also provide, that (w) ArenaCo shall not be required to pay any costs or expenses or provide any services whatsoever in connection with the Arena or the Arena Land after the effective date of the City Lease, (x) the City shall be solely responsible for paying, throughout the term of the City Lease, all costs (including capital costs) necessary to design, construct, manage, maintain, and operate the Arena after the effective date of the City Lease, including all costs of maintenance, repairs, replacements, renovation, remodeling, removal, alterations, improvements, insurance, Taxes, and all other costs, charges, expenses, and obligations of any kind now or at any time imposed upon or with respect to the Arena or the Arena Land, (y) in the event of a casualty or condemnation with respect to all or substantially all of the Arena, the City Lease will terminate, and (z) shall otherwise be upon such terms and conditions as shall be mutually agreed to by the Parties.
- (D) At the expiration of the term of the City Lease, ArenaCo shall purchase the Arena from the City for One Dollar (\$1.00). Thereafter, ArenaCo shall not resume operation of the Arena as an entertainment and sports facility. Instead, ArenaCo shall elect to either (i) renovate and repurpose the Arena in accordance with Section 17.8 or (ii) demolish the Arena in accordance with Section 17.9. ArenaCo shall provide the City written

notice of such election at the closing of the conveyance of the Arena from the City to ArenaCo described in Section 17.7.

**17.4 No City Lease.**

- (A) Subject to Section 17.5(A), if (i) TeamCo fails to exercise its right to extend the Team Agreement for either the First Renewal Term or the Second Renewal Term and (ii) the City fails to deliver (or is not entitled to deliver) the City Post-Termination Operation Notice to ArenaCo in accordance with Section 17.3(A), then ArenaCo may exercise the Purchase Option by delivering written notice thereof to the City at any time during the period beginning six months prior to the Expiration Date and ending on the Expiration Date. If ArenaCo fails to timely exercise the Purchase Option as provided in this Section 17.4(A), the Purchase Option shall automatically terminate.
- (B) If ArenaCo exercises the Purchase Option pursuant to Section 17.4(A), the purchase price for the Arena and the Arena Land, collectively, shall be One Dollar (\$1.00).
- (C) If ArenaCo exercises the Purchase Option pursuant to Section 17.4(A), ArenaCo shall not continue to operate the Arena as an entertainment and sports facility. Instead, ArenaCo shall elect to either (i) renovate and repurpose the Arena in accordance with Section 17.8 or (ii) demolish the Arena in accordance with Section 17.9. ArenaCo shall provide the City written notice of such election at the closing of the conveyance of the Arena and the Arena Land described in Section 17.7.

**17.5 Early Termination.**

- (A) If this Agreement is terminated prior to the Expiration Date pursuant to Section 9.1, 9.3, or 11.4 of this Agreement or Section 7.2(D) of the Comprehensive Agreement, ArenaCo may exercise the Purchase Option at any time within the six-month period after this Agreement is so terminated. If ArenaCo fails to timely exercise the Purchase Option as provided in this Section 17.5(A), the Purchase Option shall automatically terminate.
- (B) If ArenaCo exercises the Purchase Option pursuant to Section 17.5(A), the purchase price for the Arena and the Arena Land, collectively, shall be One Dollar (\$1.00).
- (C) If ArenaCo exercises the Purchase Option pursuant to Section 17.5(A), ArenaCo shall elect to (i) renovate and repurpose the Arena in accordance with Section 17.8, (ii) demolish the Arena in accordance with



Section 17.9, or (iii) if this Agreement is terminated pursuant to Section 11.4, continue to operate the Arena as an entertainment and sports facility in accordance with Applicable Law. ArenaCo shall provide the City written notice of such election at the closing of the conveyance of the Arena and the Arena Land described in Section 17.7.

**17.6 *Restriction for City Financing.***

- (A) Notwithstanding anything to the contrary contained in this Agreement or in any other Project Agreement, the Purchase Option cannot be exercised while any portion of the City Financing remains outstanding. Similarly, ArenaCo shall not be required or permitted to purchase the Arena or the Arena Land pursuant to Section 17.3 while any portion of the City Financing remains outstanding.
- (B) If ArenaCo is prohibited from exercising the Purchase Option pursuant to Section 17.6(A), then, notwithstanding anything to the contrary herein, (i) the City shall provide written notice to ArenaCo as promptly as practicable after the City Financing is no longer outstanding and (ii) the period in which the Purchase Option may be exercised shall automatically be extended until the date that is six months after ArenaCo's receipt of such notice.
- (C) If ArenaCo is prohibited from purchasing the Arena or the Arena Land under Section 17.3 pursuant to Section 17.6(A), then, notwithstanding anything to the contrary contained herein, (i) the City shall provide written notice to ArenaCo as promptly as practicable after the City Financing is no longer outstanding and (ii) ArenaCo shall complete the purchase of the Arena or the Arena Land, as applicable (and the Parties shall enter into the City Lease), pursuant to Section 17.3 as promptly as practicable after receipt of such notice from the City.

**17.7 *Closing.***

- (A) If ArenaCo properly exercises the Purchase Option in accordance with this Section 17, then the closing of the conveyance of the Arena and Arena Land shall occur on a date set forth by ArenaCo in the notice by which ArenaCo exercised its Purchase Option, subject to the City's approval of such date, which will not be unreasonably withheld, conditioned, or delayed.
- (B) If ArenaCo is required to purchase the Arena and the Arena Land pursuant to Section 17.3, then the closing of the conveyance of the Arena or the Arena Land, as applicable, shall occur on a date mutually agreed to



by the Parties, which agreement will not be unreasonably withheld, conditioned, or delayed by either Party.

- (C) At any such closing, (i) the City shall convey the Arena Land, the Arena, or both, as applicable, to ArenaCo, by grant deed, unencumbered by (x) any monetary liens other than the lien for real estate taxes and assessments not then due and payable and any liens made by, attributable to, or with the consent of, ArenaCo or its Affiliates and (y) any non-monetary liens or encumbrances other than those matters of record affecting the Arena Land as of the Effective Date, such additional matters as set forth in the Project Agreements, and any liens or encumbrances made by, attributable to, or with the consent of, ArenaCo or its Affiliates, all as evidenced by an CLTA owner's policy of title insurance, reasonably acceptable to ArenaCo, to be provided by the City to ArenaCo (the premiums for which shall be paid by ArenaCo), (ii) ArenaCo shall pay the entire Purchase Price to the City, and (iii) the City and ArenaCo shall deliver such customary closing documents (*e.g.*, settlement statements, tax reporting forms), including the City Lease (if applicable), and take such customary actions as shall be required in order to effect such conveyance in accordance with then-common California real estate conveyancing practice. The Parties agree that, to the extent any transfer Taxes are imposed in connection with the conveyance of the Arena Land or the Arena and the Arena Land, as applicable, to ArenaCo pursuant to this Section 17, to the extent permitted by Applicable Law, such transfer Taxes shall be paid by, or waived (or caused to be waived) by, the City.

#### **17.8 Renovation and Repurposing the Arena.**

- (A) If ArenaCo elects to renovate and repurpose the Arena as permitted by this Section 17, then (i) as renovated and repurposed, the Arena shall no longer function as an entertainment and sports facility, (ii) ArenaCo must complete such renovation and repurposing no later than 24 months after ArenaCo acquires the Arena, and (iii) ArenaCo must complete such renovation and repurposing in accordance with Applicable Law.
- (B) ArenaCo's obligation under this Section 17.8 shall be included in the grant deed by which the City transfers the Arena Land to ArenaCo and shall survive the closing described in Section 17.7. The Parties expressly agree that if ArenaCo fails to timely perform its obligations under this Section 17.8, the City may, without limiting any of its other rights or remedies set forth in this Agreement or in the grant deed, pursue equitable relief by way of a decree of specific performance.

#### **17.9 Demolition of the Arena.**

- (A) If ArenaCo elects to demolish the Arena as permitted by this Section 17, then ArenaCo must complete such demolition (i) no later than 24 months after ArenaCo acquires the Arena and (ii) in accordance with Applicable Law.
- (B) In connection with any such demolition, ArenaCo shall tear down and remove all portions of the Arena and all debris resulting therefrom, and otherwise clean and restore the Arena Land to a reasonably level and clean condition. Following such demolition, ArenaCo shall, to the extent it does not sell or lease the Arena Land to a third party, use commercially reasonable efforts to redevelop the Arena Land consistent with the then-current conditions of the neighborhood surrounding the Arena Land and then-current market conditions. If ArenaCo (or any third party to whom ArenaCo conveys the Arena Land) does not immediately commence such redevelopment, ArenaCo (or its successor) shall landscape the Arena Land in such a manner to ensure that the Arena Land is not perceived as urban blight (*e.g.*, landscaped as a simple park).
- (C) ArenaCo's obligation under this Section 17.9 shall be included in the grant deed by which the City transfers the Arena Land to ArenaCo and shall survive the closing described in Section 17.7. The Parties expressly agree that if ArenaCo fails to timely perform its obligations under this Section 17.9, the City may, without limiting any of its other rights or remedies set forth in this Agreement or in the grant deed, pursue equitable relief by way of a decree of specific performance.

**17.10 *Continued Operation of the Arena.***

- (A) If ArenaCo continues to operate the Arena as an entertainment and sports facility pursuant to Section 17.2(C)(i) or 17.5(C)(iii), then no later than six months after the date on which ArenaCo Ceases to Operate the Arena, ArenaCo shall elect, by written notice provided to the City, to either (i) renovate and repurpose the Arena in accordance with Section 17.8 or (ii) demolish the Arena in accordance with Section 17.9. Notwithstanding the timelines set forth in Sections 17.8 and 17.9, ArenaCo shall complete such renovations/repurposing or demolition, as the case may be, no later than 24 months after the date on which ArenaCo Ceases to Operate the Arena.
- (B) ArenaCo's obligation under this Section 17.10 shall be included in the grant deed by which the City transfers the Arena Land to ArenaCo and shall survive the closing described in Section 17.7. The Parties expressly agree that if ArenaCo fails to timely perform its obligations under this Section 17.10, the City may, without limiting any of its other rights or

remedies set forth in this Agreement or in the grant deed, pursue equitable relief by way of a decree of specific performance.

**17.11 No Merger.** Without the written consent of Leasehold Mortgagee, the Fee Estate and the Leasehold Estate shall remain distinct and separate estates and shall not merge, notwithstanding the acquisition of both the Fee Estate and the Leasehold Estate by the City, ArenaCo, a New Operator, or a third party, whether pursuant to the Purchase Option or otherwise.

**17.12 Survival.** This Section 17 survives the expiration or earlier termination of the Term.

## **18. Mediation**

**18.1 Process.** Any dispute between the Parties under this Agreement shall be resolved in accordance with this section.

**18.2 Direct Communication.** As soon as reasonably possible after a dispute is identified, each Party shall set forth their positions in the dispute in written correspondence delivered to the other Party. Within 15 days after delivery, representatives of each Party shall meet at a mutually agreed time and place to attempt, with diligence and in good faith, to resolve and settle the dispute.

### **18.3 Non-binding Mediation.**

- (A) *Resort to Mediation.* If the dispute is not resolved through direct communication as provided in Section 18.2 by the date that is ten days after the initial meeting, any Party to such dispute may request appointment of a neutral and properly credentialed mediator with expert knowledge and practical experience regarding the subject in dispute.
- (B) *Choice of Mediators.* The requesting Party shall provide a list of three possible mediators to the non-requesting Party. The non-requesting Party shall then select the mediator to be used to mediate the dispute from that list.
- (C) *Length of Mediation.* The Parties shall then participate in good faith in a one-day, non-binding mediation session. Notwithstanding the foregoing, the Parties may agree to extend the mediation proceedings.
- (D) *Location.* Any mediation proceedings shall take place in the City, unless otherwise mutually agreed by the Parties.
- (E) *Cost Sharing.* The cost of the mediation shall be divided equally between the Parties to the dispute.

**18.4 Mediation Failure.** If the Parties do not resolve the dispute after engaging in this mediation process, each Party shall be entitled to bring an appropriate action or proceeding in any court of competent jurisdiction to vindicate its rights under this Agreement.

**18.5 Leasehold Mortgagee.** In no event shall a Leasehold Mortgagee or its designee be subject to or bound by the provisions of this Section 18 unless and until such Leasehold Mortgagee or such designee has succeeded to the interests of ArenaCo under this Agreement.

## **19. Miscellaneous**

**19.1 Notices.** Any notice or other communication under this Agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section to the persons identified below. A notice or other communication that is mailed will be effective or will be considered to have been given on the third day after it is deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered.

<i>If to the City:</i> John Dangberg Assistant City Manager City of Sacramento 915 I Street, Fifth Floor Sacramento, CA 95814  <i>With copies to:</i> Matthew Ruyak Assistant City Attorney City of Sacramento 915 I Street, Fourth Floor Sacramento, CA 95814  Jeffrey Massey Senior Deputy City Attorney City of Sacramento 915 I Street, Fourth Floor Sacramento, CA 95814	<i>If to ArenaCo:</i> John Rinehart, CFO Sacramento Basketball Holdings, LLC One Sports Parkway Sacramento, CA 95834 Facsimile: (916) 928-6983  <i>With copies to:</i> Mark Friedman, Owner 1530 J Street, Suite 200 Sacramento, CA 95814  Jeffrey Dorso, Esq. Pioneer Law Group, LLP 1122 S Street Sacramento, CA 95811 Facsimile: (916) 496-8500  Adam R. Klein, Esq. Katten Muchin Rosenman LLP 525 W. Monroe Street Chicago, IL 60661-3693 Facsimile: (312) 902-1061
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Either Party may from time to time designate a different address or facsimile number or persons for notices by giving notice to that effect to the other Party in accordance with the terms and conditions of this section.

**19.2 City's Purpose of Review.** The City's review of any designs, plans, specifications, or other documents or inspection of any property or improvements in connection with this Agreement are performed solely for its own purposes and benefit, and the City is not liable to ArenaCo or any third party for defects in such documents or any other improvements related thereto, or the operations and maintenance standards to be applied thereto.

**19.3 Force Majeure.** Failure in performance by any Party under this Agreement due to a Force Majeure Event shall not be deemed a breach of this Agreement. In addition, when this Agreement provides a time for the performance of any obligation, the time provided is extended if compliance is not possible due to a Force Majeure Event. The extension time shall be equal to one day for each day the Force Majeure Event prevents compliance. "**Force Majeure Event**" means any act, event, or condition that is beyond the reasonable control of the Party asserting the Force Majeure Event, if it prevents or delays such Party from performing any obligation under this Agreement including the following: any act of public enemy, terrorism, blockade, war, insurrection, civil disturbance, explosion, or riot; epidemic; landslide, earthquake, fire, storm, flood, or washout, or other catastrophic weather event; any other act of God; and strike, lockout, or other industrial disturbance.

**19.4 Severability.** If a court with jurisdiction rules that any nonmaterial part of this Agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this Agreement remains valid and fully enforceable.

**19.5 Obligations of the City and ArenaCo.** The obligations and undertakings of the City and ArenaCo under or in accordance with this Agreement are obligations solely of the City and ArenaCo. Except as otherwise expressly stated in this Agreement, no recourse shall be had, whether in contract, in tort, or otherwise against any officer, director, employee, agent, member, volunteer, or representative of the City or ArenaCo in his or her individual capacity on account of any obligation or undertaking of or any act or omission by the City or ArenaCo under or pursuant to this Agreement.

**19.6 Time of the Essence.** Time is of the essence in the performance of this Agreement.

**19.7 Binding Effect.** This Agreement binds and inures to the benefit of the Parties' successors and assigns.

**19.8 Waiver.** A Party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon breach of this Agreement will not constitute a waiver

of the performance, right, or remedy. A Party's waiver of another Party's breach of any provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving Party.

**19.9 Interpretation.** This Agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. The term "including" shall mean "including, without limitation" and "including, but not limited to" and shall not be interpreted to imply any limitation on the more general preceding provision unless otherwise expressly stated. All references in this Agreement to Sections, Exhibits, or Schedules refer to the Sections, Exhibits, and Schedules of this Agreement unless otherwise expressly stated. Each Exhibit and Schedule referenced in this Agreement is incorporated herein by reference and made a part hereof. The headings and captions of the Sections, Exhibits, and Schedules are included for convenience only and shall have no effect upon the construction or interpretation of this Agreement.

**19.10 Integration and Modification.** This Agreement sets forth the Parties' entire understanding regarding the matters set forth in this Agreement and is intended to be their final, complete, and exclusive expression of those matters. It may be modified only by another written agreement signed by both Parties and approved by the NBA.

**19.11 Conflicts among Project Agreements.** To the extent of any conflict or inconsistency between or among any of the Project Agreements, such conflict or inconsistency shall be resolved pursuant to Section 11.12 of the Comprehensive Agreement.

**19.12 Relationship of the Parties.** The Parties do not intend to create any agency, partnership, joint venture, trust, or other relationship with duties or incidents different from those of parties to an arm's-length contract.

**19.13 Third-Party Beneficiaries.** TeamCo is a third-party beneficiary of, and may enforce the Parties' respective obligations under, Sections 1.1(E), 1.2(A)-(D), 1.2(F)(4), 1.4, 2.3, 4.3(F), 4.4(H), 4.6, 4.7, 4.8, and 10.4. Trustee is a third-party beneficiary of, and may enforce the Parties' respective obligations under, Sections 1.1(E), 1.1(F), 8, 9, and 16.1. Except for TeamCo's and the Trustee's third-party beneficiary rights, the rights of a Leasehold Mortgagee and a Mezzanine Lender provided herein, and as otherwise specifically provided in this Agreement, this Agreement is solely for the benefit of the Parties and their successors and assigns permitted under this Agreement and no provision of this Agreement shall be deemed to confer upon any other Person any remedy, claim, liability, reimbursement, cause of action or right.

**19.14 Attorneys' Fees.** Except as otherwise expressly stated herein, the Parties shall bear their own costs and attorneys' fees incurred in connection with this Agreement.

**19.15 *Alternative Delivery.*** When a Party is obligated to deliver a document or similar item to the other Party, the recipient may, in its sole discretion, opt for a review of that item without taking physical or electronic delivery.

**19.16 *Counterparts.*** The Parties may sign this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same Agreement. Facsimile signatures or signatures transmitted by e-mail or other electronic means shall be effective to bind the Parties.

**19.17 *Governing Law.*** This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of California located in Sacramento County or the U.S. District Court for the Eastern District of California in Sacramento.

**19.18 *Disclosure of Records.*** All non-public documents shared by the Parties shall be treated as confidential to the extent permitted by law. All documents submitted to the City may be subject to disclosure pursuant to the California Public Records Act. However, if any documents, in whole or in part, are set apart and clearly marked "trade secret" or "confidential" when provided to the City, the City shall give notice to ArenaCo of any request for the disclosure of those documents. ArenaCo shall then have five days from the date it receives that notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorneys' fees) incurred by the City in any legal action to compel the disclosure of those documents under the California Public Records Act. ArenaCo shall have sole responsibility for defense of the actual "trade secret" or "confidential" designations.

**19.19 *Payments.*** If any payment under this Agreement is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

**19.20 *Interest.*** Except as otherwise expressly set forth in this Agreement, any payment required under this Agreement that is not timely made shall bear interest at the Interest Rate from the due date until paid in full.

**19.21 *NO WAIVER OF GOVERNMENTAL IMMUNITY.*** NO PROVISION FOR INSURANCE, INDEMNIFICATION, CASUALTY, LOSS, OR SHARED EXPENSE SHALL BE CONSTRUED TO BE A WAIVER BY THE CITY OF ANY GOVERNMENTAL IMMUNITY AS TO AMOUNTS OR TYPES OF LIABILITY FOR THE USE, OCCUPANCY, OR OPERATION OF THE ARENA OR ARENA LAND OR EXERCISE OF RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT.

**19.22 *NBA Rules.***

- (A) *Subject to NBA Rules.* This Agreement shall be subject to NBA Rules in all respects.
- (B) *No Recourse Against NBA.* The City acknowledges that it shall have no recourse against, and hereby covenants not to bring any claim against the NBA, any of its member teams (excluding the Team), any of their respective Affiliates (excluding TeamCo, ArenaCo, and, subject to Section 19.5, their respective Affiliates), or any of the employees, owners, directors, shareholders, partners, members, governors, agents, or representative of any of the foregoing as a result of any breach by ArenaCo of this Agreement or any other act or omission by ArenaCo.
- (C) *Change in NBA Rules.* If any change in NBA Rules after the Effective Date materially adversely impacts the rights of the City, including by adversely impacting the ability of ArenaCo to satisfy its obligations, under this Agreement, then the Parties shall negotiate in good faith to mutually agree upon an equitable adjustment to the provisions of this Agreement to compensate the City for the value of the rights it does not receive as a result of such change in NBA Rules. If the Parties fail to agree on the value of any such equitable adjustment, then such adjustment shall be determined pursuant to Section 18.

**20. Definitions and Terms.** Capitalized terms in this Agreement have the definitions set forth in this section.

**"Accounting Firm"** is defined in Section 6.2(B).

**"Additions and Capital Repairs"** means, collectively, any capital improvements, capital additions, capital repairs, capital replacements, capital restoration, or other capital work with respect to the Arena, including the furniture, fixtures, machinery, or equipment thereat, the depreciable life of which, according to U.S. generally accepted accounting principles, consistently applied, is in excess of one year.

**"Advertising"** means, collectively, all advertising, sponsorship, and promotional activity, signage, designations, messages, and displays of every kind and nature at or regarding the Arena, whether audio or visual and whether now existing or developed in the future.

**"Affiliate"** of a specified Person means a Person who is directly or indirectly controlling, controlled by, or under common control with, the specified Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of the specified Person whether through the ownership of voting securities or by contract.

**"Agreement"** is defined in the introductory paragraph of this Agreement.



**"Annual Adjustment"** means, for any given Operating Year, the greater of (A) three percent (3%) and (B) the cumulative increase, expressed as a percentage, in the CPI Index during the 12-month period ending on June 30 of the immediately prior Operating Year; provided, however, in no event shall the Annual Adjustment be greater than five percent (5%) for any given Operating Year.

**"Annual Fee"** is defined in Section 3.1.

**"Applicable Law"** means any law, statute, ordinance, rule, regulation, order, determination, or requirement of any Governmental Authority, expressly including (A) the City's "Art in Public Places" ordinance, and any related rules or regulations, (B) the Final Environmental Impact Report for the Sacramento Entertainment and Sports Center & Related Development (including the Event Transportation Management Plan and the Mitigation Monitoring Plan), dated as of the Effective Date, as the same may be amended, restated, or otherwise modified from time to time, and (C) all laws, statutes, ordinances, rules, regulations, orders, determinations, or requirements of any Governmental Authority relating to pollution or the protection of the environment, health, safety, or natural resources, including those relating to the use, handling, transportation, treatment, storage, release, or discharge of hazardous materials.

**"Arena"** is defined in the Background.

**"ArenaCo"** is defined in the introductory paragraph of this Agreement.

**"ArenaCo Default"** is defined in Section 11.1.

**"ArenaCo's Cure Period Expiration Notice"** is defined in Section 16.7(C).

**"Arena Land"** is defined in the Background.

**"Arena Land Purchase Price"** is defined in Section 17.3.

**"Arena Name"** means the name given to the Arena in any Naming Rights Agreement and any replacements thereof from time to time.

**"Assignment"** means any sale, transfer, assignment, pledge, mortgage, encumbrance, or any other transfer, including transfers as security for obligations, of this Agreement or a Party's rights or obligations under this Agreement. For the avoidance of doubt, the license pursuant to the Team Agreement is not an Assignment.

**"Bankruptcy Proceeding"** means any bankruptcy, insolvency, reorganization, composition, or similar proceeding under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors.

**"Business Day"** means any day that the Sacramento City Attorney's Office is open. California Code of Civil Procedure Section 12a applies to this Agreement. The use of the word "day," instead of "Business Day," means a calendar day.

**"Capital Fund"** is defined in Section 4.4(A).

**"Capital Fund Ticket Fee"** is defined in Section 4.4(B).

**"Ceases to Operate the Arena"** means that ArenaCo or the City, as applicable, fails to host at least 24 entertainment or sports events at the Arena with an attendance of 5,000 or more per event during any given 12 consecutive month period for reasons other than (A) Force Majeure Events, (B) the performance of Additions or Capital Repairs, or (C) restoration following casualty or condemnation.

**"City"** is defined in the introductory paragraph of this Agreement.

**"City Rental-Interruption Insurance"** is defined in Section 8.2(A).

**"City Civic Events"** is defined in Section 1.2(A).

**"City Event Expenses"** is defined in Section 1.2(G).

**"City Event of Default"** is defined in Section 11.3.

**"City Event Revenues"** is defined in Section 1.2(F)(1).

**"City Events"** means, collectively, City Civic Events and City Minor Events.

**"City Event Services"** is defined in Section 1.2(E).

**"City Financing"** means (A) the "City Financing" as defined in the Funding Agreement, (B) any additional financings by the City, the JPA, or a similar entity as issuer, to fund the City Contribution (as defined in the Funding Agreement), and (C) any refinancings of any of the foregoing. For the avoidance of doubt, "City Financing" will not include the refinancing of the 1997 Bonds (as defined in the Comprehensive Agreement), whether pursuant to Section 1.2(B)(3) of the Comprehensive Agreement or otherwise.

**"City Financing Documents"** means the Site Lease, the Project Lease, and the indenture for the City Financing. For the avoidance of doubt, "City Financing Documents" will include any and all amendments to the foregoing Site Lease, Project Lease, and indenture that are made in connection with refinancing of the 1997 Bonds pursuant to Section 1.2(B)(3) of the Comprehensive Agreement (notwithstanding that such refinancing is expressly excluded from the foregoing definition of City Financing).

**"City Lease"** is defined in Section 17.2(B).

**"City Minor Events"** is defined in Section 1.2(B).

**"City Post-Termination Operation Notice"** is defined in Section 17.2(B).

**"City Suite"** is defined in Section 3.5.

**"Comparable Facilities"** means a majority of the six most recently constructed arenas in the United States that serve as the home arena of an NBA team as of the Effective Date (which arenas are Barclays Center in New York, New York, Amway Center in Orlando, Florida, Time Warner Cable Arena in Charlotte, North Carolina, FedExForum in Memphis, Tennessee, Toyota Center in Houston, Texas and AT&T Center in San Antonio, Texas). To the extent any of such six arenas no longer serve as the home arena of an NBA team, the Parties shall mutually agree upon a replacement for such arena (which shall be comparable to the Arena, taking into account the size and age of the Arena).

**"Comprehensive Agreement"** is defined in the Background.

**"Concession Agreement"** is defined in the Team Agreement.

**"Concessionaire"** is defined in the Team Agreement.

**"Condemnation Action"** means a taking by any Governmental Authority (or other Person with power of eminent domain) by exercise of any right of eminent domain.

**"Condemnation Award"** means all sums, amounts or other compensation for the Arena payable to the City, ArenaCo or TeamCo, as applicable, as a result of, or in connection with, any Condemnation Action.

**"Construction Work"** is defined in the Design and Construction Agreement.

**"Control of the Arena"** is defined in Section 16.7(I).

**"CPI Index"** means the bi-monthly index of the Consumer Price Index – California – All Urban Consumers issued by the State of California's Department of Industrial Relations or any successor agency of the State of California that shall issue such indices. The Consumer Price Index – California – All Urban Consumers is a weighted average of the indices of the Consumer Price Index – All Urban Consumers (All Items; 1982-1984 = 100) for (A) the San Francisco-Oakland-San Jose, CA area, not seasonally adjusted, data series CUURA422SA0 (issued bi-monthly), and (B) the Los Angeles-Riverside-Orange County, CA area, not seasonally adjusted, data series CUURA421SA0 (issued monthly), both of which are issued by the U.S. Department of Labor, Bureau of Labor Statistics. If (i) the State of California's Department of Industrial Relations substantially revises the manner in which it determines the CPI Index, (ii) the U.S. Department of Labor, Bureau of Labor Statistics substantially revises the manner in which it determines the indices the underlie the CPI Index, or (iii) the CPI Index becomes unavailable to the public or

discontinued, the City and ArenaCo shall mutually designate, as a substitute therefor, a comparable index for the State of California based on changes in the cost of living or the purchasing power of the consumer dollar published by another governmental agency or, if no such index is available, a comparable index published by a major bank or financial institution or by a university or recognized financial publication.

**"Default Rate"** means an annual interest rate equal to the Interest Rate plus five percent (5%).

**"Defense Counsel"** is defined in Section 13.3.

**"Depository"** means an independent third party financial institution, having at least one hundred million dollars (\$100,000,000) in assets, mutually approved by ArenaCo, the City, the First Leasehold Mortgagee, and the Trustee.

**"Design and Construction Agreement"** is defined in the Background.

**"Early Use License"** is defined in Section 1.4(A).

**"Early Use License Term"** is defined in Section 1.3(B).

**"Effective Date"** is defined in the introductory paragraph of this Agreement.

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

**"Enforcement Action"** means, with respect to any Leasehold Mortgage and Leasehold Mortgagee, the occurrence of any of the following events: (A) any judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver, or the taking of any other enforcement action against the Leasehold Estate or any portion thereof or ArenaCo, including the taking of possession or control of the Leasehold Estate or any portion thereof, (B) any acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by all or any portion of the Leasehold Estate (other than giving of notices of default and statements of overdue amounts), (C) any exercise of any right or remedy available to Leasehold Mortgagee under any and all loan documents evidencing the debt secured by the Leasehold Estate (collectively, the "Leasehold Loan Documents"), at law, in equity, or otherwise with respect to ArenaCo or any portion of the Leasehold Estate, other than the giving of notices of default and statements of overdue amounts, or (D) any active negotiation (including the exchange of written correspondence regarding the same and the scheduling and subsequent attending of negotiations, whether in person or via telephone) between ArenaCo and Leasehold Mortgagee with respect to a workout following any default by ArenaCo under the terms

and conditions of the Leasehold Loan Documents; provided, however, that any Enforcement Action shall be deemed to continue for a period of 60 days following final non-appealable judgment of a court of competent jurisdiction or cessation of any of the events or activities identified in subclauses (A) through (D) above.

**"Events"** means all sports, entertainment, cultural, civic, and other activities and events conducted at the Arena.

**"Event Schedule"** is defined in Section 1.2(D)(2).

**"Excluded Events"** means NCAA approved or sponsored events, any NBA All-Star game (and related events, such as rookie, future stars, or celebrity game, basketball skills competition, and slam dunk contest) and any NBA Playoff Games, in each case to be played or conducted at the Arena.

**"Expiration Date"** means the date on which the Team Agreement expires pursuant to Section 2.3.3 of the Team Agreement, which date will be the Initial Expiration Date, the First Renewal Expiration Date, or the Second Renewal Expiration Date (as such terms are defined in the Team Agreement), as applicable.

**"Fee Estate"** means the City's fee title interest in the Arena Land and the Arena.

**"First Leasehold Mortgagee"** means the holder of the Leasehold Mortgage constituting a first lien on the Leasehold Estate.

**"Floor"** means the basketball floor within the Arena designed for playing NBA basketball games.

**"Force Majeure Event"** is defined in Section 19.3.

**"Foreclosure Event"** means a foreclosure, trustee's sale, deed, transfer, assignment or other conveyance in lieu of foreclosure, or other similar exercise of rights or remedies under any Leasehold Mortgage, including the occurrence of any transfer of title to the mortgaged estate by operation of or pursuant to any Bankruptcy Proceeding, in each case whether the transferee is a Leasehold Mortgagee, a party claiming through a Leasehold Mortgagee, or a third party.

**"Funding Agreement"** means the Arena Finance and Funding Agreement, dated as of the Effective Date, between the City and ArenaCo.

**"Governmental Authority"** means any federal, state or local entity, political subdivision, agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over the Arena or the Parties.

**"HoldCo"** is defined in the Background.

**"Home Games"** is defined in the Team Agreement.

**"Indemnifying Party"** is defined in Section 13.3.

**"Indemnatee"** is defined in Section 13.3.

**"Institutional Lender"** means: (A) any of the following having a total net worth or shareholders' equity (on the date when its Leasehold Mortgage is executed and delivered, or on the date of such Leasehold Mortgagee's acquisition of its Leasehold Mortgage by assignment from the previous Leasehold Mortgagee) of at least Three Hundred Million Dollars (\$300,000,000): a bank, trust company, insurance company, credit union, savings bank, pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), finance company, public or quasi-public agency, authority, or other entity, federal or state agency regularly making or guaranteeing mortgage loans, investment bank, or a subsidiary of a Fortune 500 company (such as AT&T Capital Corporation or General Electric Capital Corporation); (B) a real estate mortgage investment conduit or securitization trust; (C) a trustee or issuer of collateralized mortgage obligations or similar investment entity (provided that such trustee, issuer, or other entity is publicly traded or is sponsored by an entity that otherwise constitutes an Institutional Lender); (D) any entity of any kind actively engaged in commercial real estate financing having a total net worth or shareholders' equity (on the date when its Leasehold Mortgage is executed and delivered, or on the date of such Leasehold Mortgagee's acquisition of its Leasehold Mortgage by assignment from the previous Leasehold Mortgagee) of at least Three Hundred Million Dollars (\$300,000,000); (E) the NBA, or any of its Affiliates; or (F) a Person that is a wholly owned subsidiary of or is a combination of any one or more of the Institutional Lenders listed in subparagraphs (A) through (E) hereof, including any of the foregoing when acting as trustee for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Institutional Lenders. An Institutional Lender also includes any financing entity which serves to further the financing structure in connection with a financing transaction that utilizes other Institutional Lenders for the purpose of financing, collateral assignment, guaranty, participation, and other functions which coordinate and cooperate with Institutional Lenders.

**"Intangible Rights"** is defined in Section 2.1.

**"Interest Holder"** is defined in Section 1.1(F)(1).

**"Interest Rate"** means the annual "prime" lending rate of interest published from time to time by the Wall Street Journal or its successor plus two percent (2%). If at any time the Wall Street Journal or its successor no longer announces a "prime" lending rate, then the Interest Rate shall be the annual interest rate that is announced by a national bank reasonably selected by the Parties and having an office in Sacramento, California

as such national bank's "prime" lending rate, plus two percent (2%). The Interest Rate shall change and be adjusted upon each announcement by the Wall Street Journal or its successor (or any substitute national bank selected by the Parties pursuant to this definition) of each change in the "prime rate" used to determine the Interest Rate in the manner described in this definition. All interest to be paid pursuant to this Agreement shall be computed on the basis of a 360-day year consisting of 12 months of 30 days each.

**"JPA"** means the Sacramento Public Financing Authority, a California joint-powers authority.

**"Lease Impairment"** means any (A) cancellation, amendment, modification, rejection surrender (whether voluntary or otherwise), or termination of this Agreement (other than a termination by the City pursuant to the City's rights as expressly provided hereunder), including upon a casualty or condemnation affecting the Arena or the Arena Land, (B) consent, or affirmative acquiescence, by ArenaCo to a sale of any property, or interest in any property, under 11 U.S.C. § 363 or otherwise in any Bankruptcy Proceeding by the City, (C) exercise of any right of ArenaCo to treat this Agreement as terminated under 11 U.S.C. § 365(h)(1)(A)(i) or any comparable provision of law, or (D) subordination of this Agreement or the Leasehold Estate to any other estate or interest in the Arena or the Arena Land (other than the City Financing Documents as provided in Section 1.1(F)).

**"Leasehold Commencement Date"** means the "Substantial Completion Date" as defined in the Design and Construction Agreement.

**"Leasehold Estate"** means ArenaCo's subleasehold estate and all other rights (expressly including the Early Use License), titles, and interests of ArenaCo arising under this Agreement.

**"Leasehold Mortgage"** means a mortgage, deed of trust, security deed, deed to secure debt, or any similar other instrument or agreement constituting a lien upon, or similarly encumbering, the Leasehold Estate held by a lender other than ArenaCo or an Affiliate of ArenaCo as renewed, restated, modified, consolidated, amended, extended, or assigned (absolutely or collaterally) from time to time.

**"Leasehold Mortgagee"** means the holder of a Leasehold Mortgage (including any trustee, servicer or administrative agent acting on behalf of the holder or holders of a Leasehold Mortgage) other than ArenaCo or any Affiliate of ArenaCo.

**"Leasehold Term"** is defined in Section 1.3(C).

**"Losses"** is defined in Section 13.1.

**"Maintenance and Repair Standard"** means a level of maintenance and repair (A) so that the Arena is in first-class condition ready for all Events, (B) that complies with all NBA Rules, (C) that complies with all Applicable Law, and (D) that is above the median level (i.e., in the top half) of maintenance and repair of other arenas in the United States that serve as home arenas for NBA teams.

**"Mezzanine Financing"** is defined in Section 16.12.

**"Mezzanine Lender"** is defined in Section 16.12.

**"Minimum FM Annual Payment"** is defined in Section 3.2.

**"Minimum Property Insurance Coverage"** is defined in Section 8.1(A).

**"Mortgagee's Cure"** is defined in Section 16.7(E).

**"Mortgagee's Cure Rights"** is defined in Section 16.7(E).

**"Municipal Services"** means the provision of (A) vehicular and pedestrian traffic direction and control appropriate to secure reasonably safe and timely ingress and egress from the Arena and the Parking Facilities, and (B) police or other security services, fire prevention services, emergency medical services, street cleaning, trash removal services, and other typical municipal services at the Arena, the Parking Facilities, and all areas immediately surrounding the Arena where such services are reasonably necessary, taking into account relevant factors such as traffic congestion, foot traffic, and safety concerns in such areas.

**"Naming Rights"** means the right to name the Arena (which shall be the Arena Name), or any portion thereof, including identifying such name on the Arena concourses, the entrances to the Arena, the Arena roof, the exterior of the Arena or any other areas, improvements and facilities at the Arena.

**"Naming Rights Agreement"** means any agreement or agreements whereby the Naming Rights are granted to a Person.

**"NBA"** is defined in the Background.

**"NBA Playoff Games"** is defined in the Team Agreement.

**"NBA Regular Season Games"** is defined in the Team Agreement.

**"NBA Rules"** is defined in the Team Agreement.

**"New Agreement"** is defined in Section 16.8.

**"New Agreement Delivery Date"** is defined in Section 16.8(A).



**"New Operator"** means a Person, including, without limitation, Leasehold Mortgagee or its assignee, nominee or designee, that (A) acquires the Leasehold Estate through a Foreclosure Event, or (B) enters into a New Agreement with the City under Section 16.8.

**"Non-Relocation Agreement"** means the Team Non-Relocation Agreement, dated as of the Effective Date, between TeamCo and the City.

**"Operating Year"** means each 12 month period during the Leasehold Term commencing on July 1 in any calendar year and ending on the immediately succeeding June 30; provided, however, that the first Operating Year shall commence on the Leasehold Commencement Date and end on the 30th day of the immediately succeeding June.

**"Operations Standard"** means a level of operation that (A) is in a manner to provide a first-class attendee experience for all Events that includes (i) sufficient on-site, uniformed security as shall be reasonably necessary to maintain and ensure public order and safety in and around the Arena and in any event for the successful and interruption-free operation of such Events and to protect the parties and users thereof, (ii) a trained ushering staff that provides cordial ushering services as necessary to accommodate efficient patron seating and other ushering services and the reasonable flow of people entering and exiting the Arena, (iii) high standards of cleanliness in all Arena facilities open to patrons, and (iv) clean, efficient, and well-staffed food and beverage concessions operations appropriate to provide first-class and efficient services to patrons, (B) complies with all Applicable Law, and (C) is consistent with the level of operation (including with respect to efforts to attract and market non-TeamCo Events, taking into account the size of the market and the desire of Event performers or promoters to hold such Events in the City of Sacramento) of Comparable Facilities. In addition to the foregoing, with respect to TeamCo Events, the Operations Standard includes a level of operation that complies with all Basketball Operating Standards (as defined in the Team Agreement).

**"Order for Possession"** means the Modified Order for Prejudgment Possession of the Superior Court of the State of California, County of Sacramento, dated March 20, 2014.

**"Order for Possession Land"** is defined in Section 1.1(D).

**"Parking Facilities"** means the City-owned parking facilities to be operated, maintained, and repaired by ArenaCo (or an Affiliate thereof) pursuant to the Arena Parking Management Agreement, dated as of the Effective Date, between the City and ArenaCo, as such facilities may be reconfigured or replaced during the development and construction of the Arena and related developments.

**"Party"** or **"Parties"** is defined in the introductory paragraph of this Agreement.

**"Person"** means any individual, trust, estate, partnership, joint venture, company, corporation, association, limited liability company, or other legal entity, business organization, or enterprise.

**"Personal Default"** means any nonmonetary default under this Agreement that is not susceptible to cure by a Leasehold Mortgagee.

**"POMA"** means the Parking Operation and Maintenance Agreement, dated as of November 30, 1992, and recorded on October 15, 1993, in Book October 15, 1993 in Book 93 1015, Page 2020 of the Official Records of Sacramento County, California, as the same may be amended, restated, or otherwise modified from time to time.

**"Pre-Opening Activities"** is defined in Section 1.4(B).

**"Premium Seating"** is defined in the Team Agreement.

**"Prohibited Uses"** means the uses set forth in Exhibit B.

**"Project Agreements"** is defined in the Background.

**"Project Lease"** is defined in Section 1.1(E).

**"Purchase Option"** is defined in Section 17.1.

**"Qualified Ticket"** means an admission ticket to an Event (other than Events for which a primary purpose is to raise funds for one or more nonprofit charitable organizations) for which ArenaCo or any of its Affiliates (expressly including TeamCo) receives valuable consideration (whether in money, services, goods, or other value); provided, that, any complimentary admission ticket to an Event that is provided by ArenaCo or any of its Affiliates, or any admission ticket to an Event that is included within a sponsorship agreement by ArenaCo or any of its Affiliates to any sponsor of the Team or ArenaCo or their Affiliates, shall not be a Qualified Ticket. For the avoidance of doubt, because the City (and not ArenaCo or any of its Affiliates) receives the consideration for tickets to City Events, such tickets are not Qualified Tickets.

**"Required Records"** is defined in Section 6.2(A).

**"Required Restoration Condition"** means, with respect to any damage or destruction of the Arena (including due to a partial Condemnation Action), the condition of the Arena, after repair and restoration that (A) is equal to or better than the condition immediately preceding such damage or destruction, (B) complies with the terms and conditions of this Agreement (including the Maintenance and Repair Standard and the Operations Standard), and (C) allows the Team to play its Home Games at the Arena in compliance with the NBA Rules and the Team Agreement.

**"SG Land"** is defined in Section 1.1(D).

**"Site Lease"** is defined in Section 1.1(E).

**"Sleep Train Arena Event Fee Agreement"** means the Sleep Train Arena Event Fee Agreement, dated September 24, 2013, between the City and HoldCo.

**"Sleep Train Event Fees"** means the "Event Fees" as defined in the Sleep Train Arena Event Fee Agreement.

**"SNDAs"** is defined in Section 1.1(F)(1).

**"Substantial Completion"** is defined in the Team Agreement.

**"Substantial Improvements"** means any individual or series of related Additions and Capital Repairs (A) of a nature that are not ordinarily included within an annual capital repair plan described in Section 4.3(G) and (B) the aggregate cost of which exceeds \$25,000,000. "Substantial Improvements" expressly excludes the Work (as defined in the Design and Construction Agreement).

**"Suites"** means the private luxury suites (including any related lounge areas) in the Arena.

**"Tax"** means any general or special, ordinary or extraordinary, tax, imposition, assessment, levy, usage fee, excise, or similar charge (including any ad valorem or other property taxes), however measured, regardless of the manner of imposition or beneficiary, that is imposed by any Governmental Authority. Without limiting the generality of the foregoing, "Tax" expressly includes any and all assessments or similar charges imposed by the Downtown Sacramento Partnership, Property Based Improvement District.

**"Team"** is defined in the Background.

**"Team Agreement"** is defined in the Background.

**"TeamCo"** is defined in the Background.

**"TeamCo Events"** is defined in the Team Agreement.

**"TeamCo Exclusive Spaces"** means the "Licensee Exclusive Spaces" as defined in the Team Agreement.

**"Term"** is defined in Section 1.3(A).

**"Ticketing Agreement"** is defined in the Team Agreement.

**"Trustee"** means the trustee under the indenture for the City Financing.

\* \* \*

IN WITNESS WHEREOF, the Parties have entered in this Agreement as of the day and year first above written.

<p>City of Sacramento</p> <p>By: _____ John F. Shirey City Manager</p> <p>Date: _____, 2014</p>	<p>SACRAMENTO DOWNTOWN ARENA LLC, a Delaware limited liability company</p> <p>By: Sacramento Basketball Holdings LLC, a Delaware limited liability company, its Sole Member</p> <p>By: _____</p> <p>Name: _____</p> <p>Its: _____</p> <p>Date: _____, 2014</p>
<p>Approved as to Form Sacramento City Attorney</p> <p>By: _____ Matthew D. Ruyak Assistant City Attorney</p>	<p>Approved as to Legal Form Pioneer Law Group, LLP</p> <p>By: _____ Jeffrey K. Dorso Attorneys for ArenaCo</p>

**Exhibit A**  
**to**  
**Arena Management, Operations, and Lease Agreement**

Arena Land

(see attached)

## **Exhibit "A"**

### **Legal Description for Sacramento Entertainment & Sports Center District**

All that certain real property situate in the City of Sacramento, County of Sacramento and State of California described as follows:

Being all of Lots A-2, A-4, AC-1, AC-2, AC-3, AC-4, E-2, GS-3, H, M-2, P, R-1, R-2, S-3, T, U-4, U-5, V, Y-1, Y-2 and a portion of lots F, R, G, U-2 and U-3 of that certain Parcel Map filed for record on July 29, 1970 in Book 3 of Parcel Maps at Page 24, Sacramento County Official Records, also being all of that certain real property described in the Quitclaim Deed to the City of Sacramento filed for recorded on December 26, 2013 at Book 20131226 Page 0696 Sacramento County Official Records, also being a portion of Parcel One as described in the deed to Downtown Plaza Sacramento, LLC recorded on August 14, 2012 at Book 20120814 Page 1600, Sacramento County Official Records and also being a portion of that certain parcel of land described in the deed to the Redevelopment Agency of the City of Sacramento recorded on October 31, 1979 in Book 791031, Page 1981, Sacramento County Official Records and being more particularly described as follows:

**Beginning** at the southwesterly corner of Parcel R-2, said point being the intersection of the easterly right of way line of 5<sup>th</sup> Street with the northerly right of way line of "L" Street as said parcels and streets are shown and delineated on that certain Parcel Map filed for record July 29, 1970 in Book 3 of Parcel Maps at Page 24, Sacramento County Official Records;

Thence along the easterly line of 5<sup>th</sup> Street North 18°29'01" East a distance of 604.97 feet;

Thence leaving said easterly right of way line of 5<sup>th</sup> Street, South 11°30'54" East for a distance of 130.63 feet;

Thence South 71°33'00" East for a distance of 314.46 feet;

Thence South 26°30'00" East for a distance of 15.33 feet;

Thence South 71°33'00" East for a distance of 75.35 feet to the westerly line of Parcels 1 through 5 as said parcels are shown and delineated on that certain Parcel Map recorded July 29, 1981 in Book 65 of Parcel Maps at Page 41, Sacramento County Official Records;

Thence along said westerly line, South 18°27'50" West for a distance of 69.01 feet;

Thence leaving said westerly line South 71°32'10" East a distance of 26.32 feet;

Thence South 18°27'50" West a distance of 31.58 feet to the intersection with the former centerline of the abandoned "K" Street as shown and delineated on that certain Parcel Map filed for record on March 21, 1980 in Book 56 of Parcel Maps at Page 15, Sacramento County Official Records;

Thence along said centerline of "K" Street, South 71°31'05" East a distance of 165.10 feet to the westerly line of that certain parcel of land described in the deed to 630 K Street Partners LLC, a California Limited Liability Company recorded on June 20, 2013 in Book 20130620, Page 0626 Sacramento County Official Records;

Thence leaving said centerline and along said westerly line and along the arc of a non-tangent curve, concave to the northwest, whose radial bears South 73°45'04" East, having a radius of 38.50 feet, through a central angle of 92°13'59" for a distance of 61.98 feet;

Thence North 71°31'05" West a distance of 1.20 feet;

Thence South 18°29'35" West a distance of 170.33 feet to the southwest corner of said lands;

Thence leaving said westerly line and along the southerly line of Lands of 630 K Street Partners LLC South 71°32'19" East a distance of 100.32 feet to the westerly right of way line of 7<sup>th</sup> Street;

Thence leaving said southerly line and along said westerly right of way line South 18°28'23" West a distance of 30.00 feet to the northeasterly line of Lands of Jafar Nassar, River Valley Properties, Inc. William O. Noack and Yvonne P. Noack, Trustees of the Wyn Trust and Ratib and Shomisa Norzei as described in the deed recorded on May 6, 2013 in Book 20130506, Page 1501, Sacramento County Official Records;

Thence leaving said westerly right of way line and along said northerly line North 71°32'19" West a distance of 80.26 feet to the northwesterly corner of said lands;

Thence leaving said northerly line and along the westerly line of said lands and the westerly line of the lands of the Marshall Hotel Investors LP, recorded on November 13, 2009 in Book 20091113, Page 1391 Sacramento County Official Records, South 18°28'23" West a distance of 140.32 feet to the northerly right of way line of "L" Street;

Thence leaving said westerly lines and along said northerly right of way line North 71°33'32" West a distance of 280.79 feet;

Thence continuing along said northerly right of way line North 71°29'06" West a distance of 357.02 feet to the **Point of Beginning**;



**EXCEPTING THEREFROM** the following described portion of land;

**Commencing** at the southwesterly corner of Parcel R-2, said point being the intersection of the easterly right of way line of 5<sup>th</sup> Street with the northerly right of way line of L Street as said parcels and streets are shown on that certain Parcel Map filed for record July 29, 1970 in Book 3 of Parcel Maps at Page 24, Sacramento County Official Records;

Thence along the easterly line of 5<sup>th</sup> Street North 18°29'01" East a distance of 222.81 feet to the **Point of Beginning**;

Thence leaving said line South 71°31'12" East a distance of 4.27 feet;

Thence North 18°28'48" East a distance of 135.67 feet;

Thence North 71°31'12" West a distance of 4.26 feet to the easterly right of way line of 5<sup>th</sup> Street;

Thence along said right of way line, South 18°29'01" West a distance of 135.67 feet to the **Point of Beginning**

The above described exception lies below an Elevation of 2.17 feet (0.00 feet as shown on Book 3 of Parcel Maps at Page 24) and above the inclined planes formed by the elevations of the top deck of the existing concrete parking structure as shown and delineated on that certain Parcel Map recorded in Book 3 of Parcel Maps at Page 24, Sacramento County Official Records;

**ALSO FURTHER EXCEPTING THEREFROM** the following described parcel:

**Beginning** at the southwesterly corner of Parcel R-2, said point being the intersection of the easterly right of way line of 5<sup>th</sup> Street with the northerly right of way line of "L" Street as said parcels and streets are shown and delineated on that certain Parcel Map filed for record July 29, 1970 in Book 3 of Parcel Maps at Page 24, Sacramento County Official Records;

Thence along the easterly line of 5<sup>th</sup> Street North 18°29'01" East a distance of 604.97 feet;

Thence leaving said easterly right of way line of 5<sup>th</sup> Street, South 11°30'54" East for a distance of 130.63 feet;

South 71°33'00" East a distance of 314.46 feet;

Thence South 26°30'00" East a distance of 18.86 feet;

Thence North 71°33'00" West a distance of 152.56 feet;

Thence along the arc of a tangent curve, concave to the southeast, having a radius of 190.00 feet, through a central angle of 89°57'01" for a distance of 298.29 feet;

Thence South 18°29'59" West a distance of 93.94 feet;

Thence along the arc of a tangent curve, concave to the northeast, having a radius of 190.00 feet, through a central angle of 29°23'19" for a distance of 97.46 feet;

Thence South 18°30'54" West for a distance of 101.50 feet to the northerly right of way line of "L" Street;

Thence along the northerly right of way line of "L" Street, North 71°29'06" West a distance of 75.00 feet to the **Point of Beginning**.

The lower vertical limit of the above described exception is Elevation 36.0 and has no upper vertical limit.

**ALSO FURTHER EXCEPTING THEREFROM** the following described parcel:

**Commencing** at the southwesterly corner of Parcel R-2, said point being the intersection of the easterly right of way line of 5<sup>th</sup> Street with the northerly right of way line of "L" Street as said parcels and streets are shown and delineated on that certain Parcel Map filed for record July 29, 1970 in Book 3 of Parcel Maps at Page 24, Sacramento County Official Records;

Thence along the easterly line of 5<sup>th</sup> Street North 18°29'01" East a distance of 604.97 feet;

Thence leaving said easterly right of way line of 5<sup>th</sup> Street, South 11°30'54" East for a distance of 130.63 feet;

Thence South 71°33'00" East for a distance of 314.46 feet;

Thence South 26°30'00" East for a distance of 15.33 feet;

Thence South 71°33'00" East for a distance of 75.35 feet to the westerly line of Parcels 1 through 5 as said parcels are shown and delineated on that certain Parcel Map recorded July 29, 1981 in Book 65 of Parcel Maps at Page 41, Sacramento County Official Records;

Thence along said westerly line, South 18°27'50" West for a distance of 69.01 feet;

Thence South 71°32'10" East for a distance of 26.32 feet;

Thence South 18°27'50" West a distance of 31.58 feet to the intersection with the former centerline of the abandoned "K" Street as shown and delineated on that

certain Parcel Map filed for record on March 21, 1980 in Book 56 of Parcel Maps at Page 15, Sacramento County Official Records and the **Point of Beginning**;

Thence along said centerline of "K" Street, South  $71^{\circ}31'05''$  East a distance of 165.10 feet to the westerly line of that certain parcel of land described in the deed to 630 K Street Partners LLC, a Limited Liability Company recorded on June 20, 2013 in Book 20130620, Page 0626 Sacramento County Official Records;

Thence leaving said centerline and along said westerly line and along the arc of a non-tangent curve, concave to the northwest, whose radial bears South  $73^{\circ}45'04''$  East, having a radius of 38.50 feet, through a central angle of  $92^{\circ}13'59''$  for a distance of 61.98 feet;

Thence leaving said westerly line North  $71^{\circ}31'05''$  West a distance of 87.89 feet;

Thence North  $26^{\circ}30'00''$  West a distance of 56.55 feet to the centerline of the former "K" Street;

Thence along said centerline South  $71^{\circ}31'05''$  East for a distance of 1.23 feet to the **Point of Beginning**;

The above described exception area has a lower vertical limit of elevation 36.0 feet and has no vertical upper limit.

**ALSO FURTHER EXCEPTING THEREFROM** the following described parcel:

**Commencing** at the southwesterly corner of Parcel R-2, said point being the intersection of the easterly right of way line of 5<sup>th</sup> Street with the northerly right of way line of "L" Street as said parcels and streets are shown and delineated on that certain Parcel Map filed for record July 29, 1970 in Book 3 of Parcel Maps at Page 24, Sacramento County Official Records;

Thence along the easterly line of 5<sup>th</sup> Street North  $18^{\circ}29'01''$  East a distance of 604.97 feet;

Thence leaving said easterly right of way line of 5<sup>th</sup> Street, South  $11^{\circ}30'54''$  East for a distance of 130.63 feet;

Thence South  $71^{\circ}33'00''$  East for a distance of 314.46 feet;

Thence South  $26^{\circ}30'00''$  East for a distance of 15.33 feet to the **Point of Beginning**.

Thence South  $71^{\circ}33'00''$  East for a distance of 75.35 feet to the westerly line of Parcels 1 through 5 as said parcels are shown and delineated on that certain Parcel Map recorded July 29, 1981 in Book 65 of Parcel Maps at Page 41, Sacramento County Official Records;

Thence along said westerly line, South 18°27'50" West for a distance of 69.01 feet;

Thence South 71°32'10" East for a distance of 26.32 feet;

Thence South 18°27'50" West a distance of 31.58 feet to the intersection with the former centerline of the abandoned "K" Street as shown and delineated on that certain Parcel Map filed for record on March 21, 1980 in Book 56 of Parcel Maps at Page 15, Sacramento County Official Records;

Thence along said centerline North 71°31'05" West for a distance of 1.23 feet;

Thence North 26°30'00" West for a distance of 142.13 feet to the **Point of Beginning**.

The above described exception area has a lower vertical limit of elevation 36.0 feet and has no vertical upper limit.

**ELEVATION NOTE:**

Elevations shown herein are based on the National Geodetic Control Monument JS1113, being a brass disk set in the top of a granite step located at the southwest entrance to the federal building located at the northeast corner of the intersection of 8<sup>th</sup> Street and "I" Street in the City of Sacramento, California and has a published elevation of 31.55 feet based on the North American Vertical Datum of 1988.

The elevations shown herein are 2.17 feet higher than the elevations referenced on 3 PM 24, 56 PM 15 and 65 PM 41, Official Records Sacramento County. Elevation 0.00 on 3 PM 24 is Elevation 2.17 herein.

The above described parcel is shown on Exhibit "B" attached hereto and made a part hereof.





**MORTON & PITALO, INC.**  
CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING  
LANDSCAPE ARCHITECTURE • TRAFFIC ENGINEERING

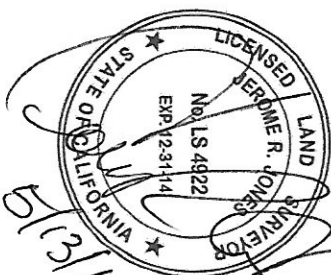
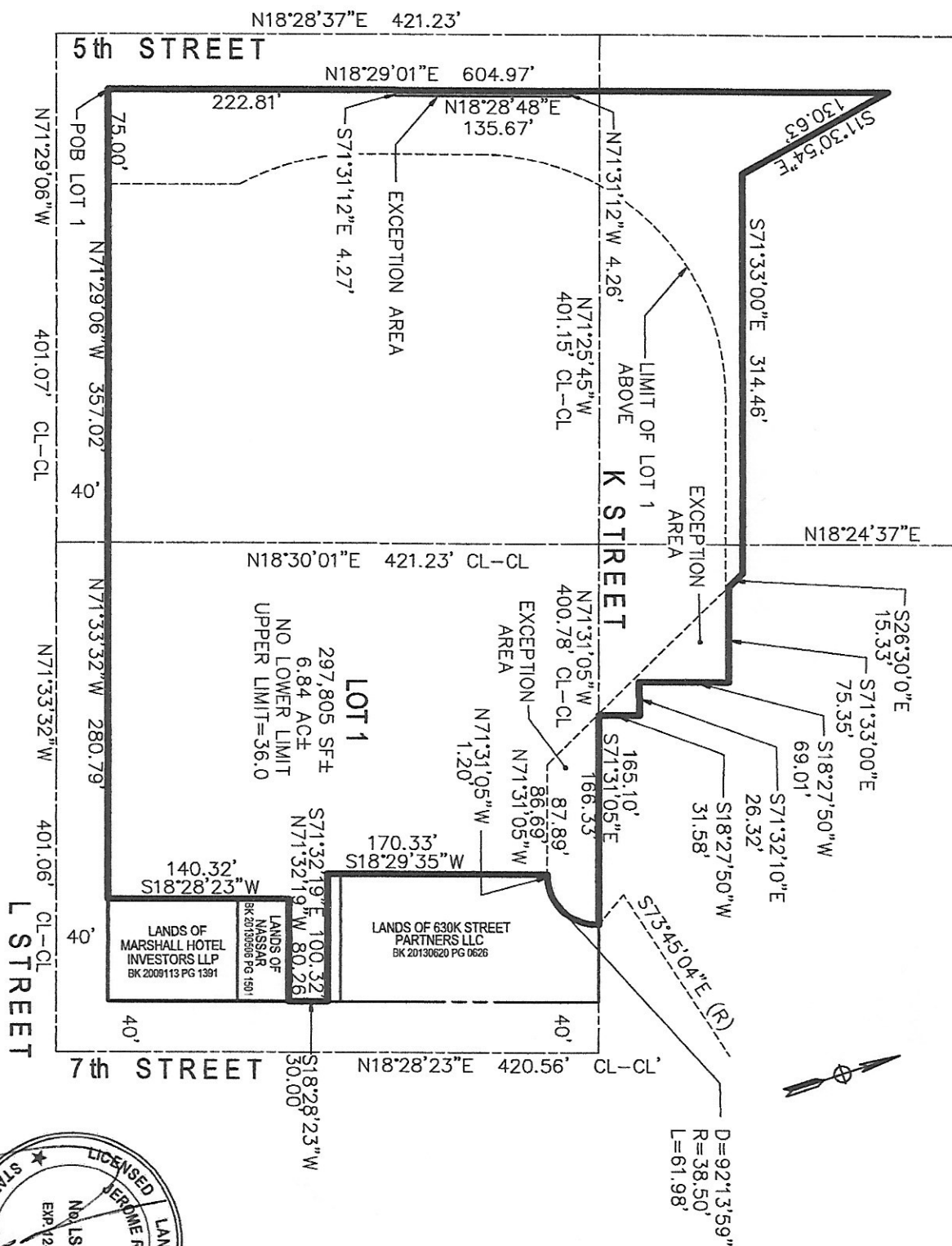
**MORTON & PITALO, INC.**

75 Iron Point Circle, Suite 120 • Folsom, CA 95630

survey email: [staking@mpengr.com](mailto:staking@mpengr.com) • web: [www.mpengr.com](http://www.mpengr.com)

EXHIBIT "B"  
PLAT TO ACCOMPANY  
SACRAMENTO ENTERTAINMENT & SPORTS  
CENTER DISTRICT  
SACRAMENTO, CALIFORNIA

1 OF 2  
JOB NO. 130048-00





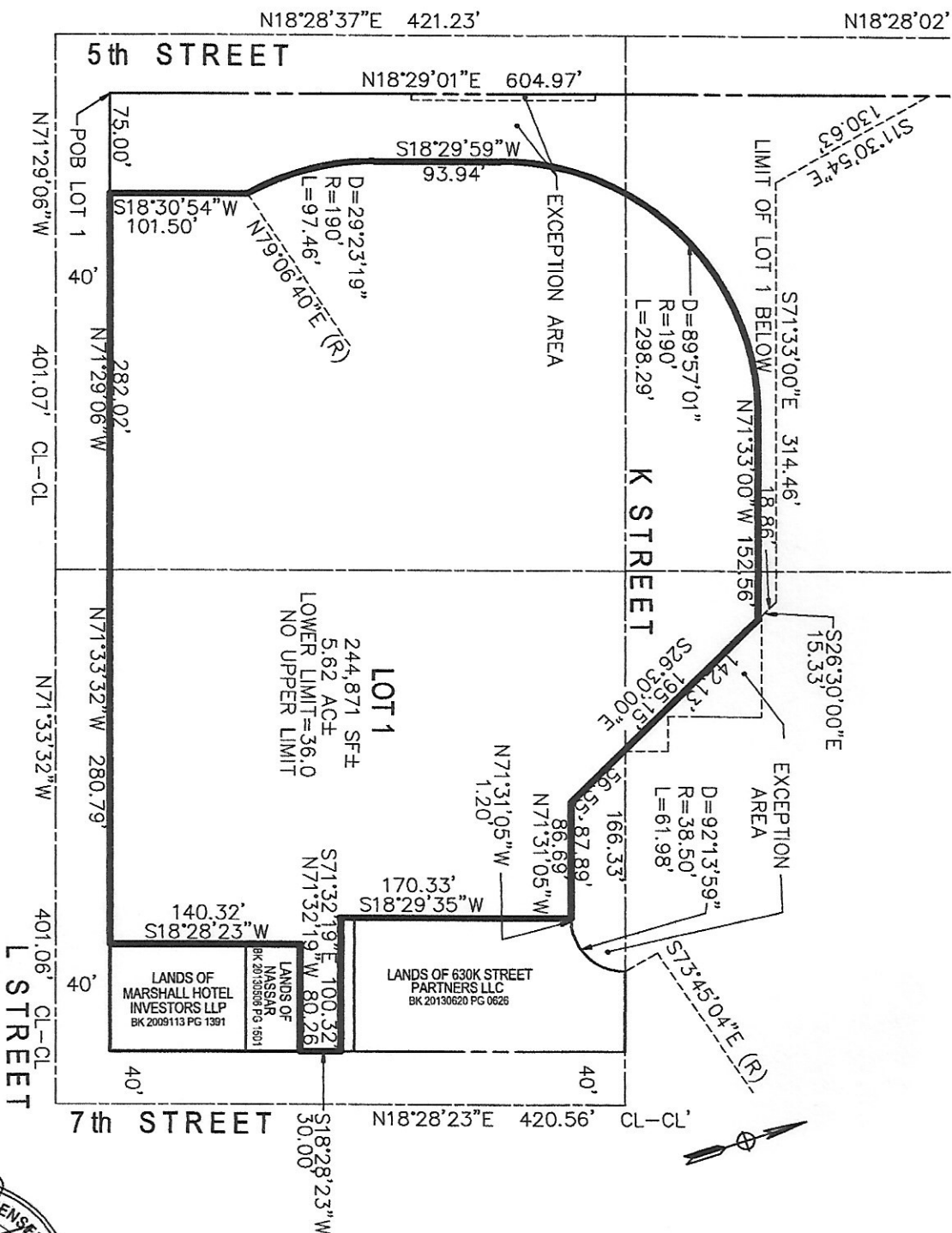
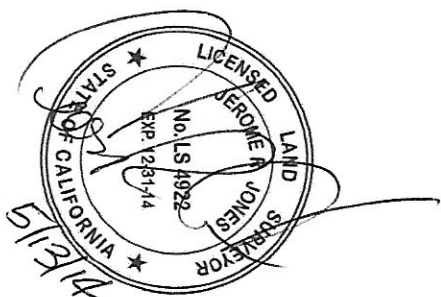
**MORTON & PITALO, INC.**  
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**EXHIBIT "B"**

PLAT TO ACCOMPANY

**SACRAMENTO ENTERTAINMENT & SPORTS  
CENTER DISTRICT  
SACRAMENTO, CALIFORNIA**



**Exhibit B**  
**to**  
**Arena Management, Operations, and Lease Agreement**

Prohibited Uses

Sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs (or their equivalent);

Casino (or other establishment in which gambling is permitted or games of chance are operated, but excluding lotteries or raffles conducted as part of Events in accordance with Applicable Law), a massage parlor, or a tanning parlor;

Wholesale, storage, warehouse, and distribution (excluding any storage and warehousing incidental to uses not prohibited under this Agreement);

Funeral parlor, mortuary, or similar service;

Commercial laundry or Laundromat (excluding any laundry or laundry services incidental to uses not prohibited under this Agreement);

Industrial services;

Manufacturing, fabrication, or assembly (excluding with respect to items to be used or consumed on-site in connection with uses not prohibited under this Agreement);

Residential uses, including any household living or group living;

Wholesale stores; and

Other uses similar to the above that are detrimental to the image of, or cause embarrassment to, the City.

**Exhibit C**  
**to**  
**Arena Management, Operations, and Lease Agreement**

Form of Subordination, Non-Disturbance, and Attornment Agreement

(see attached)



Recording Requested By And  
When Recorded Mail to:

Katten Muchin Rosenman LLP  
2029 Century Park East, 26<sup>th</sup> Floor  
Los Angeles, California 90067  
Attn: Benzion J. Westreich, Esq.

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**(space above this line for Recorder's use)**

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**SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT**

**by and between**

**SACRAMENTO PUBLIC FINANCING AUTHORITY,**

**CITY OF SACRAMENTO,**

**SACRAMENTO DOWNTOWN ARENA LLC,**

**SACRAMENTO KINGS LIMITED PARTNERSHIP,**

**and**

**[BOND TRUSTEE]**

**Dated as of \_\_\_\_\_, 201\_\_**

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## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 201\_\_, by and between the Sacramento Public Financing Authority, a joint-powers authority duly organized and existing under the laws of the State of California ("Authority"), the City of Sacramento, a municipal corporation and chartered city duly organized and existing under the laws of the State of California ("City"), [Bond Trustee], a [\_\_\_\_], in its capacity as bond trustee under the hereinafter defined Indenture ("Bond Trustee"), Sacramento Downtown Arena LLC, a Delaware limited liability company ("ArenaCo"), and Sacramento Kings Limited Partnership, a California limited partnership ("TeamCo"), who agree as follows:

1. Recitals. This Agreement is made with reference to the following recitals:

A. TeamCo owns and operates the National Basketball Association franchise currently known as the Sacramento Kings (the "Team"). Sacramento Basketball Holdings LLC, a Delaware limited liability company ("HoldCo") is the sole member of ArenaCo and indirect controlling majority owner of TeamCo.

B. On May \_\_\_\_, 2014, (i) City, HoldCo, ArenaCo and TeamCo entered into the Comprehensive Project Agreement for the Sacramento Entertainment and Sports Center (the "Comprehensive Agreement"), (ii) City and ArenaCo entered into the Arena Design and Construction Agreement (the "Design and Construction Agreement"), pursuant to which ArenaCo has agreed to design and construct a multipurpose entertainment and sports center, including administrative offices, practice facility, plazas, walkways, parking, and outdoor entertainment areas (the "Arena"), on land located at the Downtown Plaza in Sacramento, California, as more particularly described on Exhibit A attached hereto and made a part hereof (the "Arena Land"), (iii) City and ArenaCo entered into the Arena Management, Operations, and Lease Agreement (the "AMOLA"), pursuant to which City has granted an early use license and agreed to lease the Arena Land and the Arena to ArenaCo and granted ArenaCo the option to purchase the Arena Land or the Arena Land and the Arena (the "Purchase Option"), and ArenaCo has agreed to operate, maintain and repair the Arena, (iv) ArenaCo and TeamCo entered into the Team Use Agreement (the "Team Agreement"), pursuant to which ArenaCo has agreed to operate, maintain, and repair the Arena for, and license the use of the Arena to, TeamCo and (v) City, ArenaCo and [Escrow Agent], in its capacity as escrow agent entered into the Arena Finance, Escrow, and Disbursement Agreement (the "Escrow Agreement"), pursuant to which City and ArenaCo have agreed to the terms of funding their respective share of the costs to design, develop and construct the Arena.

C. As contemplated by the Escrow Agreement, City is financing its share of the costs to design, develop and construct the Arena through the issuance of the Authority's Lease Revenue Bonds, Series 2014 (the "Bonds") pursuant to that certain Indenture (the "Indenture") between City, Authority, and Bond Trustee, and other documents executed and delivered in connection therewith. In connection with the issuance of the Bonds and after the AMOLA and the Team Agreement have been executed and delivered, City and the Authority are

concurrently herewith entering into (i) a Site Lease (the "Site Lease") pursuant to which City leases the Arena Land and the Arena to the Authority, and (ii) a Project Lease (the "Project Lease") pursuant to which the Authority subleases the Arena Land and the Arena to City.

D. Pursuant to the Indenture, Authority has transferred in trust, granted a security interest in, and assigned to Bond Trustee, for the benefit of the owners from time to time of the Bonds, all of Authority's right, title and interest in the Site Lease and the Project Lease (excluding any rights to payments or reimbursement of Authority's reasonable costs and expenses under the Project Lease and any rights of Authority to indemnification under the Project Lease).

E. Even though the AMOLA and the Team Agreement were executed and delivered prior to the Site Lease and the Project Lease, the parties hereto intend and agree that the AMOLA is subordinate to the Site Lease and the Project Lease (and to the assignment thereof under the Indenture) and the Team Agreement is subordinate to the AMOLA.

F. The parties desire, pursuant to and in accordance with the provisions set forth in this Agreement, to: (1) except where an ArenaCo Default (as defined in the AMOLA) continues to exist beyond any applicable notice and cure periods, including those available to any then-existing Leasehold Mortgagees (as defined in the AMOLA), (a) assure ArenaCo that it shall not be disturbed and that its right to possession of the Arena Land and the Arena for the entire term of the AMOLA shall continue in full force and effect even if for any reason the Site Lease and/or the Project Lease terminates before expiration of the AMOLA; and (b) assure TeamCo that it shall not be disturbed and that its right and the Team's right to use the Arena Land and the Arena for the entire term of the Team Agreement shall continue in full force and effect even if for any reason the Site Lease and/or the Project Lease terminates before expiration of the Team Agreement and (2) in the event that the AMOLA terminates by reason of City exercising any right it has under the AMOLA to terminate, a rejection in ArenaCo's bankruptcy, or option of ArenaCo to treat the AMOLA as terminated under 11 U.S.C. § 365(h)(1)(A)(i), or any comparable provision of law, and a New Agreement (as defined in the AMOLA) or the Step-In Agreement (as defined in the Team Agreement) is entered into (or deemed to have been entered into), assure TeamCo that it shall not be disturbed and that its right and the Team's right to use the Arena Land and the Arena for the entire term of the Team Agreement shall continue in full force and effect for so long as there is no event of default that occurs and continues to exist beyond any applicable notice and cure periods under a Step-In Agreement that replaces the AMOLA or a Step-In Agreement that replaces a New Agreement.

2. Subordination. The Project Lease and the Site Lease (and the assignment thereof under the Indenture) are and shall unconditionally be and remain a charge on the Arena Land and the Arena prior and superior to the AMOLA and the Team Agreement, regardless of the date of execution or the date or order of recording of any of such agreements or any memoranda thereof.

3. Terms of Project Lease and Site Lease Prohibit Termination. City, Authority and Bond Trustee represent and warrant that in the event of default under the Site Lease or the Project Lease, City, Authority and Bond Trustee have expressly waived the right to re-enter and relet the Arena Land and the Arena or terminate the Project Lease or the Site Lease. Each of City, Authority and Bond Trustee irrevocably covenant not to amend, terminate, invalidate or

challenge the foregoing waiver and explicitly agree and declare that any amendment, termination, invalidation or challenge of or to the foregoing waiver shall be null and void and of no force or effect. City, Authority and Bond Trustee shall promptly notify ArenaCo and TeamCo in writing of any default under the Site Lease or the Project Lease of which notice thereof is received or given by such party.

4. Termination of Project Lease.

A. Except where an ArenaCo Default continues to exist beyond any applicable notice and cure periods, including those available to any then-existing Leasehold Mortgagees and subject to, and without detracting from, the rights of any Leasehold Mortgagees under the AMOLA, including any rights of notice and cure in favor of such Leasehold Mortgagees, if the Site Lease is still in effect, and if the Project Lease is terminated for any reason prior to the expiration of the AMOLA, Authority shall notify ArenaCo in writing of such termination as of the date such termination occurs. On receipt of such notice from Authority, ArenaCo shall have the right in its sole discretion and irrespective of whether the then-current term is the Early Use License Term or the Leasehold Term (as each term is defined in the AMOLA), by notice in writing given within sixty (60) days after receipt of such notice, to attorn to Authority and upon such attornment shall be entitled to all of the rights, and shall perform all of ArenaCo's obligations, under the AMOLA as if the AMOLA were the direct agreement between Authority, as landlord, and ArenaCo, as tenant. Provided no ArenaCo Default exists at the time of such notice beyond any applicable notice and cure periods, including those available to any then-existing Leasehold Mortgagee under the AMOLA, Authority shall (i) not disturb ArenaCo's right to possession of the Arena and the Arena Land and TeamCo's right to use the Arena and the Arena Land and such possession and right to use shall continue in full force and effect and (ii) continue to recognize the estate created under the AMOLA, in each case upon the then remaining terms and conditions of the AMOLA. So long as no ArenaCo Default continues to exist beyond any applicable notice and cure periods, including those available to any then-existing Leasehold Mortgagees under the AMOLA, the AMOLA shall continue with the same force and effect as if Authority and ArenaCo had entered into a lease on the same provisions as those contained in the AMOLA, including, without limitation, ArenaCo's Purchase Option as provided therein.

B. From the date ArenaCo attorns to Authority as provided in this Section 4, ArenaCo shall not be further liable to City for performance under the AMOLA.

C. From the date of recognition and attornment, Authority and ArenaCo shall have the same rights as City and ArenaCo, respectively, have that can be enforced against each other under the AMOLA.

D. Authority and ArenaCo, immediately upon ArenaCo's notice to Authority of its election for the recognition and attornment provided in this Section 4, shall enter into a written agreement with the same provisions as those in the AMOLA, except for changes that are necessary because of the substitution of Authority in place of City (the "New AMOLA"). ArenaCo shall have the right to obtain specific performance of Authority's obligation to enter into the New AMOLA.

5. Termination of Site Lease.

A. Except where an ArenaCo Default continues to exist beyond any applicable notice and cure periods, including those available to any then-existing Leasehold Mortgagees and subject to, and without detracting from, the rights of any Leasehold Mortgagees under the AMOLA, including any rights of notice and cure in favor of such Leasehold Mortgagees, if the Site Lease is terminated for any reason prior to the expiration of the AMOLA, City shall notify ArenaCo in writing of such termination as of the date such termination occurs. On receipt of such notice from City, ArenaCo shall attorn to City and shall be entitled to all of the rights, and shall perform all of ArenaCo's obligations, under the AMOLA. If no ArenaCo Default continues to exist beyond any applicable notice and cure periods, including those available to any then-existing Leasehold Mortgagees under the AMOLA, City shall (i) not disturb ArenaCo's right to possession of the Arena and the Arena Land and TeamCo's right to use the Arena and the Arena Land and such possession and right to use shall continue in full force and effect and (ii) continue to recognize the estate created under the AMOLA, in each case upon the then remaining terms and conditions of the AMOLA. So long as no ArenaCo Default continues to exist beyond any applicable notice and cure periods, including those available to any then-existing Leasehold Mortgagees under the AMOLA, the AMOLA shall continue in full force and effect, including, without limitation, ArenaCo's Purchase Option as provided therein.

6. Termination of AMOLA. In the event that the AMOLA shall terminate by reason of City exercising any right it has under the AMOLA to terminate, a rejection in ArenaCo's bankruptcy, or option of ArenaCo to treat the AMOLA as terminated under 11 U.S.C. § 365(h)(1)(A)(i), or any comparable provision of law, (i) City shall either (x) enter into a New Agreement at the request of Leasehold Mortgagee pursuant to Section 16.8 of the AMOLA, or (y) if no New Agreement is entered into pursuant to Section 16.8 of the AMOLA, enter into the Step-In Agreement (as defined in the Team Agreement) with TeamCo or its Affiliate (as defined in the Comprehensive Agreement) pursuant to Section 2 of the Comprehensive Agreement, and (ii) City, Authority, and Bond Trustee shall not disturb TeamCo's right to use the Arena and the Arena Land and such right to use shall continue in full force and effect for so long as there is no event of default that occurs and continues to exist beyond any applicable notice and cure periods under a Step-In Agreement that replaces the AMOLA or a Step-In Agreement that replaces a New Agreement. In the event a New AMOLA is entered into pursuant to Section 4(D) hereof, references to City in this Section 6 shall be deemed to refer to Authority.

7. Miscellaneous.

A. Conflicts with Existing Leases and Agreements. Except as expressly provided herein, nothing in this Agreement shall be deemed to change in any manner the provisions of the Site Lease, the Project Lease, the AMOLA or the Team Agreement, or to waive any right that one party may now have or later acquire against the other party by reason of said leases and agreements. If any conflict exists between the provisions of this Agreement and the provisions of the Site Lease, the Project Lease, the AMOLA and/or the Team Agreement, the provisions of this Agreement shall prevail.

B. No Merger. City, Authority, Bond Trustee, ArenaCo and TeamCo agree that ArenaCo's early use license and leasehold estate created by the AMOLA and TeamCo's

license rights created by the Team Agreement shall not merge but shall remain separate and distinct, notwithstanding the union of said estates in TeamCo in the event that TeamCo enters into the Step-In Agreement, and as a result thereof also becomes the licensor under the Team Agreement.

C. Additional SNDA; Acknowledgment of Subordination. Each of City, Authority and Bond Trustee shall require that any third party that acquires an interest senior to such party in the Site Lease, the Project Lease, the Arena Land or the Arena, and any lender to any of the foregoing parties (including, without limitation, to such third parties) having a security interest in the Arena Land, the Arena, the Site Lease or the Project Lease (each, an “**Interest Holder**”) shall enter into a subordination, non-disturbance and attornment agreement substantially similar to this Agreement for the benefit of ArenaCo and TeamCo, and their respective lenders, pursuant to which such Interest Holder shall agree not to disturb ArenaCo’s and TeamCo’s (and their respective lenders’ rights in respect of the) use of the Arena Land and the Arena and such right to use shall continue in full force and effect for so long as there is no event of default that occurs and continues to exist beyond any applicable notice and cure periods under the AMOLA, the Team Agreement, the New Agreement or the Step-In Agreement, as applicable, and as further protected under the terms of this Agreement. Each of ArenaCo and TeamCo shall, at the request of City, Authority or Bond Trustee, use their commercially reasonable efforts to obtain from any lender to ArenaCo or TeamCo having a security interest in the AMOLA or the Team Agreement an acknowledgement and/or confirmation that, subject to the rights set forth above in this Section 7(C), the Project Lease and the Site Lease (and the assignment thereof under the Indenture), to the extent any of such agreements are then in existence, are and shall unconditionally be and remain a charge on the Arena Land and the Arena prior and superior to the AMOLA and the Team Agreement, regardless of the date of execution or the date or order of recording of the AMOLA or the Team Agreement or any memoranda thereof.

D. Attorneys’ Fees. If any party commences an action against any of the other parties arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys’ fees and costs of suit.

E. Notice. Any notice, demand, request, consent, approval or communication that any party desires or is required to give to another party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval or communication that any party desires or is required to give to another party shall be addressed to the other party in the manner and at the address set forth below.

**City’s and Authority’s address:**

City of Sacramento  
City Hall  
915 I Street  
Sacramento, CA 95814  
Attention: City Manager  
Telephone: (916) 264-5704

Fax: (916) 264-7618

With a copy to:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

Telephone: [\_\_\_\_\_]

Fax: [\_\_\_\_\_]

and a copy to:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Telephone: [\_\_\_\_\_]

Fax: [\_\_\_\_\_]

**Bond Trustee's address:**

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

Telephone: [\_\_\_\_\_]

Fax: [\_\_\_\_\_]

**ArenaCo's address:**

Sacramento Downtown Arena LLC

Attention: John Rinehart, CFO

Sacramento Basketball Holdings LLC

One Sports Parkway

Sacramento, CA 95834

Telephone: (916) 928-3636

Fax: (916) 928-6983

With a copy to:

Adam R. Klein, Esq.

Katten Muchin Rosenman LLP

525 W. Monroe Street

Chicago, IL 60661-3693

Telephone: (312) 902-5469

Fax: (312) 902-1061

and a copy to:

Jeffrey K. Dorso, Esq.  
Pioneer Law Group, LLP  
1122 S Street  
Sacramento, CA 95811  
Telephone: (916) 496-8500  
Fax: (916) 496-8500

**TeamCo's address:**

Sacramento Kings Limited Partnership  
Attention: John Rinehart, CFO  
Sacramento Basketball Holdings LLC  
One Sports Parkway  
Sacramento, CA 95834  
Telephone: (916) 928-3636  
Fax: (916) 928-6983

With a copy to:

Adam R. Klein, Esq.  
Katten Muchin Rosenman LLP  
525 W. Monroe Street  
Chicago, IL 60661-3693  
Telephone: (312) 902-5469  
Fax: (312) 577-9739

and a copy to:

Jeffrey K. Dorso, Esq.  
Pioneer Law Group, LLP  
431 I Street, Suite 201  
Sacramento, CA 95814  
Telephone: (916) 496-8500  
Fax: (916) 496-8500

Any party's address may be changed from time to time by such party by giving notice as provided above to the other parties. No change of address of any party shall be binding on the other parties until notice of such change of address is given as herein provided. Mailed notices shall be deemed received within two (2) business days from the time of mailing.

F. Successors. This Agreement shall be binding on and inure to the benefit of the parties and their successors.



G. Third Party Beneficiaries. Each Leasehold Mortgagee and Mezzanine Lender (as defined in the AMOLA) are intended direct third party beneficiaries of this Agreement with the right of direct enforcement of the provisions set forth herein.

H. Counterparts. The parties hereto may sign this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same Agreement. Facsimile signatures or signatures transmitted by email or other electronic means shall be effective to bind each of the parties hereto.

I. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of any proceedings regarding this Agreement, the parties hereto agree that the venue shall be the state courts of California located in Sacramento County or the U.S. District Court for the Eastern District of California.

[SIGNATURES FOLLOW]

**“ARENACO”**

SACRAMENTO DOWNTOWN ARENA LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

-AND-

**“TEAMCO”**

SACRAMENTO KINGS LIMITED PARTNERSHIP,  
a California limited partnership

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**“CITY”**

CITY OF SACRAMENTO

By: \_\_\_\_\_  
Its Authorized Representative

Attest:

\_\_\_\_\_  
City Clerk

-AND-

**“AUTHORITY”**

SACRAMENTO PUBLIC FINANCING AUTHORITY

By: \_\_\_\_\_  
Its Authorized Representative

Attest:

\_\_\_\_\_  
Secretary

Approved as to form:

\_\_\_\_\_  
City Attorney and Authority Counsel

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**“BOND TRUSTEE”**

[\_\_\_\_\_]

By: \_\_\_\_\_  
Its Authorized Officer

[ACKNOWLEDGMENTS FOLLOW]

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, 201\_ before me, \_\_\_\_\_  
(here insert name and title of the officer), personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, 201\_ before me, \_\_\_\_\_  
(here insert name and title of the officer), personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, 201\_ before me, \_\_\_\_\_  
(here insert name and title of the officer), personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, 201\_ before me, \_\_\_\_\_  
(here insert name and title of the officer), personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, 201\_ before me, \_\_\_\_\_  
(here insert name and title of the officer), personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

Exhibit A

Arena Land



**THIS EXHIBIT IS FOR ILLUSTRATION PURPOSES ONLY.  
THE ANNUAL FEE IS SET AND ADJUSTED IN ACCORDANCE WITH SECTION 3.  
SAMPLE CALCULATIONS ARE PROVIDED FOR OPERATING YEARS 1 THROUGH 10 ONLY.**

**Exhibit D-1  
to  
Arena Management, Operations, and Lease Agreement**

Annual Fee: Sample Calculations

Date of Substantial Completion:	October 12, 2016
"Commencement Date" under Team Agreement:	November 3, 2016
Sleep Train Event Fees (7/1/16 – 10/12/16):	\$100,000

CPI Index:

June 2016	258.000
June 2017	264.500
June 2018	271.250
June 2019	278.682
June 2020	287.805
June 2021	297.680
June 2022	309.722
June 2023	323.841
June 2024	340.630
June 2025	355.653

### Annual Adjustment

	Prior Year's Opening CPI Index	Prior Year's Ending CPI Index	Increase in CPI Index during Prior Year	Percentage Increase in CPI Index during Prior Year (%)	3% Floor?	5% Cap?	Annual Adjustment (%)
Operating Year 2	258.000	264.500	6.500	$[6.500 \div 258.000] \times 100 = 2.519$	✓		3.000
Operating Year 3	264.500	271.250	6.750	$[6.750 \div 264.500] \times 100 = 2.552$	✓		3.000
Operating Year 4	271.250	278.682	7.432	$[7.432 \div 271.250] \times 100 = 2.740$	✓		3.000
Operating Year 5	278.682	287.805	9.123	$[9.123 \div 278.682] \times 100 = 3.274$			3.274
Operating Year 6	287.805	297.680	9.875	$[9.875 \div 287.805] \times 100 = 3.431$			3.431
Operating Year 7	297.680	309.722	12.042	$[12.042 \div 297.680] \times 100 = 4.045$			4.045
Operating Year 8	309.722	323.841	14.119	$[14.119 \div 309.722] \times 100 = 4.559$			4.559
Operating Year 9	323.841	340.630	16.789	$[16.789 \div 323.841] \times 100 = 5.184$		✓	5.000
Operating Year 10	340.630	355.653	15.023	$[15.023 \div 340.630] \times 100 = 4.410$			4.410

### Annual Fee

	Annual Fee From Prior Operating Year (\$)	Annual Adjustment (%)	Annual Fee (\$)
Operating Year 1	N/A	N/A	4,765,753.43 <sup>1 2</sup>
Operating Year 2	N/A	N/A	6,500,000.00
Operating Year 3	N/A	N/A	6,500,000.00
Operating Year 4	N/A	N/A	6,500,000.00
Operating Year 5	N/A	N/A	6,500,000.00
Operating Year 6	$6,500,000.00 \times 1.03000 \times 1.03000 \times 1.03000 \times 1.03274 \times 1.03431 = 7,586,941.80$		
Operating Year 7	7,586,941.80	4.045	7,893,833.60
Operating Year 8	7,893,833.60	4.559	8,253,713.47
Operating Year 9	8,253,713.47	5.000	8,666,399.14
Operating Year 10	8,666,399.14	4.410	9,048,587.34

<sup>1</sup> Annual Fee prorated for partial Operating Year per Section 3.3  $[(262 \text{ days} \div 365 \text{ days}) \times \$6,500,000.00 = \$4,665,753.43]$ .

<sup>2</sup> Annual Fee increased by Sleep Train Event Fees per Section 3.1(B)  $[\$4,665,753.43 + \$100,000.00 = \$4,765,753.43]$ .

**THIS EXHIBIT IS FOR ILLUSTRATION PURPOSES ONLY.  
THE ANNUAL FEE IS SET AND ADJUSTED IN ACCORDANCE WITH SECTION 3.**

**Exhibit D-2**

Illustration of Annual Fee Escalation (Assuming 3% Minimum Annual Adjustment)

Term (w/out extensions of Team Agreement)	Annual Fee From Prior Operating Year (\$)	Minimum Annual Adjustment (3%)	Minimum Annual Fee (\$)
Operating Year 1	N/A	N/A	6,500,000 (\$3.1(A)(1)(i))* 4,700,000 (\$3.1(A)(1)(ii))*
Operating Year 2	6,500,000	1.000	6,500,000
Operating Year 3	6,500,000	1.000	6,500,000
Operating Year 4	6,500,000	1.000	6,500,000
Operating Year 5	6,500,000	1.000	6,500,000
Operating Year 6	6,500,000	1.159	7,533,500
Operating Year 7	7,533,500	1.030	7,759,505
Operating Year 8	7,759,505	1.030	7,992,290
Operating Year 9	7,992,290	1.030	8,232,059
Operating Year 10	8,232,059	1.030	8,479,021
Operating Year 11	8,479,021	1.030	8,733,392
Operating Year 12	8,733,392	1.030	8,995,394
Operating Year 13	8,995,394	1.030	9,265,256
Operating Year 14	9,265,256	1.030	9,543,214
Operating Year 15	9,543,214	1.030	9,829,510
Operating Year 16	9,829,510	1.030	10,124,395
Operating Year 17	10,124,395	1.030	10,428,127
Operating Year 18	10,428,127	1.030	10,740,971
Operating Year 19	10,740,971	1.030	11,063,200
Operating Year 20	11,063,200	1.030	11,395,096
Operating Year 21	11,395,096	1.030	11,736,949
Operating Year 22	11,736,949	1.030	12,089,057
Operating Year 23	12,089,057	1.030	12,451,729
Operating Year 24	12,451,729	1.030	12,825,281
Operating Year 25	12,825,281	1.030	13,210,039
Operating Year 26	13,210,039	1.030	13,606,340
Operating Year 27	13,606,340	1.030	14,014,530
Operating Year 28	14,014,530	1.030	14,434,966
Operating Year 29	14,434,966	1.030	14,868,015
Operating Year 30	14,868,015	1.030	15,314,055
Operating Year 31	15,314,055	1.030	15,773,477
Operating Year 32	15,773,477	1.030	16,246,681
Operating Year 33	16,246,681	1.030	16,734,081
Operating Year 34	16,734,081	1.030	17,236,103
Operating Year 35	17,236,103	1.030	17,753,186**
Operating Year 36 (if applicable)	17,753,186	1.030	18,285,782**

\* Annual Fee for first Operating Year is adjusted per Sections 3.1(B) and 3.3. Adjustments not shown.

\*\* Annual Fee for final Operating Year is adjusted per Section 3.3. Adjustment not shown.

ARENA MANAGEMENT, OPERATIONS, AND LEASE AGREEMENT

**Exhibit E**  
**to**  
**Arena Management, Operations, and Lease Agreement**

Form of Memorandum of Lease and Purchase Option

Recording Requested By and  
When Recorded Mail To:

Katten Muchin Rosenman LLP  
2029 Century Park East, Suite 2600  
Los Angeles, California 90067  
Attention: Benzion J. Westreich, Esq.

---

**MEMORANDUM OF LEASE AND OPTION**

This **MEMORANDUM OF LEASE AND OPTION** (this "**Memorandum**"), dated as of \_\_\_\_\_, 201\_, is entered into between the CITY OF SACRAMENTO, a municipal corporation of the State of California (the "**City**"), and SACRAMENTO DOWNTOWN ARENA LLC, a Delaware limited liability company ("**ArenaCo**").

**RECITALS**

A. The City and ArenaCo entered into (i) that certain Arena Management, Operations, and Lease Agreement, dated as of \_\_\_\_\_, 2014 (the "**Lease**"), pursuant to which (i) the City has granted to ArenaCo an Early Use License during the Early Use License Term (as such terms are defined in the Lease), (ii) the City will lease to ArenaCo, and ArenaCo will lease from the City, for the Leasehold Term (as such term is defined in the Lease), the real property described in Exhibit "A" attached hereto and incorporated herein by reference (the "**Arena Land**") and the multipurpose entertainment and sports center, including administrative offices, practice facility, plazas, walkways, parking, and outdoor entertainment areas (the "**Arena**"), to be constructed on the Arena Land, upon the terms more particularly described therein, (ii) the Comprehensive Project Agreement for the Sacramento Entertainment and Sports Center, dated as of \_\_\_\_\_, 2014, and (iii) certain other "Project Agreements" (as such term is defined in such Comprehensive Agreement).

B. The City and ArenaCo desire to execute this Memorandum to provide constructive notice of ArenaCo's rights under the Lease to all third parties.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

ARENA MANAGEMENT, OPERATIONS, AND LEASE AGREEMENT

1. Term. The City has (a) granted to ArenaCo an Early Use License during the Early Use License Term (as such terms are defined in the Lease) to construct the Arena, and (b) upon the satisfaction of certain conditions precedent, to lease the Arena Land and the Arena to ArenaCo for the Leasehold Term (as such term is defined in the Lease), which Leasehold Term will be approximately 35 years and will be automatically extended if the Team Use Agreement, dated as of \_\_\_\_\_, 2014, between ArenaCo and TeamCo is extended, all upon and subject to the terms and conditions set forth in the Lease.

2. Lease Terms. The lease of the Arena Land and the Arena to ArenaCo is pursuant to the Lease, which is incorporated into this Memorandum by reference.

3. Purchase Option. ArenaCo shall either (a) have the option to purchase the Arena and the Arena Land from the City (the "**Purchase Option**") or (b) be required to purchase the Arena and the Arena Land from the City, upon and subject to the terms and conditions set forth in the Lease.

4. Assignment. ArenaCo's ability to transfer the Lease and to sublease the Arena Land and the Arena is set forth in more detail in the Lease.

5. Leasehold Mortgagee's Right to New Agreement. ArenaCo's leasehold mortgagees are granted certain rights and protections, including notice and cure rights with respect to ArenaCo's defaults and the right, under certain circumstances that result in the termination of the Lease, to require the City to enter into a new lease with ArenaCo's senior leasehold mortgagee or its assignee, nominee or designee, all as set forth in more detail in the Lease.

6. Step-In Agreement. Pursuant to that certain Comprehensive Project Agreement for the Sacramento Entertainment and Sports Center, dated as of \_\_\_\_\_, 2014, between the City, ArenaCo, Sacramento Basketball Holdings LLC, a Delaware limited liability company and an affiliate of ArenaCo, and Sacramento Kings Limited Partnership, a California limited partnership and an affiliate of ArenaCo ("TeamCo"), under certain circumstances that result in the termination of the Lease, TeamCo will be required to enter into a new lease with the City on substantially the same terms as the Lease.

7. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors and assigns, subject, however, to the provisions of the Lease.

8. Release. The Lease provides that ArenaCo will execute and record a release of this Memorandum within ten Business Days (as defined in the Lease) following the expiration of the Purchase Option. The Lease also provides that: (a) if ArenaCo fails to execute and record such release as provided in the Lease, then, provided there is no dispute between the parties at the time regarding the termination of the Purchase Option, the City may, after providing ArenaCo and ArenaCo's senior leasehold mortgagee not less than ten Business Days' prior written notice thereof, unilaterally execute and record a release of this Memorandum, (b) the

City may, after providing ArenaCo and ArenaCo's senior leasehold mortgagee not less than ten Business Days' prior written notice thereof, unilaterally execute and record a release of this Memorandum if the Lease terminates pursuant to Section 11.2(C) of the Lease or Sections 7.2(A), 7.2(B), 7.2(E), 7.2(F), or 7.2(G) of the Comprehensive Agreement, and (c) any third party may rely on any such release unilaterally executed and recorded by the City.

9. Governing Law. This Memorandum and the Lease are governed by California law.

\* \* \*

IN WITNESS WHEREOF, the City and ArenaCo have entered in this Memorandum as of the day and year first above written.

<p>City of Sacramento</p> <p>By: _____ John F. Shirey City Manager</p> <p>Date: _____, 2014</p>	<p>SACRAMENTO DOWNTOWN ARENA LLC, a Delaware limited liability company</p> <p>By: Sacramento Basketball Holdings LLC, a Delaware limited liability company, its Sole Member</p> <p>By: _____</p> <p>Name: _____</p> <p>Its: _____</p> <p>Date: _____, 2014</p>
<p>Approved as to Form Sacramento City Attorney</p> <p>By: _____ Matthew D. Ruyak Assistant City Attorney</p>	<p>Approved as to Legal Form Pioneer Law Group, LLP</p> <p>By: _____ Jeffrey K. Dorso Attorneys for ArenaCo</p>

**Schedule 10.2(D)**  
**to**  
**Arena Management, Operations, and Lease Agreement**  
**Litigation**

1. CASE NO.: 34-2014-00156358  
CASE TITLE: CITY OF SACRAMENTO  
vs.  
STATE OF CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM, US  
BANK A NATIONAL ASSOCIATION, C-III ASSET MANAGEMENT LLC, and  
DOES 1 through 50, inclusive.
2. CASE NO.: 34-2013-80001489  
CASE TITLE: ISAAC GONZALEZ, JAMES CATHCART, and JULIAN CAMACHO,  
vs.  
KEVIN JOHNSON, JOHN SHIREY, JOHN DANGBERG,  
CITY OF SACRAMENTO, and DOES 1 through 40, inclusive.