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12 UNITED STATES BANKRUPTCY COURT
13 DISTRICT OF ARIZONA

14 In re:) In the Proceeding
15 DEWEY RANCH HOCKEY, LLC,) Under Chapter 11
16 COYOTES HOLDINGS, LLC,) Case No. 2:09-bk-09488-RTBP
17 COYOTES HOCKEY, LLC, AND) (Jointly Administered)
18 ARENA MANAGEMENT GROUP, LLC,) **POSITION STATEMENT OF ARAMARK**
19 Debtors.) **SPORTS AND ENTERTAINMENT**
20) **SERVICES, LLC REGARDING THE**
21) **PROPOSED SALE AND RELOCATION**
22) **OF SUBSTANTIALLY ALL OF THE**
23) **ASSETS OF COYOTES HOCKEY, LLC**

24 This Filing Applies to:

- 25 All Debtors
26 Specified Debtors

Hearing Date: June 9, 2009
Hearing Time: 9:00 a.m.
Hearing Location: 230 N. First Avenue
Courtroom 703, 7th Floor, Phoenix, AZ
Objection Deadline: June 5, 2009

[Related to Document Nos. 18 & 19]

27 ARAMARK Sports and Entertainment Services, LLC, successor-by-conversion of
28 ARAMARK Sports and Entertainment, Inc. (hereinafter "ARAMARK"), by and through its
29 counsel, McCarter & English, LLP and local counsel Hinshaw & Culbertson, LLP, files this
30 position statement regarding the proposed sale and relocation of substantially all of the assets
31 of Coyotes Hockey, LLC (the "Team") in response to the inquiry by the Court at the hearing

1 held on May 27, 2009 regarding the economic impact upon creditors of the estate.

2 **JURISDICTION AND VENUE**

3 1. On May 5, 2009 (the “Petition Date”), Dewey Ranch Hockey, LLC (“Dewey”),
4 Coyotes Holdings, LLC (“Holdings”), Coyotes Hockey, LLC (“Hockey”), and Arena
5 Management Group, LLC (“Arena Management” and, together with Dewey, Holdings, and
6 Hockey, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the
7 United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the
8 District of Arizona (the “Court”).

9 2. The Debtors continue to operate their businesses and manage their assets as
10 debtors-in-possession under 11 U.S.C. §§ 1107 and 1108.

11 3. This Court has jurisdiction over the Cases under 28 U.S.C. §§ 157 and 1334.
12 These matters constitute core proceedings under 28 U.S.C. § 157(b)(2).

13 **THE PROPOSED SALE AND RELOCATION OF THE TEAM¹**

14 4. On May 5, 2009, the Debtors entered into an Asset Purchase Agreement (the
15 “APA”) with PSE Sports & Entertainment, L.P. (the “Proposed Buyer”), under which the
16 Proposed Buyer agreed to purchase the Team for an aggregate purchase price of over \$200
17 million (the “Proposed Sale”). See Document No. 18. The APA includes a relocation of the
18 Team from Glendale, Arizona (the “Glendale Arena”) to Hamilton, Ontario.

19 5. On May 5, 2009, the Debtors filed a Motion for an Order Under Sections
20 105(a), 363 and 365 of the Bankruptcy Code (i) Authorizing Coyotes Hockey, LLC’s Sale of
21 Substantially All of Its Assets, Free and Clear of Liens, Claims, and Encumbrances, Subject
22 to Higher and Better Offers, and (ii) Approving an Asset Purchase Agreement (the “Sale
23 Motion”) and a Motion For Entry Of An Order (A) Authorizing Conduct Of An Auction Of
24 Coyotes Hockey, LLC’s Assets; (B) Establishing Procedures To Be Employed In Connection

25 ¹ ARAMARK expressly reserves all of its rights under the Bankruptcy Code and other applicable law in connection with
26 any sale transaction that comes before this Court.

1 With The Sale Including Approval Of Termination Fee; And (C) Approving Form And
2 Manner Of Notice Of Conditional Cure Notice And Solicitation Notice (the “Bid Procedures
3 Motion”). See Document Nos. 18 and 19.

4 **THE CATERING AND CONCESSION AGREEMENT**

5 6. As of the Petition Date, ARAMARK was a party to a Catering and Concession
6 Agreement dated July 24, 2003, by and among Coyotes Hockey, LLC, Arena Development,
7 LLC, as Arena Developer, Arena Management Group, LLC, as Arena Manager and
8 ARAMARK, as Contractor (the “Agreement”). A true and correct copy of the Agreement is
9 attached hereto as Exhibit A.

10 7. The Agreement states that ARAMARK is to exclusively manage all of the
11 Concession Operations² at the Glendale Arena. See Section 3(a) of the Agreement. The
12 Agreement also provides that ARAMARK has the exclusive right to use all of the Facilities³
13 and the non-exclusive right to use the Common Areas.⁴

14 8. In exchange for the grant of the exclusive right to manage the Concession
15 Operations, at the time the Agreement was executed, ARAMARK provided Arena
16 Development, LLC with Eight Million Dollars (\$8,000,000) (the “Capital Grant”) towards
17 the cost to develop, design, construct, fixture, equip and finish the Concession Premises.⁵

18 ² The “Concession Operations” consist of ARAMARK’s sole and exclusive right to operate, manage and sell food,
19 alcoholic and non-alcoholic beverages, tobacco and other products, and candy and to provide concession, dining,
20 restaurant and catering services through fixed and portable concession stands, vending machines in public areas, roving
21 vendors, suites, premium seating areas, snack bars, banquet halls, the Proposed Restaurant, liquor bars and any other
22 areas at the Arena Premises, at any and all events held or conducted at the Arena Premises during the Term (as defined in
23 the Agreement). See Section 3(a) of the Agreement.

22 ³ The “Facilities” include those areas, improvements, fixtures and trade fixtures, the kitchens, storage areas, concession
23 stands, food court(s), at the Arena Premises which are used in connection with the operation of the Concession
24 Operations, including also office, warehouse, storage, kitchen, service and preparation areas. See Section 3(b) of the
25 Agreement.

24 ⁴ The “Common Areas” include the areas that ARAMARK has a non-exclusive use of within the Arena Premises,
25 including the Suites, and Club Seats, necessary to perform the Concession Operations. See Section 3(b) of the
26 Agreement.

26 ⁵ The Concession Premises consists of the Facilities and the Common Areas. See Section 3(b) of the Agreement.

1 See Section 2(d)(i) of the Agreement. Additionally, ARAMARK pays the Debtors a
2 percentage of the Gross Receipts derived from the Concession Operations (the
3 “Commissions”). See Section 12 of the Agreement.

4 **THE TERMINATION PAYMENT**

5 9. Section 14 of the Agreement sets forth the terms of the scope, duration,
6 termination and default provisions of the Agreement. Among the grounds for termination,
7 Section 14(d)(iii) of the Agreement states as follows:

8 [ARAMARK] shall have the right to terminate this Agreement upon the
9 occurrence of any of the following events of default by the Team, Arena
10 Developer or Arena Manager and upon ten (10) days prior written notice to the
11 Team, Arena Developer and Arena Manager specifying the nature of such
12 default:...(iii) The Team’s NHL franchise, currently the Phoenix Coyotes, fails
13 to play all of its regular season home games at the Arena and/or the franchise
14 relocates to another facility.

15 See Section 14(d)(iii) of the Agreement.

16 10. If the Team is relocated, the Debtors are required to pay a Termination
17 Payment to ARAMARK.⁶ See Section 14(e) of the Agreement. The Termination Payment
18 shall be a lump sum payment in an amount equal to:

19 the sum of (A) the unamortized value of [ARAMARK’s] Capital Grant, which
20 amortization shall be based on a straight-line one hundred eighty (180) month
21 amortization beginning on the date of the First Public Event⁷, and (B) the
22 unamortized value of [ARAMARK’s] reasonably documented start-up
23 expenses, not to exceed \$700,000 (“Start-Up Costs”), which amortization shall
24 be based on an accelerated forty-eight (48) month amortization beginning on
25 the First Public Event, with 30% of such amount to be amortized over the first
26 twelve (12) months, an additional 30% of such amount to be amortized over
the next twelve (12) months, an additional 20% of such amount to be
amortized over the next twelve (12) months and the final 20% to be
amortized over the final twelve (12) months plus any other amounts due to
[ARAMARK].

See Section 14(e) of the Agreement.

6 ARAMARK reserves all rights to assert that the Termination Payment is an administrative claim.

7 “First Public Event” is defined in the Agreement as “the date of the first event at the Arena which is (a) open to the general public and at which food and beverages are sold by [ARAMARK]; and (b) where tickets are offered for sale to the general public.” See Section 14(a) of the Agreement.

1 11. As of the Petition Date, ARAMARK was owed approximately \$264,139 for
2 services rendered. As of the Petition Date, ARAMARK owed the Debtors approximately
3 \$216,607 in Commissions under the Agreement, subject to ARAMARK's setoff rights.

4 12. If the Team relocates, the Debtors are required to pay the Termination Payment
5 to ARAMARK. As of this date, the amount of the Termination Payment is approximately
6 \$5,095,022.

7 ARAMARK'S POSITION

8 13. ARAMARK has long had a symbiotic relationship with various major league
9 sports teams, including the NHL and the Phoenix Coyotes. As the Court has seen with these
10 proceedings, a host city pairs with a team to construct, develop and provide a first class
11 venue for play. The resulting forum economically benefits the team, the host city, the fans,
12 the league, the job market and the numerous businesses that service all of the foregoing. A
13 basic assumption for the significant capital investment by all parties in interest, including the
14 league, is that the team agrees to long term play at the location where all parties have
15 invested so much.

16 14. ARAMARK is an important part of the package. In this case, ARAMARK
17 made a Capital Grant of \$8,000,000 of its funds, which were used to create the Concession
18 Premises, and agreed to pay up to \$700,000 in Start-Up Costs to assist Debtors in covering
19 some of the significant costs to start up the food and beverage operations at their new NHL
20 venue. These are funds that reduced the economic burden on the City of Glendale and the
21 Debtors as the new Glendale Arena was built in 2003. ARAMARK agrees to make capital
22 grants under these circumstances because of the commitment of the team to play all of its
23 home games at the location. Given the governing documents of the NHL, and other leagues,
24 ARAMARK reasonably expects that the NHL team will continue to play in the arena for the
25 term of its agreement. ARAMARK therefore can make a long term commitment for jobs and
26 future business, as it amortizes over many years its capital grant. In this case, the Capital

1 Grant amortizes at a rate of approximately \$44,000 per month. Many years are still
2 necessary before the Capital Grant is fully recovered. If the Debtors sell to a purchaser that
3 relocates the team, the remaining activity and events at the now “dark” arena will fail to
4 amortize the Capital Grant in any meaningful way.

5 15. The process followed by this Court as to the pending Sale Motion by the
6 Debtors directly affects ARAMARK with regard to the Glendale Arena, the relationships that
7 ARAMARK has with other teams in major sports leagues and possible future transactions in
8 which ARAMARK and other concessionaires are asked to participate with opening new
9 venues or with substantial renovations or upgrades to existing venues. This ruling could
10 have a significant impact on the entire industry and the willingness of third parties to commit
11 capital in these business ventures. If the Team remains in the Glendale Arena, ARAMARK
12 will continue to amortize the Capital Grant. If, however, the Team relocates, the Debtors
13 will be liable for a significant claim in the form of the Termination Payment, which may be
14 entitled to administrative priority.

15 **CONCLUSION**

16 WHEREFORE, ARAMARK Sports and Entertainment Services, LLC respectfully
17 requests that the Court enter an order granting any relief the Court deems appropriate related
18 to the issues raised in this Position Statement.

19 DATED this 5th day of June, 2009.

20 HINSHAW & CULBERTSON LLP

21
22 /s/Richard H. Herold
23 Richard H. Herold

24 Joseph Lubertazzi, Jr., Esq.
25 McCarter & English, LLP

26 Attorneys for ARAMARK Sports and
Entertainment Services, Inc.

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 5th day of June, 2009, I electronically transmitted the attached
3 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
4 Notice of Electronic Filing to the following CM/ECF registrants:

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16 By /s/ Kathleen M. Haley

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EXECUTION COPY

CATERING AND CONCESSION AGREEMENT

BY AND AMONG

COYOTES HOCKEY, LLC,

ARENA DEVELOPMENT, LLC, AS ARENA DEVELOPER,

ARENA MANAGEMENT GROUP, LLC, AS ARENA MANAGER

AND

**ARAMARK SPORTS AND ENTERTAINMENT SERVICES, Inc., AS
CONTRACTOR**

DATED: JULY 24, 2003

CATERING AND CONCESSION AGREEMENT

This Catering And Concession Agreement ("Agreement") is entered into as of this ___ day of July, 2003 by and among Coyotes Hockey, LLC, a Delaware limited liability company (the "Team"), Arena Development, LLC, a Delaware limited liability company ("Arena Developer"), Arena Management Group, LLC, a Delaware limited liability company ("Arena Manager"), and ARAMARK Sports and Entertainment Services, Inc., a Delaware corporation ("Contractor"), an indirect wholly owned subsidiary of Aramark Corporation.

RECITALS

A. As of November 29, 2001, the City of Glendale, an Arizona municipal corporation (the "City") entered into certain definitive agreements regarding the development and use of a project to be located on 225± acres of land in the City, which may include, among other things: (i) an approximately 17,500 seat multi-purpose arena and related facilities suitable for professional hockey; (ii) entertainment, office, hotel, retail, residential and other mixed uses; and (iii) parking, media displays and other infrastructure and associated rights (collectively, the "Project"). The definitive agreements include: (1) Arena Development Agreement (City of Glendale Contract No. C-4415) (the "Arena Development Agreement") between the City, Coyote Center Development, LLC (the "Entertainment Developer"), and Arena Developer; (2) Mixed-Use Development Agreement (City Contract No. C-4418) between the City, Entertainment Developer and Glendale-101 Development, LLC (The "Retail/Residential Developer"); (3) Arena Management, Use and Lease Agreement (City Contract No. C-4416) (the "Arena Management Agreement") between the City, Arena Manager, the Team, Retail/Residential Developer, and Entertainment Developer; (4) Agreement Regarding Renewal and Replacement Schedule (City Contract No. C-4417) between City, Arena Manager and Team; and (5) Safety and Security Agreement (City Contract No. C-4414) between the City, Arena Manager and the Team (collectively, the "Public Contracts"). Arena Developer, Arena Manager, Entertainment Developer and the Team are all affiliates under the common control of entities controlled by Steven M. Ellman and Jerry Moyes.

B. Pursuant to the terms of the Arena Development Agreement, Arena Developer is in the process of developing, designing and constructing an approximately 17,500 seat multi-purpose arena and plaza area, together with related machinery, equipment and fixtures for professional hockey and other public events located in Glendale, Arizona (the "Arena") at the site legally described on Exhibit B attached hereto.

C. Pursuant to the terms of the Arena Management Agreement, the Team has the exclusive right to negotiate and enter into all concessions agreements for the Arena, and Arena Manager has the right to manage and operate the Arena on the terms set forth in the Arena Management Agreement. For purposes of this Agreement, the Team has directed the Arena Manager to administer all of the Team's rights and obligations under this Agreement, as the

agent for the Team and a party to this Agreement, recognizing that the Team shall remain directly responsible to Contractor for the performance of all of the obligations of the Team and the Arena Manager as set forth herein.

D. Contractor is engaged in the business of (i) selling food, alcoholic and non-alcoholic beverages, tobacco and other products and (ii) providing restaurant and catering services at arenas, stadiums and other sports, leisure and entertainment facilities throughout the United States.

E. Contractor desires to manage all "Concession Operations" (as defined herein) at the Arena, as more fully described in this Agreement.

F. The Team and Arena Manager desire to engage Contractor, and Contractor desires to be engaged by the Team and Arena Manager, pursuant to the terms of this Agreement, to exclusively manage all of the Concession Operations at the Arena throughout the duration of this Agreement.

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

1. Representations

(a) Team's Representations to Contractor - Team hereby represents to Contractor as follows:

- (i) that it has been validly formed and duly exists as a limited liability company under the laws of the State of Delaware, and that it is duly qualified to do business as a foreign limited liability company in the State of Arizona;
- (ii) that it has the full right, power and authority to grant the exclusive right to manage the Concession Operations throughout the entire Arena and the Arena pad site (being collectively the "Arena Premises") as the Arena Premises are shown on Exhibit 1(a), including, but not limited to, the right to engage Contractor to provide management and operational services described in this Agreement;
- (iii) that it is not prevented from entering into this Agreement or complying with its commitments hereunder by its articles of organization or the Public Contracts;

- (iv) that it is not prevented from entering into this Agreement or complying with its commitments hereunder by any statute, regulation, order of, or agreement with, governmental or quasi-governmental authority or by any license, debt instrument, mortgage, lease, contract or other agreement or instrument binding it or any of its property;
 - (v) that it is duly authorized to enter into this Agreement and has taken all necessary limited liability company action to obtain such authorization and that no consent of, or notice to, any other individual, private entity or governmental authority, including, but not limited to, the National Hockey League ("NHL") or any of their respective teams' owners is required in connection with the execution, delivery and performance of this Agreement;
 - (vi) that this Agreement, when properly executed by all parties, will constitute a legal, valid and binding agreement, enforceable by Contractor as to the Team in accordance with its terms;
 - (vii) that the party executing this Agreement on behalf of the Team has full right, power and authority to execute this Agreement and to bind the Team to the terms hereof;
 - (viii) that it shall use its good faith, reasonable and diligent efforts at all times to cooperate with and assist Contractor in (1) Contractor's fulfillment of its obligations to provide quality food and beverage services to patrons of the Concession Operations and (2) Contractor's fulfillment of the parties' mutual desire to maximize Gross Receipts (as that term is defined below) from the Concession Operations by Contractor performing its obligations under this Agreement;
 - (ix) that neither the Public Contracts, nor any other agreement, written or oral, shall be modified, amended, revised or entered into if the effect of such modification, amendment, revision or agreement shall materially impair or adversely affect in any manner Contractor's right and ability to provide the Concession Operations or any part thereof on the terms set forth in this Agreement; and
 - (x) that all home games for the Team's NHL franchise, currently the Phoenix Coyotes, (but in any event, all Home Games (as defined in the Arena Management Agreement)) will be played at the Arena.
- (b) Arena Developer's Representations to Contractor – Arena Developer hereby represents to Contractor as follows:

- (i) that it has been validly formed and duly exists as a limited liability company under the laws of the State of Delaware, and that it is duly qualified to do business as a foreign limited liability company in the State of Arizona;
- (ii) that it is not prevented from entering into this Agreement or complying with its commitments hereunder by its articles of organization, the Public Contracts;
- (iii) that it is not prevented from entering into this Agreement or complying with its commitments hereunder by any statute, regulation, order of, or agreement with governmental or quasi-governmental authority or by any license, debt instrument, mortgage, lease, contract or other agreement or instrument binding it or any of its property;
- (iv) that it is duly authorized to enter into this Agreement and has taken all necessary limited liability company action to obtain such authorization and that no consent of, or notice to, any other individual, private entity or governmental authority, including, but not limited to, the NHL or any of their respective team's owners is required in connection with the execution, delivery and performance of this Agreement;
- (v) that this Agreement, when properly executed by all parties, will constitute a legal, valid and binding agreement, enforceable by Contractor as to Arena Developer in accordance with its terms;
- (vi) that the party executing this Agreement on behalf of Arena Developer has full right, power and authority to execute this Agreement and to bind Arena Developer to the terms hereof;
- (vii) that neither the Public Contracts, nor any other agreement, written or oral, shall be modified, amended, revised or entered into if the effect of such modification, amendment, revision or agreement shall materially impair or adversely affect in any manner Contractor's right and ability to provide the Concession Operations or any part thereof on the terms set forth in this Agreement; and
- (viii) that the Arena is being and will be developed and constructed in accordance with the terms of the Arena Development Agreement, including in accordance with the quality standards contained therein and will be a first class facility consistent with current NHL standards.

- (c) Arena Manager's Representations to Contractor - Arena Manager hereby represents to Contractor as follows:
- (i) that it has been validly formed and duly exists as a limited liability company under the laws of the State of Delaware, and that it is duly qualified to do business as a foreign limited liability company in the State of Arizona;
 - (ii) that it is not prevented from entering into this Agreement or complying with its commitments hereunder by its articles of organization, or the Public Contracts;
 - (iii) that it is not prevented from entering into this Agreement or complying with its commitments hereunder by any statute, regulation, order of, or agreement with, governmental or quasi-governmental authority or by any license, debt instrument, mortgage, lease, contract or other agreement or instrument binding it or any of its property;
 - (iv) that it is duly authorized to enter into this Agreement and has taken all necessary limited liability company action to obtain such authorization and that no consent of, or notice to, any other individual, private entity or governmental authority, including, but not limited to, the NHL or any of their respective team's owners is required in connection with the execution, delivery and performance of this Agreement;
 - (v) that this Agreement, when properly executed by all parties, will constitute a legal, valid and binding agreement, enforceable by Contractor as to Arena Manager in accordance with its terms; and
 - (vi) that the party executing this Agreement on behalf of Arena Manager has full right, power and authority to execute this Agreement and to bind Arena Manager to the terms hereof;
 - (vii) that it shall use its good faith, reasonable and diligent efforts at all times to cooperate with and assist Contractor in (1) Contractor's fulfillment of its obligations to provide quality food and beverage services to patrons of the Concession Operations and (2) Contractor's fulfillment of the parties' mutual desire to maximize Gross Receipts (as that term is defined below) from the Concession Operations by Contractor performing its obligations under this Agreement;
 - (viii) that neither the Public Contracts, nor any other agreement, written or oral, shall be modified, amended, revised or entered into if the effect of such

modification, amendment, revision or agreement shall materially impair or adversely affect in any manner Contractor's right and ability to provide the Concession Operations or any part thereof on the terms set forth in this Agreement;

(ix) that the Arena will be managed in accordance with the terms of the Arena Management Agreement, including in accordance with the quality standards contained therein and will be a first class facility and operation consistent with current NHL standards.

(d) Contractor's Representations to Team, Arena Developer and Arena Manager - Contractor hereby represents to the Team, Arena Developer and Arena Manager as follows:

- (i) that it has been validly formed and duly exists as a corporation under the laws of the State of Delaware, and that it is duly qualified to do business as a foreign corporation in the State of Arizona;
- (ii) that it is duly authorized to enter into this Agreement and is not prevented from entering into this Agreement or complying with its commitments hereunder by its certificate of incorporation, its by-laws, by any statute, regulation or order of any governmental or quasi-governmental authority, or by any license, debt instrument, mortgage, lease, contract or other agreement or instrument binding upon it or any of its property;
- (iii) that it is duly authorized to enter into this Agreement and has taken all necessary action to obtain such authorization, and that no consent of, or notice to, any other individual, private entity or governmental authority is required in connection with the execution, delivery and performance of this Agreement;
- (iv) that this Agreement, when properly executed by all parties, will constitute a legal, valid and binding agreement, enforceable by the Team, Arena Developer and Arena Manager in accordance with its terms;
- (v) that the party executing this agreement on behalf of Contractor has full right, power and authority to execute this agreement and to bind Contractor to the terms hereof;
- (vi) that in fulfilling its obligations under this Agreement, Contractor shall use its good faith, reasonable and diligent efforts at all times to cooperate with the Team and Arena Manager in fulfilling the Team's and Arena Manager's obligations under the Arena Management Agreement to

manage the Arena as a first class facility and operation consistent with current NHL standards;

- (vii) that it acknowledges that (A) the Arena is being constructed by the Arena Developer subject to the terms of the Arena Development Agreement, and upon completion the Arena will be owned by the City, (B) the Arena Developer derives all of its rights and obligations with respect to the design, development and construction of the Arena from the Arena Development Agreement, (C) the Team and the Arena Manager derive all of their rights and obligations with respect to the Arena from the Arena Management Agreement and other Public Contracts, (D) this Agreement is subject to the City's rights under the Arena Development Agreement, the Arena Management Agreement, and Public Contracts and (E) the Contractor has received a copy of each of the Public Contracts and acknowledges the City's rights thereunder; and
- (viii) that in fulfilling its obligations under this Agreement, Contractor shall not enter into any agreement that pertains only to the Arena and not any other locations in which Contractor operates, which would materially impair or adversely affect in any manner Contractor's ability to provide the Concession Operations or any part thereof on the terms set forth in this Agreement .

2. Design and Construction Consultation; Substantial Completion; Contractor's Capital Grant; Developer's Investment

- (a) Design and Construction Documents - Contractor shall reasonably review with Arena Developer in connection with certain phases of the design, development and construction of the Concession Premises (as that term is defined below). The review by Contractor shall primarily focus upon the finalization of the design and construction documents to be utilized for the Concession Premises (the "Design and Construction Documents"). The current form of such Design and Construction Documents are those documents listed in Exhibit 2(a) attached hereto, copies of which have previously been provided to Contractor's personnel. Contractor acknowledges that it has reviewed the Design and Construction Documents and that, so long as the Concession Premises are constructed by Arena Developer in compliance therewith in all material respects, the Contractor shall not object to the design, development, and construction of the Concession Premises. Material or substantive deviations from the documents listed on Exhibit 2(a) must be agreed upon in writing in advance among the Team, Arena Developer, Arena Manager and Contractor, as provided below. Contractor shall cooperate with the Team, Arena Developer and Arena Manager in a prudent, expedient and workmanlike manner if it becomes necessary or appropriate to

Developer shall be solely responsible and liable for any design defects or any other defects in the Design and Construction Documents, notwithstanding Contractor's approval of the Design and Construction Documents.

- (c) Scope of Contractor's Responsibilities - It is expressly understood and agreed that, unless Arena Developer and Contractor otherwise agree in a separate written agreement, Contractor shall have no responsibilities with respect to the design, development or construction of any aspect of the Arena Premises other than the Concession Premises; provided, however, that the cost of any such responsibilities shall be limited to the Contractor's Capital Grant or as a result of a modification proposed by Contractor as provided in Section 2(a) above. Notwithstanding anything contained herein to the contrary, Arena Developer shall be responsible for all design costs related to the build-out of the Concession Premises, including but not limited to, preparation of schematics, equipment specifications, drawings, cut sheets and construction drawings; provided, however, that Arena Developer shall not be obligated to pay Contractor for its performance of any of Contractor's rights or obligations as set forth in this Section 2. It is further expressly understood and agreed that Contractor is a consultant and not a licensed architect, engineer or professional services provider and, accordingly, Contractor shall not have control or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programming in connection with the design, development and construction of the Concession Premises, nor for the acts or omissions of any architect, engineer, professional services provider, general contractor, subcontractor, supplier, vendor or any other individual or entity performing any of the design, engineering or construction work, or for the failure of any of them to carry out the construction work in accordance with the contract documents.
- (d) Contractor's Capital Grant
- (i) In consideration of the rights granted to Contractor by the Team and Arena Manager pursuant to this Agreement, Contractor hereby agrees to provide to Arena Developer, as the designee of the Team and Arena Manager, as set forth herein, Eight Million Dollars (\$8,000,000.00) (the "Contractor's Capital Grant") towards the cost to develop, design, construct, fixture, equip and finish the Concession Premises in accordance with the Design and Construction Documents in all material respects, as modified, pursuant to paragraph 2(a). Contractor shall pay fifty percent (50%) of the Contractor's Capital Grant (the "First Tranche") in cash within five days after the execution of this Agreement by wire transfer to the following account: Glendale/Developer Deposit Escrow Account No. 110962, at BNY Western Trust Company, Los Angeles, California. Contractor shall pay the remaining fifty percent (50%) of the Contractor's

Capital Grant (the "Second Tranche") within five days after the later to occur of (a) the First Public Event (as hereinafter defined) and (b) substantial completion of the Concession Premises as described in Section 2(b) above by wire transfer to the following account: Escrow Account no. 01282444-003-H64 at Lawyers Title of Arizona, Inc., 2425 E. Camelback Road, Tower A, Suite 700, Phoenix, AZ 85016, Escrow Officer: Judy Sorensen, VP.

- (ii) Arena Developer hereby formally acknowledges and agrees that: (1) it shall provide Contractor with a "turnkey" premises, except that Contractor shall procure and provide those materials set forth on Exhibit 2(d)(ii) which are indicated as Contractor's Smallwares ("Contractor's Smallwares"), and (2) except with respect to the Eight Million Dollar (\$8,000,000.00) Contractor's Capital Grant, Arena Developer shall be responsible for paying, or causing to be paid pursuant to the terms of the Arena Development Agreement, all costs, fees and expenses incurred in connection with the development, design, construction, fixturing, equipping and finishing the Arena, including, but not limited to, the Concession Premises (the "Developer's Investment") unless the Contractor has a payment obligation in connection with the procurement of Contractor's Smallwares as described above or pursuant to Section 2(a) above as a result of Contractor's Requested Modification. Without limiting the aforesaid, the Arena Developer shall provide for all improvements, furnishings, and equipment necessary to provide the Concession Operations at the Arena, which shall include but not be limited to fully constructed, equipped, installed and ready-to-operate concession stands (prepared with all menu boards), exterior signage, kiosks, commissaries, preparation areas, warehouse and storage space (with adequate refrigeration facilities and dry storage), kitchens, pantries and offices, all with adequate utilities including plumbing, electricity and HVAC service and hardware, cash registers along with necessary rolling stock, portables, information systems, office equipment, including printers, computers, hard drives, telephone systems for the Concession Premises, chafing dishes and service ware for the Concession Operations in the Suites, Club Seats and Proposed Restaurant (such chafing dishes and service ware referred to herein as "Arena Developer's Service ware" as such items are set forth on the list in Exhibit 2(d)(ii)), warehouse operating system including fork lifts, pallet jacks, four-wheel and two-wheel dollies for product movement, complete automated time clock system which connects into Contractor's computer systems, all back-flow devices required by law, regulation, ordinance and/or City health department. Contractor acknowledges that all of the fixtures and

equipment described in the immediately preceding sentence and provided by the Arena Developer shall be owned by the City pursuant to the terms of the Arena Development Agreement and the Arena Management Agreement. Except as provided above, Contractor shall provide Contractor's Smallwares for other Concession Operations at the Arena, and to the extent that Contractor requires any fixtures or equipment that are specific to Contractor's operations and could not be used by a successor concessionaire, Contractor shall provide such fixtures or equipment.

- (iii) Once the Arena Developer has fulfilled its obligations hereunder with respect to the design, development and construction of the Arena, and the Arena and the Concession Premises have been accepted by the Team, Arena Manager and Contractor pursuant to the terms of this Agreement, then the Arena Developer shall have no further obligations to any of the Team, Arena Manager or Contractor pursuant to this Agreement, except with respect to latent defects that are the responsibility of Arena Developer and that could not have reasonably been discovered at the time of acceptance.

3. Management Services

- (a) Exclusive Concession Operations Grant to Contractor – The Team, having the right to do so, hereby grants to Contractor the sole and exclusive right to operate, manage and sell food, alcoholic and non-alcoholic beverages, tobacco and other products, and candy and to provide concession, dining, restaurant and catering services through fixed and portable concession stands, vending machines in public areas, roving vendors, suites, premium seating areas, snack bars, banquet halls, the Proposed Restaurant, liquor bars and any other areas at the Arena Premises, at any and all events held or conducted at the Arena Premises during the Term (as defined below). The sale of such items and the provision of such services collectively shall be defined and referred to as the "Concession Operations". The sole and exclusive right granted herein to Contractor shall extend to the entire Arena Premises during all events at the Arena Premises, including but not limited to the Team's home hockey games. Notwithstanding the exclusivity granted in this paragraph (a), Contractor agrees that the Arena Manager shall have the right, if reasonable and appropriate in order to induce a licensee to enter into a license to use the Arena, to grant such licensee the right to use a concessionaire other than Contractor solely for the provision of concessions to such licensee's officers, employees and agents.
- (b) Concession Premises - In order to provide the services required of Contractor hereunder, Contractor shall also have the exclusive right to those areas,

improvements, fixtures and trade fixtures, the kitchens, storage areas, concession stands, food court(s), at the Arena Premises which are used in connection with the operation of the Concession Operations, including also office, warehouse, storage, kitchen, service and preparation areas, items referred to in Section 2(c)(ii) above and other areas of the Arena all as shown by diagonal lines and described on Exhibit 3(b) attached hereto and made a part hereof (collectively, the "Facilities"). Contractor's exclusive rights also shall extend to any future areas, including the Proposed Restaurant, as agreed upon by the parties to become Facilities; provided, however, that the parties recognize that the City has approved the designation of the Facilities as set forth on Exhibit 3(b), and any additions to or deletions from the areas to be designated as Facilities by means of a revision to Exhibit 3(b) will be an amendment to this Agreement and will be subject to the City's rights pursuant to the Arena Management Agreement. Contractor shall also have the non-exclusive use of other common areas within the Arena Premises, including the Suites, and Club Seats, necessary to perform the Concession Operations ("Common Areas"). The Facilities and the Common Areas are sometimes referred to herein as the "Concession Premises".

- (c) Contractor's Rights in the Concession Premises - Subject to Sections 33 and 34, in order to enable Contractor to fulfill its responsibilities under this Agreement, the Team and Arena Manager hereby grant Contractor the exclusive right to use all of the Facilities, and the non-exclusive right to use the Common Areas. In order to control the quality of the products and services sold at the Arena Premises, to ensure the safety of the patrons and to protect Contractor's exercise of the exclusive rights granted hereunder, the Team and Arena Manager, having the right to do so, shall prohibit any other entities or individuals from (i) utilizing all or any portion of the Facilities, (ii) selling any Food and Beverage Items (as that term is defined below) in any portion of the Arena Premises, and (iii) providing any Concession Operations in any portion of the Arena Premises, in each case except as otherwise permitted pursuant to Section 6 of this Agreement. In addition, Arena Manager hereby agrees to use its good faith, reasonable and diligent efforts to prevent patrons from bringing any food, beverages, beverage containers or alcoholic beverages into the Arena Premises. Contractor shall not use the Concession Premises for any purposes other than providing the Concession Operations.
- (d) Services - The management services to be provided by Contractor shall include, without limitation, the following:
- (i) Administration, management and direction of the day-to-day Concession Operations in accordance with, and subject to, the further terms and conditions of this Agreement.

- (ii) Procurement of all supplies (including, but not limited to, replacement of Contractor's Smallwares initially purchased by Contractor in accordance with Section 2(d)(ii)), services and personnel which are necessary for the Concession Operations, including personnel for the maintenance and operation of the Concession Premises and preparation and service of such food and beverage items as shall be proposed by Contractor and reasonably approved by Arena Manager ("Food and Beverage Items"), which Food and Beverage Items shall consist of, but not necessarily be limited to, food, alcoholic and non-alcoholic beverages, candy and confections, but only to the extent that any of the foregoing may now or hereafter be legally sold at the Arena, in accordance with applicable laws, ordinances, rules and regulations;
- (iii) Establishment and, from time to time, review and/or modification of such menus, portions and prices of the Food and Beverage Items as shall be proposed by Contractor and reasonably approved by Arena Manager; provided, however: (1) Arena Manager shall have the right to make suggestions to such menus, portions and prices and Contractor shall be obligated to use its good faith, reasonable and diligent efforts to accommodate Arena Manager's suggestions; (2) Arena Manager shall not unreasonably withhold, condition or delay its approval of such menus, portions and prices; and (3) in the event that Arena Manager fails to deliver to Contractor within thirty (30) days after submission of such menus, portions and prices, written approval or denial, such submitted menus, portions and prices shall be deemed approved. It is understood and agreed by Arena Manager and Contractor that the prices charged for the Concession Operations shall be comparable to those found in other similar or comparable NHL facilities.
- (iv) Arranging and paying the cost, from Contractor's funds and not out of the Capital Budget (as defined below), for the maintenance and repair of all furniture, fixtures and equipment used in connection with the Concession Operations and the maintenance of the Facilities in a clean, neat and sanitary condition;
- (v) In accordance with an approved Capital Budget (as that term is defined below), arranging for the addition to, and replacement or modification of, any food service related element of the Concession Premises, the cost of which shall be borne by Arena Manager, except as set forth in Section 2(d)(ii); provided, however, that the Contractor uses good faith, reasonable and diligent efforts to maintain all of such items in accordance with (1) reasonable practices for operators operating in such space, and (2) applicable manufacturers' specifications and warranties. Notwithstanding

the foregoing, Arena Manager shall be responsible for all structural and utility systems maintenance, repair and replacement of the Concession Premises and the Arena Manager's Serviceware, unless such maintenance, repair or replacement is caused by Contractor's negligence;

- (vi) Consultation with Arena Manager at such times as shall be reasonably appropriate for the purpose of eliminating operational problems and improving the Concession Operations;
- (vii) Arranging for the removal of all trash from the Facilities to various centralized collection points in the Arena, whereupon Arena Manager shall be responsible for arranging for such trash to be properly and lawfully discarded; provided, however, that Contractor shall be responsible for the removal and off-site disposition of any materials requiring special handling; and
- (viii) Any and all other services which Arena Manager or Contractor, in their joint reasonable discretion, deem appropriate in order for Contractor to effectively manage and operate the Concession Operations in a manner at least consistent with, if not better than, Contractor's performance of comparable services at facilities similar to the Arena.

4. Projections of Gross Receipts - Capital Budget - Not later than July 1 of each Contract Year (as defined below) during the Term (or such other date upon which Arena Manager and Contractor shall mutually agree), Contractor shall supply Arena Manager with a copy of Contractor's projections for anticipated Gross Receipts for the ensuing Contract Year. Not later than April 1 of each Contract Year during the Term, Contractor shall supply Arena Manager with a budget (the "Capital Budget") for any recommended capital expenditures for food service related elements of the Concession Premises (the cost of which shall be borne exclusively by Arena Manager) to be made during such ensuing Contract Year to add to, replace or modify any of the furniture, fixtures or equipment to be included in the Concession Premises, which Capital Budget shall be subject to Arena Manager's approval, which approval shall not be unreasonably withheld, conditioned or delayed. In making its determination regarding the Capital Budget, Arena Manager shall consider, among other things, the anticipated return on investment, availability of capital, industry trends, season ticket, suite and club seat renewals, and local market competition. No later than the 15th day of each month, Contractor shall provide Arena Manager with a statement of the actual Gross Receipts for the prior month in comparison to the applicable sales projection, together with a brief explanation from Contractor about any significant variances between the projected Gross Receipts and the actual Gross Receipts.

5. Conduct of the Operations

- (a) General - All of Contractor's Concession Operations shall be subject to policies and standards to be included in detailed written operating policies and procedures to be developed and agreed upon by Arena Manager and Contractor not later than sixty (60) days prior to the First Public Event (the "Standard Operating Procedures"), which shall be incorporated into and become a part of this Agreement, except that in the event of a conflict between any term of this Agreement and the Standard Operating Procedures, the applicable term of this Agreement shall prevail. The parties acknowledge that the final Standard Operating Procedures are subject to the City's rights pursuant to Section 19.24 of the Arena Management Agreement. The Arena Manager and Contractor shall develop the Standard Operating Procedures based on those principals and procedures set forth in Exhibit 5(a) attached hereto, and otherwise in accordance with the terms and provisions of this Agreement. In its performance of the terms of this Agreement, Contractor agrees that it will conduct the Concession Operations diligently and in good faith so as to maximize Gross Receipts and to promptly and courteously serve the patrons of the Concession Operations at a high quality level from time to time prevailing in the conduct of similar operations at first class operating sports and entertainment arenas of similar age and in similar condition in major metropolitan areas of the United States, and in accordance with applicable NHL standards. The hours and days of operation during which the Concession Operations shall be provided shall include all hours during which the Arena is open for all Team games and during such hours for other events as shall be proposed by Contractor and reasonably approved or modified by Arena Manager. The number of stands in operation and their respective hours of operation shall be appropriate for each event so as to enable Contractor to efficiently meet anticipated customer demand.
- (b) Compliance with Laws, Policies and Programs - In connection with the conduct of the Concession Operations, Arena Manager shall promptly comply with and observe all federal, state and local laws, ordinances, regulations, orders or directions (including, without limitation, fire, building, health and sanitation codes and regulations) with respect to, without limitation, the conduct of the Concession Operations, the condition of the Facilities and the sanitation and purity of the Food and Beverage Items, provided that nothing herein shall be interpreted to hold Contractor responsible for such compliance as it relates to areas of the Arena Premises other than the Facilities; and further provided, however, that, all structural modifications or additions to the Concession Premises required by any of the foregoing shall be made by Arena Manager, or shall be caused to be made by Arena Manager and shall not be made at Contractor's expense.

(c) Condition of the Concession Premises - Contractor agrees to conduct the Concession Operations in such a manner so as to reasonably preserve the condition of all areas of the Concession Premises to which Contractor shall have access in the course of the performance of its obligations hereunder. Contractor agrees to keep the Facilities and all other areas to be utilized by Contractor neat, clean and in a sanitary condition, and to follow all reasonable and appropriate directions of Arena Manager with respect thereto.

6. Sale and Delivery of Food and Beverage Items - In its performance of the terms of this Agreement, Contractor covenants that it shall at all times have available for sale sufficient quantities and varieties of Food and Beverage Items and shall provide sufficient and competently trained personnel so that the Concession Operations shall yield the maximum Gross Receipts commensurate with the opportunities presented. All Food and Beverage Items sold by Contractor, and the manner of serving and selling the Food and Beverage Items, shall be of a high quality. All deliveries of Food and Beverage Items and any other items used in connection with the Concession Operations shall be made only at the times and through the locations in the Arena reasonably designated by Arena Manager.

If the City elects to exercise its rights under the Arena Management Agreement to sponsor a City Revenue Event or a Community Event at the Arena and Arena Manager notifies Contractor of the scheduling of such event, then if it is commercially reasonable for the City to do so in order to attract such event, the distribution (without charge) of food and beverage samples by a licensee (those persons or entities authorized to use the Arena pursuant to a license with the Arena Manager entered into at the request of the City) for such event shall be permitted during such event; provided, however, that the Arena Manager and Contractor agree that it is commercially reasonable that with respect to any such event (a) sample sizes shall be approximately two (2) ounces for food items and four (4) ounces for beverages, and shall be distributed one per patron per category, and (b) such licensee shall only be permitted to distribute such items on the general concession concourse level at the Arena. Notwithstanding the foregoing, licensees shall not be permitted to distribute samples, unless prior to such distribution such licensee: (i) has agreed, in a writing satisfactory to Arena Manager, (a) to remove and properly dispose of all trash and garbage generated by its activities, (b) to conduct its operations in a manner that does not materially interfere with Contractor's conduct of the Concession Services, and (c) to indemnify Contractor from any claim, loss or liability resulting from or arising out of such licensee's activities; and (ii) has provided to Arena Manager and Contractor proof of general liability insurance in such amounts and types of coverage as is reasonably required by Arena Manager and Contractor, which insurance names Contractor and the Team, City and Arena Manager as additional insureds.

7. Employees and Agents

(a) Conduct and Supervision of Employees and Agents - Contractor agrees that it

shall hire, train, supervise and regulate all persons employed by it in the conduct of the Concession Operations so that they are aware of, and continuously practice, a high standard of cleanliness, courtesy and service required and customarily followed in the conduct of similar operations. Contractor shall use its reasonable, good faith and diligent efforts to assure that its employees shall (1) be neatly and cleanly uniformed, (2) maintain personal cleanliness, (3) be polite and courteous and (4) with respect to non-management employees, wear identification badges that are (A) reasonable in light of identification and security concerns and (B) unobtrusive and consistent with the uniforms worn by the Contractor's employees. Contractor shall hire and at all times employ an experienced general manager who shall be subject to Arena Manager's reasonable approval and who shall be available to, shall consult with, and shall regularly report to Arena Manager regarding the conduct of the Concession Operations.

All Contractor employees involved in the sale and service of alcoholic beverages shall be trained by Contractor in effective alcoholic beverage service and awareness. This training may include, without limitation, policies and procedures developed by Contractor dealing with alcohol management and a nationally-recognized program such as "Techniques For Effective Alcohol Management" ("TEAM") or "Techniques For Intervention Procedures By Servers of Alcohol" ("T.I.P.S.").

Contractor may, at its expense, adopt a program to enter into subcontract arrangements with various local community service clubs and other non-profit organizations which will be allowed to staff certain locations in the Arena Premises. Contractor will ensure that any representatives of such clubs and organizations will be suitably uniformed, trained and supervised in accordance with the requirements imposed by Contractor on its employees.

- (b) Cooperation with Other Employees - Contractor agrees to cause its employees to reasonably cooperate in the use of the Common Areas. In this regard, Contractor agrees to cause its employees to cooperate in all other reasonable manners with all employees and agents of Arena Manager and with third parties performing services at the Arena.
- (c) Hiring and Employment Practices - Contractor agrees that in the conduct of the Concession Operations it will not discriminate or permit discrimination in its hiring or employment practices on the basis of any federal, state or local impermissible grounds. In connection with the performance of its obligations under this Agreement, Contractor shall not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, creed, color, religion, sex, age, national origin or ancestry, sexual orientation, or disability; and Contractor agrees to insert the foregoing provision in all subcontracts hereunder. Upon receipt of notice from

Arena Manager of any reasonable and significant objection to any of Contractor's employees, including the general manager, the employment of such person at the Arena will be discontinued and a suitable person will be promptly substituted; provided, however, the Arena Manager acknowledges that its right to require replacement of an employee employed by Contractor is expressly subject to considerations and restrictions imposed upon Contractor by any federal, state or local statute, law, code, regulations or ordinance, by any Contractor employment policies or practices, by any collective bargaining agreement or other contract affecting such employee; provided, further, however, that Contractor shall promptly inform Arena Manager of the existence of any such policy or practice, collective bargaining agreement or contract and provide descriptions or copies, if permissible, thereof at the request of Arena Manager.

- (d) Uniforms - The uniforms to be worn by Contractor's employees shall be designed by the Contractor, approved by the Arena Manager (such approval not to be unreasonably withheld) and provided by Contractor. To the extent that the cost of such uniforms exceeds the highest cost of Contractor's uniform costs at other reasonably similar facilities operated or managed by Contractor or its affiliates, the Arena Manager agrees to pay such excess costs. Contractor shall replace the uniforms as reasonably required by Arena Manager to maintain a first class operation consistent with current NHL standards. Contractor shall be responsible for the cleaning and maintenance of such uniforms in first class condition.
8. Licenses and Permits - Contractor shall obtain and maintain in force during the Term, all required food, liquor and other licenses and permits and renewals thereof and shall cause to be paid all fees and taxes which may be due and owing from time to time to federal, state, local or municipal authorities related to the Concession Operations. Contractor shall be the named licensee under all such licenses and permits and Arena Manager, at no cost to Arena Manager, shall do all acts or things that are necessary in order for Contractor to obtain all such licenses and permits. Throughout the Term, Arena Manager shall, at its sole cost and expense, maintain all other licenses and permits which may be required for the operation of the Arena. At all times, Arena Manager shall comply with the restrictions, rules and conditions of all such licenses and permits.
9. Collections and Payments of Taxes and Other Items
- (a) Payment of Taxes - As set forth more fully in Section 17, Contractor agrees to timely pay, from Gross Receipts, all sales, excise, employment and similar taxes relating to the Concession Operations.
- (b) Cash Handling and Cash Management Policies - In connection with the conduct of the Concession Operations, Contractor agrees to employ reasonable and appropriate internal control procedures to protect against the misappropriation of cash funds, which procedures shall be subject to the reasonable approval of Arena

Manager. In addition, Contractor agrees to deposit all cash Gross Receipts on a daily (except for Saturday and Sunday) basis, as feasible, in a federally insured depository institution mutually acceptable to Arena Manager and Contractor.

10. Use of Facilities

- (a) Access to Facilities - Except as otherwise set forth in Sections 33 and 34, access to the Concession Premises shall be limited to the authorized representatives of, and other persons designated by, Arena Manager and Contractor for the purpose of the reasonable exercise of Arena Manager's and Contractor's rights and obligations hereunder.
- (b) Signs, Displays and Advertising - Contractor agrees (i) that all signs and displays, and the content and graphics thereof, to be utilized by Contractor at the Arena Premises shall be subject to the prior reasonable approval of Arena Manager, and (ii) as more fully set forth in Section 18 below, Contractor has no right under this Agreement to enter into sponsorships with providers of Food and Beverage Items with respect to payment for the use or display of such providers' signs, displays or advertising. Contractor may use its name and logo and that of any affiliate of Contractor, as well as the name and logo of Arena Manager, that of any affiliate of Arena Manager, and the name by which the Arena is known in the menus and similar items used in connection with the Concession Operations. In addition, Contractor may, in a reasonable and tasteful fashion, promote its affiliation with the Team, Arena Manager, the Arena and the services provided by Contractor under this Agreement in Contractor's and its affiliates' corporate stationery, brochures and similar promotional material.

11. Definition of Gross Receipts

- (a) As used in this Agreement, the term "Gross Receipts" shall mean all receipts actually received by Contractor from sales made or services rendered in the Concession Operations; provided, however, for purposes of determining Commissions pursuant to Section 12 below, Gross Receipts shall not include any (i) service charges or gratuities (but not including as service charges or gratuities any amounts which would constitute gross receipts for purposes of applicable Arizona transaction privilege taxes), (ii) city, county, state or federal use, excise or similar tax imposed on the sale or use of the Food and Beverage Items collected and paid to applicable taxing authorities by Contractor, (iii) any service or discount charges on credit card sales, (iv) Subcontractor Net Receipts (provided nonetheless that Contractor shall pay Commissions thereon as set forth in Section 12(a)(i) below), and (v) receipts from food and beverage services provided at a discount as provided for in Section 12(a)(viii).

- (b) Arena Manager and Contractor agree that it may be desirable to sell, or to arrange for the sale of, prepared food products ("Branded Products") of nationally or regionally advertised companies, such as Taco Bell® and Pizza Hut®, in the Arena. If the Arena Manager requests that such Branded Products be offered for sale at the Arena, the Arena Manager shall pay all Branded Product Fees incurred by Contractor. If the Contractor requests that such Branded Products be offered for sale at the Arena, then Contractor shall pay all Branded Product Fees without reimbursement by the Arena Manager. In any event, the Branded Product Fees shall be excluded from Gross Receipts. Branded Product Fees shall include but not be limited to any commissions, license fees, marketing fees, leasing fees, royalties, advertising fees or other fees paid or payable to the sellers of such Branded Products, portions of the purchase price for such Branded Products retained by the sellers of such Branded Products or the difference between the product and labor costs of providing such Branded Products and the cost of similar products and labor normally available to Contractor (collectively, "Branded Product Fees").

12. Commissions

- (a) Commissions - As consideration for the Team's grant of the exclusive rights and privileges to Contractor pursuant to this Agreement, and as the sole compensation due and owing from Contractor to the Team, Contractor agrees to pay Arena Manager, as the Team's designee, the following percentages of Gross Receipts (the increasing percentages referred to herein shall be incremental and shall not be retroactive to the first dollar of Receipts) derived from the Concession Operations (collectively, the "Commissions"). The dollar amounts of Gross Receipts used to specify each tier of a specific percentage Commission shall be increased annually by the increase in the Consumer Price Index for all goods for the greater Phoenix metropolitan area (the "CPI") over the prior year, using these dollar amounts for the Contract Year starting on October 1, 2003 and increasing thereafter starting with the increase of the CPI for 2004 over the CPI for 2003.
- (i) With respect to all events at the Arena Premises, other than events that the Arena Manager has identified in writing as "Community Events" under the Arena Management Agreement and at which (a) attendance is less than fifty percent (50%) of maximum Arena attendance when configured for a regular season hockey game and (b) alcoholic beverages will not be served at a level comparable to alcoholic beverage service for a regular season hockey game ("Negotiated Community Events"), Commissions shall be determined based on the following table:

Regular Concessions Gross Receipts

Commissions

Up to \$5,000,000	39.0%
\$5,000,001 to \$7,500,000	40.0%
\$7,500,001 to \$8,500,000	42.0%
In excess of \$8,500,001	47.0%

Club Seats/ Bar Lounge Gross Receipts

Commissions

Up to \$1,000,000	20.0%
\$1,000,001 to \$1,500,000	25.0%
In excess of \$1,500,001	30.0%

Suites and Catering Gross Receipts

Commissions

Up to \$1,500,000	12.5%
\$1,500,001 to \$2,000,000	15.0%
In excess of \$2,000,001	20.0%

Proposed Restaurant Gross Receipts

Commissions

Up to \$500,000	10.0%
\$500,001 to \$1,000,000	12.5%
In excess of \$1,000,001	15.0%

Subcontractor Net Receipts

Commissions

50.0%

(ii) With respect to Negotiated Community Events, the Arena Manager, in consultation with the City, shall negotiate with Contractor and mutually agree upon the amount of the Commissions on a case-by-case basis.

(iii) As used herein, the terms below shall have the following meanings :
Club Seats/Bar Lounge- all Gross Receipts generated from the provision of food and beverages in the club seats and bar lounge at the Arena as shown on Exhibit 3(b).

Proposed Restaurant – all Gross Receipts generated from the provision of food and beverages in the proposed game-day restaurant location at the Arena Premises which would feature a customary and standard in-arena menu and dining style (“Proposed Restaurant”). The parties acknowledge that as of the date of execution, they have not determined whether to provide the proposed restaurant facility at the Arena Premises, or if such restaurant is provided, except as provided above, the concept, model and service

level of such restaurant. However, if such contemplated restaurant is created, Contractor shall have the exclusive right to manage and operate same and the Commissions described above shall apply unless adjusted pursuant to paragraph 12(a)(iv) below. All furniture, fixtures, equipment and servicewares shall be provided by the Arena Developer or Arena Manager, depending on the time at which a Proposed Restaurant is built out. The obligation for build-out, furniture, fixtures, equipment and servicewares for a Proposed Restaurant if added to the Arena Premises before Substantial Completion (as defined in the Arena Development Agreement) of the Arena must be added to the Approved Arena Development Budget, in accordance with the Arena Development Agreement, and fully funded on terms acceptable to the City.

Regular Concessions - shall mean all Gross Receipts generated from the provision of food and beverages from permanent or portable concession stands or roving vendors to individual customers at the Arena Premises, excluding sales from catering type services in the plaza.

Subcontractor Net Receipts - shall mean all commissions received by Contractor from its subcontractors, less all expenses (including, but not limited to Branded Product Fees and labor costs).

Suites and Catering Gross Receipts- shall mean all Gross Receipts generated from any prearranged food and beverage function at the Arena Premises of multiple customers, such as parties and banquets, where payment for the entire function rests with one individual or company and all Gross Receipts generated from the provision of food and beverages in the suites at the Arena.

(iv) Adjustment to Commissions for the Proposed Restaurant to Accommodate Enhanced Operations – The parties acknowledge and agree that, except as described above, the Proposed Restaurant concept, model and service levels have not been finalized by the parties, and that the proposed Commission structure for the Proposed Restaurant could change based upon the finalization of such items if such items are substantially enhanced from customary and standard operations for an in-arena restaurant at other arenas substantially similar to the Arena (such enhanced operations, hereinafter “Enhanced Operations”). Prior to the commencement of any Enhanced Operations at the Proposed Restaurant, and in connection with the finalization of plans for such Enhanced Operations, upon the request of Contractor, the parties will meet to discuss the following factors regarding the Enhanced Operations of the Proposed Restaurant at the Arena Premises, in addition to the concept, model, and service levels: (1) financial performance of the Proposed Restaurant; (2) financial performance of the non-game day operations as relates to the Proposed Restaurant, (3) trends, developments, changes and other significant factors which have impacted or may be anticipated to impact the operations at the Proposed Restaurant and (4) factors which may have an impact on either party’s reasonable expectations and assumptions as to the operations of the Proposed Restaurant, and the financial or other benefits to be derived from them. In addition, to the extent

either party, in its reasonable, good faith judgment determines that such Enhanced Operations factors have impacted or may impact such party's reasonable expectations as to the operations of the Proposed Restaurant and the financial or other benefits to be derived from them, the parties also will negotiate in good faith mutually acceptable amendments and modifications to adjust the Commissions payable on Gross Revenues from the Proposed Restaurant operations, to enable the parties' expectations to be achieved through the conduct of the Enhanced Operations of the Proposed Restaurant. Any such adjustment to Commissions shall be considered a modification or amendment to this Agreement in accordance with Section 26. While both parties covenant and agree to participate in such negotiations in good faith and in the spirit of mutual cooperation, neither party shall have any liability to the other, and this Agreement shall be otherwise unaffected, in the event the parties fail to agree on mutually acceptable terms for Enhanced Operations, except that the Arena Manager shall thereafter be permitted to engage a third party to manage and operate the Enhanced Operations and Contractor shall make reasonable amendments to its exclusive use of the Facilities to enable such third party to do so.

(v) Alcoholic Beverage Prohibition - Adjustment to Commissions - In the event the Contractor is prohibited completely from offering alcoholic beverages for sale at the Arena or its ability to serve alcoholic beverages is substantially curtailed (other than as a result of the fault of Contractor), Arena Manager and Contractor shall promptly negotiate in good faith to determine an equitable adjustment in the commission rates to compensate Contractor for the effect of such prohibition. The amount of the adjustment shall be negotiated and determined to provide Contractor with the continued ability to receive a fair and reasonable rate of return for the duration of the prohibition. It also is understood that an equitable adjustment in the commission rates can occur regardless of whether the prohibition is imposed by the Team, Arena Manager, governmental authorities, or any other party having the right to do so. The parties agree that the adjustments contemplated by this paragraph shall not apply if the following paragraph (vi) applies.

(vi) Suspension or Revocation of Contractor's Alcoholic Beverage Licenses - In the event Contractor's alcoholic beverage licenses are suspended or revoked, due to Contractor's actions, the Team and Arena Manager shall have the right to suspend Contractor's rights hereunder only with respect to the sale of alcoholic beverages which otherwise would be allowed under the suspended or revoked license, so that Contractor shall continue to provide its Concession Operations in all other respects. Contractor shall, within thirty (30) days and at its sole cost and expense, retain a third party which is reasonably acceptable to Arena Manager and which possesses all necessary alcoholic beverage licenses to operate pursuant to the terms of this Agreement any area requiring alcoholic beverage service until Contractor shall have reinstated or obtained substitute liquor licenses. For any period of time during which Contractor (or such third party) has been unable to provide alcoholic beverage service at the level required by this Agreement as a result of the suspension or revocation of Contractor's alcoholic beverage licenses, Contractor shall pay to Arena Manager an amount necessary to reimburse Arena Manager

for the revenues lost under this Agreement resulting from the inability to serve alcoholic beverages. In the event that within the thirty-day period described above Contractor has neither retained a third party nor had its liquor licenses reinstated or substituted, then Arena Manager shall have the right to (a) retain a third party which is reasonably acceptable to Contractor and which possesses all necessary alcoholic beverage licenses to operate pursuant to the terms of this Agreement any area requiring alcoholic beverage service, or (b) declare Contractor to be in default and terminate this Agreement pursuant to the terms of Section 14 hereof, without reference to any cure periods set forth therein.

(vii) Adjustment to Term Due to NHL Strike or Work Stoppage - In the event a strike or labor dispute involving the NHL's players results in the loss of ten (10) consecutive Team home games in a single season, or over two successive seasons, Contractor shall have the right and option of extending the Term for a period of one (1) Contract Year. In addition, in the event a strike or labor dispute involving the NHL's players results in the loss of more than one-half of the Team home games in any given season and more than one half of the Team home games in another season, Contractor shall have the right and option of extending the Term for a period of one (1) Contract Year for each season so affected.

(viii) Discounts - Contractor shall provide food and beverage services to the Team and Arena Manager, when reasonably requested by the Team or Arena Manager for (i) press and media dining, and (ii) dining for the Team's and Arena Manager's on-duty event staff, at a price equal to Contractor's cost incurred in connection therewith, plus ten percent (10%) of such costs; provided, that the aggregate retail value of such discounted services shall not exceed \$100,000 in any Contract Year. Any excess discounted services amount not used in any Contract Year may not be carried forward to subsequent Contract Years. No Commissions will be payable on such discounted services provided pursuant to this Section 12(a)(viii).

13. Accountings - Payment of Commissions

- (a) Contractor shall deliver to the Arena Manager within two (2) business days a copy of the summary of estimated Gross Receipts for such operating day as described in the Standard Operating Procedures. Within fifteen (15) days following the last day of each Accounting Period during the Term, Contractor shall provide Arena Manager with a statement detailing all Gross Receipts from the Concession Operations generated during such Accounting Period (separated by type of event and area), together with a statement of the applicable Commissions due for such Gross Receipts (collectively, the "Statement"). When Contractor delivers the Statement, Contractor shall also pay to Arena Manager or its designee the appropriate Commissions for such Accounting Period. Within sixty (60) days following the conclusion of each Contract Year during the Term, Contractor shall provide Arena Manager with a complete accounting (collectively, the "Final Statement"), setting forth the calculation of the annual Gross Receipts (separated

by type of event and area), and the total Commissions due for the applicable period, which statement shall be certified by Contractor's Chief Financial Officer as accurate and prepared in accordance with Contractor's past practices and obligations hereunder. If any payment is made more than five (5) days after notice from Arena Manager that any payment is late, Contractor shall pay Arena Manager daily interest commencing on the first date such amount is overdue at a rate equal to 2% over the published prime rate published in The Wall Street Journal under a heading presently entitled "Money Rates", such rate on such payment to be adjusted at the end of each calendar quarter annually. At any time during the Term, and for a period of three (3) calendar years thereafter, Arena Manager and its designated representatives shall have the opportunity, at their sole cost and expense (subject to the provisions set forth below), to inspect the books and records (including cash register tapes) of Contractor to verify the figures contained in each Statement or Final Statement, as the case may be, and all such books and records shall be maintained for a period of at least five (5) years. In the event that Arena Manager disputes such figures, Arena Manager shall deliver a written notice of such dispute to Contractor ("Dispute Notice"). If Arena Manager and Contractor are unable to resolve such dispute within ninety (90) days following the delivery of the Dispute Notice, Arena Manager and Contractor shall immediately submit the dispute for resolution to a nationally recognized public accounting firm to be mutually agreed to by Arena Manager and Contractor (the "Accounting Firm"). The determination of Gross Receipts and of Commissions in accordance with the terms hereof made by the Accounting Firm after a full and complete inspection of Contractor's books and records, shall be final and binding upon the parties. If the Accounting Firm determines that the computation of Gross Receipts or Commissions contained in any Statement or the Final Statement, as the case may be, is inaccurate, then either Arena Manager shall promptly pay to Contractor, or Contractor shall promptly pay to Arena Manager, such amount as is necessary to reflect the adjustment of Gross Receipts or Commissions based upon the Accounting Firm's determinations (the "Adjustment Amount"). If the Accounting Firm determines that the computation of Commissions contained in any Statement or the Final Statement, as the case may be, is understated by \$50,000.00 or more (as adjusted by the Consumer Price Index for the Phoenix metropolitan area), then, in addition to the Adjustment Amount, Contractor shall pay the entire cost of the Accounting Firm's engagement. In all other events, the cost of the Accounting Firm's engagement and the costs of Arena Manager's inspection of the books and records of Contractor shall be borne by Arena Manager. All of Contractor's books and records relating to Gross Receipts from Operations shall also be subject to audit by the City, the Team, the Retail/Residential Developer and the Entertainment Developer; provided, however, that Arena Manager shall ensure that such parties agree that the terms of Section 30 of this Agreement shall apply to any such party. "Accounting Period" shall mean the two accounting periods of four weeks each and one accounting period of five weeks which occur in each quarter.

- (b) All Commission payments to be made under this Agreement that are attributable to an event that Arena Manager has identified in writing to Contractor as a "Community Event" under the terms of the Arena Management Agreement shall be shown as a separate line item on the Statement.

14. Scope / Duration / Termination / Default

- (a) The Team and Arena Manager hereby grant Contractor the right to be the exclusive provider of all management services for the Concession Operations for a period of not less than fifteen (15) years (the "Term"), commencing on the date of the first event at the Arena which is (a) open to the general public and at which food and beverages are sold by Contractor; and (b) where tickets are offered for sale to the general public (the "First Public Event") and, unless otherwise extended by Arena Manager pursuant to the terms of this Agreement, expiring at 12:01 a.m. on the fifteenth (15th) anniversary of the June 30 occurring first after the First Public Event. For purposes of this Agreement, the term "Contract Year" shall mean the twelve (12) month period commencing on July 1st and expiring on the next ensuing June 30th.
- (b) The Team shall have the right to terminate this Agreement and Contractor services for all of the Concession Operations upon the occurrence of any default by Contractor and upon ten (10) days prior written notice to Contractor specifying the nature of such default. A default shall be defined as the occurrence of any one (1) or more of the following:
 - (i) Contractor shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, or shall seek, consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of Contractor or of all or any substantial part of its properties (the term "acquiesce", as used herein, being deemed to include, but not be limited to, the failure to file a petition or motion to vacate or discharge any order, judgment or decree providing for such appointment within the time specified by law) or a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Contractor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, and Contractor shall consent to or acquiesce in the entry of such order, judgment or decree, or the same shall remain unvacated and

unstayed for an aggregate of sixty (60) days from the day of entry thereof, or any trustee, receiver, conservator or liquidator of Contractor of all or any substantial part of its properties shall be appointed without the consent of or acquiescence of Contractor and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days; or

- (ii) Contractor fails to perform any of its material services or material obligations in the manner or within the time required under this Agreement or commits or permits a breach of, or default in, any of its duties, liabilities or obligations hereunder and fails to fully cure or remedy such failure, breach or default within thirty (30) days after written notice from the Team or Arena Manager to Contractor specifying, in detail, the nature of such failure, breach or default or if such breach or default cannot reasonably be cured within thirty (30) days, fails to commence such cure or remedy within said thirty (30) day period and fails to diligently prosecute such cure or remedy to completion as soon as is reasonably possible thereafter.

Upon termination of this Agreement pursuant to subparagraphs (i) or (ii) above, which termination shall be deemed to occur at the conclusion of any continuing service by Contractor pursuant to paragraph (c) below, Contractor shall only be obligated to pay the Commissions for Gross Receipts generated and actually collected prior to termination in accordance with Paragraph 12 above.

- (c) In the event that all of Contractor's services are terminated as provided in this Paragraph 14, Contractor shall, at the request of Arena Manager, continue to serve as manager of the Concession Operations until a successor is selected and commences work in the Concession Premises or until such earlier date as Arena Manager shall specify, provided that Contractor shall not be obligated to so continue as Contractor for a period in excess of ninety (90) days and further provided that Contractor shall be permitted to set off against Commissions due to Arena Manager the actual cost of any usable inventory remaining at the end of such period of operation and retained by Arena Manager. The terms and conditions of this Agreement shall continue to be fully applicable during such period as if no termination had occurred.
- (d) Contractor shall have the right to terminate this Agreement upon the occurrence of any of the following events of default by the Team, Arena Developer or Arena Manager and upon ten (10) days prior written notice to the Team, Arena Developer and Arena Manager specifying the nature of such default:
 - (i) The Team shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer

seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, or shall seek, consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of the Team or of all or any substantial part of its properties (the term "acquiesce", as used herein, being deemed to include, but not be limited to, the failure to file a petition or motion to vacate or discharge any order, judgment or decree providing for such appointment within the time specified by law) or a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Team seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, and the Team shall consent to or acquiesce in the entry of such order, judgment or decree, or the same shall remain unvacated and unstayed for an aggregate of sixty (60) days from the day of entry thereof, or any trustee, receiver, conservator or liquidator of the Team or of all or any substantial part of its properties shall be appointed without the consent or acquiescence of the Team and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days;

- (ii) The Team, Arena Developer or Arena Manager fails to perform any of their respective material obligations or breaches any of their respective representations or warranties under this Agreement or fails to make payments due to Contractor hereunder and no party fully cures or remedies such failure within thirty (30) days after written notice from Contractor to the Team, Arena Developer and Arena Manager specifying, in detail, the nature of such failure or default, or if such failure or default cannot reasonably be cured within thirty (30) days, no party commences such cure or remedy within said thirty (30) day period and diligently prosecutes such cure or remedy to completion as soon as is reasonably possible thereafter, specifically recognizing that such failure or default by any party can be cured by any other party; or
 - (iii) The Team's NHL franchise, currently the Phoenix Coyotes, fails to play all of its regular season home games at the Arena and/or the franchise relocates to another facility.
- (e) In the event that this Agreement is terminated prior to the expiration of the Term, the Team hereby agrees, as a condition precedent to such earlier termination, to pay Contractor, in a single lump sum payment, an amount equal to the sum of (A) the unamortized value of Contractor's Capital Grant, which amortization shall be based on a straight-line one hundred eighty (180) month amortization beginning

on the date of the First Public Event, and (B) the unamortized value of Contractor's reasonably documented start-up expenses, not to exceed \$700,000 ("Start-Up Costs), which amortization shall be based on an accelerated forty-eight (48) month amortization beginning on the First Public Event, with 30% of such amount to be amortized over the first twelve (12) months, an additional 30% of such amount to be amortized over the next twelve (12) months, an additional 20% of such amount to be amortized over the next twelve (12) months and the final 20% to be amortized over the final twelve (12) months plus any other amounts due to Contractor (collectively, "Termination Payment"). All calculations of the unamortized value shall be prepared by the Contractor, and such calculations shall be conclusive in the absence of manifest error. The Termination Payment shall be paid to Contractor not later than ten (10) days following the date of termination of this Agreement; provided, however, that (i) in the event that this Agreement is terminated by Contractor other than in accordance with paragraph 14(d) above, then the Team shall have no obligation to make any Termination Payment; and (ii) in the event that this Agreement is terminated by the Team in accordance with paragraph 14(b)(ii) above and the Team proves in a court of competent jurisdiction without any right of appeal(s) that Contractor's failure to perform its material obligations under this Agreement was willful and done with the sole purpose of having this Agreement terminated by the Team and obtaining the Termination Payment under this Agreement, then the Team shall only be required to pay forty percent (40%) of the Termination Payment that would otherwise be payable and such payment will not be due until six (6) months following the date of such termination. If the Termination Payment is eliminated pursuant to clause (i) of the preceding sentence or reduced pursuant to clause (ii) of the preceding sentence, then Contractor hereby agrees, as a condition precedent to such termination, to pay to the Team, in a single lump sum payment, an amount equal to the unamortized value of the Team's reasonably documented direct or indirect expenses related to the retention and start-up of a replacement for Contractor; provided, however, such amount shall not exceed twenty-five thousand dollars (\$25,000). Contractor's receipt of the Termination Payment shall be a precondition to the effective termination of this Agreement.

- (f) In the event that Contractor does not receive the Termination Payment from the Team at the time provided therefor, Contractor may, at its option, exercise the following remedies: (i) remain at the Arena and continue to provide the Concessions Operations, and the terms and conditions of this Agreement shall continue to be fully applicable during such period as if no termination had occurred, including the payment of Commissions hereunder with no right of set off, and/or (ii) institute proceedings against the Team for all amounts owing.
- (g) Notwithstanding anything in this Agreement to the contrary, neither the Team, Arena Developer, Arena Manager nor Contractor shall be entitled to seek, claim or collect damages in excess of the actual and direct damages (including in the

definition of actual damages both business interruption claims and costs of retaining a replacement for Contractor) actually incurred or sustained as a result of a breach or violation of this Agreement. Accordingly, the Team, Arena Developer, Arena Manager and Contractor hereby expressly waive any right to seek, claim or collect any punitive, indirect, special, speculative or consequential damages in connection with, or related to, a breach or violation of this Agreement entered into among the Team, Arena Developer, Arena Manager and Contractor.

- (h) Except and to the extent otherwise required by law or stock exchange regulation, and provided that the party required to exercise the foregoing exceptions uses reasonable efforts to deliver prior written notice to the other party, any public announcements made upon the expiration or earlier termination of this Agreement directly related to this Agreement shall be reasonably agreed upon in advance by the Team, Arena Developer, Arena Manager and Contractor.
- (i) Right of Re-Entry - Except as provided above in Section 14(f), the Team and Arena Manager shall, as an additional remedy upon the giving of notice of termination, have the right to re-enter the Concession Premises upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Contractor under this Agreement, and shall in no event constitute an acceptance or surrender.
- (j) City's Right to Cure and Notice Requirements. In order to provide for the City's right to cure this Agreement as set forth in the Arena Management Agreement, Contractor agrees as follows: (i) any default asserted against the the Team, Arena Developer or Arena Manager by Contractor shall require Contractor to not only provide notice to the Team, Arena Developer and Arena Manager, as set forth in paragraph (d) above, but also copies of the notice to the Retail/Residential Developer, the Entertainment Developer and the City at the addresses set forth in Section 29; (ii) the City shall have until the expiration of the cure time permitted the Team, Arena Developer and Arena Manager to provide written notice to Contractor that it is considering whether to cure the default and (iii) if the City gives such written notice, then the City shall have ten (10) days after the expiration of the cure time permitted the Team, Arena Developer and Arena Manager to exercise the City's right to cure the asserted default. If the City fails to timely give such notice of exercise its right to cure, the City shall have waived such right.

15. Indemnity

- (a) To the fullest extent permitted by law, Contractor hereby indemnifies, defends,

protects and forever holds the Team, the Arena Developer, the Arena Manager, the Retail/Residential Developer, the Entertainment Developer and the Team and their respective owners, shareholders, officers, directors, partners, members, employees, agents and representatives (collectively, the "Arena Manager's Indemnitees") harmless from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees, paraprofessional fees and court-related costs), such indemnity covering, but not being limited to, bodily injury, sickness, disease, death or injury to or destruction of tangible property, but in all events, except as expressly provided below, only to the extent arising (i) out of the gross negligence or any willful misconduct, omission or breach of its obligations under this Agreement by Contractor or by any of its officers, directors, agents or employees, in connection with this Agreement or Contractor's performance of its duties or authority hereunder or (ii) any claims against Arena Manager's Indemnitees by Contractor's employees as a result of their engagement in the Operations. The indemnification obligation contained in this Paragraph 15(a) shall expressly include, but will not be limited to, claims against Arena Manager's Indemnitees by Contractor's employees and damage which occurs as a result of the consumption of Food and Beverage Items sold by Contractor at the Arena. Notwithstanding the foregoing, this Paragraph 15(a) does not require Contractor to indemnify, defend, protect or hold Arena Manager or Arena Manager's Indemnitees harmless for claims, demands, losses, liabilities, actions, lawsuits or other proceedings, judgments, awards, costs and expenses all to the extent resulting from (i) the willful or negligent acts or omissions of Arena Manager or any of Arena Manager's Indemnitees or any contractors hired or retained by any of them, (ii) the willful or negligent acts or omissions of the Arena's construction contractor, any construction subcontractors, the Arena architect or any other persons involved in the design, construction, renovation or modification of the Arena (including, but not limited to, the Concession Premises), or (iii) any damages, claims or liabilities resulting from any part of the Arena other than the Facilities, provided that such damages, claims or liabilities are not caused by Contractor or any of its employees. If any action or proceeding (including any governmental investigation) shall be brought or asserted against Arena Manager or Arena Manager's Indemnitees, in respect of which indemnity may be sought from Contractor, Arena Manager and Arena Manager's Indemnitees, as the case may be, shall promptly notify Contractor in writing, provided that the timing of such notice shall not affect this indemnity unless Contractor is materially and adversely affected. Contractor shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to Arena Manager and Arena Manager's Indemnitees, as the case may be, and the payment of all expenses. If Contractor assumes the defense of such action or proceeding, any such indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such

indemnified party unless (1) Contractor, in its sole and absolute discretion, has agreed in advance and in writing to pay such fees and expenses, (2) Contractor has failed to assume the defense of such action or proceeding or employ counsel reasonably satisfactory to the indemnified party in any such action or proceeding or (3) to the extent that the applicable Arena Manager's Indemnitee in good faith determines that a conflict of interest exists between such Arena Manager's Indemnitee and Contractor requiring separate representation or that the Contractor or its counsel is not prosecuting the defense with reasonable diligence, Contractor agrees that in any action, suit or proceeding brought against such Arena Manager's Indemnitee, such Arena Manager's Indemnitee may be represented by counsel of its choice without affecting or otherwise impairing Contractor's indemnity(ies) under this Agreement, and, to the extent fees and disbursements of such Arena Manager's Indemnitee's counsel are reasonable and reasonably incurred in protecting the Arena Manager's Indemnitee's interest, to pay such fees and disbursements. Contractor shall not be liable for any settlement of any such action or proceeding effected without its written consent, but if there be a final judgment for the plaintiff in any such action or proceeding, or if any such action or proceeding shall be settled and Contractor shall have consented to such settlement, Contractor agrees to indemnify, protect, defend and hold harmless both Arena Manager and Arena Manager's Indemnitees from and against any loss or liability by reason of such judgment or settlement.

- (b) To the fullest extent permitted by law, the Team and Arena Manager, jointly and severally, hereby indemnify, defend, protect and forever hold Contractor and its affiliates, and their respective shareholders, officers, directors, employees, agents and representatives (collectively, the "Contractor's Indemnitees") harmless, from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees, paraprofessional fees and court-related costs), such indemnity covering, but not limited to, bodily injury, sickness, disease, death or injury to or destruction of tangible property, but in all events, except as expressly provided below, only to the extent arising out of the gross negligence or any willful misconduct or omission or breach of any obligations hereunder by any of the Team, Arena Developer or Arena Manager or by any of their respective officers, directors, agents or employees, in connection with this Agreement. The indemnification obligation shall also include an indemnification of Contractor's Indemnitees from and against any claims of the Team's or Arena Manager's employees. Notwithstanding the foregoing, this Paragraph 15(b) does not require the Team or Arena Manager to indemnify, defend, protect or hold Contractor or Contractor's Indemnitees harmless for claims, demands, losses liabilities, actions, lawsuits or other proceedings, judgments, awards, costs and expenses, all to the extent resulting from the willful or negligent acts or omissions of Contractor or any of Contractor's Indemnitees. If any action or proceeding (including any governmental investigation) shall be brought or asserted against Contractor or

Contractor's Indemnitees, in respect of which indemnity may be sought from the Team and Arena Manager, Contractor and Contractor's Indemnitees, as the case may be, shall promptly notify the Team and Arena Manager in writing, provided that the timing of such notice shall not affect this indemnity unless either of the Team or Arena Manager is materially and adversely affected. The Team or Arena Manager, as they shall determine, shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to Contractor and Contractor's Indemnitees, as the case may be, and the payment of all expenses. If the Team or Arena Manager assumes the defense of such action or proceeding, any such indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such indemnified party unless (1) the Team or Arena Manager, as the case may be, in its sole and absolute discretion, have agreed in writing to pay such fees and expenses, (2) the Team or Arena Manager, as the case may be, has failed to assume the defense of such action or proceeding or employ counsel reasonably satisfactory to the indemnified party in any such action or proceeding, or (3) to the extent that Contractor in good faith determines that a conflict of interest exists between the Contractor and the Team or Arena Manager requiring separate representation or that the neither the Team nor Arena Manager or its counsel is prosecuting the defense with reasonable diligence, the Team and Arena Manager agree that in any action, suit or proceeding brought against Contractor, Contractor may be represented by counsel of its choice without affecting or otherwise impairing the Team's and Arena Manager's indemnity(ies) under this Agreement and, to the extent fees and disbursements of Contractor's counsel are reasonable and reasonably incurred in protecting the Contractor's interest, to pay such fees and disbursements. Neither the Team nor Arena Manager shall be liable for any settlement of any such action or proceeding effected without its written consent, but if there be a final judgment for the plaintiff in any such action or proceeding, or if any such action or proceeding shall be settled and the Team or Arena Manager, as the case may be, shall have consented to such settlement, the Team and Arena Manager agree to indemnify, protect, defend and hold harmless both Contractor and Contractor's Indemnitees from and against any loss or liability by reason of such judgment or settlement.

- (c) To the fullest extent permitted by law, the Arena Developer hereby indemnifies, defends, protects and forever holds the Team, Arena Manager and Contractor and their respective affiliates, and their respective shareholders, officers, directors, employees, agents and representatives (collectively, the "Non-Arena Developer Indemnitees") harmless, from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees, paraprofessional fees and court-related costs), such indemnity covering, but not limited to, bodily injury, sickness, disease, death or injury to or destruction of tangible property, but in all events,

except as expressly provided below, only to the extent arising out of the gross negligence or any willful misconduct or omission or breach of its obligations hereunder by the Arena Developer or by any of its officers, directors, agents or employees, in connection with this Agreement. The indemnification obligation shall also include an indemnification of the Non-Arena Developer Indemnitees from and against any claims of the Arena Developer's employees.

Notwithstanding the foregoing, this Paragraph 15(c) does not require the Arena Developer to indemnify, defend, protect or hold the Team, Arena Manager, Contractor or Non-Arena Developer Indemnitees harmless for claims, demands, losses liabilities, actions, lawsuits or other proceedings, judgments, awards, costs and expenses, all to the extent resulting from the willful or negligent acts or omissions of the Team, Arena Manager, Contractor or any of the Non-Arena Developer Indemnitees. If any action or proceeding (including any governmental investigation) shall be brought or asserted against the Team, Arena Developer, Contractor or Non-Arena Developer Indemnitees, in respect of which indemnity may be sought from the Arena Developer, the affected Non-Arena Developer Indemnitees, as the case may be, shall promptly notify the Arena Developer in writing, provided that the timing of such notice shall not affect this indemnity unless the Arena Developer is materially and adversely affected. The Arena Developer shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the affected Non-Arena Developer Indemnitees, as the case may be, and the payment of all expenses. If the Arena Developer assumes the defense of such action or proceeding, any such indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such indemnified party unless (1) the Arena Developer, in its sole and absolute discretion, has agreed in writing to pay such fees and expenses, (2) the Arena Developer has failed to assume the defense of such action or proceeding or employ counsel reasonably satisfactory to the indemnified party in any such action or proceeding, or (3) to the extent that the indemnified party in good faith determines that a conflict of interest exists between the indemnified party and the Arena Developer requiring separate representation or that the Arena Developer or its counsel is not prosecuting the defense with reasonable diligence, the Arena Developer agrees that in any action, suit or proceeding brought against a Non-Arena Developer Indemnitee, such indemnified party may be represented by counsel of its choice without affecting or otherwise impairing the Arena Developer's indemnity(ies) under this Agreement and, to the extent fees and disbursements of such indemnified party's counsel are reasonable and reasonably incurred in protecting the indemnified party's interest, to pay such fees and disbursements. The Arena Developer shall not be liable for any settlement of any such action or proceeding effected without its written consent, but if there be a final judgment for the plaintiff in any such action or proceeding, or if any such action or proceeding shall be settled and the Arena Developer shall have consented to such settlement, the Arena Developer agrees to

indemnify, protect, defend and hold harmless such Non-Arena Developer Indemnitees from and against any loss or liability by reason of such judgment or settlement.

- (d) Any monetary liability indemnified under Subparagraph (a), (b) or (c) above shall be reduced by the proceeds of insurance actually received by the indemnified party, it being understood that the decision of whether to submit a claim for insurance recovery shall be within the discretion of each party to this Agreement.

- (e) To the fullest extent permitted by law, the Team, Arena Developer, Arena Manager and Contractor, each on its own behalf only and not for the obligations of the others, hereby indemnifies, defends, protects and forever holds the City and its employees, elected officials, officers, agents, consultants and representatives (collectively, the "City's Indemnitees") harmless, from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees, paraprofessional fees and court-related costs), such indemnity covering, but not limited to, bodily injury, sickness, disease, death or injury to or destruction of tangible property, to the extent arising out of each of their performance of their rights and obligations under this Agreement. Notwithstanding the foregoing, this Paragraph 15(d) does not require any of the Team, Arena Developer, Arena Manager or Contractor to indemnify, defend, protect or hold the City or the City's Indemnitees harmless for claims, demands, losses liabilities, actions, lawsuits or other proceedings, judgments, awards, costs and expenses, all to the extent resulting from the willful misconduct or negligent acts or omissions of the City or any of the City's Indemnitees or each other. If any action or proceeding (including any governmental investigation) shall be brought or asserted against the City or the City's Indemnitees, in respect of which indemnity may be sought from the Team, Arena Developer, Arena Manager or Contractor, the City or the City's Indemnitees, as the case may be, shall promptly notify the Team, Arena Developer, Arena Manager and Contractor in writing, provided that the timing of such notice shall not affect this indemnity unless the party who is not so notified is materially and adversely affected. The Team, Arena Developer, Arena Manager or Contractor, as the case may be, shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the City and the City's Indemnitees, as the case may be, and the payment of all expenses. If the indemnifying party assumes the defense of such action or proceeding, any such indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such indemnified party unless (1) the indemnifying party, in its sole and absolute discretion, has agreed in writing to pay such fees and expenses, (2) the indemnifying party has failed to assume the defense of such action or proceeding or employ counsel reasonably satisfactory to the indemnified party in any such action or proceeding,

or (3) to the extent that the City in good faith determines that a conflict of interest exists between the City and the indemnifying party requiring separate representation or that the indemnifying party or its counsel is not prosecuting the defense with reasonable diligence, each of the Team, Arena Developer, Arena Manager and Contractor agrees that in any action, suit or proceeding brought against the City, the City may be represented by counsel of its choice without affecting or otherwise impairing the indemnifying party's indemnity(ies) under this Agreement and, to the extent fees and disbursements of the City's counsel are reasonable and reasonably incurred in protecting the City's interest, to pay such fees and disbursements. The indemnifying party shall not be liable for any settlement of any such action or proceeding effected without its written consent, but if there be a final judgment for the plaintiff in any such action or proceeding, or if any such action or proceeding shall be settled and the indemnifying party shall have consented to such settlement, each of the Team, Arena Developer, Arena Manager and Contractor agrees that the indemnifying party will indemnify, protect, defend and hold harmless both the City and the City's Indemnitees from and against any loss or liability by reason of such judgment or settlement.

(f) The provisions of this Paragraph 15 shall survive the termination of this Agreement for any reason.

16. Ownership in Concession Premises - Authority of Contractor - Contractor shall have no ownership rights in the Concession Premises, nor any claim of ownership with respect thereto, arising out of this Agreement or the performance of its services hereunder. This Agreement shall in no way be construed to authorize Contractor to engage in any brokerage services or activities of any similar nature relating to the Concession Premises.
17. Taxes and Contributions - Contractor assumes full and exclusive responsibility and liability for withholding and paying, as may be required by law, all federal, state and local taxes and contributions with respect to, assessed against, or measured by Contractor's earnings hereunder, or salaries or other contributions or benefits paid or made available to any persons retained, employed or used by or for Contractor in connection with its services, and any and all other taxes and contributions applicable to its services for which Contractor may be responsible under any laws or regulations, and shall make all returns and/or reports required in connection with any and all such laws, regulations, taxes, contributions and benefits.
18. Sponsorships - Contractor acknowledges that the Team and Arena Manager, and not Contractor, shall have the sole right to negotiate sponsorship arrangements with providers of Food and Beverage Items, including for the placement of signs, displays and advertising within the Concession Premises that go beyond what is normally installed on walls, menu boards and equipment to facilitate customer identification of the particular items being sold in the Concession Premises. The parties acknowledge that the City has advised each of them, by inclusion of this provision in this Agreement, that sponsorships

of Food and Beverage Items are subject to the City's rights pursuant to Section 19.24 of the Arena Management Agreement and, accordingly, are to be submitted to the City's designated outside counsel as provided in that section. Without limiting the foregoing sentence, Contractor acknowledges that the Team or Arena Manager may be party to a sponsorship arrangement(s) with respect to sales of products at the Arena, and the Contractor agrees to purchase said products for sale at the Arena, and will do so at cost in accordance with Contractor's purchasing arrangements with suppliers, if any. Contractor may also be required, as a result of an arrangement with a corporate sponsor, to purchase or sell other Food and Beverage Items which are required by the Team or Arena Manager; provided, however, that Contractor shall not be required to pay costs for such Food and Beverage Items in excess of costs set forth in its national contracts with such sponsors, if any, provided that if Contractor does not have a national contract with such sponsor, Contractor shall not be required to use such Food and Beverage Items if (i) to do so would have adverse economic effect on Contractor by obligating it to use such products at prices and/or other terms which are less favorable than comparable Food and Beverage Items unless the Team elects to reimburse Contractor for any economic loss incurred if such products are used, (ii) such Food and Beverage Items are of a quality that is less than reasonably comparable similar items ordinarily sold by Contractor or (iii) if Contractor does not have the capability to provide services due to the lack of equipment or specially trained personnel unless the Team elects to reimburse Contractor for the net cost to obtain such equipment or personnel.

In the event during the Term the name of the Arena and/or the name of the Team is changed, Arena Manager shall cause such reimbursement, for all costs and expenses incurred by Contractor as a consequence thereof. Such costs shall include, but not be limited to, the cost of replacing uniforms, product containers, signage and stationary and inventory rendered obsolete by such name change(s); provided, however, that Arena Manager shall not be responsible for any replacement costs of uniforms or other items that the Arena Manager would otherwise have a right to require to be replaced, such as uniforms under Section 7(d) hereof.

19. Utilities and Systems

- (a) The Contractor acknowledges that the Concession Premises, if constructed in accordance with the Design and Construction Documents, will have adequate electrical connections, telephone and communications connections and natural gas connections at and in the Concession Premises to permit Contractor to operate the electrical equipment, communication equipment and natural gas powered equipment needed for the Concession Operations as currently contemplated. In the event that, after the Contractor commences the Concession Operations, the Team, the Arena Manager and the Contractor mutually agree to a change in the manner of providing the Concession Operations and, as a result thereof, the electrical connections, telephone and communications connections and natural gas connections at and in the Concession Premises are not adequate to accommodate such changes, then the Arena Manager shall furnish Contractor with adequate electrical connections, telephone and communications connections and natural gas connections at and in the Concession Premises to permit Contractor to operate the electrical equipment, communication equipment and natural gas powered equipment needed for the agreed upon changes to the Concession Operations. The Arena Manager shall also pay the cost of electrical current and natural gas used by Contractor in connection with its normal and customary operations. Where electrical and natural gas connections exist at the Arena at reasonable locations and Contractor desires to relocate such connections to improve its operating efficiency, Contractor may relocate such connections at its cost and expense with Arena Manager's approval, which approval will not be unreasonably withheld.
- (b) The Arena Manager shall heat and air condition the Concession Premises in a proper manner and shall furnish Contractor at the Concession Premises with an adequate potable hot and cold water supply, appropriate drainage and sewage facilities to permit Contractor to use such Concession Premises for the purposes of the Concession Operations in the normal customary manner. The Arena Manager shall also pay the cost of heat, internal telephone service and equipment, air conditioning, hot and cold water, drainage and sewage used by Contractor at the Concession Premises in connection with its normal and customary operations. Contractor shall pay for external telephone service to the Concession Premises.
20. Severability - Each provision of this Agreement is intended to be severable. If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be deemed to be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.
21. Consents - Waiver - The Team, Arena Developer, Arena Manager and Contractor hereby expressly acknowledge and agree that, unless otherwise expressly stated to the

contrary in this Agreement, all of the consents and approvals that are necessary or required from any of the Team, Arena Developer, Arena Manager or Contractor hereunder shall not be unreasonably conditioned, delayed, withheld or denied. The granting of any consent or approval in any one instance by or on behalf of any of the Team, Arena Developer, Arena Manager or Contractor shall not be construed to waive or limit the need for such consent in any other or subsequent instance; provided, however, that any consent or approval granted by Arena Manager may be relied upon by Contractor with respect to any Concession Operations; provided, further, however, that to the extent any such consent, approval or waiver significantly exceeds that which is necessary for the Contractor's reasonable performance of the Concession Operations as currently agreed to in this Agreement, and the effect of such consent, approval or waiver is to amend this Agreement in any material way, then such consent, approval or waiver shall be subject to the City's rights as set forth in Section 19.24 of the Arena Management Agreement. No waiver, express or implied, by any of the Team, Arena Developer, Arena Manager or Contractor to or of any breach or default by the other party in the performance by the other of its obligations hereunder shall be valid unless in writing, and no such waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

22. Governing Law - This Agreement is entered into in the State of Arizona and shall be governed by the laws thereof.
23. Time of Essence - Subject only to the provisions of Paragraph 24 below, time is of the essence in the performance of this Agreement.
24. Force Majeure - A delay in or failure of performance by the Team, Arena Developer, Arena Manager or Contractor shall not constitute a default, nor shall the Team, Arena Developer, Arena Manager or Contractor be held liable for loss or damage, if and to the extent that such delay, failure, loss or damage is caused by occurrences beyond the reasonable control of such party, and its agents, employees, contractors, subcontractors and consultants, including, but not limited to, acts of God or the public enemy, expropriation or confiscation of facilities, compliance with any order or request of any governmental authority or person purporting to act therefor, acts of declared or undeclared war, weapon of war employing atomic fission or radioactive force, whether in the time of peace or war, public disorders, rebellion, sabotage, revolution, earthquakes, tornadoes, floods, riots, strikes, labor or employment difficulties, delays in transportation, inability of a party to obtain necessary materials or equipment or permits due to existing or future laws, rules or regulations of governmental authorities, or any other causes, whether direct or indirect, and whether or not of the same class or kind as those specifically above named, not within the reasonable control of such party, or its agents, employees, contractors, subcontractors and consultants, and which by the exercise of

reasonable diligence said party is unable to prevent (any such cause, a "Force Majeure"). None of the Team, Arena Developer, Arena Manager nor Contractor shall be entitled to the benefits of this Paragraph 24 unless it (i) gives reasonably prompt written notice to the other of the existence of any event, occurrence or condition which it believes permits a delay in the performance of its obligations pursuant to this Paragraph 24; provided, however, if the other party is already aware of such event causing the Force Majeure, no such written notice shall be required, and (ii) utilizes reasonable, good faith, diligent and aggressive efforts to minimize or prevent the event or circumstance causing such Force Majeure.

25. Assignment and Subcontracts - Contractor shall have no right, power or authority to assign this Agreement, or any portion hereof or any monies due or to become due hereunder, or to delegate any duties or obligations arising hereunder, either voluntarily, involuntarily or by operation of law, without the prior written approval of the Team and Arena Manager, which approval shall be subject to the City's rights under Section 19.24 of the Arena Management Agreement; provided, however, that assignment of this Agreement to an affiliate of the Contractor shall not require such approval so long as Contractor continues to guarantee the performance of such affiliate. For purposes of the foregoing sentence, the term "affiliate" shall refer to a person or an entity that controls, is controlled by or is under common control with Contractor. Contractor shall have the right to subcontract the sale of Food and Beverage Items with the prior written approval of Arena Manager, which approval shall not be unreasonably withheld, conditioned or delayed but shall be subject to the City's rights under Section 19.24 of the Arena Management Agreement. Except as set forth in the last sentence of this Section 25, in the event that the Team sells or transfers its rights to grant the right to sell Food and Beverage Items in the Arena, this Agreement shall be transferred or assigned, subject to Contractor's prior approval, provided that prior to the consummation of such sale, assignment or transfer, such purchaser(s), assignee(s) or transferee(s) expressly assumes in writing the terms and conditions of this Agreement and agrees to be bound by all of the obligations of the Team contained in this Agreement; provided, however, that if the City succeeds to this Agreement, it shall not be bound by Section 14(e), rather such obligation shall remain with Team pursuant to the terms provided herein. In the event that Arena Manager is being replaced by the Team and City pursuant to the terms of the Arena Management Agreement, then the Arena Manager may transfer and assign the Arena Manager's interest in this Agreement, without the consent of Contractor, to an assignee or transferee approved by the Team and the City pursuant to the provisions of the Arena Management Agreement so long as (i) such transfer or assignment fully assigns all of the rights and delegates all of the duties of the Arena Manager under this Agreement to such assignee or transferee, and (ii) such assignee or transferee assumes the Arena Manager's duties under this Agreement, and (iii) upon such transfer or assignment, Contractor shall thereafter look solely to such assignee or transferee and Team for performance of the Arena Manager's duties under this Agreement. Without waiver of the foregoing provisions, all of the rights, benefits, duties, liabilities and obligations of the parties hereto shall inure to the benefit of, and be binding upon, their respective successors and

assigns. The Team shall use its good faith, reasonable and diligent efforts to obtain a commitment or undertaking, in form and substance reasonably acceptable to Contractor, from every person, firm or corporation that holds a lien or encumbrance affecting the Arena, stating that such person, firm or corporation shall not disturb Contractor in its possession of the Facilities or use of the Concession Premises and conduct of the Concession Operations and will recognize and be subject to the rights granted to Contractor under this Agreement and Contractor will review and agree to such reasonable attornment provisions as such person, firm or corporation may reasonably request.

26. Modifications or Amendments of Agreement - This Agreement constitutes the entire agreement between the parties hereto. To be effective, any modification or amendment of this Agreement must be in writing and signed by the party to be charged thereby, shall only be effective after notice to the City and shall be subject to the City's rights pursuant to Section 19.24 of the Arena Management Agreement.
27. Headings - The headings of the Paragraphs of this Agreement are inserted for convenience of reference only and shall not in any manner affect the construction or meaning of anything contained herein or govern the rights or liabilities of the parties hereto.
28. Interpretation - Whenever the context requires, all words used in the singular number shall be deemed to include the plural and vice versa, and each gender shall include any other gender. The use herein of the word "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specified items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation", or "but not limited to", or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. The use herein of the phrase "not to be unreasonably withheld, conditioned, delayed or denied" or any variation thereof in each case shall take into account that in no circumstances shall a consent or approval be deemed to be unreasonably conditioned, delayed, withheld or denied if the cause thereof is the City's exercise of its rights under the Public Contracts.
29. Notices - All notices, requests and communications required or permitted hereunder shall be in writing and shall be sufficiently given and deemed to have been received upon personal delivery or, if mailed, upon the first to occur of actual receipt as evidenced by written receipt for certified or registered mail or a nationally recognized overnight courier service, refusal or delivery or notification by the United States Postal Service to the sending party that the notice, request or communication is not deliverable at the address of the receiving party set forth below due to the unwillingness of the recipient to accept delivery:

If to Team: Coyotes Hockey, LLC
4040 East Camelback Road
Suite 250
Phoenix, Arizona 85018
Attention: Mr. Doug Moss

Copies to:

Coyotes Hockey, LLC
4040 East Camelback Road
Suite 250
Phoenix, Arizona 85018
Attention: Robert P. Kaufman

Coyotes Hockey, LLC
4040 East Camelback Road
Suite 250
Phoenix, Arizona 85018
Attention: Timothy Wright

Mr. Jim Miller
3846 W. Clarendon
Phoenix, AZ 85019

If to Arena Developer: Arena Development, LLC
4040 East Camelback Road
Suite 250
Phoenix, Arizona 85018
Attention: Mr. Timothy Wright

Copies to:

Arena Development, LLC
4040 East Camelback Road
Suite 250
Phoenix, Arizona 85018
Attention: Anthony Cosentino and Robert P. Kaufman

Romani Group, Inc.
7400 E. Crestline Circle
Suite 200
Greenwood Village, Colorado 80111
Attention: Tim Romani

Mr. Jim Miller
3846 W. Clarendon
Phoenix, AZ 85019

If to Arena Manager: Arena Management Group, LLC
4040 East Camelback Road
Suite 250
Phoenix, Arizona 85018
Attention: Mr. Ron Woodbridge

Copies to:

Arena Management Group, LLC
4040 East Camelback Road
Suite 250
Phoenix, Arizona 85018
Attention: Robert P. Kaufman

Arena Management Group, LLC
4040 East Camelback Road
Suite 250
Phoenix, Arizona 85018
Attention: Timothy Wright

Mr. Jim Miller
3846 W. Clarendon
Phoenix, AZ 85019

If to Contractor: ARAMARK Sports and Entertainment Services, Inc.
1101 Market Street
Philadelphia, PA 19107
Attention: Elizabeth Cartmell, President

With copy to:
ARAMARK Sports and Entertainment Services, Inc.
1101 Market Street
Philadelphia, PA 19107
Attention: Associate General Counsel

If to City: City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301

With copy to:
City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301

If to Retail/Residential Developer: Glendale-101 Development, LLC
4040 East Camelback Road, Suite 250
Phoenix, AZ 85018
Attention: Timothy Wright

With copies to:
Glendale-101 Development, LLC
4040 East Camelback Road, Suite 250
Phoenix, AZ 85018
Attention: Robert Kaufman
General Counsel

Mr. Jim Miller
3846 W. Clarendon
Phoenix, AZ 85019

If to Entertainment Developer: Coyote Center Development, LLC
4040 East Camelback Road, Suite 250
Phoenix, AZ 85018
Attention: Timothy Wright

With copies to:
Coyote Center Development, LLC
4040 East Camelback Road, Suite 250
Phoenix, AZ 85018
Attention: Robert Kaufman
General Counsel

Mr. Jim Miller
3846 W. Clarendon
Phoenix, AZ 85019

Notice of a change in address of one of the parties shall be given in writing to the other parties as provided above, but shall be effective only upon actual receipt.

30. Confidentiality - Subject to Section 13, any financial statements or other financial information that may be provided by either party to the other prior to the execution of, or pursuant to the requirements contained in this Agreement, whether provided voluntarily

or in satisfaction of an obligation to do so, shall be kept strictly confidential by the party receiving the same, except to the extent that such information may be required to be reported for purposes of the receiving party's financial statements or public reporting requirements, to or by any duly constituted governmental authorities or to any bank or other financial institution providing financing to Contractor, the Team, Arena Developer, Arena Manager or any of their respective affiliated or related entities or owners.

31. Security - Arena Manager shall be exclusively responsible for providing adequate security throughout the entire Arena, including the Concession Premises. Contractor acknowledges that Arena Manager shall be responsible for public order and safety and that Arena Manager shall have the right and authority to eject individuals from the Concession Premises as necessary.
32. Insurance - The Contractor shall acquire and maintain the following insurance coverages during the Term, or for such additional time as required in any paragraph of this section.
 - (a) Commercial General Liability - The Contractor shall maintain commercial general liability insurance covering all operations of the Contractor under this Agreement on an occurrence basis insuring against bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. Further, the policy shall include coverage for liquor liability and the hazards commonly referred to as XCU (explosion, collapse and underground). The policy shall contain severability of interest provisions and shall be at least as broad as Insurance Services Office ("ISO") Form CG 1986, or its equivalent, with the following endorsements:
 - (i) The Arena Developer, Arena Manager, the Team, the Retail/Residential Developer, the Entertainment Developer and the City, and their respective officers, officials and employees shall be included as additional insureds with respect to the liability arising out of the performance of Contractor's work under this Agreement, by blanket additional insured endorsement, pursuant to ISO Form CG 20 26, or its equivalent, for the duration of this Agreement.
 - (ii) Coverage for defense costs of additional insureds outside the limits of insurance pursuant to ISO Form CG 00 01 1/96, or its equivalent, for the duration of this Agreement.
 - (iii) Waiver of Subrogation and Rights of Recovery pursuant to ISO Form CG 2404 5/92, or its equivalent.
 - (iv) Amendment of Contractual Liability Exclusion for Personal Injury pursuant to ISO CG 2274 5/92, or its equivalent.

(v) In the event that any policies are not occurrence based, then such coverage shall extend for at least five (5) years after termination of this Agreement and shall be evidenced by annual certificates of insurance.

(vi) The limits of commercial general liability insurance required of the Contractor shall be no less than the following:

\$1,000,000 bodily injury and property damage, each occurrence
\$2,000,000 general aggregate (annual)
\$2,000,000 products / completed operations aggregate, and
\$1,000,000 personal and advertising injury.

(b) Commercial Automobile Liability - The Contractor shall maintain commercial automobile liability insurance with respect to all vehicles used in the performance of work under this Agreement at the Arena or away from the Arena, whether owned, non-owned, borrowed, leased or hired, Symbol 1, on a form reasonably acceptable to City, with limits of liability no less than \$1,000,000 combined bodily injury and property damage. Coverage must be at least as broad as ISO Form CA 0001 6/92. The Team, Arena Developer, Arena Manager, the Retail/Residential Developer, the Entertainment Developer and the City, and their respective officers, officials and employees shall be included as additional insureds with respect to the liability arising out of the performance of Contractor's work under this Agreement, by blanket additional insured endorsement. If hazardous materials or waste are to be transported, the commercial automobile liability insurance shall be endorsed with the MCS-90 endorsement in accordance with applicable law.

(c) Statutory Workers' Compensation - The Contractor shall maintain statutory workers' compensation insurance insuring against and satisfying the Contractor's liabilities and obligations under the workers' compensation laws of the federal government and the State of Arizona having jurisdiction over all employees of Contractor engaged in the performance of work under this Agreement, including employers' liability insurance with limits of not less than \$100,000/\$500,000/\$100,000.

(d) Excess Liability: - Contractor shall maintain excess liability insurance on an occurrence basis, insuring against bodily injury, personal injury, and property damage, and all other coverages as specified in paragraphs (b) and (c) above over and above the limits required for each such coverage. The limits of excess liability shall be no less than the following:

\$10,000,000 each occurrence
\$10,000,000 annual aggregate
\$10,000,000 products / completed operations

Total per occurrence limits of \$10,000,000 may be satisfied in any combination of primary and excess policies of insurance. Any applicable retention shall be the sole responsibility of the Contractor.

- (e) All Risk Property – The Contractor shall maintain all risk property insurance to insure against physical loss or damage to all personal property of the Contractor at the Arena. Such coverage will be written on a replacement cost basis, include flood and earthquake coverage and shall not be subject to co-insurance.
- (f) Form of Policies - All insurance required pursuant to this Section 32 shall be by valid and enforceable policies issued by an insurer licensed to do business in the State of Arizona and shall have the A.M. Best's Rating Guide (most current edition) rating of not less than "A-VII" . All policies of insurance required pursuant to this Section 32 shall provide (or include endorsements providing) that (1) the coverage shall not be invalid due to any act or omission of any of the the Team, Arena Developer, Arena Manager, the Retail/Residential Developer, the Entertainment Developer or the City or their respective agents and employees, (2) name each of the the Team, Arena Developer, Arena Manager, the Retail/Residential Developer, the Entertainment Developer and the City as an additional insured, (3) to provide that the insurance provided thereunder, with respect to Contractor's obligations hereunder, is primary for losses covered under the policy arising from Contractor's operations under this Agreement as to any insurance provided by the Team, Arena Developer, Arena Manager, the Retail/Residential Developer, the Entertainment Developer or the City, so that the latter shall be excess and non-contributing to insurance provided by the Contractor, (4) to provide that the waiver of subrogation set forth above shall not invalidate or have any adverse effect on such insurance policy or the liability of the insurer under such policy, (5) no lapse or cancellation with respect to such policies shall be effective as to the Team, the Arena Developer, the Arena Manager, the Retail/Residential Developer, the Entertainment Developer or the City until at least 45 days after receipt of notice (given pursuant to Section 29) thereof by the Team, the Arena Developer, the Arena Manager, the Retail/Residential Developer, the Entertainment Developer or the City, as the case may be (provided that only 10 days' notice need be given if the cause of any lapse or cancellation is a failure to pay the premium due). Notwithstanding the foregoing, Arena Manager hereby agrees that any insurance that it obtains with respect to its operations at the Arena shall provide that the insurance provided thereunder is primary for losses covered as to any insurance provided by the Contractor under this Agreement, so that the latter shall be excess and non-contributing to insurance provided by the Arena Manager.

- (g) Evidence of Insurance - Three (3) copies of a certificate evidencing the existence of each policy of insurance required pursuant to this Section 32 shall be delivered to each of the Team, Arena Developer, Arena Manager, the Retail/Residential Developer, the Entertainment Developer and the City pursuant to Section 29 at least thirty (30) days prior to Contractor commencing the Concession Operations. Three (3) certificates concerning any renewal policy shall be delivered to each of the Team, Arena Developer, Arena Manager and the City at least thirty (30) days prior to a policy's expiration date except for any policy expiring on the expiration date of this Agreement or thereafter. Each such certificate shall include Contractor's consent to the waiver of subrogation as herein provided.
- (h) The specified limits of any insurance required pursuant to this Section 32 shall be subject to reasonable adjustment from time to time or as required of the Arena Manager by the City pursuant to the Arena Management Agreement.

33. Inspection and Testing by Arena Manager

- (a) Arena Manager shall have the right to observe any transaction or transactions between Contractor and the public involving any sales authorized hereunder for the purposes of determining the quality and quantities of Food and Beverage Items offered to the public, the prices charged therefor and the accountability of the Gross Receipts received therefrom. Arena Manager shall also have the right to make any and all examinations, tests, measurements, weighings, etc. as it may desire of all Food and Beverage Items in Contractor's possession and to be sold by Contractor in order to determine their quality and quantity.
- (b) Arena Manager shall have the right at any time and as often as the Arena Manager considers necessary to inspect the Facilities and to advise Contractor of the existence of any conditions which the Arena Manager reasonably determines to be unsafe, unsanitary or detrimental to the public or the operation of the Arena. Contractor agrees to correct all such conditions immediately after notice.

34. Right of Entry Reserved

- (a) Arena Manager, through its agents and/or employees, representatives and contractors, shall have the continual right to enter upon and under all portions of the Facilities to inspect same, to observe the performance of the Contractor of its obligations under this Agreement, to conduct inspections and/or audits as indicated in Section 33 hereof, and to install, remove, adjust, repair, replace and otherwise handle any equipment, utility lines, or other matters in, on, or about the Concession Premises, or to do any act or thing which Arena Manager may be obligated or has the right to do under this Agreement or otherwise. In addition to the foregoing, the City, through appropriate designees, has reserved the right in

the Arena Management Agreement to enter the Facilities, upon reasonable notice to the Team and the Arena Manager and during the Arena Manager's regular business hours or other hours when the Arena Manager is open for business (other than during events at the Arena), to exercise the City's governmental powers and the City's rights under the Arena Management Agreement; provided, however, that in exercising such right (i) the City shall not unreasonably interfere with the operations of the Arena; and (ii) such right shall not be deemed to either waive or relinquish in any manner any right under the United States or Arizona Constitutions of the Arena Manager, the Team or the Contractor, or limit in any way the Arena Manager's, the Team's or the Contractor's rights to contest the City's actions or findings with respect to any such exercise of the City's governmental powers. Nothing contained in this Section is intended or shall be construed to limit any other rights of Arena Manager under this Agreement.

- (b) No abatement of any payments by the Contractor shall be claimed by or allowed to the Contractor by reason of the exercise of any of the rights set forth in this Section; provided, however, that in the exercise of the foregoing rights, the Arena Manager shall not interfere in Contractor's business activities, nor shall Arena Manager assert any nonperformance by Contractor of its responsibilities hereunder as a result of the exercise by the Arena Manager of such rights.
 - (c) Arena Manager agrees that it will make ordinary inspections and undertake other non-emergency activities only at reasonable times; provided, however, that nothing in this Section shall be construed to limit or diminish Arena Manager's right of entry at any time in an emergency.
35. Damage to or Destruction of Concession Premises - All risk of loss from damage to or destruction of the Concession Premises, which is a direct result of Contractor's performance of its operations hereunder, shall be upon the Contractor and the Contractor shall, at its cost and expense, replace and repair any and all such damage or destruction; provided, however, that said risk or loss and duty to replace and repair shall not apply to insured property (but only to the extent of such insurance) of the City, the Team, Arena Developer or Arena Manager, or to damage or destruction caused by the negligence of employees of the Team, Arena Developer or Arena Manager.
36. Contractor Independent Contractor - It is understood and agreed that nothing herein contained is intended or shall be construed to in any way create or establish the relationship of co-partners or joint venturers between the Team, Arena Manager, Arena Developer, or any affiliate thereof, and Contractor or as constituting any party as the representative or agent of any other party for any purpose whatsoever.

37. Surrender of Premises

- (a) The Contractor covenants and agrees to yield and deliver peaceably to the Team and Arena Manager possession of the Concession Premises occupied herein and alterations, additions, or improvements thereof made by Contractor upon the termination or expiration of this Agreement promptly and in good condition, order and repair, except for reasonable wear and tear from the last necessary repair, replacement, restoration or renewal of such Concession Premises made by the Contractor pursuant to Contractor's obligations under this Agreement.
- (b) If the Contractor fails or neglects to remove all or any portion of its movable furniture, movable personal property and/or removable trade fixtures within thirty (30) days after the expiration or termination of this Agreement or expiration of any renewal thereof, such items shall become the property of the City and managed by the Arena Manager and the Contractor shall have no further legal or equitable right, title or interest therein.

38. Quiet Enjoyment - Except for such rights and acts of the Team, Arena Manager or the City authorized by this Agreement, the Team and Arena Manager covenant that the Contractor, upon paying all Commission Payments and other charges due hereunder and performing and complying with all covenants, agreements, provisions, obligations and duties incumbent upon Contractor under this Agreement, shall and may peaceably have, hold and enjoy the premises occupied herein during the term of this Agreement. In the event that the Team or Arena Manager shall in any manner convey their rights in the premises or assign this Agreement, with the consent of the Contractor or if the operations of the Arena shall pass from the Team or Arena Manager by operation of law or otherwise, then either the Team or Arena Manager, as the case may be, shall have no personal obligation to Contractor with respect to the foregoing covenant after such conveyance, assignment or passing.

39. Cooperation with Lenders - The Contractor shall cooperate with any lender financing of the Arena, or any portion thereof, and shall agree to reasonable amendments to this Agreement to facilitate such financing, so long as such amendments do not result in any material change to the detriment of the Contractor, determined in Contractor's sole discretion, in the substance of the terms and conditions of this Agreement, including, but not limited to, the parties' respective financial obligations under this Agreement.

40. City Exculpation - Contractor acknowledges and agrees that (i) this Agreement imposes no contractual obligation on the City; (ii) in the event of a default under this Agreement of any kind or nature whatsoever, Contractor shall look solely to the Team, Arena Developer or Arena Manager, as the case may be, at the time of the default for remedy or relief; (iii) no elected official, officer, employee, agent, independent contractor or consultant of the City shall be liable to Contractor, or any successor in interest to Contractor, with respect to this Agreement.

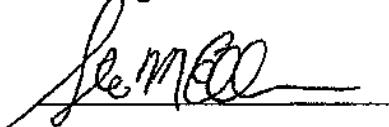
41. Failure of the Arena to Open as Scheduled – Arena Manager has advised Contractor that the construction of the Arena and Concession Premises is anticipated to be completed in accordance with a schedule that will permit the First Public Event to be held in late December of 2003 or January 2004. If the First Public Event is not held on or before March 31, 2004, then Contractor shall be entitled to receive interest on the (1) First Tranche of the Contractor's Capital Grant and (2) any Start-Up Costs then incurred by Contractor at an interest rate (equal to 2% over the published prime rate published in *The Wall Street Journal* under a heading presently entitled "Money Rates", such rate to be adjusted at the end of each calendar quarter) computed from March 31, 2003 until the First Public Event is actually held at the Arena. Such interest shall be paid by either Arena Developer or Arena Manager, depending on which of the two parties is responsible for the delayed opening, as determined by the parties and approved by the City pursuant to Section 19.24 of the Arena Management Agreement, on a monthly basis, commencing as of the first day of April 2004, and continuing thereafter until the First Public Event is held at the Arena. If the opening of the Arena is delayed for any reason beyond September 30, 2004, then Contractor shall have the right to terminate this Agreement upon thirty (30) days' written notice to the Team and Arena Manager, and in the event of such termination, the Team shall pay to Contractor, prior to the effective date of such termination, the Termination Payment excluding the amount of the First Tranche and/or Second Tranche to the extent that either or both has not been paid. The obligation of the Team for the Termination Payment, excluding the amount of the First Tranche and/or Second Tranche to the extent that either or both has not been paid, shall not be secured, in any manner.
42. City Approval of Additions and Capital Repairs. Notwithstanding any provision of this Agreement to the contrary, any agreements between the Team and/or the Arena Manager and the Contractor for Additions and Capital Repairs, as defined in the Arena Management Agreement and described in Article 6 of the Arena Management Agreement, are subject to the Arena Management Agreement and to the annual budget (operating and capital) process (and to the City's approval rights) as set forth in Section 5.2 thereof. The parties acknowledge that by inclusion of this provision in the Agreement, the City has advised the Team, the Arena Manager and the Contractor that any Additions and Capital Repairs as defined in the Arena Management Agreement and described in Article 6 thereof must be set forth in the applicable Annual Budget for the Arena or be permitted by Section 5.2 with respect to unbudgeted expenses not to exceed \$100,000 for Additions and Capital Repairs in any Fiscal Year. The parties acknowledge that by inclusion of this provision in this Agreement the City has advised the Team, the Arena Manager and the Contractor that any Additions and Capital Repairs, as defined in the Arena Management Agreement and discussed in Article 6 thereof, must be fully funded by deposit to the Renewal and Replacement Account (as defined in the Arena Management Agreement) or otherwise assured of payment by bond, letter of credit, or other means acceptable to the City.

43. City Rights Pursuant to Section 19.24 of the Arena Management Agreement. Notwithstanding any provision of this Agreement to the contrary, to the extent that any future amendment, modification or other event may be subject to the City's rights pursuant to Section 19.24 of the Arena Management Agreement, Contractor agrees to abide by a final and unappealable decision of an Arbitrator selected in accordance with Article 16 of the Arena Management Agreement in connection with an Arbitration Dispute (between the City and the Team) pursuant to which the Arbitrator (i) determines that an amendment, modification or other future event under this Agreement presents an inconsistency between this Agreement and the Arena Management Agreement or unreasonably interferes with the City's rights under the Arena Management Agreement and (ii) determines the appropriate remedy or recourse of the City with respect to such amendment, modification or other future event in light of such inconsistency or unreasonable interference.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Coyotes Hockey, LLC

By: Arizona Hockey Management, Inc.
Its Manager

By: 

Its: Chairman / CEO

Arena Development, LLC

By: Coyotes Holdings, LLC.
Its Manager

By: 

Its: Senior Vice President

Arena Management Group, LLC

By: Coyotes Holdings, LLC.
Its Manager

By: 

Its: Senior Vice President

ARAMARK Sports and Entertainment Services, Inc.

By: _____

Its: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Coyotes Hockey, LLC
By: Arizona Hockey Management, Inc.
Its Manager

By: _____

Its: _____

Arena Development, LLC
By: Coyotes Holdings, LLC.
Its Manager

By: _____

Its: _____

Arena Management Group, LLC
By: Coyotes Holdings, LLC.
Its Manager

By: _____

Its: _____

ARAMARK Sports and Entertainment Services, Inc.

By: Elizabeth B. Carbell

Its: PRES.