

**DEVELOPMENT AGREEMENT  
FOR NEW ARENA PROJECT**

**among**

**THE CITY OF OKLAHOMA CITY,**

**OKLAHOMA CITY PUBLIC PROPERTY AUTHORITY,**

**and**

**PBC SPORTS & ENTERTAINMENT, LLC**

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Appendix A    Definition

**Exhibits**

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## **DEVELOPMENT AGREEMENT FOR NEW ARENA PROJECT**

This **DEVELOPMENT AGREEMENT FOR NEW ARENA PROJECT** (the “Agreement”) is made and entered into as of the Effective Date as set forth herein (the “Effective Date”) by, between and among **THE CITY OF OKLAHOMA CITY**, an Oklahoma municipal corporation (also referred to as the “City”), the **OKLAHOMA CITY PUBLIC PROPERTY AUTHORITY**, an Oklahoma public trust (also referred to as the “Authority”), and PBC Sports & Entertainment, LLC, an Oklahoma limited liability company (“Team”).

### **STATEMENT OF PURPOSE AND FACTS**

(a) The City and the Team executed a Letter of Intent dated September 26, 2023, stating their mutual intent to the material terms and conditions on which the parties would enter into certain definitive agreements relating to the development of a New Arena in downtown Oklahoma City, including this Agreement and other New Arena Transaction Documents, all in order to continue the positive relationship between the City and the Club which began in 2008, and to promote economic growth, tourism, and expansion of business in Oklahoma City, to ensure that the City is regionally competitive and a premier destination for sports and entertainment, to further business development and to improve quality of life and to secure for the City the economic impact, national and international identity, community unity, and philanthropy that the City has enjoyed since 2008. In consideration thereof, the City agreed to present to its citizens the proposition of passing a limited-term (72-month) one percent (1%) sales tax, which would take effect after the expiration of the MAPS 4 sales tax, providing funding to construct and maintain a New Arena for both the Club and City’s use and benefit. The City Council on September 26, 2023, introduced and on October 3, 2023, adopted, Ordinance 27,420 (the “Ordinance”), which sent to the voters an election proposition, held on December 12, 2023, to authorize said sales tax for funding expenses related in any manner to constructing, establishing, providing and maintaining the New Arena.

(b) The voters have approved the election proposition and the Ordinance, authorizing said sales tax for funding expenses related in any manner to constructing, establishing, providing and maintaining the New Arena. The City and the Authority have accordingly determined that the contemplated New Arena Project should be undertaken, and that the Team should be an active participant in the design and construction of New Arena as provided in the Ordinance and in accordance with this Agreement. This Agreement sets forth the terms and conditions under which, in furtherance of the public purposes and public benefit described in the preceding paragraph, (1) the City will exercise its control over the tax revenues received under the Ordinance and fulfill the obligation that the proceeds from the Ordinance are used in a manner set forth therein by directing the proceeds be used for the New Arena Project, a first-class, state-of-the-art sports and entertainment facility that meets or exceeds the requirements of the NBA and which is comparable to recently constructed NBA and other major league venues, in a manner that will not only be of benefit to the Team and the City, but will be of benefit to the public by attracting other events, enhancing the community by promoting and stimulating growth, development and expansion of businesses and job opportunities within the downtown Oklahoma City area and by promoting growth of tourism in the City, and (2) the City and Authority will cause the New Arena to be designed and constructed in accordance with this Agreement for the benefit of the citizens of Oklahoma City.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements as set forth herein and intending to be legally bound hereby, subject to the terms hereof, the Parties hereto do hereby agree as follows:

**Article I.  
DEFINED TERMS**

Capitalized terms used but not defined in this Agreement (also including the Exhibits) shall have the meanings given such terms in **Appendix A**, attached hereto and incorporated herein by reference.

**Article II.  
SALES TAX; GUIDING PRINCIPLES**

2.1 **Sales Tax Proceeds.** The voters of Oklahoma City have approved the Ordinance, which provides for a limited-term (72-month) one percent (1%) sales tax for funding expenses related in any manner to constructing, establishing, providing and/or maintaining a New Arena to be owned by the City. The City must fully comply with the Ordinance in all aspects and thereby commits to using the proceeds from the limited-term one percent sales tax to construct, establish, provide and/or maintain the New Arena. If proceeds remain after the New Arena is complete, the City will use those remaining proceeds, in accordance with the Ordinance for the New Arena Project.

(a) The Ordinance provides for a levy of a limited-term one percent sales tax on the gross proceeds or gross receipts derived from all sales taxable under the applicable sales tax laws of the State of Oklahoma. The Ordinance states that the tax may be expended only for the limited purpose of funding all expenses related in any manner to constructing, establishing, providing, or maintaining an arena facility to be owned by The City of Oklahoma City. Further, the Ordinance provides that expenses may include the payment of financing costs. Nothing in this Agreement, or any of the New Arena Transaction Documents or any other related agreement, shall be deemed to commit the City or the Authority to expend any funds other than Available Funding for the New Arena Project or to expend Available Revenues in any manner other than as authorized by the Ordinance. Any surplus revenues ultimately collected from the Ordinance which exceed the New Arena Project costs and any related financing costs will be utilized either to complete the New Arena Project and/or will be placed in a capital improvement fund for future capital maintenance of and improvements to the New Arena. In light of the Ordinance and the legal obligations thereunder, the City or the Authority, on behalf of its sole beneficiary the City, shall undertake to obtain interim financing to provide funding for New Arena Project Costs that are incurred prior to receipt of sufficient sales taxes pursuant to Ordinance, with such interim financing costs and any subsequent financing or refinancing costs to be repaid with such Ordinance sales taxes as proceeds are received by the City, all with the understanding for the Substantial Completion of the New Arena Project in accordance with Scheduling Deadlines and within New Arena Project Budget.

(b) The City recognizes its obligation to expend Available Revenues for the purposes of constructing, establishing, providing and/or maintaining the New Arena and agrees that Available Revenues will be segregated and used as allowed under the Ordinance to constructing, establishing, providing and/or maintaining the New Arena Project. To the extent



expressly permitted by the Ordinance, the City may reimburse itself, the Authority, and any trust of which the City is a beneficiary, for interim financing and/or any costs or expenses incurred for constructing, establishing, providing and/or maintaining the New Arena Project.

(c) The City will authorize the use of City staff and resources as necessary to enable the City and/or the Authority to meet its obligations under this Agreement.

(d) Within the confines of the Ordinance, the City will support actions to obtain NBA Approval of the New Arena.

2.2 **Guiding Principles.** The Parties recognize that a state-of-the-art facility is (i) to benefit the residents of the City of Oklahoma City, (ii) must adhere to the purpose of the Ordinance, (iii) is limited to the Available Funding, and (iv) will provide for an NBA approved arena that enhances the sustainability of the Team in Oklahoma City. To that end the New Arena Project will (a) conform to NBA Arena Standards and any applicable NBA Rules and Regulations and (b) include revenue producing improvements that will maximize Team Revenues (together, (a) and (b) are known as the “Guiding Principles”). Accordingly, the Parties agree that the Approved Plans for the New Arena Project, and subsequent decisions regarding the inclusion, exclusion, or modification of components in the plans, designs, and construction, will conform to the Guiding Principles.

2.3 **Collaborative Process.** The Parties intend for the design and construction of the New Arena Project to be a cooperative, mutual endeavor in which the Authority, City and the Team actively participate and work together with due diligence and good faith in accordance with the terms and conditions of this Agreement. The Parties will establish a New Arena Project development committee (the “Development Committee”) to facilitate the collaborative effort between the Parties for all aspects of the New Arena Project. The Development Committee will be established under the process set forth in **Exhibit F**, and the Development Committee will be administered in accordance with the rules and procedures set forth in **Exhibit F** to this Agreement.

### **Article III. ARENA PROJECT CONSTRUCTION**

#### **3.1 The Facilities.**

3.1.1 **The Property.** The New Arena Project will be located on a tract of land as more particularly described and defined on **Exhibit A** attached hereto and incorporated herein (the “New Arena Site”). The New Arena Site includes and is comprised of certain real property that is outside of and in addition to the New Arena building but is considered by the Parties to be part of and governed by the terms and conditions of this Agreement, including other improvements which are related to, or complementary to, the New Arena.

3.1.2 **Ownership of Arena Site.** The City represents and warrants to the Team that the City holds or will hold marketable title to the New Arena Site. The City will provide to the Team copies of all title insurance binders, title surveys, environmental assessments and other relevant ownership documents reasonably requested by the Team respecting the New Arena Site.

3.1.3 Infrastructure. The Authority, working with the City, agrees to pursue all necessary approvals of public agencies necessary to expeditiously permit construction of the New Arena Project and proceed with the design and construction of the New Arena Project as soon as practical. The Authority shall be responsible for completion of the New Arena Project so as to permit Substantial Completion by the Scheduled Completion Date as provided herein.

3.1.4 New Arena Project Requirements. The design, development, and construction of the New Arena Project shall include, at a minimum, the improvements described in **Exhibit B**, which the New Arena Project Requirements shall be more particularly established in the design process and in the Approved Plans.

3.1.5 Collateral Effects on the Existing Arena. The Team, Authority and City will use commercially reasonable efforts to minimize negative effects on the operations and use of the existing downtown arena currently used by the Club (the “Existing Arena”), and the ability of guests to access and utilize the Existing Arena during the demolition, site preparation, construction and development of the New Arena Project. The Parties agree that any negative effects on the operations and use of the Existing Arena will be handled in an expeditious manner collaboratively by the Parties. In addition, the Parties understand that the construction of the New Arena on the New Arena Site will displace approximately 750 parking spaces used by the Club for its games played in the Existing Arena. As a result, the Team will work with the Central Oklahoma Transportation and Parking Authority (“COTPA”) to secure the replacement of all such parking spaces displaced on the New Arena Site, at locations to be approved by COTPA and the Team Representatives. The City and the Authority will work collaboratively with COTPA and the Team to designate parking spaces for spaces displaced due to construction of the New Arena.

3.1.6 Owner Representative. The Authority or City, in consultation with the Team, has or will issue a request for qualifications or request for proposal to provide professional owner representation services for the New Arena Project and will proceed to select, with the approval of the Team Representatives, a professional owner representation firm in accordance with the policies, procedures and requirements of the City, the City’s Consultant Selection Procedures as adopted in 2023, and as applicable, to perform such services (the “Owner Representative”). The Team Representatives will have the right to actively participate in the interview process of each of the owner representative candidates and approve the selection of the Owner Representative as provided on **Exhibit F**. Neither the owner representative selection nor selection of a replacement owner representative, in such event, nor any material assignment of professional services to another owner representative nor any termination of the owner representative, shall occur without written approval of the Development Committee. The Team Representatives shall be given full access to the Owner Representative. The services provided by the Owner Representative shall be included as a New Arena Project Cost, and shall include making all submissions to the NBA as necessary to demonstrate compliance by the New Arena Project with the NBA Facility. A copy of the final draft of the contract with the Owner Representative shall be provided for review and approval by the Team Representatives, not later than ten (10) Business Days prior to execution, for the sole purpose of confirming that such contract is consistent with this Agreement. Within the ten (10) Business Days, the Team Representatives shall confirm that such contract is consistent with this Agreement. Within seven (7) calendar days following execution and delivery of the same by all signatories to the contract with the Owner Representative, the Authority will provide a copy thereof to the Team.

### 3.1.7 Ground Lease and Ancillary Development.

(a) Upon the Team's request, the Parties agree to negotiate in good faith and seek to finalize and execute one or more ground leases (collectively, the "Ground Lease"), which would grant the Team or its Affiliate an exclusive non-assignable contract option for a ground lease and development rights for all areas on the New Arena Site, as described in **Exhibit A**, other than areas used for the purposes of the New Arena Project, including the New Arena, parking structure, or transit hub as described in **Exhibit A**. Because the areas the Ground Lease would cover are properties acquired with General Obligation Bonds earmarked for convention center purposes, the Parties acknowledge that any such Ground Lease must require the payment by the Team or its Affiliate of consideration to the City in the form of fair market value in cash, with such consideration to be used solely for Proposition 8 of 1968 General Obligation Bond purposes, which purposes the Parties agree will include the use of the consideration for future capital maintenance of and improvements to the New Arena, as contemplated by paragraph (c) of this **Section 3.1.7**. The term of any Ground Lease will be coterminous with the expiration or early termination of the License Agreement.

(b) In conjunction with the potential finalization of the Ground Lease, the Team or any of its Affiliates would have the right to develop ancillary development(s) on the New Arena Site. Any ancillary development(s) shall be subject to Applicable Law and NBA Rules and Regulations.

(c) Subject to annual appropriations, any payments made by the Team (or its Affiliate) under the terms and conditions of the Ground Lease will be used by the City and/or Authority to fund future capital maintenance of and improvements to the New Arena in accordance with Proposition 8 of the 1968 General Obligation Bond authorizations.

(d) In addition, the City and Authority agree that, with respect to the Team's contract option to develop all areas on the New Arena Site other than the New Arena, parking structure, or transit hub, the City and Authority will not (i) solicit, seek, negotiate, or encourage submission of inquiries or proposals from, or accept any offers from or have any substantive discussions with any other party relative to any potential disposition, sale, ground lease or sale and leaseback of all or any portion of such areas; nor otherwise (ii) develop and/or improve upon such areas, except for the purposes of the New Arena Project, including the New Arena, parking structure, or transit hub as described in **Exhibit A**.

3.1.8 The Architect. The Authority, in consultation with the Team Representatives, will issue a request for proposals to provide professional architectural services for the New Arena Project and will proceed to select, with the approval of the Team Representatives, an architectural firm in accordance with the policies, procedures and requirements of the City, the City's Consultant Selection Procedures as adopted in 2023, and as applicable, to perform such services (the "Architect"). The Team Representatives will have the right to actively participate in the interview process of each of the architect candidates as provided on **Exhibit F**. Neither the architect selection nor selection of a replacement architect, in such event, nor any material assignment of professional services to another architect nor any termination of the Architect, shall occur without written approval of the Development Committee.

3.1.9 Design Contract. The Authority will enter negotiations for a professional services contract (the “Design Contract”) with the selected Architect. The Authority will prepare and submit the Design Contract (and any applicable amendments) for review and approval by the Team Representatives. The Design Contract to be entered into between the Authority and the Architect shall contain such terms mutually acceptable to the Authority and the Architect (and as approved by the Team Representatives), but shall include the following provisions:

(a) The Team Representatives will be entitled to participate, by providing timely review, and providing timely recommendations within the applicable budget, in all aspects of the process of designing, developing and constructing the New Arena Project, including each iteration of:

- (1) Concept Designs,
- (2) Schematic Drawings,
- (3) Design Development Documents,
- (4) Construction Documents, and
- (5) other drawings and documents designated in this Agreement.

The Team Representatives shall be given full access to the Architect. The Development Committee Chair shall provide such coordination and communication necessary to facilitate the expeditious flow of documents, information, comments, recommendations, consultations, approvals, and other communication contemplated hereby. The Architect shall be required to provide the City Representatives and Team Representatives with reasonable prior notice of all meetings involving the Architect. The Architect will provide reasonable cooperation and coordination with the City Representatives and Team Representatives in scheduling such meetings at mutually agreeable times;

(b) The Team Representatives will have full access to all documents created by the Architect, or subcontracted directly or indirectly by the Architect; provided, however, neither the Team nor the Team Representatives shall have the authority to give direction to the Architect, any Construction Contractor(s), or Other Professional. Only the Development Committee Chair shall have the authority to give directions to the Architect, any Construction Contractor(s), or Other Professionals; provided, however, the City Representatives (including the Development Committee Chair) shall not give any instructions that are inconsistent with the Approved Plans, this Agreement, or decisions of the Development Committee, unless approved by the Team Representatives. The Architect shall provide to the City Representatives and Team Representatives the names, titles, appropriate contact information, and assigned responsibilities of all design and other professionals working on the New Arena Project on at least a monthly basis, and more frequently upon request;

(c) The Architect and, where reasonably required or standard practice, the Owner Representative, shall be required to make reports related to the Design Contract including (i) monthly detailed written reports to the Development Committee in form and substance reasonably developed by the Development Committee on each task and at each Reporting Point, (ii) monthly interim reports updating information previously provided in form and substance reasonably developed by the Development Committee, (iii) such other or additional monthly

reports as directed by the Development Committee, and (iv) to otherwise keep all Parties fully informed and involved in the design process;

(d) Neither the Authority, City nor the Team shall be entitled to exercise any approval or review and comment rights in a manner that is reasonably likely to cause the New Arena Project to not stay within the New Arena Project Budget or to not meet a Scheduling Deadline unless such action is (i) necessary in order to meet the New Arena Project Requirements, (ii) mutually approved by the City Representatives and the Team Representatives, and (iii) approved by City Council if necessary;

(e) The Parties acknowledge and agree that the Team needs to be actively involved in the design, planning, and construction process of the Basketball Operations Areas and that the Architect and Owner Representative must demonstrate compliance with the NBA Arena Standards and the Team's standards, and as part of such process the Team shall be allowed to participate in the pre-qualification and selection process for any subcontractor, consultant, or subconsultant to be hired by the Architect to design the Basketball Operations Areas to ensure that such subcontractor, consultant, or subconsultant has extensive experience in designing similar areas within other first class, state-of-the-art sports and entertainment facilities as described in this Agreement;

(f) The Architect shall not be permitted to change the key members of the architectural team or any subcontractors or consultants assigned to the New Arena Project without the prior written consent of the Development Committee. The Architect will require that a similar provision be included in its contracts with its subcontractors and consultants. The key members of the architectural team, including any subcontractors and consultants, will be identified in the Design Contract, and subcontracts and consulting contracts, respectively.

(g) The Authority will incorporate any requirements in this Agreement, as pertain to the Architect, in the Design Contract, including, without limitation, that the New Arena Project is to be designed to comply with the New Arena Project Requirements and the Architect shall be required to certify that, to the extent required by the applicable standard of care, the Schematic Drawings, Design Development Documents, Construction Documents and other drawings and specifications prepared by the Architect meet the New Arena Project Requirements, except to the extent the City Representatives and Team Representatives have agreed otherwise. The Authority will provide a copy of this Agreement to the Architect;

(h) The Team will be a third-party beneficiary of the Design Contract; provided, however, the Team shall have no liability in connection with its status as a third-party beneficiary and shall not be entitled to exercise any right or claim against the Architect without first giving the Authority and the City not less than sixty (60) calendar days' prior written notice of any proposed claim or action by the Team (a "Team Claim") and by giving the Authority and the City the opportunity to also pursue such claim or action against the Architect. In addition, if the Authority and/or the City institute a claim or action against the Architect, the Team shall be entitled to join in such action, at its own expense, but the Team will not have any claim or cause of action against the City or the Authority for or under such claim or action. If the Authority and/or the City do not initiate a claim pursuit to notice of a Team Claim within sixty (60) calendar days following receipt of said notice, then the Team shall be entitled to independently pursue such claim

or action at its expense, but the Team will not have any claim or cause of action against the City or the Authority for such claim or for failure to pursue such claim. In evaluating the merits of pursuing a Team Claim, the Authority, the City, and the Team shall take into consideration the possible impact of the same on the New Arena Project, the New Arena Project Schedule, and the ability to meet the Scheduled Completion Date;

(i) The Authority shall cause the Architect to comply with any small business opportunity, non-discrimination and other similar ordinances that have been adopted or enacted at the time of entering the Design Contract;

(j) Additionally, the Design Contract must be consistent with the terms and provisions of this Agreement. The Authority and/or City shall comply in all material respects with the terms and provisions of the Design Contract;

(k) A copy of the final draft of the Design Contract shall be provided for review and approval by the Team Representatives, not later than twenty (20) Business Days prior to execution, for the sole purpose of confirming that the Design Contract is consistent with this Agreement. Within the twenty (20) Business Days, the Team Representatives shall confirm that the Design Contract is consistent with this Agreement. Within seven (7) calendar days following execution and delivery of the same by all signatories to the Design Contract, the Authority will deliver the Design Contract to the Architect and provide a copy thereof to the Team; and

(l) A requirement that the Architect (and each applicable subcontractor or subconsultant) maintains the insurance required by this Agreement, including but not limited to Errors and Omission insurance, Commercial General Liability insurance, and all other requirements of the Risk Management Division of the City, naming the City, Authority and Team as additional insureds as their respective interests may appear.

#### 3.1.10 Design Process.

(a) Team Rights. The City and Authority acknowledge that the Team needs to be actively involved in the design, planning, and construction process and that the Architect and Owner Representative must demonstrate compliance with this Agreement. It is agreed that the Team shall have reasonable review, consultation and comment rights, and where so specified in this Agreement approval rights, during the design process, as set forth and described in **Section 3.1.11.**

(b) Team Access. The Team Representatives will have full access to the Architect, Construction Contractor(s), and Other Professionals during the design phase and subsequent construction phases to the same extent as the City Representatives. Meetings with such persons will be coordinated by the Development Committee Chair as provided in this Agreement.

#### 3.1.11 Review and Approval Rights of Team.

(a) Submission for Approval. In accordance with **Section 2.2** the Authority and the City recognize that the principal objectives of this Agreement are to provide the Parties' roles and responsibilities as it relates to the New Arena Project in a manner that renders the New Arena

as a first class and state-of-the-art facility, comparable to recently constructed NBA and other major league venues as set forth herein, that is compliant with NBA Arena Standards and other NBA Rules and Regulations related to technology and guest experience, and, within the New Arena Project Budget. The Parties agree that submission to and approval by the Team Representatives of certain documents or components of the Approved Plans is necessary, desirable, and beneficial to achieve goals satisfactory to each Party. The Parties agree that there are certain benchmarks and timelines in the design process and in the development of certain components of the Approved Plans, the timeliness of approval by the Team Representatives is necessary. The Parties agree that the following documents are subject to review and timely approval by the Team Representatives:

- (1) New Arena Project Budget,
- (2) Design Contract, including any applicable design schedule and any applicable amendments,
- (3) Approved Plans, and
- (4) Construction Contract(s) and any applicable amendments.

Recognizing the critical time limit involved in preparing the Approved Plans, the Development Committee Chair will instruct the Architect, and the City will require that City staff, and other professionals involved in the preparation of the above listed documents, to provide drafts of these documents simultaneously to the City Representatives and the Team Representatives so as to minimize the time needed for review, input and comments from the Team Representatives.

(b) Submission for Information or Advisement. The Parties agree that additional information and advisory documents not listed above will assist the Team in the timely development of the Approved Plans. The Parties agree that the following documents should be submitted to the Team for informational purposes:

- (1) field changes, and directives as authorized by the Development Committee Chair,
- (2) responses to requests for information by the Architect,
- (3) Architect supplemental instructions,
- (4) Construction Contractor meeting notices and minutes,
- (5) final documents posted for bid, bid tabs of final bid submissions, list of bids submitted, including any applicable amendments or addendums to bid documents, and
- (6) any other document reasonably requested by the Team Representatives.

(c) Authority Approval. Subject to the rights of the Team and Team Representatives set forth in this **Section 3.1.11**, and to the requirement that the Approved Plans comply with the New Arena Project Requirements (unless the Authority and the Team agree otherwise), the Authority has the responsibility and right to approve all:

- (1) Schematic Drawings,
- (2) Design Development Documents, and

- (3) Construction Documents (also including the construction phase drawings, specifications, and final construction working drawing).

(d) Team Review, Comment and Approval Procedure. The Team Representatives shall timely notify the Development Committee Chair in writing of its approval or disapproval (with any objections specified) of all submissions. When a submission is made to the Team under this Agreement, the approval of the same by the Team Representatives shall be an acknowledgement and agreement by the Team that such submission is consistent with the New Arena Project Requirements or, to the extent that the same is identified as inconsistent, that the specific inconsistency is waived as to the specific matters identified for approval in such submission. In the event that the Team Representatives object to all or any portion of any submission as inconsistent with the New Arena Project Requirements or otherwise unacceptable to the Team, the Team Representatives' written response shall contain in reasonable detail the reason therefor. Further, in the event that the Team Representatives object to any submission, the Team Representatives shall meet on an expeditious basis with the City Representatives and the Architect to resolve any items of dispute to the reasonable satisfaction of the Parties. Any resubmission objected to by the Team Representatives shall be reviewed and commented on by the Team Representatives as provided in this **Section 3.1.11** and shall be responded to in the same manner as the original submission hereunder.

(e) Updating Design Schedule. During the Design Contract negotiation and in the design process the Development Committee shall cause the Architect to establish and update as necessary the design schedule (as provided for in **Section 3.11**) setting forth the dates for delivery of the various design documents; provided, however, that the design schedule shall not be revised in a manner that is reasonably likely to cause an inability to meet a Scheduling Deadline, unless such revision is approved in writing by the City Representatives and the Team Representatives.

(f) Disputes Concerning Approved Plans. The Parties agree to attempt in good faith to resolve expeditiously any disputes concerning the approval of or consent to any submission to either Party for approval hereunder. Any disputes that arise, and which cannot be resolved by the City Representatives and the Team Representatives respecting the approval or consent process set forth in this **Article III** shall be resolved in accordance with the rules and procedures set forth in **Exhibit F**.

(g) NBA Approval. As applicable, the Parties shall jointly submit or shall cause the Owner Representative or Architect to submit the designs to the NBA and obtain NBA approval of the designs and construction in accordance with NBA Arena Standards as described in the compliance section of the NBA Arena Standards. The Authority and City agree to support the Team and to use their best efforts to assist in obtaining from the NBA letters pursuant to which the NBA approves in writing the Approved Plans and confirms that the construction substantially complies with the NBA Arena Standards. The Parties acknowledge that prior to holding any practice, exhibition, or Home Game at the New Arena involving NBA players, the Team is required under NBA Rules and Regulations to obtain a written determination from the NBA Commissioner (or his designee) that the New Arena substantially complies with NBA Arena Standards.



(h) Team and Basketball Operations Area Finishes. Approved Plans for the New Arena shall include plans for the Team Areas, including the Basketball Operations Areas. The Authority shall cause the Architect (or the applicable subcontractor, consultant, or subconsultant) to prepare, as a New Arena Project Cost, the layout drawings to the Team Areas, including the Basketball Operations Areas, in compliance with Applicable Law. Subject to compliance with the New Arena Project Budget but notwithstanding any other provision of this Agreement to the contrary, the Team Representatives shall have the right to approve the design or, and all work to be performed, in connection with the Basketball Operations Areas. The Authority and Team shall jointly review such Basketball Operations Area plans. The Authority shall cause the Team Areas, including the Basketball Operations Areas, to be constructed in accordance with the Approved Plans and within the New Arena Project Budget. The Team, acting in good faith and exercising commercially reasonable judgement, may recommend for the termination or delegation of any Construction Contractor(s) working in the Basketball Operations Areas and the change of any Architect and Construction Contractor(s) personnel assigned to work on the Basketball Operations Areas, and the City nor the Authority shall not unreasonably withhold, delay or condition its approval of such termination or delegation. The Basketball Operations Areas, as reflected in the Approved Plans, except as otherwise agreed by the Parties, will be provided in the New Arena plans on a fully “built-out” basis and equipped basis as intended in the Approved Plans. The Team Areas and all restaurants, sports bars and retail facilities in the New Arena shall be furnished on a fully furnished, “built-out” and equipped basis as intended in the Approved Plans, unless otherwise agreed to by the Parties. As used in this paragraph, “fully ‘built-out’ and equipped basis” shall include all furniture, fixtures and equipment necessary to operate the New Arena and such spaces as intended, but not necessarily included in the Approved Plans as all Parties recognize that some FF&E requirements and specifications will not be fully developed or understood at the time the Approved Places are adapted and will require further development amongst the Parties at later stages of the project in compliance with the Guiding Principles. For clarity purposes, “fully built-out and equipped basis” as used in this paragraph excludes merchandise and food and beverage inventory.

### 3.2 Construction Contractors.

3.2.1 Construction Contractor(s). The Authority, in collaboration with the Team through the Development Committee, will solicit and award or cause to be solicited, bid and awarded construction contract(s) in accordance with City policies, procedures and Applicable Law. The selection of the lead general Construction Contractor shall be subject to the approval of the Team Representatives. In conformance with **Section 3.6** below, no termination of the Construction Contractor(s) working in the Basketball Operations Areas or any other Construction Contractor(s) whose contract for services is \$5,000,000 or more, and no material delegation to another Construction Contractor(s) for such contract, shall occur without the approval of the Development Committee. The selection of the Construction Contractor(s) and any replacement Construction Contractor following the termination of any Construction Contract will proceed in accordance with the City’s established procedures and in compliance with applicable requirements of Applicable Laws, and subject to the approval by the Development Committee. Those procedures permit the City to develop criteria to “pre-qualify” potential Construction Contractors for Construction Contracts and to verify and consider each Construction Contractor’s qualifications to bid and/or award. The Authority and City will follow such process in selection of all Construction Contractors and the Team will be permitted to actively participate in such processes,

including developing the criteria to “pre-qualify” potential Construction Contractors and the final criteria for qualifying Construction Contractors, and actively participate in the interview process of each Construction Contractor.

3.2.2 Nonconformance. If during construction, the Authority, the City or the Team reasonably determines or otherwise becomes aware that construction is not proceeding in accordance with the Approved Plans, as such Approved Plans may have been modified under this Agreement, the Authority or City shall cause any such nonconforming work to be re-executed by the party responsible therefor, unless otherwise agreed by the Parties. The Authority, the City or the Team, in their discretion, may independently or jointly engage the services of independent inspection and/or testing agencies to verify construction compliance with the Approved Plans and to monitor the Construction Contractor’s quality control program. Such independent inspectors shall have the right to access the New Arena Site to conduct inspections for purposes of verifying the Approved Plans, compliance with this Agreement and all Applicable Laws. Such access shall be upon prior notice given to the Development Committee and the Construction Contractor(s) onsite.

3.2.3 Other Professionals. The Authority or the City may from time to time select and engage such other architects, engineers, environmental consultants (“Other Professionals”) in connection with the New Arena Project as the Authority or the City may deem necessary; provided, however that if any such engagement by the Authority or the City of Other Professionals exceeds the allotted amount in the New Arena Project Budget, such fees and costs shall be at the sole expense of the Authority or City, and not a New Arena Project Cost nor the responsibility of the Team. Neither the Authority nor the City shall be required to secure the Team’s approval of any Other Professional and the Team shall not have any right to disapprove any Other Professional, provided, however, that the Authority or the City shall require each such Other Professional to communicate with the Team Representatives and provide the Team Representatives with copies of all written work product completed by such Other Professionals. Other Professionals shall not be engaged to directly prepare Approved Plans. The Approved Plans will be prepared by the Architect pursuant to the Design Contract. In addition, the Team may from time to time select and engage Other Professionals or consultants in connection with the New Arena Project as the Team may deem necessary; provided, such fees and costs shall be at the sole expense of the Team, and not a New Arena Project Cost nor the responsibility of the City or Authority.

3.3 Construction Contract(s). The Authority and/or City will prepare and submit the Construction Contract(s) (and any applicable amendments) for review and approval by the Development Committee. The Construction Contract(s) as entered into by the Authority and/or the City shall contain such terms and conditions as shall be mutually satisfactory to the Authority, the City, the Team and the Construction Contractor(s), but shall include the following:

- (a) where reasonably possible and cost effective under the circumstances, unit prices and lump sum prices to cover all of the New Arena Project Work through Substantial Completion for a fixed price or a guaranteed maximum price for all such work;
- (b) a provision for a performance bond, a labor and material payment bond, and a maintenance bond in the full amount of the contract price for the work and services covered

thereby in a form reasonably acceptable to the Authority and the City, with the Authority and the City being named as obligee or insured, as applicable, on all such bonds;

(c) separate provisions for liquidated damages payable to the City and/or Authority and to the Team, respectively, if the New Arena Project does not achieve Substantial Completion on or before the date designated for Substantial Completion under the Construction Contracts (and such delay is not attributable to a Team Change Request(s)), excusing payment only in the context of delays resulting from Force Majeure, in amounts and on terms reasonably acceptable to the Parties; provided, however, that the provision respecting the Team shall state that in addition to other rights of the Team as provided herein, the Team, as a third-party beneficiary to the Construction Contract(s), shall be entitled to collect a specific dollar amount for each day of delay beyond the date designated for Substantial Completion under the Construction Contracts, sufficient to compensate the Team for (i) lost revenues from the failure to be able to hold such events in the New Arena (less reasonable costs and expenses that would be incurred in connection therewith) and (ii) the estimated amount of all allowances, credits or rebates that the Team or Club is required to give to licensees of Premium Seating and all other sponsors and patrons as a result of such delay and any penalties or forfeitures incurred respecting Arena Events (such estimates to be based upon best available information as to any allowances, credits or rebates normally required to be given to licensees of premium seating and other sponsors and patrons at comparable NBA Arenas)(“Team Liquidated Damages”), and Team Liquidated Damages hereunder are not in any event considered to be Project Costs;

(d) appropriate retention amounts in accordance with Applicable Laws, taking into account as appropriate the liquidated damages payable to the Authority and/or City and/or Team as contemplated by **Section 3.3(c)** herein;

(e) a requirement of not less frequently than monthly construction progress reports to the Authority, City and Team for review and approval;

(f) a requirement that each Construction Contractor certify in writing that all materials are new and that no materials used in the work or incorporated into the New Arena Project contain lead, asbestos materials or other Hazardous Substances in excess of amounts allowed by Applicable Laws, including any Environmental Law;

(g) a requirement that each Construction Contractor will comply with all Applicable Laws, including OSHA and any Environmental Law;

(h) a requirement that each Construction Contractor provide to the Authority and City on or before the date of Substantial Completion, or as soon thereafter as practicable, complete reference, operator’s and owner’s manuals and a complete manual of assignment of all the warranties and guaranties provided by the Construction Contractor, equipment providers, and all subcontractors related to the New Arena Project, with such warranties and guaranties to have an effective date that begins no sooner than the date of Substantial Completion;

(i) a requirement that each Construction Contractor maintain the insurance required by this Agreement, and all other requirements of the Risk Management Division of the

City, naming the City, Authority and Team as additional insureds as their respective interests may appear, all as more fully set forth in **Section 3.14** hereof; and

(j) a provision that the Construction Contractor(s) develop and implement mutually acceptable plans for construction staging, procedures, and practices, including using best efforts to minimize negative effects on the operations and use of the Existing Arena by the Team and its guests in accordance with **Section 3.1.5** herein.

A copy of the final draft of each such Construction Contract shall be provided to the Team not later than twenty (20) Business Days prior to execution for review by the Team for the sole purpose of confirming that such Construction Contract is consistent with this Agreement. The Authority or City will provide a copy thereof to the Team within seven (7) calendar days following execution and delivery of the same by all signatories thereto. The Authority or City shall perform, or cause to be performed, all the Authority's or City's obligations and responsibilities in all material respects under each Construction Contract to which the Authority or City is a party.

**3.4 Team as Beneficiary.** The Team shall be a third-party beneficiary to all Construction Contract(s) with all Construction Contractors. However, the Team shall have no liability in connection with its status as a third-party beneficiary, and shall not be entitled to exercise any right or claim against the Construction Contractor without first giving the Authority not less than sixty (60) calendar days' prior written notice of any proposed Team Claim and giving the Authority the opportunity to pursue such claim or action against the Construction Contractor. If the Authority so institutes a claim against the Construction Contractor, the Team shall be entitled to join in such action subject to the Authority and the Team reaching a mutually satisfactory agreement as to the manner in which the claim will be pursued and the Party primarily responsible for the same. If the Authority does not pursue a Team Claim, then the Team shall be entitled to pursue such claim at its expense. In evaluating the merits of pursuing a Team Claim, the Authority and the Team shall take into consideration the possible impact of the same on the New Arena Project, the Construction Schedule and the ability to meet the Scheduling Deadlines.

**3.5 Design and Construction Obligation.** Subject to the other terms and conditions of this Agreement, the Authority (i) shall undertake and assume responsibility in accordance with this Agreement to cause and obtain all necessary, permitting, design, and construction of all improvements comprising the New Arena Project in accordance with Applicable Law, the Construction Schedule, the Construction Documents, and the New Arena Project Requirements and will use its best efforts to cause Scheduling Deadlines to be met and a permanent certificate of occupancy to be secured within a period of time following Substantial Completion to be mutually established by the Development Committee, taking into account the agreed phasing of various components of the New Arena Project in accordance with the Construction Schedule; (ii) cause all punch list items to be completed within sixty (60) calendar days of achieving Substantial Completion and cause all remediation and repairs or replacement, and warranty work as may be required respecting any defective or incomplete work; (iii) meet with the Team, the Architect, the Construction Contractor(s) and the Other Professionals providing design or construction services on a regular basis as is necessary to ensure the performance of the work in accordance with the terms of this Agreement. However, in meeting the obligations set forth in this **Section 3.5**, neither the Authority nor the City shall be obligated to incur any expense or cost that would cause the Total Project Costs to exceed Available Funding.

3.6 Termination of Construction Contractor(s). The Authority or City shall not terminate any Construction Contractor or select a replacement Construction Contractor if termination shall have occurred, without prior written notice and approval of the Development Committee. If, at any time, any Construction Contractor's performance is not acceptable to the Team Representatives, then (i) the Team Representatives will request to the City Representatives for the termination or delegation of such Construction Contractor's contract for services or work, as communicated through the Development Committee and (ii) the City Representatives will in good faith consider such request and either approval or deny the Team Representatives' request within ten (10) Business Days.

3.7 Construction Schedule. The Authority and City must cause Commencement of Construction on or before the Construction Start Date and endeavor to cause all Scheduling Deadlines to be met. The Development Committee, in consultation with the Architect and the Construction Contractor, will develop a construction schedule (the "Construction Schedule") with appropriate milestones tied to the critical path for construction, significant construction phases and/or trade contracts and/or lump sum prices consistent with the foregoing. Phases of the New Arena to be addressed in the Construction Schedule shall include, without limitation:

- (a) the construction design phase,
- (b) the acquisition and approval of permits,
- (c) ordering and delivery of equipment and materials,
- (d) the critical path for construction, and
- (e) all construction phases.

Such Construction Schedule shall be incorporated as an integral part of the Design Contract and the Construction Contract(s). The Construction Schedule shall delineate all phases of the New Arena Project and set forth a projected date for completion of each phase in sufficient detail to allow the Development Committee to monitor progress of the New Arena Project. The Construction Schedule shall encompass the construction design and the construction of all aspects of the New Arena Project. The Construction Schedule shall indicate the projected dates for the start and completion of the construction on the critical path and various stages of construction design and the construction. The Construction Schedule may be changed or revised by the Development Committee as required by the progress and condition of the New Arena Project. No change or revision shall be made to the Construction Schedule that would have the effect of extending any Scheduling Deadlines without approval of the Development Committee. The Development Committee shall continually evaluate the status of construction in view of the Construction Schedule. The Parties will use all commercially reasonable efforts to reach Substantial Completion on or before the Target Completion Date, but in no event shall Substantial Completion occur after the Outside Completion Deadline.

### 3.8 New Arena Project Budgets: Change Orders.

3.8.1 New Arena Project Budgets. The preliminary New Arena Project Budget is attached as **Exhibit C**. The Parties acknowledge that during the development of the Approved Plans certain decisions will be necessary regarding specific components of the New Arena Project. The Parties agree to cooperate in such process with a view toward finalizing the New Arena Project Budget and the Approved Plans so that the New Arena Project is completed in a manner that is consistent with the Guiding Principles. The New Arena Project Budget, and any amendment

thereto, shall be subject to approval of the Development Committee, however at no time shall the New Arena Project Budget exceed the Available Funding.

3.8.2 Authority Field Change. The Authority and the City, shall be entitled to make field changes in the Approved Plans, without the approval of the Team Representatives, only if such field changes would not do any of the following:

- (a) extend any Scheduling Deadline,
- (b) result in a failure of the New Arena Project to conform to the New Arena Project Requirements,
- (c) change the quality or functionality of any element of the New Arena Project as to which the Team has previously approved in the Approved Plans (including any element that is not itself directly subject to the proposed change),
- (d) increase the New Arena Project Budget,
- (e) directly affect the production of Team Revenues related to the New Arena Project, or
- (f) change the seating bowl, the Premium Seating (including inventory and location of the Premium Seating), the amenities for Premium Seating customers, the Basketball Operations Areas, Team Areas, the camera positions, the scoreboards, LED or other signs and displays, or other video displays, the sound system, information technology systems, the concession areas, hospitality areas, the Floor or any item of equipment, lighting or signage relating to the production, playing or broadcast of a Home Game (including any broadcast operations), or any other areas that require NBA approval or are contemplated in the NBA Arena Standards.

Such a field change may be implemented as an “Authority Field Change” by the City Representatives at any time and from time to time without the approval of the Team Representatives; provided, however that any Authority Field Change shall be subject to the value engineering terms and conditions set forth in **Section 3.8.4** below. Any Authority Field Change must be due to unexpected construction conditions encountered in connection with the construction of the New Arena Project, and not modify items (a) through (f) above in this **Section 3.8.2**. The City Representatives will informally notify the Team Representatives (email with brief summary of change and where applicable, photo evidence, being sufficient) of any Authority Field Changes as promptly thereafter as is practicable, and in all events, the City Representatives shall deliver a report of any such Authority Field Change to the Team Representatives no later than one week after such Authority Field Change occurs, and if the Team Representatives object to any Authority Field Change, the Development Committee will meet as promptly as practicable to discuss an agreed resolution to such objection. Any change requested in the Approved Plans that does not qualify as an Authority Field Change must be approved by the Team Representatives.

3.8.3 Change Requests. Either Party shall be entitled to submit, from time to time, requests to change the Approved Plans (each, a “Change Request”). Any Change Requests will be submitted to the Development Committee for approval to proceed.

If a Change Request is approved by the Development Committee, the Authority or City shall cause the Architect and/or Construction Contractor to furnish to the Development Committee, as promptly as possible after receipt, a good faith estimate of:

- (a) the cost of designing and implementing such Change Request (or the net estimated savings that would result from such Change Request);
- (b) any resulting change in the Construction Cost; and
- (c) any resulting change in the New Arena Project Schedule and Scheduling Deadlines.

This information will be submitted to the Development Committee for approval or denial, as they see fit, based on the information provided. If such Change Request is approved by the Development Committee, the Authority and City, subject to the requirements of Applicable Laws and the City’s internal policies and procedures shall:

- (i) issue a change order with respect to such Change Request (a “Change Order”), and
- (ii) cause such Change Order to be incorporated into the Approved Plans.

3.8.4 Value Engineering. If at any time during design process and construction process, the Parties reasonably believe that the New Arena Project Budget might be exceeded, or if an Authority Field Change or Change Request causes a net increase in the New Arena Project Budget then, the Development Committee may undertake mutually agreed value engineering as may be reasonable and appropriate to attempt to cause the New Arena Project Budget not to be exceeded; provided, however, that any such value engineering shall be performed so that the revised design or construction is in accordance with the Guiding Principles, the New Arena Project Requirements, the NBA Arena Standards or as otherwise approved by the Parties; provided, further, however, the Team shall have the right to initiate a privately financed enhancement to avoid such value engineering modification.

3.8.5 Compliance With Law. The Parties acknowledge that Authority Field Change and Change Requests (collectively “Changes”) may, as between the Parties, be implemented by the City Representatives and Team Representatives as set forth above. However, the Parties also acknowledge that particular Changes require compliance with other procedures and approvals under the City procedures or Applicable Law and the ability to make Changes which result in additional costs is specifically limited to ten percent (10%) of the contract amount, as provided in the Public Competitive Bidding Act of 1974. Nothing in the foregoing is intended to authorize Changes in any manner that would conflict with such City procedures or Applicable Law.

3.8.6 Cost Overruns. All costs related to the New Arena Project (other than the costs to be separately borne by the Team under the express terms hereof including but not limited Team overruns) not adequately provided for in the New Arena Project Budget shall be “cost overruns.”

The risk of all cost overruns for the New Arena Project is that of Authority and City, less and except that the Authority or City will not be responsible for any cost to be paid by the Team as expressly provided here into the Team overruns; and less and except that in no event shall either the City or Authority be responsible for any costs overruns to the extent such overruns cause the New Arena Project to exceed Available Funding. The Team shall not be responsible for any cost overruns with respect to the New Arena Project Budget, except those cost overruns which result from modifications to the New Arena Project requested by the Team after approval of the Approved Plans, if such requests increases the agreed-upon New Arena Project Budget for the New Arena Project. In such instance, the Team is only responsible for the increase above the previously agreed-upon New Arena Project Budget that is attributable to their request. The City Representatives and Team Representatives will use the value engineering process set forth in **Section 3.8.4** above to resolve any such cost overruns, and otherwise mutually agree to reallocate funds within the New Arena Project Budget to address cost overruns.

3.8.7 Additional Costs Resulting from Changes in Applicable Law. Any additional costs for the New Arena Project resulting from any change of whatsoever nature in Applicable Law enacted by the City shall be borne by the Authority. However, in no event shall either the City or Authority be responsible for any additional costs to the extent such overruns cause the Total Project Costs exceed Available Funding.

3.8.8 Remediation. The Authority and/or City will undertake an evaluation on the New Arena Site as reasonably necessary to determine the presence of Hazardous Substances in excess of generally accepted established standards. To the extent that any Hazardous Substance is in excess of generally accepted established standards or violation of any Environmental Law, is discovered, or in the event any soil, geological or other condition is discovered that will cause the New Arena Project to be more time consuming or expensive than anticipated, then the Authority or City, shall undertake, or causing to be undertaken, the remediation of such conditions in accordance with Applicable Law or securing such waivers and permits as shall be necessary in order to permit the New Arena Project so as to permit Substantial Completion of the New Arena Project to meet any Scheduling Deadlines. The costs and expense of such remediation will be a New Arena Project Cost.

3.8.9 Available Funding. Notwithstanding any other provision in this Agreement, the Parties agree, neither the City nor the Authority is required to provide funding for the New Arena Project in an aggregate amount exceeding Available Funding. If at any time it appears that New Arena Project Costs will exceed Available Funding, the Authority will notify the Team, and the City Representatives and Team Representatives will mutually agree on the possible reallocation of budgeted costs, re-design of the New Arena Project, or other measures designed to assure completion of the New Arena Project in accordance with New Arena Project Requirements and, subject to the terms hereof, reflect any necessary changes in appropriate Changes. In conferring regarding such matters, the City Representatives and Team Representatives will negotiate in good faith on any reallocation; however, in determining any such reallocation the Parties will in all respects be guided by the Guiding Principles. Notwithstanding the preliminary budgets or subsequent budget, nothing herein will prohibit approval of any increase in costs for the New Arena Project provided that New Arena Project Costs do not exceed Available Funding. On or before a date one hundred and twenty (120) calendar days after the sales tax collections under the



Ordinance ends, the City will notify the Team of the total sales tax collections received by the City as a result of the Ordinance.

3.9 Ownership of the New Arena. The New Arena, including all improvements made as part of the New Arena Project, shall be owned by the City. Except as provided otherwise in this Agreement, any personal property (including finishings, furniture, fixtures and equipment) relating to the New Arena Project, whether located within public spaces within the New Arena, or the Team Areas, or the office and operational areas of the New Arena shall be owned by the City. Provided, any personal property purchased by the Team, in excess of the Team Contribution, though located at the New Arena shall remain the property of Team and may be removed by Team upon termination of the License Agreement provided that the Team repairs all damage caused by any such removal.

3.10 Team's Depreciable Interest. The Parties acknowledge and agree that (i) portions of the Team Contribution may be used to construct or provide (or cause to be constructed or provided) certain specific improvements, fixtures, furnishings, equipment, trade fixtures, appliances and other Internal Revenue Code Sections 1245 personal property to be placed in or upon the New Arena Project (collectively, the "Depreciable Property"), including Depreciable Property in the Team Areas and (ii) pursuant to the terms of the License Agreement the Team shall retain the sole legal and beneficial depreciable interest in the Depreciable Property. The Team shall have (1) a right, title and interest in the Depreciable Property created by and arising from this Agreement and the License Agreement and (2) a depreciable interest for tax purposes in, though no legal ownership of, all Depreciable Property in the amount of the Team Contribution and any other amount paid for or otherwise funded by the Team. For purposes of identifying the Depreciable Property, the Team shall prepare a schedule for the City and Authority's review and consent identifying the items constituting the Depreciable Property and allocating the Team's investment among such items (the "Depreciable Property Schedule"). The City and Authority will have twenty (20) Business Days after receipt to review and approve the Depreciable Property Schedule, or to notify the Team in writing of any objections. If the City and Authority do not deliver a written objection and the basis thereof to the Team within twenty (20) Business Days of receipt of the Depreciable Property Schedule, then the Depreciable Property Schedule shall be deemed final and binding on the Parties absent manifest error. If the City or Authority delivers to the Team a written objection and the basis thereof to the Depreciable Property Schedule within twenty (20) Business Days of receipt, then the Parties shall negotiate in good faith to resolve the disputes and, if the Parties are unable to resolve the disputes, then such dispute shall be resolved in accordance with the rules and procedures set forth in **Exhibit F**.

3.11 NBA Approval Process. No approval by the NBA or the Team, pursuant to the NBA approval process, shall impose, imply or be construed as an assumption by the NBA or the Team, as applicable, of any duties or responsibilities of the City or the Authority with respect to:

- (a) the design, development and construction of the New Arena Project; or
- (b) with respect to any of the work or as to the construction means and methods employed by or on behalf of any Construction Contractor or Other Professional retained by or on behalf of the Authority, the Architect or any Construction Contractor.

The Team, in coordination with the Owner Representative, shall use commercially reasonable efforts to seek and obtain all needed NBA approvals as soon as reasonably practicable; provided, however the Team shall be entitled to withhold any approval rights referenced under this **Article III** as it pertains to the NBA approval rights until such approvals are granted.

The Development Committee shall, in consultation with the Architect, develop a design schedule timeline and approval periods for the approval by each of them of all architectural work (including revisions) that are mutually acceptable to the Authority, the City, and the Team. Such design schedule timeline and approval periods shall take into account the matter to be approved, its complexity and any impact the time for approval may have on the New Arena Project and the Construction Schedule. It is acknowledged by the Authority, City and the Team that some of the architectural work, including but not limited to revisions during the early stages of the design process, will require substantial periods of time for review including but not limited to Schematic Drawings, Design Development Documents and Construction Documents, each of which will reasonably require a reasonable time for review and approval. The Authority, the City and the Team further recognize that an expedited approval process may be necessary to meet Scheduling Deadlines. If the City Representatives and Team Representatives cannot mutually agree as to a specific approval period for a specific matter requiring Team approval, or a specific time is not otherwise provided, then the default timeline for the Team to notify the Development Committee Chair of its approval or disapproval in writing shall be ten (10) Business Days (being at least fourteen (14) calendar days) after receipt of notice of any matter requiring approval of the Team.

### 3.12 Team Contribution.

3.12.1 New Arena. Subject to the terms and conditions herein, the Team shall contribute the Team Contribution toward the cost of the New Arena Project. The Team shall tender the Team Contribution to the Authority upon satisfaction of the conditions set forth in **Section 3.12.2** below. Notice of each payment using the Team Contribution shall be accompanied with documentation substantiating such New Arena Project Costs.

3.12.2 Conditions. The Team's obligation under this Agreement to tender the Team Contribution to the Authority shall be subject in all respects to the satisfaction of each of the following conditions:

(a) The \$78 million of MAPS 4 funds shall have been spent or contractually obligated to be spent on the New Arena Project by the City and/or Authority;

(b) The Oklahoma City Council shall have authorized the issuance of debt in connection with the New Arena Project and such authorization shall not have been rescinded or otherwise adversely modified. However it is the intention of the Parties that the Team's Contribution be contractually obligated to be spent or spent on the New Arena Project prior to the expenditure of any net proceeds of borrowings;

(c) The other New Arena Transaction Documents shall have been executed and delivered by the Parties thereto; and

(d) The Construction Schedule shall have indicated that the Team Contribution is needed to ensure uninterrupted progress of the New Arena Project.

The Parties agree to use good faith efforts to promptly negotiate the other New Arena Transaction Documents. The City and the Authority shall use all commercially reasonable efforts to secure binding and enforceable commitments to provide financing to complete the New Arena Project as contemplated by this Agreement. Furthermore, in order to guarantee that the New Arena Project proceeds without delay, the City agrees to provide the Team with not less than 120 days' notice of when the Team's Contribution will be required.

### 3.13 Substantial Completion.

#### 3.13.1 New Arena Project.

(a) Use and Occupancy of New Arena. The Team acknowledges that the Club shall be obligated to play Home Games at the New Arena upon commencing with the License Commencement Date. The Parties acknowledge that the License Commencement Date is not certain at this time, but the Authority and the City agree to endeavor to cause the New Arena Project to reach Substantial Completion by such date.

(b) Use of the New Arena. Notwithstanding failure to achieve Substantial Completion, in the event that any Scheduling Deadline is not met but the Club has been able to play, and has so elected to play, Home Games in the New Arena, then in such event all liquidated damages, if any, recovered under any Construction Contract(s) and all proceeds of insurance payable by reason of late completion shall be allocated in an equitable manner between the City and the Authority on the one hand and the Team on the other, taking into account all of the facts and circumstances including any Basketball Operations Areas, Team Arena Office, or other portions of the New Arena not available for use; and if such Parties are unable to agree upon an allocation, the same shall be decided by the expedited dispute resolution procedure as provided in **Section 9.16** hereof based on the relative losses incurred by the Parties.

3.13.2 Exclusive Remedies. The Team acknowledges and agrees that except as provided in **Article VI** and **Article VII** hereof, the remedies set forth in **Section 3.3(c)** relating to delays in construction and liquidated damages represent the sole and exclusive remedies of the Team against the Authority and the City should Scheduling Deadlines not be met and that neither the City nor the Authority shall have any further liability to the Team for actual or consequential damages as a result of construction delays.

3.14 Insurance. All Construction Contractor(s) shall be required to maintain insurance of the type set forth in the City's standard insurance specifications but at a minimum will include that set forth in this **Section**. Required insurance must be carried and maintained by each Construction Contractor throughout the term of its Construction Contract(s). Certificates of insurance shall contain an understanding by the insurer(s) to the effect that the policy(s) may not be canceled, fail to be renewed, nor the limits decreased without thirty (30) calendar days prior written notice to the Authority, City and/or any participating public trust.

3.14.1 Policy Requirements. During the term of the Construction Contract(s), the Construction Contractor shall provide, pay for and maintain with companies satisfactory to the City, the types of insurance described herein. All insurance shall be from responsible insurance companies eligible to do business in the State of Oklahoma. All liability policies shall provide that

the City, the Authority and/or any participating public trust are named additional insured as to the operations of the Construction Contractor under this Construction Contract and shall also provide the following Severability of Interest Provision:

(a) With respect to claims involving any insured hereunder, each such interest shall be deemed separate for any and all other interest herein and coverage shall apply as though each such interest was separately insured.

(b) The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the forms furnished by the Authority or the City, showing the New Arena Project number and description as indicated in the Construction Contract. The certificate must be signed by the authorized representative of the insurance company(s) shown in the certificate with proof that it is an authorized representative thereof. In addition, certified, true and exact copies of all insurance policies required shall be provided to the Authority and the City, on a timely basis, if requested by the Authority or the City. The required policies of insurance shall be performable in Oklahoma City, Oklahoma and shall be construed in accordance with the laws of Oklahoma.

(c) No less than thirty (30) calendar days prior written notice by registered or certified mail shall be given to the Authority and the City of any cancellation, intent not to renew, or reduction in the policies' coverage except in the application of the aggregate limits provisions. In the event of a reduction in any aggregate limit, the Construction Contractor shall take immediate steps to have the full amount of the limits appearing on the certificate reinstated. If at any time the Authority or the City requests a written statement from the insurance company(s) as to any impairments to the aggregate limit, the Construction Contractor hereby agrees to promptly authorize and have delivered to the Authority and the City such statement. The Construction Contractor shall make up any impairment when known to it.

The Construction Contractor authorizes the Authority and the City to confirm all information so furnished, as to Construction Contractor's compliance with its bonds and insurance requirements, with the Construction Contractor's insurance agents, brokers, surety, and insurance carriers. All insurance coverage of the Construction Contractor shall be primary to any insurance or self-insurance program carried by the Authority or City.

3.14.2 Commencement of Work. No work or occupancy of the premises shall commence at the New Arena Site unless and until the required certificates of insurance are in effect and the written notice to proceed is issued to the Construction Contractor by the Authority or the City.

3.14.3 Construction Contractor Responsibility. The insurance coverage and limits required of the Construction Contractor under the Construction Contract are designed to meet the minimum requirements of the City and the Authority. Such coverage and limits are not designed as a recommended insurance program for the Construction Contractor. The Construction Contractor alone shall be responsible for the sufficiency of its own insurance program.

3.14.4 Deductibles; Self-Insurance. Any deductibles or self-insured retention or any scheme other than a fully insured program of general liability, automobile liability and/or

employer's liability must be declared by the Construction Contractor and be approved in advance by the Authority, the City and the Team. At the option of the Authority and the City, either may require the Construction Contractor to reduce or eliminate such deductibles or self-insured retention with respect to the City and/or Authority; or, in alternative, the Construction Contractor shall procure a bond guaranteeing payment of the losses and related investigations, claim administration and defense expenses not otherwise covered by Construction Contractor's insurance because of deductibles or self-insurance retention.

3.14.5 Worker's Compensation and Death Liability. The Construction Contractor shall maintain, during the term of the Construction Contract, Worker's Compensation Insurance as prescribed by the laws of the State of Oklahoma and Employer's Liability Insurance in an amount not less than one hundred thousand dollars (\$100,000.00) each for all its employees working on the New Arena Project and in case any work is sub-contracted, the Construction Contractor shall require the sub-contractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all the sub-contractor's employees, unless such employees are covered by the protection afforded by the Construction Contractor. In the event any class of employees engaged in work or services performed under the Construction Contract or at the site of the New Arena Project is not protected under such insurance heretofore mentioned, the Construction Contractor shall provide and shall cause each sub-contractor to provide adequate insurance for the protection of the employees not otherwise protected.

3.14.6 Commercial General Liability Insurance.

(a) The Construction Contractor shall maintain during the term of the Construction Contract sufficient commercial general liability insurance to protect the Construction Contractor and any additional insured(s) from claims for bodily injury, including death, as well as from claims from property damages or loss, which may arise from activities, omissions and operations under the Construction Contract, whether such activities, omissions and operations be by the Construction Contractor or by any sub-contractor or by anyone directly or indirectly employed by or acting on behalf of or to the benefit of any of them. The amounts of such insurance shall be not less than the City's or Authority's maximum liability under the Governmental Tort Claims Act, 51 O.S. 151 et seq., as amended from time to time and are:

(b) Property Damage Liability in an amount not less than twenty-five thousand dollars (\$25,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages, arising out of a single accident or occurrence.

(c) All Other Liability in an amount not less than one hundred seventy-five thousand dollars (\$175,000.00) per claimant for claims including death, personal injury and all other claims arising out of a single accident or occurrence.

(d) Single Occurrence or Accident Liability in an amount not less than one million dollars (\$1,000,000) for any number of claims arising out of a single accident or occurrence.

3.14.7 Liability Policy Requirements. The Construction Contractor's general liability insurance coverage policy must be endorsed to reflect the fact that the City and/or any participating

public trust and their tenants shall continue to operate business activities at the New Arena Site during the activities of the Construction Contractor and that no property used in connection with their activities shall be considered by the Construction Contractor's insurance company as being in the care, custody, or control of the Construction Contractor. Additionally, if the Construction Contractor's commercial general liability coverage is written in a "claims-made" form, Construction Contractor shall also provide tail coverage that extends a minimum of one year from the expiration of the Construction Contract.

3.14.8 Automobile Coverage. Automobile liability insurance shall be maintained by the Construction Contractor as to the ownership, maintenance and use of all owned, non-owned, leased or hired vehicles, with limits of not less than:

- (1) Bodily Injury liability \$175,000.00 limit each person, \$1,000,000.00 limit each accident;
- (2) Property damage liability \$100,000.00 limit each accident; or
- (3) Bodily injury and \$1,000,000.00 combined single limit each property damage liability accident.

The Construction Contractor shall not commence work under the Construction Contract until they have obtained all insurance required under this **Section** and such insurance has been approved by the Authority, nor shall the Construction Contractor allow any sub-contractor to commence work on the Construction Contractor's sub-contract until all similar insurance required of the sub-contractor has been so obtained and approved.

3.14.9 Builder's Risk. Except as provided below, the Construction Contractor shall procure and shall maintain during the life of the Construction Contract, builder's risk insurance (extended coverage including fire coverage on building construction and/or renovation) on a one hundred percent (100%) completed value basis on the insurable portion of the New Arena Project, including any existing improvements at the construction site which are hereby made a part of this New Arena Project. The Team, City, the Authority, the Construction Contractor and subcontractors (as their interests may appear) shall be named as the insured. In the event the Authority determines in its sole discretion that it is more efficient and cost effective not to require the Contractor to obtain builder's risk insurance, the Authority will obtain such insurance and provide to the Team a certificate of insurance or similar document demonstrating the existence of builder's risk insurance on the New Arena Project as outlined above. This insurance may be obtained or provided by the Authority, the City, or any public trust of which the City is sole beneficiary.

3.14.10 Policy Terms. All insurance required hereunder must be issued under standard form policies issued by insurers of recognized responsibility authorized to do business in Oklahoma which are rated at least Class A-VIII, AM Best Rating Services. All such policies shall be non-assessable and shall contain language to the effect that (i) any loss shall be payable notwithstanding any act or negligence of the City, the Authority, the Team or their agents, employees, subcontractors and licensees; (ii) the policies are primary and noncontributing with insurance that may be carried by any other Party; and (iii) the policies cannot be cancelled, materially changed or not renewed except after thirty (30) calendar days' written notice by the insurer to the Authority and the City. Each such policy of insurance shall further include waivers

of all rights of subrogation against the City, the Authority, the Team, and the NBA and their respective officers, agents and employees. On all insurance procured pursuant to this **Section 3.14**, the Team, City, and the Authority, and their respective agents, employees, subcontractors and licensees shall each be named as additional insured on the respective policies to the extent allowed by law and within the limitations in the forms of coverage available.

3.14.11 Damage or Destruction Prior to Substantial Completion. If, at any time prior to Substantial Completion, the New Arena Project, or any part thereof, shall be damaged or destroyed by a Casualty, the Authority or City may commence, and thereafter proceed as promptly as possible, to repair and restore the New Arena Project to cause the same to achieve Substantial Completion in accordance with the Approved Plans as soon as practicable. Damage or destruction to the New Arena Project prior to Substantial Completion shall not give rise to any right to terminate this Agreement (i) except as otherwise provided in **Article VII** hereof, or (ii) unless the Authority, City and Team shall mutually agree to the contrary. However, unless expressly agreed by the City and Authority in writing, nothing herein shall obligate either the Authority or City to incur any expense or costs to the extent the New Arena Project Costs exceed Available Funding. The Authority shall compensate the Team for actual damages which the Team incurs as a result of the New Arena Project not achieving Substantial Completion by the Scheduled Completion Date due to a Casualty in an amount corresponding to the Team Liquidated Damages but only to the extent of insurance proceeds, if any, that may be available in excess of the amount required to repair and restore (including cost attributable to work acceleration) the New Arena Project.

### 3.15 Reports: Inspection Rights of Team.

3.15.1 Reports. The Authority shall cause the Architect and any Construction Contractor(s) to provide to the City Representatives and Team Representatives and the NBA written progress reports on a regular basis. Such reports shall be in such form as designated by the City Representatives and Team Representatives and shall describe the status of the design and construction of the New Arena Project, any proposed or necessary changes in the Approved Plans or the Construction Schedule, the estimated percentage of completion, and such other relevant information as the City or Authority shall determine or the Team shall reasonably request. The City Representatives and Team Representatives shall furnish to each other any information that comes to their respective attention from the Architect or any Contractor or any other sources relating to the occurrence of any Casualty or other Force Majeure or other situation, occurrence or event that could have a materially adverse effect on the ability to achieve Substantial Completion by the Target Completion Date, Scheduled Completion Date, or Outside Completion Deadline, as applicable. In addition, the City and Authority shall be required to, or direct the Owner's Representative, to make reports available to the Team Representatives on the following basis, unless an increased frequency is requested by the City Representatives or Team Representatives, related to the funding and expenditures of the New Arena Project including (i) a monthly report of expenditure of MAPS 4 funds related to the New Arena Project report (ii) monthly sales tax funding report, (iii) a monthly report of expenditure of Team Contributions, (iv) a bi-weekly project status cost control report, in form acceptable to Development Committee, showing the percentage completion of each line item in the New Arena Project Budget and the amount, if any, by which the actual costs incurred for each line item is above or below the amount indicated in the New Arena Project Budget, (v) monthly report showing Available Funding, and any related expenditures, and (vi) any other additional reports or information as directed by the Team

Representatives to otherwise keep the Team fully informed and involved in the availability and expenditure of funds related to the New Arena Project.

3.15.2 Inspection Rights of the Team. The Authority and City agrees that the Team Representatives shall have the right (i) at all times during normal Business Hours upon not less than three (3) Business Days' prior written notice to review all New Arena Project records reasonably requested including, without limitation, all draw requests, cost records and evidence of payment with respect to New Arena Project, and (ii) at all reasonable times, subject to compliance with Applicable Law, during construction hours to inspect the progress of the construction of the New Arena Project. The Team Representatives (or such other representative) shall, at the option of the Authority or the City, be accompanied by a City Representative or its representative during such inspection.

#### **Article IV. RELATED AGREEMENTS**

4.1 New Arena Use. The New Arena will be made available for Club use in accordance with the License Agreement.

4.2 Food and Beverage. A food and beverage operator will be selected in accordance with the Food and Beverage Agreement.

#### **Article V. REPRESENTATIONS AND WARRANTIES**

5.1 Representations and Warranties of the City. The City represents and warrants to Team that:

(a) The City is a municipal corporation duly organized and validly existing under the laws of the State of Oklahoma;

(b) The City is authorized and empowered to enter into this Agreement and to perform all of its obligations under this Agreement or any other such agreement approved by the Oklahoma City Council;

(c) No consent or approval of any third-party is or was required to execute and deliver this Agreement;

(d) The Person signing this Agreement on behalf of the City has been duly authorized to sign and deliver this Agreement on behalf of the City;

(e) Neither the execution and delivery of this Agreement nor the performance by the City of its obligations under this Agreement shall (i) violate any statute, rule, judgment, order, decree, stipulation, injunction, charge or other restriction of any Governmental Authority, or any provision of any governing document of the City, or (ii) conflict with, result in a breach of, or constitute a default under, any contract, indenture, mortgage, instrument of indebtedness or other agreement to which the City is a party or by which it or its assets are bound, which conflict, breach or default could reasonably be expected to have a material adverse effect on its ability to perform its obligations hereunder;



(f) This Agreement has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms except to the extent enforceability is limited by bankruptcy, reorganization and other similar laws affecting the City and rights of creditors generally and by general principles of equity; and

(g) There is no known litigation, governmental proceeding or investigation pending or, to the knowledge of the City, except as otherwise disclosed in writing to the Team, threatened against the City which would have a material adverse effect on the ability of the City to fulfill its obligations under this Agreement.

5.2 Representations and Warranties of Team. The Team represents and warrants to the City and the Authority that:

(a) The Team is a duly organized and validly existing limited liability company, in good standing under the laws of the State of Oklahoma and has all requisite power and authority to execute and deliver this Agreement;

(b) The Club is the owner of an NBA Franchise;

(c) This Agreement has been duly authorized, executed and delivered by the Team and constitutes the legal, valid and binding obligation of the Team, enforceable against the Team in accordance with its terms except to the extent enforceability is limited by bankruptcy, reorganization and other similar laws affecting the Team and rights of creditors generally and by general principles of equity; and

(d) There is no known litigation, governmental proceeding or investigation pending or threatened in writing against the Team, which would have a material adverse effect on the business or financial condition of the Team or which could have a material adverse effect upon the Team's ability to fulfill its obligations under this Agreement.

5.3 Representations and Warranties of Authority. The Authority represents and warrants to the Team that:

(a) Authority is a public trust duly formed and validly existing under the laws of Oklahoma with all necessary power and authority to enter into this Agreement and to consummate the transactions herein and therein contemplated. The execution and delivery of this Agreement and the performance by Authority of its obligations hereunder will not violate or constitute an event of default under any material terms or material provisions of any agreement, document, instrument, judgment, order or decree to which Authority is a party or by which Authority or its assets are bound;

(b) The Authority has caused all governmental proceedings required to be taken by or on behalf of the Authority to authorize the Authority to make and deliver this Agreement and to perform the covenants, obligations and agreements of the Authority hereunder. No consent to the execution or delivery of this Agreement by the Authority or the performance by the Authority of its covenants, obligations and agreements hereunder is required from any board of directors, shareholder, creditor, investor, judicial, legislative or administrative body,

Governmental Authority or other Person, other than any such consent which already has been unconditionally given;

(c) Neither the execution and delivery of this Agreement nor the performance by the Authority of its obligations hereunder shall (i) violate any statute, rule, judgment, order, decree, stipulation, injunction, charge or other restriction of any Governmental Authority, or any provision of any governing document of the Authority, or (ii) conflict with, result in a breach of, or constitute a default under, any contract, indenture, mortgage, instrument of indebtedness or other agreement to which the Authority is a party or by which it or its assets are bound, which conflict, breach or default could reasonably be expected to have a material adverse effect on its ability to perform its obligations hereunder;

(d) This Agreement has been duly authorized, executed and delivered by the Authority and constitutes the legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms except to the extent enforceability is limited by bankruptcy, reorganization and other similar laws affecting the Authority and rights of creditors generally and by general principles of equity; and

(e) There is no known action, suit, claim, proceeding or investigation pending or, except as otherwise disclosed in writing to the Team, currently threatened against the Authority that could either individually or in the aggregate have a material adverse effect on the ability of the Authority to fulfill its obligations under this Agreement.

## **Article VI. DEFAULTS AND REMEDIES**

6.1 City or Authority Default. The following events (each a “City or Authority Default”) shall each constitute a default by the City and/or Authority under this Agreement:

(a) The Authority or the City shall fail to observe or perform any material term or covenant of this Agreement specifically applicable to such entity, and such default or failure either is not cured within any applicable grace period or shall continue for a period of thirty (30) calendar days after written notice thereof has been given to the Authority by the Team, specifying in reasonable detail the nature of the breach and the action required to cure; provided, however that any such cure period shall not act to extend any Scheduling Deadline; or

(b) Any representation or warranty made by City or the Authority as set forth in this Agreement shall be false or inaccurate in any material way when made; or

(c) An Act of Bankruptcy shall have occurred with respect to the City or the Authority; or

(d) Failure to achieve Substantial Completion by the Outside Completion Deadline.

In the event a City or Authority Default shall occur, then, in any such event, Team may either (i) seek specific performance of the City’s or Authority’s obligations hereunder; or (ii) subject to the limitations of **Section 9.17**, seek to recover such damages to which Team may be entitled, whether

under the terms of this Agreement or otherwise; provided, that the Team shall only be entitled to recover damages resulting from a City or Authority Default described in **Section 6.1(d)** if such City or Authority Default was a result of independent action or inaction taken solely by the City or Authority without specific approval of such action or inaction by the Team, or (iii) exercise any other rights or remedies available at law or in equity; provided, however, that except as expressly set forth in **Section 7.2** hereof, the Team does hereby expressly waive any right it may have to terminate this Agreement upon any City or Authority Default; and the Team further agrees that the failure to meet Scheduling Deadlines does not constitute City or Authority Default and shall be governed solely by **Sections 3.15 and 7.2** hereof.

6.2 **Team Default.** The following events (each a “Team Default”) shall constitute a default by Team hereunder:

(a) The Team shall fail to observe or perform any material term or covenant of this Agreement and such default or failure either is not cured within any applicable grace period or shall continue for a period of thirty (30) calendar days after written notice thereof has been given to the Team by the City or the Authority, specifying in reasonable detail the nature of the breach and the action required to cure; or

(b) Any representation or warranty made by the Team as set forth in this Agreement shall be false or inaccurate in any material way when made; or

(c) An Act of Bankruptcy shall have occurred with respect to the Team.

(d) Failure by the Team to provide the Team Contribution as required by **Section 3.12.**

(e) In the event a Team Default shall occur, then, in any such event, the City or Authority may either (i) seek specific performance of the Team’s obligations hereunder; or (ii) subject to the limitations of **Section 9.17**, seek to recover such actual damages to which the City or the Authority may be entitled, whether under the terms of this Agreement or otherwise; or (iii) exercise any other rights or remedies available at law or in equity; provided, however, the City and the Authority expressly waive any right either of them may have to terminate this Agreement upon a Team Default.

## **Article VII. TERMINATION**

7.1 **No Other Termination Rights.** It is the intention and agreement of the Parties that except as expressly provided to the contrary this **Article VII**, this Agreement shall not be subject to termination and as to all other events and circumstances, each of the Parties hereto waives its right to terminate this Agreement.

7.2 **Team Termination Rights.** Notwithstanding anything herein to the contrary, the Team shall have the right, in the exercise of its sole, exclusive discretion, to terminate this Agreement, in the event that prior to the License Commencement Date any follow occurs:

(a) The Authority ceases all work on the construction of the New Arena Project for more than thirty (30) consecutive calendar days prior to Substantial Completion unless agreed to by Parties; or

(b) Substantial Completion does not occur by the Outside Completion Deadline.

7.3 Obligations Following Termination. Upon the termination of this Agreement in accordance with the terms of this **Article VII**, none of the Parties hereto shall have any further obligations or liabilities accruing hereunder after such termination; provided, however, termination of this Agreement shall not affect any obligations or liabilities attributable to the period prior to the effectuation of such termination.

### **Article VIII. CLAIMS**

8.1 City. To the extent permitted by Applicable Laws, the City agrees to be liable for any and all liabilities, damages, suits, claims and judgments of any nature (including without limitation, reasonable attorneys' fees and expenses), arising from or in connection with (i) any negligence or misconduct of City or its employees, agents or contractors or (ii) any breach by the City of any representation or warranty or breach of its obligations hereunder.

8.2 Authority. To the extent permitted by Applicable Laws, the Authority agrees to be liable for any and all liabilities, damages, suits, claims and judgments of any nature (including without limitation, reasonable attorneys' fees and expenses), arising from or in connection with (i) any negligence or misconduct of Authority or its employees, agents or contractors or (ii) any breach by the Authority of any representation or warranty or breach of its obligations hereunder.

8.3 Team. The Team agrees to be liable for any and all liabilities, damages, suits, claims and judgments of any nature (including without limitation, reasonable attorneys' fees and expenses) arising from or in connection with (i) any negligence or misconduct of the Team or its employees, agents or contractors or (ii) any breach by the Team of any representation or warranty or breach of its obligations hereunder.

8.4 Procedures. If any Party (a "Party with Notice") shall discover or have actual notice of matter for which another Party is liable under this **Article VIII** (each a "Claim"), the Party shall, within twenty (20) calendar days following service of process (or within such shorter time as may be necessary to give the Person liable (the "Responsible Party") opportunity to respond to such service of process) and within twenty (20) calendar days after any other such notice, notify the Responsible Party in writing thereof together with a statement of such information respecting such matter as the Party with Notice then has; provided, however, the failure to notify the Responsible Party shall not relieve the Responsible Party from any liability which it may have to the Party with Notice except and solely to the extent that such failure or delay in notification shall have adversely affected the Responsible Party's ability to defend against, settle or satisfy any such Claim. The Responsible Party shall be entitled, at its cost and expense, to contest any such Claim by all appropriate legal proceedings provided the Responsible Party shall have first notified the Party with Notice of the Responsible Party's intention to do so within twenty (20) calendar days after

the Responsible Party's receipt of such notice from the Party with Notice. If the Party with Notice elects to join in any defense of a Claim, the Responsible Party shall have full authority to determine all action to be taken with respect thereto. If, after such an opportunity, the Responsible Party elects not to contest such Claim, the Responsible Party shall be bound by the resolution of such Claim obtained by the Party with Notice. If required by the Responsible Party, the Party with Notice shall cooperate fully with the Responsible Party and the Responsible Party's attorneys in contesting any such Claim or, if appropriate, in making any counterclaim or cross complaint against the Person asserting the Claim against the Party with Notice, but the Responsible Party will reimburse the Party with Notice for any expenses incurred by the Party with Notice in so cooperating. The Responsible Party shall pay to the Party with Notice in cash all amounts to which the Party with Notice may become entitled by reason of the provisions of this **Article VIII**, such payment to be made within thirty (30) calendar days after such amounts are finally determined either by mutual agreement or by judgment of a court of competent jurisdiction. Notwithstanding that the Responsible Party is actively conducting a defense or contest of any Claim against a Party with Notice, such Claim may be settled, compromised or paid by the Party with Notice without the consent of the Responsible Party; provided, however that if such action is taken without the Responsible Party's consent, the Responsible Party's obligations with respect thereto shall be terminated, and the Responsible Party shall have no obligation to the Party with Notice. The Responsible Party shall have the right to settle, compromise or pay any Claim being defended by the Responsible Party without the Party with Notice's consent so long as such settlement or compromise (i) does not cause the Party with Notice to incur any present or future material cost, expense, obligation or liability of any kind or nature, (ii) does not require any admission or action or forbearance from action by the Party with Notice, and (iii) the Party with Notice is released from all liability, cost or expense respecting such Claim.

8.5 Survival. The obligations contained in this **Article VIII** will survive the expiration or earlier termination of this Agreement but only with respect to an event that may give rise to a Claim that occurs prior to such termination.

## **Article IX. MISCELLANEOUS**

9.1 Notices. Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by certified mail (return receipt requested), by reputable overnight carrier, or by email, to the intended recipient at the addresses set forth below:

For the Team:

PBC Sports & Entertainment, LLC  
Attn: Clayton I. Bennett, Chairman  
208 Thunder Avenue  
Oklahoma City, OK 73102  
Email: cbennett@dorcap.com

With copies to:

National Basketball Association  
Attn: Chris Russo  
Matt Carpenter-Dennis, Esq.  
Olympic Tower  
645 Fifth Avenue  
New York, NY 10022  
Email: crusso@nba.com and mcarpenter-dennis@nba.com

and

McAfee & Taft A Professional Corporation  
Attn: Joshua D. Smith, Esq.  
10th Floor, Two Leadership Square  
211 North Robinson Avenue  
Oklahoma City, OK 73102-7103  
Email: josh.smith@mcafeetaft.com

For the City:

The City of Oklahoma City  
Attn: City Manager  
200 North Walker Avenue, Third Floor  
Oklahoma City, OK 73102  
Email: craig.freeman@okc.gov

With copies to:

The City of Oklahoma City  
Attn: Municipal Counselor  
200 North Walker Avenue, Fourth Floor  
Oklahoma City, OK 73102  
Email: kenneth.jordan@okc.gov

and

City Clerk  
The City of Oklahoma City  
200 North Walker Avenue, Second Floor  
Oklahoma City, OK 73102  
Email: amy.simpson@okc.gov

For the Authority:

Oklahoma City Public Property Authority  
Attn: General Manager  
200 North Walker Avenue, Third Floor  
Oklahoma City, OK 73102  
Email: craig.freeman@okc.gov

With copies to:

Oklahoma City Public Property Authority  
Attn: Municipal Counselor  
200 North Walker Avenue  
Oklahoma City, OK 73102  
Email: kenneth.jordan@okc.gov

and

Oklahoma City Public Property Authority  
Attn: Secretary  
200 North Walker Avenue  
Oklahoma City, OK 73102  
Email: amy.simpson@okc.gov

Notices given by certified mail shall be deemed given on the earlier of receipt or five (5) Business Days after mailing; notices given by reputable overnight carrier shall be deemed given on the Business Day after delivery to such carrier for overnight delivery; notices given by email shall be deemed given when transmitted with a delivery confirmation of the transmission. Any Party may, from time to time, by written notice given to the other Parties pursuant to the provisions of this **Section 9.1**, change the address or designees for notices to such Party or designate one or more additional Persons to whom notices are to be sent.

## 9.2 Assignment.

9.2.1 Authority or City Assignment. Neither the City nor the Authority shall transfer or attempt to transfer this Agreement or any rights herein, without the prior written consent of the Team, which consent will not be unreasonably withheld, delayed or conditioned. Provided, however, the City and the Authority may transfer rights between the City and the Authority by notice to the Team. No assignment shall change, limit, release or affect the obligations of the City or Authority hereunder, and any assignee shall agree to be bound by all the terms and conditions hereunder.

9.2.2 Team Assignments. Except as otherwise permitted by this **Section 9.2**, the Team shall not voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation) sell, assign, transfer, pledge, mortgage or encumber this Agreement (each, a “Transfer”), without first obtaining the written consent of the City and Authority, which consent shall not be unreasonably withheld, delayed or conditioned. The Team shall provide the City and

Authority with not less than ten (10) calendar days prior written notice of any proposed Transfer, including Permitted Transfers below.

9.2.3 Permitted Transfers. The following Transfers (“Permitted Transfers”) shall be permitted without the consent of the City or the Authority, notwithstanding the prohibitions on Transfers set forth in **Section 9.2.2** or any other provision of this Agreement:

(a) The Team may freely Transfer, in whole or in part, any or all of their respective rights and obligations under this Agreement to one or more Affiliates of the Team, provided that any such Transfer shall not change, limit, release or otherwise affect the rights, obligations and liabilities of the Team to the Authority or the City under this Agreement and such Affiliate shall agree to be bound by all of the terms and conditions hereof applicable to the rights and obligations being Transferred;

(b) The Team may pledge, mortgage, grant a security interest in or encumber this Agreement to secure a credit facility or other financial obligation of the Team; and

(c) The Team may Transfer all the Team’s right, title and interest in and to this Agreement to any Person (or Affiliate of such Person) that acquires the NBA Membership or ownership interests in the Club with the approval of the NBA, provided all of the following conditions are satisfied (a “Permitted NBA Membership Transfer”):

- (1) Such assignee or one or more Affiliates of such assignee unconditionally and expressly assumes pursuant to one or more instruments or documents, in form and substance reasonably acceptable to the City and Authority, all the obligations of the Team under this Agreement, and all amendments hereto and agrees to abide and be bound by all the terms and provisions of this Agreement, applicable to the Team, and all amendments hereto; and
- (2) The Team provides the City and the Authority with written confirmation that the Transfer of the NBA Membership or ownership interests in the Club has been duly approved by the NBA.

9.2.4 Release of the Team. No Transfer shall relieve the Team from any of its obligations under this Agreement, except that the Team shall be relieved from any obligations arising under this Agreement upon a Permitted NBA Membership Transfer arising after the effective date of such transfer.

9.3 Amendments and Modifications. Neither this Agreement nor any provision hereof may be amended, waived, released or terminated except by an instrument in writing signed by all the Parties hereto.

9.4 Entire Agreement. On the Effective Date, this Agreement shall constitute the entire agreement among the Parties pertaining to the New Arena Project construction and shall, on the Effective Date and not before, supersede all prior agreements for New Arena Project construction, and all other understandings, negotiations and discussions, whether oral or written, of the Parties, and as of the Effective Date, there shall be no warranties, representations or other agreements



among the Parties in connection with the New Arena Project except as specifically set forth in this Agreement.

9.5 Force Majeure. For the purposes of this Agreement, an event of “Force Majeure” shall mean, except as otherwise herein expressly provided, if any Party shall be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder, as a result of any event beyond the control of such Party (or any Person acting on its behalf) and which by the exercise of reasonable diligence and prudence the Party affected was unable to prevent, including acts of God, explosions, riots, pandemics, fires, sabotage, strikes, lock-outs, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources, and, provided that the Party delayed, hindered or prevented from performing notifies the other Party both of the commencement and of the expiration of such delay, hindrance or prevention, (each notice being required within ten (10) Business Days of the respective event), then the non-performance of such covenant or obligation shall be excused for the period of such delay, hindrance or prevention and the period for the performance of such covenant or obligation shall be extended by the number of days equivalent to the number of days of the impact of such delay, hindrance or prevention. Failure to provide the foregoing notice will result in waivers of both excused non-performance and extension of time to perform under this **Section 9.5** with respect to any such delay, hindrance, or prevention. Provided, however, the right of the Team to terminate this Agreement for failure to achieve any Scheduling Deadlines shall not be subject to extension in any respect by reason of Force Majeure.

9.6 Headings and Table of Contents. The headings and table of contents in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

9.7 Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be an original, but all of which shall together constitute one (1) and the same instrument.

9.8 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Oklahoma without reference to the conflicts or choice of law principles thereof.

9.9 Submission to Jurisdiction; Venue; Waivers. Each of the Parties hereto hereby irrevocably and unconditionally:

(a) Submits for itself in any legal action or proceeding relating to this Agreement to which it is a Party, or for recognition and enforcement of any judgment in respect thereof, to the personal jurisdiction of the state and federal courts located in Oklahoma County, Oklahoma;

(b) Agrees that service of process in any such action or proceeding may be affected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail) postage prepaid, to such Party at its address set forth in **Section 9.1** hereof or at such other address to which such Parties hereto shall have been notified pursuant thereto;

(c) Agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction;

(d) Waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding any special, exemplary or punitive damages; except, neither the City or Authority agree to waive, nor shall any provision of this Agreement be construed to waive any legal obligation under 62 O.S. §§ 372, 373 or 374; and

(e) Agrees that all legal proceedings or litigation, mediation and other proceedings relating to this Agreement, shall be brought in a state or federal court sitting in Oklahoma County, Oklahoma and agrees not to assert any objection that it may ever have to the laying of venue of any suit, action or proceeding in any federal or state court located in Oklahoma County, Oklahoma or any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

9.10 Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and their successors and assigns permitted under this Agreement. Except as otherwise specifically provided herein, no provision of this Agreement shall be deemed to confer upon any other Person any remedy, claim, liability, reimbursement, cause of action or right; provided, however, the NBA shall be a third-party beneficiary hereof.

9.11 Interpretation. Each of the Parties has agreed to the use of the particular language of the provisions of this Agreement and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

9.12 Severability. If any article, section, subsection, term or provision of this Agreement or the application of the same to any Party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement or the application of the same to the Parties or circumstances other than those to which it is held invalid or enforceable shall not be affected thereby and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent as permitted by law.

9.13 Relation of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third-party to create the relationship of principal and agent, partnership, joint venture or any association between the City and/or the Authority, on the one hand, and the Team and/or the NBA, on the other.

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

9.15 Exhibits and Appendices. All Exhibits and Appendices referred to herein shall be incorporated herein and considered a part of this Agreement and with the same force and effect as if such had been included in full in the body of this Agreement.

## 9.16 Dispute Resolution.

9.16.1 Construction Disputes. Notwithstanding anything to the contrary in this **Section 9.16**, any Dispute or Controversy between the Team, the City and the Authority that occurs prior to Substantial Completion that relates to those aspects of the construction of the New Arena Project involving the preparation, review, approval, and incorporation of the Schematic Drawing, Design Development Documents, New Arena Project Budget, Construction Schedule, application of the New Arena Project Requirements, Scheduling Deadlines or any other matter described in **Article III** of this Agreement regarding the construction process (“Construction Dispute”) shall be submitted to the following expedited dispute arbitration process:

(a) Not later than thirty (30) calendar days after the execution of this Agreement, the Parties shall agree upon a single Person to serve as the initial arbitrator (the “Construction Arbitrator”) of any Construction Dispute, as well as the individual who initially shall serve as the secondary arbitrator (the “Secondary Arbitrator”). If the Parties cannot agree on the selection of any such individuals within thirty (30) calendar day period, the Parties shall jointly request the American Arbitration Association (or such other organization as the Parties may agree upon) to submit to the Parties a list of seven (7) potential Arbitrators, each of whom shall have significant experience in the design or construction of projects having an aggregate cost of at least \$50 million (not more than three (3) of whom shall be practicing attorneys, and none of whom shall currently be or at any time have been an employee of, or engaged or otherwise contracted by any Party, the NBA or their respective Affiliates). If the Parties cannot, within seven (7) calendar days from the receipt of such list, agree to the identity of the successor Arbitrator from among the names on such list, the Parties shall meet and alternate striking one (1) name at a time from the list until one (1) name remains on the list. The remaining name shall be the Construction Arbitrator and the second to last shall be the Secondary Arbitrator.

(b) If the Parties are unable to resolve a Construction Dispute, either the City or the Authority may invoke the provisions of this **Section 9.16.1** by notice (the “Initial Notice”) to the Construction Arbitrator and the other Party. The Initial Notice may be by email, hand delivery, telephone or other means providing actual notice and shall identify the subject matter of the Construction Dispute.

(c) Authorized representatives of the Parties and the Construction Arbitrator shall convene in person within forty-eight (48) hours of the Initial Notice at such time and place in Oklahoma City, Oklahoma as established by the Construction Arbitrator. At or before such time, each Party shall present such information to the Construction Arbitrator (with copies to the other Party) as deemed necessary or appropriate to substantiate such Party’s position. The Construction Arbitrator shall be entitled to request additional information to render its award with respect to the Construction Dispute, but in no event shall the providing of or failure to provide such information delay the rendering of the Construction Arbitrator’s award without the consent of both Parties. Absent agreement by the Parties to extend the time for a decision, the Construction Arbitrator shall render its decision with respect to the Construction Dispute within forty-eight (48) hours after the Parties and the Construction Arbitrator first convened. Any award rendered in any Arbitration pursuant to this **Section 9.16.1** shall be final and binding upon the Parties; however, the Parties agree that in no event shall the Arbitrator have authority not available under or not within Applicable Law or authority to require the Authority or the City to incur any expense that results

in costs that causes the total costs of the New Arena Project, which cost include existing contract obligations and the payment of existing bonds and indebtedness (principal, interest, taxes and penalties) and the cost of financing thereof in regard to the New Arena Project to exceed Available Revenues (unless reasonable provision with respect to excess costs reasonably acceptable to the Authority, City and the Team is made). Any such award shall be considered non-appealable, and a judgment of any court having jurisdiction may be entered on any such award. However, nothing herein shall limit or prevent any Party from obtaining a judicial determination from an Oklahoma Court that the Arbitrator exceeds authority granted under this Agreement.

(d) If the Construction Arbitrator is unavailable or unable to serve with respect to any given Construction Dispute, then the Secondary Arbitrator shall serve as the Construction Arbitrator. The Construction Arbitrator shall serve as such until he or she resigns or is replaced by written agreement of the Parties. Absent other agreement by the Parties, in the event of the resignation of the Construction Arbitrator, the Secondary Arbitrator shall be deemed the Construction Arbitrator, and the Parties shall agree as soon as possible thereafter on the identity of a person to assume the role of Secondary Arbitrator. If the Parties cannot agree, the Secondary Arbitrator shall be selected pursuant to **Section 9.16.1(a)**. Costs of any Arbitrator, if any, shall be borne equally by the Parties.

(e) Nothing in subsections (a) through (d) above is intended in any way to prohibit discouraging the Parties from first attempting in good faith to settle and resolve such Dispute or Controversy by mutual agreement.

#### 9.16.2 Arbitration.

(a) Settlement By Mutual Agreement. In the event any dispute, controversy or claim between or among the Parties arises under or in connection with this Agreement or is related in any way to this Agreement or the relationship of the Parties under this Agreement, including a dispute, controversy or claim relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Agreement (a “Dispute or Controversy”), unless the Dispute or Controversy is a Construction Dispute (in which event the provisions of **Section 9.16.1** shall govern), the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with **Section 9.16.2(b)** hereof.

(b) Alternate Dispute Resolution. In the event a Dispute or Controversy arises, each Party shall notify the other Party or Parties involved that it has elected to implement the procedures set forth in **Section 9.16.2**. Within fifteen (15) calendar days after delivery of any such notice by one Party to the other Party or Parties involved in the Dispute or Controversy regarding such Dispute or Controversy, a representative of the Parties involved shall meet at a mutually agreed time and place to attempt, with diligence and in good faith, to resolve and settle the Dispute or Controversy. If a mutual resolution and settlement are not obtained at such meeting, the participating representative shall cooperate in a commercially reasonable manner to determine if techniques such as mediation or other techniques of amicable alternative dispute resolution might be useful. If a technique is agreed upon, a specific timetable and completion date for implementation shall also be agreed upon.

(c) Failure to Settle by Alternate Dispute Resolution. If such technique, timetable or completion date contemplated by **Section 9.16.2(b)** is not agreed upon within thirty (30) calendar days after delivery of the notice implementing the procedures of this **Section 9.16.2**, or if no resolution is obtained through such alternative technique, or if no such meeting takes place within the fifteen (15) calendar day period, then any Party may by notice to the other Parties involved submit the Dispute or Controversy to litigation in a court of competent jurisdiction. No Party shall commence a court proceeding without first giving a notice implementing the procedures of this **Section 9.16.2(a) and (b)**. Any court proceeding commenced in violation of this proceeding shall be stayed (with attorneys' fees and costs awarded to the responding or defending Party) until the procedures of **Section 9.16.2(a) and (b)** have been complied with.

9.16.3 Emergency Relief. Notwithstanding any provision of this Agreement to the contrary, except in the case of a Construction Dispute, each Party may seek injunctive relief or another form of ancillary relief at any time from any court of competent jurisdiction, with respect to any Dispute or Controversy. If a Dispute or Controversy requires emergency relief before the matter may be resolved under the Arbitration Procedures, the Arbitration Procedures still will govern the ultimate resolution of the Dispute or Controversy notwithstanding the fact that a court of competent jurisdiction may have entered an order providing for injunctive or another form of ancillary relief.

9.16.4 Court Proceedings. Any litigation and any action that seeks confirmation of an award rendered through the expedited arbitration process under **Section 9.16.1** may, only be brought by suit, action or proceeding before any federal or state court located in Oklahoma County, Oklahoma, and each Party hereby submits to the jurisdiction of such courts for the purpose of any such suit, action or proceeding and agrees that Oklahoma County is the proper venue for such action or proceedings. To the extent that service of process by mail is permitted by Applicable Laws, each Party irrevocably consents to the service of process in any such suit, action or proceeding in such courts by the mailing of such process by registered or certified mail, postage prepaid, at its address for notice provided in **Section 9.1** hereof.

9.17 No Indirect Damages. To the extent permitted by Applicable Laws, in no event shall any Party be liable under any provision of this Agreement for any special, indirect, incidental, consequential, exemplary, treble or punitive damages, in contract, tort or otherwise, whether or not caused by or resulting from the sole or concurrent negligence of such Party or any of its affiliates or related parties. Notwithstanding the foregoing, except as otherwise provided herein, this limitation of liability shall not apply to claims against a third-party. The preceding limitation shall not be a basis for any claim or argument that a dispute or controversy should not be arbitrated or litigated under the terms of **Section 9.16**. Further, neither the City nor the Authority agree to waive, nor shall any provision of this Agreement be construed to waive any legal obligation under 62 O.S. §§ 372, 373 or 374.

9.18 Time. Time set forth in this Agreement for the performance of obligations shall be strictly construed, time being of the essence. In the event the date specified or computed under this Agreement or for the performance, delivery, completion or observation of a covenant, agreement, obligation or notice by any Party hereto or for the occurrence of any event provided for herein shall not be a Business Day, then the date for such performance, delivery, completion, observation or occurrence shall automatically be extended to the next calendar day that is a Business Day.

9.19 Interest on Overdue Obligation and Post-Judgment Interest. If any sum due under this Agreement is not paid by the due date thereof, the Party owing such obligation to the other Party shall pay to the other Party interest thereon at the then prevailing prime rate plus two percent (2%) (the “Default Rate”) concurrently with the payment of the amount, such interest to begin to accrue thirty (30) calendar days after the date such amount was due or finally adjudicated. Any payment of such interest at the Default Rate pursuant to this Agreement shall not excuse or cure any default hereunder. All payments shall first be applied to the payment of accrued but unpaid interest. The amount of any judgment obtained by one Party against the other Party in any action or proceeding arising out of a default by such other Party under this Agreement shall bear interest in accordance with 12 O.S. 2021 § 727, thereafter until paid.

9.20 Liability of NBA. The City and the Authority acknowledge that they shall have no recourse against, and hereby covenant not to bring any claim against the NBA, any of its Member Teams (other than the Team), any of their respective affiliates or any of the employees, owners, directors, shareholders, partners, members, governors, agents or representative of any of the foregoing as a result of any breach by the Team of this Agreement or any other act or omission by the Team.

9.21 No Broker’s Fees or Commissions. Each Party hereby represents and warrants to the other Parties that it has not incurred or created any liabilities or claims for broker’s commissions or finder’s fees in connection with the negotiation, execution or delivery of this Agreement and that it has not dealt with, nor sought or accepted the assistance of and has no (knowledge of, any broker, agent, finder or salesperson in connection with this Agreement.

9.22 Expenses. Unless otherwise provided in this Agreement, each Party shall bear its own expenses in connection with the negotiation and preparation of this Agreement and the performance of all its obligations under this Agreement.

9.23 Table of Contents; Headings. The table of contents and headings of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

9.24 Parties in Interests; Limitation on Rights of Others. The terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable solely by the Parties and their permitted successors and assigns. Except as expressly set forth in this Agreement, and for the NBA, which shall be an express third-party beneficiary of all rights of Team under this Agreement. Nothing in this Agreement or by virtue of the transactions contemplated hereby, whether express or implied, shall be construed to constitute, create or confer rights, remedies or claims in or upon any person (as third-party beneficiary or otherwise) not a Party hereto, or to create obligations or responsibilities of the Parties to such persons, or to permit any person other than the Parties hereto and their respective successors and assigns to rely upon or enforce the covenants, conditions and agreements contained herein.

9.25 Parties. The New Arena will be owned by the City. It is anticipated that the New Arena will be (a) leased by the City to the Authority and (b) subleased by the Authority to an arena operator as provided in the applicable management agreement. The obligations for completion of the New Arena Project described in this Agreement are primarily obligations between the Authority, on behalf of the City as its sole beneficiary, and the Team. The Authority will be

obligated for payment of all sums and performance of all obligations of the Authority under this Agreement, regardless of the extent to which the City may have any defense against enforcement of any such obligation. Without limitation of the foregoing, Authority agrees that its obligations under this Agreement are payable, without qualification, from the trust estate of the Authority and its revenue and without regard to any funding of Authority by, or any other relationship with, the City. Nothing in this Agreement, however, is intended to constitute a waiver by any Party of any defense to a claim under this Agreement available under Applicable Laws or a waiver by the City or Authority of any limitation on liability of such Parties available under Applicable Laws.

9.26 Method and Timing of Payment. All amounts required to be paid by any Party to the other Party under this Agreement shall be paid in U.S. dollars.

9.27 Counterparts. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one Agreement. Not all signatures need be on the same counterpart.

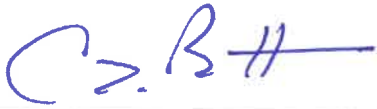
9.28 Antidiscrimination Clause. In accordance with Applicable Law, the Parties shall not discriminate based on race, sex, religion, national or ethnic origin, age or disability.

9.29 Survival: Expiration of the Agreement. Any rights or obligations that expressly or by their nature survive the Substantial Completion or termination of this Agreement will continue in full force and effect subsequent to and notwithstanding Substantial Completion or termination and until they are satisfied or by their nature expire. Following the expiration of any such rights or obligations under this Agreement, the Parties may execute a letter that formally recognizes the expiration and completion of this Agreement.

**SIGNATURES APPEAR ON THE FOLLOWING PAGES**

EXECUTION VERSION

This Agreement was approved by PBC Sports & Entertainment, LLC, an Oklahoma limited liability company, this \_\_\_\_\_ day of May, 2024.

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

Name: Clayton I. Bennett

As: Chairman, Board of Managers



EXECUTION VERSION

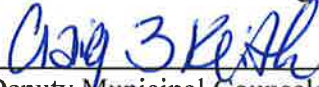
This Agreement was approved by the Oklahoma City Public Property Authority this \_\_\_\_\_ day of May, 2024.

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

Reviewed for form and legality.

  
\_\_\_\_\_  
Deputy Municipal Counselor

This Agreement was approved by the City of Oklahoma City this \_\_\_\_\_ day of May, 2024.

Attest:

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

\_\_\_\_\_  
Mayor

Reviewed for form and legality.

  
\_\_\_\_\_  
Deputy Municipal Counselor

**Appendices**

Appendix A    Definition

**Exhibits**

Exhibit A	New Arena Site
Exhibit B	New Arena Project Requirements
Exhibit C	New Arena Project Budget
Exhibit D	[Reserved]
Exhibit E	New Arena Project Costs
Exhibit F	Collaborative Processes

## APPENDIX A DEFINITIONS

“Act of Bankruptcy” means, with respect to any Party, that (i) such Party shall have commenced a voluntary case under the United States Bankruptcy Code amended from time to time or under any other insolvency act or law, state or federal, now or hereafter existing, or applied for or consented to the appointment of, or taking of possession by, a receiver, trustee, assignee, custodian or liquidator of all or a substantial part of its assets; (ii) such Party shall have made a general assignment for the benefit of creditors; (iii) such Party shall have been adjudicated bankrupt, or shall have filed a petition or an answer seeking an arrangement with creditors; (iv) such Party shall have taken advantage of any insolvency law, or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding; (v) an order, judgment or decree for relief shall have been entered in an involuntary case against such Party, without the application, approval or consent of such Party, by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for such Party or for a substantial part of any of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days; or (vi) an involuntary petition in bankruptcy against such Party shall have continued undismissed for ninety (90) days after the filing thereof.

“Affiliate” shall mean, with respect to any Person, another Person that directly or indirectly owns or controls, is owned or controlled by, or is under common control with such Person. For purposes of this definition, one Person owns another when it owns more than fifty percent (50%) of the equity interest in the other Person and one Person “controls” another when either (i) it has the right to exercise more than fifty percent (50%) of the voting power of the other Person, or (ii) such Person has the power to direct or cause the direction of the actions, management or policies of such Person, whether through the ownership of voting securities or interest, by contract or otherwise.

“Agreement” is defined in the introductory paragraph hereof.

“Applicable Law” shall mean any generally applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, building codes and ordinances, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of, or agreement with, or by, Governmental Authorities. “Applicable Law” shall also the Ordinance. Additionally, any requirement or recommendation by the Board of Fire Underwriters or other similar independent advisory organization addressing issues of risk to the health and safety of patrons, performers, employees or other individuals shall be deemed “Applicable Law”.

“Approved Plans” shall mean the Concept Designs, Schematic Drawings, Design Development Documents, Construction Documents, construction phase drawings and specifications and such other documents as the Architect and Other Professionals may prepare, setting forth in detail the requirements for the development and construction of the New Arena Project as the same are approved by the City and the Team, as herein provided, and as the same may be amended from time to time as provided for herein. The Approved Plans shall at all times comply with the NBA Arena Standards and the New Arena Project Requirements. The Approved

Plans shall include the working drawings and specifications prepared in accordance with **Sections 3.1.6, 3.1.7, 3.1.9, and 3.1.10** and the Team Arena Office.

“Architect” shall have the meaning set forth in **Section 3.1.8** of this Agreement.

“Arena Events” means any event conducted at the New Arena including Home Games or other professional or amateur sporting events or exhibitions; concerts, general audience, family or targeted audience shows, performances or exhibitions; and charitable, civic and other events of any nature.

“Authority” shall mean the Oklahoma City Public Property Authority, an Oklahoma public trust.

“Authority Field Change” shall have the meaning set forth in **Section 3.8.2**.

“Authorized Representatives” shall have the meaning set forth in **Exhibit F**.

“Available Funding” shall mean \$78 million in the MAPS 4 funding, \$50 million Team Contribution, and net proceeds of borrowings secured by the Available Revenues for the New Arena Project in an amount not less than \$772 million; provided, the Parties acknowledge there is no major public source of project funding for the New Arena beyond what is provided in this definition.

“Available Revenues” shall mean all revenues received by the City from limited sales tax collections under the Ordinance.

“Basketball Operations Areas” shall mean any portion of the New Arena Project that is intended primarily for the exclusive use of the Club’s basketball operations personnel and families, including players, coaches, trainers, medical personnel, and equipment managers.

“Business Day” shall mean a day of the year that is not a Saturday, Sunday, legal holiday or a day on which national banks are neither required nor authorized to close in Oklahoma City, Oklahoma.

“Business Hours” shall mean 8:00 a.m. through 5:00 p.m. Oklahoma City, Oklahoma time Business Days.

“Casualty” shall mean damages, destruction or other property casualty resulting from any fire, storm, earthquake, tornado, flood, natural disaster, acts of God or other sudden, unexpected or unusual cause.

“Changes” is defined in **Section 3.8.5** hereof.

“Change Order” is defined in **Section 3.8.3** hereof.

“Change Request” is defined in **Section 3.8.3** hereof.

“City” shall mean The City of Oklahoma City, a municipal corporation or its successors.

“City or Authority Default” is defined in **Section 6.1** hereof.

“City Representatives” is defined in **Exhibit F**.

“Claim” is defined in **Section 8.4** hereof.

“Club” shall mean The Professional Basketball Club, LLC, an Oklahoma limited liability company and the NBA team pursuant to rights granted to it as a member of the NBA.

“Concept Designs” shall mean the preliminary project work plan, programming report, and pre-design document, concept sketches and renderings illustrating the scale and relationship of the New Arena Project components.

“Commencement of Construction” shall mean the commencement of significant construction activities as contrasted with ceremonial groundbreaking activities.

“Construction Arbitrator” is defined in **Section 9.16.1(a)** hereof.

“Construction Contract(s)” shall mean any agreement between the City and any Construction Contractor regarding the performance of any portion of the New Arena Project Work.

“Construction Contractor(s)” shall mean the qualified, licensed construction contractor(s) and subcontractor(s) and suppliers selected by the City to perform the work hereunder.

“Construction Dispute” is defined in **Section 9.16.1** hereof.

“Construction Documents” shall mean the architectural drawings, specifications, construction drawings and other documents, as may be amended from time to time pursuant to this Agreement, setting forth the design of the Project and the requirements for its construction in sufficient detail for permitting and construction of the Project. Construction Documents will be submitted to the Development Committee when the design process has reached the 35%, 65%, 90% and 100% stages of completion or any other intervals as requested by the Development Committee.

“Construction Schedule” is defined in **Section 3.7** hereof.

“Construction Start Date” shall mean as to the New Arena Project, a date as soon as practical to be mutually agreed upon and set forth in the Construction Schedule.

“COTPA” is defined in **Section 3.1.5** hereof.

“Default Rate” is defined in **Section 9.19** hereof.

“Depreciable Property” is defined in **Section 3.10** hereof.

“Depreciable Property Schedule” is defined in **Section 3.10** hereof.

“Design Contract” is defined in **Section 3.1.9** hereof.

“Design Development Documents” shall mean such documents that (i) are a further advancement of the Schematic Drawings, (ii) indicate in substantially greater detail than the Schematic Drawings the spaces within the New Arena Project, (iii) indicate the elements and functions that affect the site work for the New Arena Project, (iv) indicate in substantially greater detail than the Schematic Drawings the sections and interior and exterior elevations, (v) include more detailed outlined specifications and systems narratives than those in the Schematic Drawings, and (vi) such other documents, drawings and information as are customarily included in design development documents for a project comparable to the New Arena Project.

“Development Committee” is defined in **Section 2.3**.

“Development Committee Chair” shall have the meaning set forth in **Exhibit F**.

“Dispute or Controversy” is defined in **Section 9.16.2(a)** hereof.

“Effective Date” is the date of approval by the last Party to this Agreement.

“Environmental Law” shall mean any Applicable Law or any judicial or agency interpretation or other requirement of any Governmental Authorities relating to pollution or protection of the environment, health, safety or natural resources, including without limitation those relating to the use, handling, transportation, treatment, storage, release or discharge of Hazardous Substances.

“Existing Arena” is defined in **Section 3.1.5** hereof.

“Floor” shall mean the area(s) within the Arena designed for the playing or conducting of basketball games, or other events, as applicable.

“Food and Beverage Agreement” means the Food and Beverage Agreement described in **Section 4.2**.

“Force Majeure” shall have the meaning set forth in **Section 9.5**.

“Governmental Authorities” shall mean any and all jurisdictions, entities, courts, boards, agencies, commissions, authorities, offices, divisions, subdivisions, departments or bodies of any nature whatsoever or any governmental unit (federal, state, county, municipality or otherwise) whether now or hereafter in existence.

“Ground Lease” is defined in **Section 3.1.7(a)** hereof.

“Guiding Principles” is defined in **Section 2.2** hereof.

“Hazardous Substances” shall mean (a) any chemical, material or substance at any time defined as or included in the definition of “hazardous substance”, “hazardous waste”, “hazardous materials”, “extremely hazardous material”, “acutely hazardous waste”, “radioactive waste”, “biohazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substances”, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor

environment (including, without limitation, harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP,” “IEP toxicity” or words of similar import under any applicable Environmental Laws (in amounts in excess of that permitted under Environmental Laws); (b) any oil, petroleum, petroleum fraction or petroleum derivative substance; (c) any drilling fluids, produced waters and other waste associated with the exploration, development or production of crude oil, natural gas or GEO thermal resources; (d) any flammable substances or explosives; (e) any radioactive materials; (f) any asbestos containing materials, any urea formaldehyde foam insulation; (g) any electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (h) any pesticide; (i) any radon gas; and (j) any other chemical material or substance designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environment Law or which could pose a hazard to health, safety or other environment.

“Home Game(s)” shall mean the NBA pre-season, regular season and playoff games as to which games the NBA has designated the Club as the “home” team and that the Team is required to play at the New Arena pursuant to the License Agreement.

“Initial Notice” is defined in **Section 9.16.1(b)** hereof.

“License Agreement” means the Arena Use License Agreement described in **Section 4.1**.

“License Commencement Date” shall mean the day the term of the License Agreement commences, as set forth therein.

“Member Team” or “NBA Member Team” shall mean any existing or future member team of the NBA or any other future league which is not characterized as a minor league.

“NBA” shall mean the National Basketball Association, a New York joint venture having its chief executive office currently located at Olympic Tower, 645 Fifth Avenue, New York, New York 10022 and any successor or substitute association or entity of which the Club is a member or joint owner and which engages in professional basketball competition in a manner comparable to the National Basketball Association.

“NBA Arenas” means the arenas that serve as home venues for then existing NBA Member Teams.

“NBA Arena Standards” shall mean all applicable NBA requirements, regulations and standards for design, construction and operation of the New Arena Project, including as set forth in the “NBA Arena Standards” as in effect at the applicable time of review or determination.

“NBA Membership” shall mean the NBA Membership for an NBA basketball team issued by the NBA to the Club which entitles the Club to operate an NBA Member Team in Oklahoma City, Oklahoma as contemplated herein.

“NBA Rules and Regulations” shall mean the following governing documents and agreements, as they may be amended from time to time:

- (a) Constitution of the NBA;

- (b) NBA By-Laws;
- (c) Resolutions of the NBA Board of Governors;
- (d) NBA Arena Standards and
- (e) All other rules, regulations, directives, policies, and agreements of the NBA and its affiliated entities, including but not limited to the NBA Operations Manual.

“New Arena” means the first-class, state-of-the-art sports and entertainment facility meeting or exceeding the requirements of the NBA and which is comparable to recently constructed NBA and other major league venues, to be located on a portion of the New Arena Site.

“New Arena Project” means the design, construction, fit-out and operational readiness of the New Arena in accordance with this Agreement.

“New Arena Project Budget” shall mean, with respect to the New Arena Project, the budget set forth on **Exhibit C** hereto, as the same is revised and finalized in accordance with **Section 3.8.1** of this Agreement.

“New Arena Project Costs” shall mean, with respect to the New Arena Project, all costs incurred pursuant to this Agreement in demolition, site preparation, design, construction, and fit-out of the New Arena Project, including, but not limited to, costs of labor and materials, architectural, engineering and specialty consultant’s fees, costs of permitting, insurance, bonding, other “soft” costs directly related to the New Arena Project, and other costs outlined in **Exhibit E**.

“New Arena Project Requirements” shall mean, with respect to the New Arena Project, the Quality Arena Standard, Applicable Laws and the requirements of this Agreement and the general requirements for the New Arena Project Work described on **Exhibit B** hereto.

“New Arena Project Schedule” means a schedule of development and construction of the New Arena Project that will be developed in the following manner, but will be subject to further design and construction updates by the Development Committee in conjunction with the Architect and Construction Contractor(s): (a) the Parties agree to work together in good faith to jointly develop the New Arena Project Schedule, which will be approved by the City Manager, or his designee, and the Team Representatives, or designee; and (b) the City Manager, or his designee, and the Team Representatives, or designees, shall meet quarterly to review the New Arena Project Schedule. The City Manager, or his designee, and the Team’s Representative, or designee, may establish additional or different New Arena Project Schedule timelines, targets and deadlines and may by mutual agreement amend and revise the New Arena Project Schedule during the term of this Development Agreement, as may be necessary.

“New Arena Project Work” shall mean all labor, materials, equipment and services necessary for the New Arena Project in accordance with the Approved Plans and the terms and conditions of this Agreement.

“New Arena Site” is defined in **Section 3.1.1** hereof.

“New Arena Transaction Documents” shall mean this Agreement, the License Agreement, and the Food and Beverage Agreement.



“Ordinance” is defined in **Section (a)** in the Statement of Purpose and Facts.

“Other Professionals” is defined in **Section 3.2.3** hereof.

“Outside Completion Deadline” shall be June 30, 2030.

“Owner Representative” is defined in **Section 3.1.6** of this Agreement.

“Parties” shall mean the Parties to this Agreement; and “Party” in the singular shall mean any one of the Parties hereto as the context requires.

“Party With Notice” is defined in **Section 8.4**.

“Permitted NBA Membership Transfer” is defined in **Section 9.2.3(c)** of this Agreement.

“Permitted Transfers” is defined in **Section 9.2.3** of this Agreement.

“Person” shall mean any natural person, firm, partnership, association, corporation, limited liability company, trust, entity, public body, authority, governmental unit or other entity, or the successor or assign of such natural person, firm, partnership, association, corporation, limited liability company, trust, entity, public body, authority, governmental unit or other entity, as applicable.

“Premium Seating” refers, collectively, to those Suites, seats, boxes and other seating in the Arena that are governed by a premium seating license agreement entered into by the Club pursuant to the License Agreement.

“Quality Arena Standard” shall mean an arena that (i) meets or exceeds the NBA Arena Standards, (ii) complies with all Applicable Laws, (iii) complies with the Guiding Principles and (iv) unless otherwise specified, is a first class facility and state-of-the-art, comparable to recently constructed NBA and other major league venues while conforming to NBA Arena Standards and any applicable NBA Rules and Regulations and other rules or current industry standards related to technology and media/broadcasting.

“Reporting Point” shall mean the points in time (i) at which Schematic Design Documents are completed, (ii) at which Design Development Documents are completed and (iii) at which the development of the Construction Documents has progressed to the points at which the design of a Project has reached the 35%, 65%, 90% and 100% stages of completion.

“Responsible Party” is defined in **Section 8.4** hereof.

“Reviewing Party” shall have the meaning set forth in **Exhibit F**.

“Scheduled Completion Date” shall mean, with respect to the New Arena Project, June 30, 2029.

“Scheduling Deadlines” shall mean, with respect to the New Arena, the commencement of construction by the Construction Start Date for the New Arena, the achievement of Substantial Completion by the Outside Completion Deadline.

“Schematic Drawings” shall mean such documents as are customarily referred to in the architectural, design and construction industries as “schematic drawings” including, but not limited to, drawings that indicate the relative proportion and adjacencies of the functional areas of the Project, outline specifications and systems narratives of the New Arena Project, including such other documents, drawings and information as are customarily included in schematic drawings for a project comparable to the New Arena Project.

“Secondary Arbitrator” is defined in **Section 9.16.1(a)** hereof.

“Submitting Party” shall have the meaning set forth in **Exhibit F**.

“Substantial Completion” shall mean the condition occurring when (A) all work reflected in the Approved Plans has been completed except for (1) customary punch list items and minor items which can be fully completed within sixty (60) days, and (2) other items which, because of the season, weather or nature of the items are not practicable to perform at that time, provided, in the case of both clauses (1) and (2), that the failure of such items to be completed will not materially interfere with the use, occupancy or anticipated revenues from the New Arena Project and, in the case of clause (2), that such items can be fully completed within sixty (60) days, and (B) a substantial completion certificate in the form of AIA G704 or comparable form signed by the Architect has been delivered to the City and the Team, and (C) a temporary or permanent certificate of occupancy has been issued, and (D) to the extent required for use pursuant to NBA Arena Standards, the commissioner of the NBA (or his designee) has delivered a written determination that the New Arena Project has been completed in compliance with the NBA Arena Standards, in each case where the Team can use and occupy the Arena for its intended purpose. If only a temporary certificate of occupancy has been issued as of the date that all other conditions for Substantial Completion have been satisfied, the achievement of Substantial Completion also shall require delivery of a certificate from the Architect that a permanent certificate of occupancy reasonably can be expected within the succeeding sixty (60) days. When used with respect to a component of the New Arena Project, such term will mean satisfaction of the foregoing requirements to the extent applicable to such component.

“Suites” shall mean the private viewing boxes to be designed, constructed, furnished and equipped in accordance with the Approved Plans (or such lesser or greater number as the City and the Team shall mutually agree upon based upon market conditions and other relevant factors) that would be licensed by the Club to third Parties in accordance with the License Agreement.

“Target Completion Date” shall mean, with respect to the New Arena Project, June 30, 2028.

“Team” is defined in the introductory paragraph hereof.

“Team Areas” shall mean the Team Store, and any other areas agreed by the Parties, and all, or portions of, areas of the Arena that are not intended for use by the general public, including, the following areas within the Arena: (i) the Team Arena Office; (ii) NBA Team storage areas,

administrative spaces, and offices for coaches, trainers, equipment managers and related personnel; (iii) NBA Team locker rooms and NBA Team training and medical facilities (including the NBA quality basketball practice court, weight training and exercise room, x-ray room, equipment room, video room, auditorium, players' lounge, family rooms, management and representation rooms, and related facilities); (iv) the production and broadcast operations room and related facilities and equipment; (v) separate basketball operations offices; (vi) NBA officials locker rooms and related facilities; (vii) media room and related facilities; and (viii) the Basketball Operations Areas.

"Team Arena Office" shall mean the space in the New Arena to be finished as office space for the Club's business office staff and made available to the Club pursuant to the License Agreement.

"Team Claim" is defined in **Section 3.1.9(h)** hereof.

"Team Contribution" shall mean funds in the amount of \$50,000,000 to be contributed by the Team.

"Team Default" is defined in **Section 6.2** hereof.

"Team Liquidated Damages" is defined in **Section 3.3(c)** hereof.

"Team Representatives" shall have the meaning set forth in **Exhibit F**.

"Team Revenues" shall mean revenues to be remitted to and/or retained by the Team in accordance with the License Agreement, or more particularly described therein, or other agreements related to the New Arena as agreed to by the Parties.

"Team Store" means a retail store located in the New Arena and open to the general public on a year-round basis, to which access can be obtained without an admission ticket to an Arena Event. Such store shall primarily sell sports-related apparel and merchandise, or other merchandise selected at the discretion of the Team.

"Total Project Costs" shall mean the total costs to be incurred by the Authority in design and construction of the New Arena Project including architectural and engineering fees, costs of permits, costs of bonding of insurance, costs of labor and material and other amounts payable under approved Design Contracts and Construction Contracts, and reasonable interest costs on interim financing reasonably necessary to proceed with the New Arena Project pending the City's receipt of taxes pursuant to the Ordinance.

"Transfer" is defined in **Section 9.2.2** hereof.

**Rules as to Usage**

1. The capitalized terms used in this Agreement have the meanings set forth in this Appendix for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.
2. “Include”, “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import.
3. “Writing”, “written” and comparable terms refer to printing, typing, and other means of reproducing in a visible form.
4. Any agreement, instrument or Applicable Law defined or referred to in this Agreement shall mean such agreement or instrument or Applicable Law as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.
5. Any term defined above by reference to any agreement, instrument or Applicable Law has such meaning whether or not such agreement, instrument or Applicable Law is in effect.
6. “Hereof”, “herein”, “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used (including any exhibits, addenda or other attachments thereto) and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to “Article”, “Section” or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to addenda, schedules, exhibits or appendices in any agreement or instrument that is governed by this Appendix are to addenda, schedules, exhibits or appendices attached to such instrument or agreement.
7. The word “or” will have the inclusive meaning represented by the phrase “**and/or.**”
8. Unless otherwise specified, all references to a specific time of day shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable on the date in question in Oklahoma City, Oklahoma.

**EXHIBIT A**  
**NEW ARENA SITE**

The New Arena Site is generally located between Sheridan Avenue and Reno Avenue and between Robinson Avenue and E K Gaylord Boulevard in Oklahoma City, Oklahoma.

The City/Authority reserves adequate space for the transit hub, approximately 60,000 square feet (1.377 Ac.) of land, accessible from E.K. Gaylord Boulevard and as close to the Santa Fe Train Station as reasonably possible. Any amount of said land in excess of 1.377 Ac. must be mutually agreed upon by the Parties. Said land is to be for transit hub use and may be combined with other facilities or buildings. Said land will be specifically located during the site plan design of the New Arena.

**[Legal description and site depiction attached.]**

## EXHIBIT "A"

### LEGAL DESCRIPTION

New Arena Site – Overall Tract  
March 22, 2024

A tract of land being a part of the Southeast Quarter (SE/4) of Section Thirty-three (33), Township Twelve (12) North, Range Three (3) West of the Indian Meridian, Oklahoma City, Oklahoma County, Oklahoma, being a portion of the AMENDED PLAT OF BLOCK NO. 5 OKLAHOMA CITY recorded in Book 1 of plats, Page 10, a portion of Blocks 4, 24 and 25 of the plat OKLAHOMA CITY recorded in Book 1 of plats, Page 2, a portion of MCKINLEY'S SUBDIVISION OF LOTS 14 15 & 16 BLK 24 OKLAHOMA CITY O.T. recorded in Book 3 of plats, Page 1, a portion of California Avenue and Broadway both vacated by Book 3880, Page 448 and that portion of platted Santa Fe Avenue and platted Robinson Avenue vacated by Book 3909, Page 1884, being more particularly described as follows:

Beginning at the Northeast (NE) Corner of Lot 32 of said AMENDED PLAT OF BLOCK NO. 5 OKLAHOMA CITY, said point being the POINT OF BEGINNING;

THENCE North 89°48'36" East, along and with the extended North line of said AMENDED PLAT OF BLOCK NO. 5 OKLAHOMA CITY, a distance of 11.83 feet to the West right-of-way line of EK Gaylord Boulevard;

THENCE along and with the West right-of-way line of EK Gaylord Boulevard the following three (3) calls:

1. South 11°38'29" West, departing said extended North line, a distance of 96.16 feet;
2. on a non-tangent curve to the left having a radius of 500.00 feet, a chord bearing of South 06°41'16" West, a chord length of 86.40 feet and an arc length of 86.54 feet;
3. South 01°43'05" West, a distance of 520.37 feet to a point on the South line of Block 4 of said plat OKLAHOMA CITY, said point being 34.40 feet West of the Southeast (SE) Corner of Lot 1 of said Block 4;

THENCE South 89°48'36" West, along and with the South line of Block 4 and Block 25 of said plat OKLAHOMA CITY, a distance of 825.60 feet to a point on the East right-of-way line of Ron Norick Boulevard, said point being 20.00 feet East of the Southwest (SW) Corner of Lot 16 Block 25 of said plat OKLAHOMA CITY;

THENCE along and with the East right-of-way line of Ron Norick Boulevard the following two (2) calls:

1. North 01°56'24" West, departing said South line, a distance of 621.45 feet;
2. North 01°56'27" West, a distance of 78.88 feet to a point on the extended North line of Block 24 of said plat OKLAHOMA CITY, said point being 2.54 feet West of the Northwest (NW) Corner of Lot 17 Block 24 of said plat OKLAHOMA

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION**

CITY;

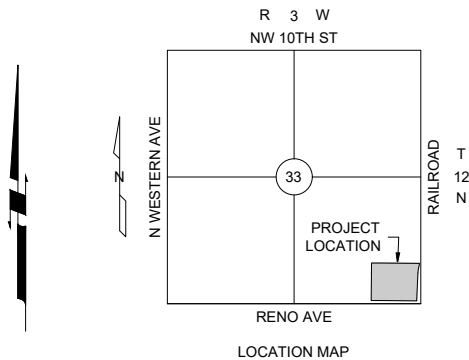
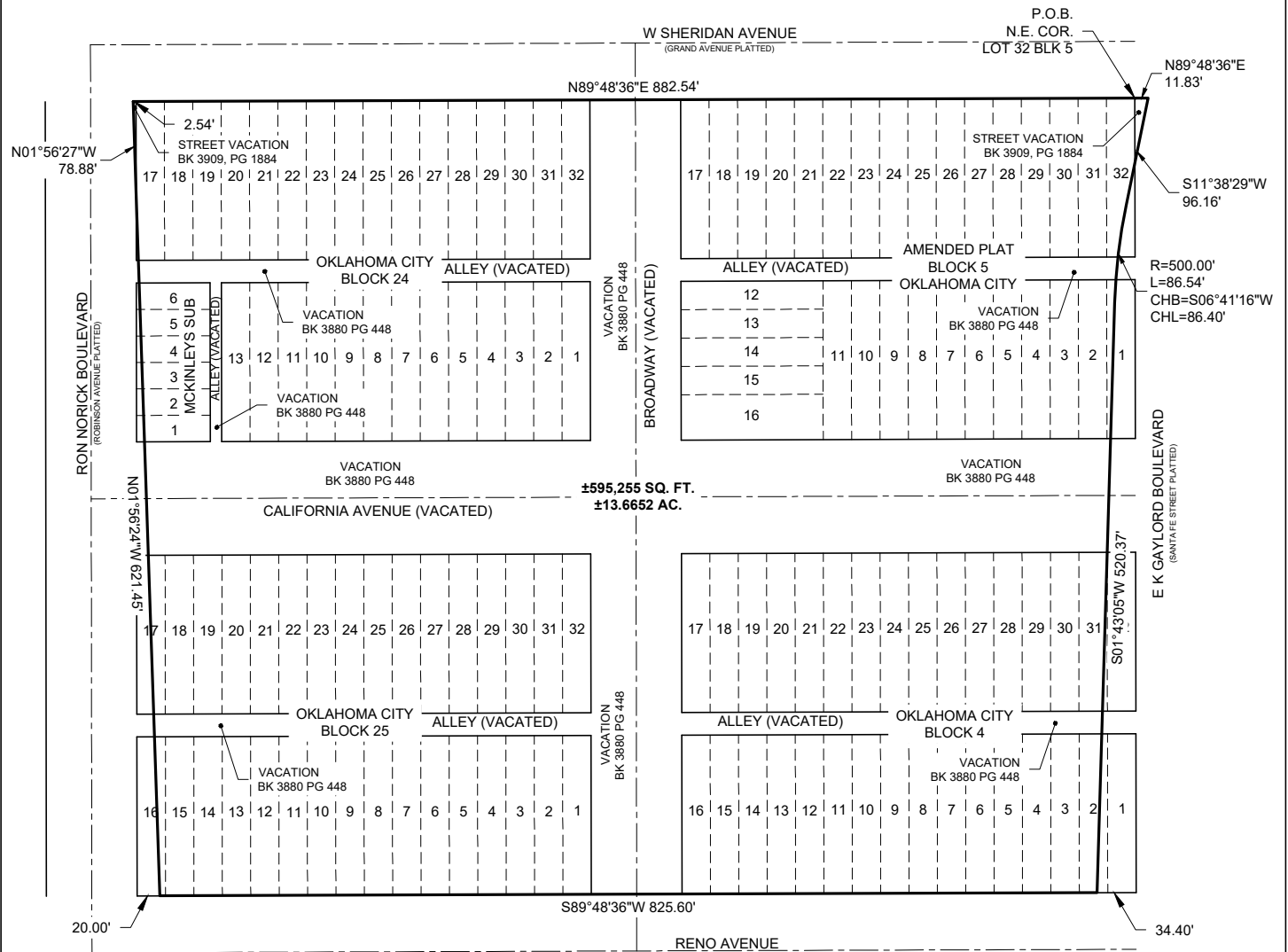
THENCE North 89°48'36" East, along and with the extended North line and the North line of Block 24 of said plat OKLAHOMA CITY and the North line of the AMENDED PLAT OF BLOCK NO. 5 OKLAHOMA CITY, a distance of 882.54 feet to the POINT OF BEGINNING.

Containing 595,255 square feet or 13.6652 acres, more or less.

The City/Authority reserves adequate space for the transit hub, approximately 60,000 square feet (1.377 Ac.) of land, accessible from E.K. Gaylord Boulevard and as close to the Santa Fe Train Station as reasonably possible. Any amount of said land in excess of 1.377 Ac. must be mutually agreed upon by the Parties. Said land is to be for transit hub use and may be combined with other facilities or buildings. Said land will be specifically located during the site plan design of the New Arena.

Basis of Bearing: Grid North as established by state plane datum (Oklahoma State Plane North Zone NAD83). All Distances are grid distances in U.S. Survey Feet.

# EXHIBIT "A"



The City/Authority reserves adequate space for the transit hub, approximately 60,000 square feet (1.377 Ac.) of land, accessible from E.K. Gaylord Boulevard and as close to the Santa Fe Train Station as reasonably possible. Any amount of said land in excess of 1.377 Ac. must be mutually agreed upon by the Parties. Said land is to be for transit hub use and may be combined with other facilities or buildings. Said land will be specifically located during the site plan design of the New Arena.

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XREFS LOADED: 5677002-bdy.dwg 5677002-topo.dwg

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Proj. No.: 5677003  
Date: 3-22-24  
Scale: 1"=150'

## NEW ARENA SITE OKLAHOMA CITY, OKLAHOMA COUNTY, OKLAHOMA OVERALL TRACT



**Johnson & Associates**  
1 E. Sheridan Ave., Suite 200  
Oklahoma City, OK 73104  
(405) 235-8075 FAX (405) 235-8078 www.jaokc.com  
Certificate of Authorization #1484 Exp. Date: 06-30-2025  
• ENGINEERS • SURVEYORS • PLANNERS •



**EXHIBIT B**  
**NEW ARENA PROJECT REQUIREMENTS**

At a minimum, the Parties anticipate the preliminary New Arena Project Requirements will consist of the following, but will be subject to further design and construction updates by the Development Committee to ensure the New Arena Project Requirements adheres to the Quality Arena Standard:

**ARENA OVERVIEW**

***Square Footage***

Total Gross Building Area - minimum 750,000 square feet.

**SPECTATOR & ARENA BOWL FACILITIES**

Basketball General Seating – Lower Bowl  
Club Seating  
Suite Seating  
Club Box & Ledge Seating  
General Seating – Upper Bowl

**PREMIUM FACILITIES**

Event Level Suites  
Chairman's Suite  
Luxury Suite  
Mini Suites  
Party Suites  
Courtside Club  
Main Concourse Club Lounge  
Bar(s)  
Banquet/Meeting Rooms  
Other Premium Spaces as requested by Team

**CIRCULATION**

Service Corridor on Event Level  
Main Concourse  
Upper Concourse  
Suite Concourse  
Lobbies  
Vertical Circulation – Freight Elevators  
Vertical Circulation – Passenger Elevators  
Vertical Circulation – Escalators

**FOOD, SPECTATOR & RETAIL FACILITIES**

Public/Premium Toilet Rooms

Guest Service Facilities  
Concessions  
Food Service/Kitchens/Prep Areas  
Cooler Rooms  
F&B Staff Facilities/Offices  
Team Store and Storage  
Kid Zone(s)  
Novelty/Merchandise Carts and Sales Booths  
Sponsor Area(s)  
Fan Experience Area(s)

### **TEAM FACILITIES**

NBA Home Team Facilities  
NBA Visiting Team Facilities  
Officials' Locker Rooms  
Auxiliary Locker Rooms  
Green Rooms  
Weight Room(s)  
Team Support Rooms  
On-site Team and Player Parking

### **ADMINISTRATION**

Arena Management Offices  
NBA Team Business Offices  
Other Team Administrative Offices  
Box Office

### **MEDIA FACILITIES**

Press Facilities (dining/work/press conference rooms)  
Television Truck Parking  
Control Rooms  
Studio  
Camera Platforms, Television and Radio Areas

### **EVENT FACILITIES & OPERATIONS SUPPORT**

Event Floor  
Event Supports & Building Staff  
Event Personnel and Building Staff  
Storage  
Loading Dock/Staging/Marshalling  
Maintenance Shops and Janitorial Facilities  
Security  
Primary IT/Carrier Rooms (MDF, data center, etc.)  
Secondary IT/Carrier Rooms (IDFs, etc.)

Primary MEP Rooms (boiler, emergency power, electrical, mechanical)  
Secondary MEP Rooms (all levels)  
Sufficient power for large events (minimum of 6000 amps for Show Power)  
Humidity controlled storage areas for basketball courts (3 minimum) and equipment  
Humidity control for entire arena  
Full Facility backup power  
Plaza Area for outside events  
Trash dock area large enough for recycling/sorting not by main dock/player parking / trash compactors  
Minimum of tri-fed grid for the facility main power. (multiple fail safes)  
Storage on all levels for Events, Operations, and Thunder  
MERV-16 HVAC System with ionization  
Extensive TV Truck and bus power  
Concert/other event related rooms: promotor, star, crew, etc.

### **PARKING STRUCTURE**

Parking Garage – minimum 650 spaces

**EXHIBIT C**  
**NEW ARENA PROJECT BUDGET**

1. The Parties agree to work together in good faith to jointly develop the final budget, which will be approved by the City Manager, or his designee, and the Team's Representative, or designee.
2. The City Manager, or his designee, and the Team's Representative, or designee shall meet bi-weekly to review the budget, available revenues, estimated revenues, financial estimates, financing approvals, expenditures, and other factors. The City Manager, or his designee, and the Team's Representative, or designee, may develop budget details and may by mutual agreement amend and revise the budget during the term of this Development Agreement, as may be necessary.
3. Available Funding shall not diminish below \$900,000,000, which is dedicated to the New Arena Project Costs.
4. The Parties agree to continued joint development of the New Arena Project Budget. The Parties agree to work together in good faith to build to the final budget ultimately agreed upon by the Parties and both Parties acknowledge there is no major public source of project funding beyond that which is provided for here for the New Arena, though the Parties agree to work diligently and creatively to maximize available resources within the sources identified here. Upon completion of the New Arena and repayment of any outstanding debt, any surplus revenues ultimately collected from the 72-month temporary one percent sales tax pursuant to the Ordinance will be placed in a capital improvement fund for future capital improvements to and maintenance of the New Arena.

**EXHIBIT D**  
**[Reserved]**

**EXHIBIT E**  
**NEW ARENA PROJECT COSTS**

At a minimum, the Parties anticipate the New Arena Project Costs will consist of the following, but will be subject to further updates by the Development Committee:

1. Demolition and Site preparation.
2. Remediation and Preparation Costs.
3. Development Fees.
4. Owner Representative Fees.
5. Architect/Engineer Design Services.
6. Geo-Technical Testing Services.
7. Survey Services.
8. Easement Procurement and preparation.
9. Relocation, Extension and Improvement of Utilities:
  - a. Water and Sanitary Sewer.
  - b. Electric, Gas, and/or Other HV/AC.
  - c. Telephone, Cable, and Internet (communications).
  - d. Traffic signalization.
10. Paycom Utility Retrofit (Central Plant Demolition).
11. Site Ready Services.
12. National Basketball Association coordination and compliance costs.
13. Value Architectural and Engineering Review.
14. Construction Manager Fees – Pre-Construction Services.
15. Construction Management (GMP) or General Contractor and Subcontractors.
16. Construction Costs.
17. Team Areas.
18. Inspection Services.
19. Construction Material Testing Services.
20. Commissioning Services.
21. Signage, Landscaping, Hardscape, and Aesthetics.
22. 1% For Art.

- 23. Street Extension and Widening and replacement.
- 24. Traffic Management.
- 25. Streetcar Stop Restoration.
- 26. Team Parking Facilities.
- 27. Parking Structure.
- 28. Security and Security Facilities and related security equipment.
- 29. Furniture, Fixtures and Equipment.
- 30. Sport specific equipment.
- 31. Move-Out and Move-In Costs.
- 32. Groundbreaking and Grand Opening.
- 33. Continuous Maintenance Services.
- 34. Deferred Construction and Services.
- 35. Construction Inspection.
- 36. City Staff Administrative Costs related to initial construction of New Arena , not to exceed three million dollars for the duration of the New Arena Project.
- 37. IT.
- 38. DAS.
- 39. Broadcasting and Production Infrastructure.

**EXHIBIT F**  
**COLLABORATIVE PROCESSES**

1. Composition of the Development Committee. The Development Committee shall be comprised of the two (2) representatives designated by the City (the “City Representatives”) and the two (2) representatives designated by the Team (the “Team Representatives”). The City Representatives and the Team Representatives shall serve as the lead representatives to the Development Committee for the City and the Team, respectively. The City and Team shall also designate Alternate Representatives with the authority to serve in place of, and with the authority of, such representatives if such representatives are not available to attend Development Committee meetings. Except as provided below, the City and Team may remove and replace its Representatives or Alternate Representatives (collectively, its “Authorized Representatives”) at any time, with or without cause and without the approval of any other Party, effective immediately upon written notice to the other Party. Each Party shall be responsible for compensation and expenses of its Authorized Representatives, which shall not be included as New Arena Project Costs. The Development Committee Chair shall cause minutes of all Development Committee meetings to be prepared.
2. Development Committee Chair. A City Representative appointed by the City will serve as chairperson of the Development Committee (“Development Committee Chair”). The role of the Development Committee Chair shall be administrative in nature so as to facilitate the scheduling, conducting and documenting of meetings. The Development Committee Chair shall actively participate in discussions on all issues before the Development Committee and shall have the same voting rights as all other members of the Development Committee. The City shall not appoint nor replace the Development Committee Chair without the prior approval of the Team, which shall not be unreasonably withheld or delayed (the anticipated Development Committee Chair, David Todd, being hereby approved).
3. Team Representatives. The Team shall designate the Team Representatives and the Team Alternate Representatives as its agents and representatives authorized to act on the Team’s behalf with respect to the New Arena Project. It is the responsibility of the Team Representatives to obtain timely, appropriate and adequate authority to act on the Team’s behalf, including obtaining authority from the Team’s governing body on issues described in this Agreement. The Team Representatives are the Team’s exclusive representatives insofar as the Development Committee is concerned. All communications and submittals from the Team to the City, the Authority or the Development Committee with respect to matters arising from the Development Committee shall be issued or made through the Team Representatives, unless the Team or the Team Representatives shall otherwise direct in writing.
4. City Representatives. The City has designated the City Representatives and the City Alternate Representatives as its agents and representatives authorized to act on behalf of both the City and Authority with respect to the New Arena Project. It is the responsibility of the City Representatives to obtain timely, appropriate, and adequate authority to act on the City and Authority’s behalf including obtaining authority from the City and/or Authority as described in of this Agreement or as otherwise required by Applicable Law. Except for approvals which by Applicable Law require City Council approval, all of which shall be subject to the approval of the City Council, all City approvals under this Agreement may be made by the City Representatives.



The City Representatives are the City and Authority's exclusive representatives insofar as the Development Committee is concerned. All communications and submittals from the City or Authority to the Team or the Development Committee with respect to matters arising from the Development Committee shall be issued or made through the City Representatives, unless the City, Authority or the City Representatives shall otherwise direct in writing.

5. Meetings. Unless the Parties agree otherwise, the Development Committee shall meet (i) no less frequently than weekly and (ii) at special meetings called by either the City Representatives or Team Representatives. The Development Committee Chair shall provide notice to the members of the Development Committee stating the place (or means if by telephone or video conference or other means), date and hour of each meeting of the Development Committee not less than two (2) Business Days before the date of such meeting (unless such notice is waived by an Authorized Representative of each Party either at the meeting or by written consent before or after the meeting) and provide a detailed agenda prior to the meeting if practical to do so. Any Party may submit an item for inclusion on the agenda of a Development Committee meeting. Attendance at a meeting of the Development Committee shall constitute a waiver of notification of any particular meeting. Meetings of the Development Committee shall require a quorum consisting of one (1) Representative or Alternate Representative of the City and Team.

6. Attendance. Other employees, contractors, consultants, or agents of the Parties may attend meetings of the Development Committee. Meetings may be conducted in person, by telephone or video conference call, or by other means which permit the Authorized Representatives of each Party to be verified and to hear and be heard by the other Authorized Representatives and which are acceptable to each of the Authorized Representatives. Attendees who are not Authorized Representatives shall be identified at the commencement of such meeting and may participate in discussions, as recognized by the Chair of the Development Committee.

7. New Arena Project Purpose and Guiding Principles. It is the intent of the Development Committee that the Guiding Principles will provide the greatest value and benefit for the New Arena Project and guide decisions that come before the Development Committee.

8. Standards for Approvals.

- (a) The provisions of this paragraph shall be applicable with respect to all instances in which it is provided under this Agreement that the Authority, the City, Team or the Development Committee exercises Review and Approval Rights; provided, however, that if the provisions of this paragraph specifying time periods for exercise of Review and Approval Rights shall conflict with other express provisions of this Agreement providing for time periods for exercise of designated Review and Approval Rights, then the provisions of such other provisions of this Agreement shall control. As used herein, the term "Review and Approval Rights" shall include, without limiting the generality of that term, all instances in which one Party (the "Submitting Party") is permitted or required to submit to the other Party or to the representative of that other Party any document, notice or determination of the Submitting Party and with respect to which the other Party or its representative (the "Reviewing Party") has a right or duty hereunder to review, comment, confirm,

consent, approve, disapprove, dispute or challenge the submission or determination of the Submitting Party.

- (b) Standard for Review. Unless this Agreement specifically provides that a Party's Review and Approval Rights may be exercised in the sole discretion of the Reviewing Party, then in connection with exercising its Review and Approval Rights under any provision of this Agreement, and whether or not specifically provided in any such provision, the Reviewing Party covenants and agrees to act in good faith, with due diligence, and in a fair and commercially reasonable manner in its capacity as Reviewing Party with regard to each and all of its Review and Approval Rights and to not unreasonably withhold, condition or delay its Approval of, consent to or confirmation of any submission or determination. The Reviewing Party shall review the matter submitted in writing and shall promptly and within a reasonable amount of time as determined by the Development Committee based upon the complexity of the matter submitted, (but in any event within ten (10) Business Days after such receipt) give notice to the Submitting Party of the Reviewing Party's comments resulting from such review and, if the matter is one that requires approval or confirmation pursuant to the terms of this Agreement, such approval, confirmation, disapproval or failure to confirm, setting forth in detail the Reviewing Party's reasons for any disapproval or failure to confirm. If the Reviewing Party fails to respond within the reasonable amount of time as determined by the Development Committee, then Submitting Party must send a final response request email directly to the City Representatives or Team Representatives, as applicable, requesting a response on the reviewing matter. If, after five (5) Business Days from receipt of such email, the Reviewing Party has still failed to respond then any such submission or determination shall be deemed to be approved or confirmed. Unless otherwise provided herein, the Reviewing Party's right to disapprove or not confirm any matter submitted to it for approval or confirmation and to which this paragraph applies shall be limited to the elements thereof: (a) which do not conform in all material respects to approvals or confirmations previously given with respect to the same matter; or (b) which propose or depict matters that are or the result of which would be a violation of or inconsistent with the provisions of this Agreement or Applicable Law.
- (c) Resubmissions. If the Reviewing Party disapproves of or fails to confirm a matter to which this paragraph applies within the applicable time period, the Submitting Party shall have the right, within a reasonable amount of time as determined by the Development Committee based upon the complexity of the matter submitted, but in any event within twenty (20) calendar days after the Submitting Party receives notice of such disapproval or failure to confirm, to re-submit the disapproved or not confirmed matter to the Reviewing Party, altered to satisfy the Reviewing Party's basis for disapproval or failure to confirm (all subsequent re-submissions with respect to such matter must be made within ten (10) Business Days of the date the Submitting Party receives notice of disapproval or failure to confirm of the prior re-submission). The applicable Submitting Party shall use reasonable efforts to cause any such re-submission to expressly state that it is a re-submission, to identify the disapproved or not confirmed portion of the original submission and any prior

resubmissions, and to not be included with an original submission unless the matter previously disapproved is expressly identified thereon. Any resubmission made pursuant to this paragraph shall be subject to Review and Approval Rights of the Reviewing Party in accordance with the procedures described in this paragraph for an original submission (except that the Review and Approval Rights shall be limited to the portion previously disapproved or not confirmed), until such matter shall be approved by the Reviewing Party.

- (d) Duties, Obligations, and Responsibilities Not Affected. Approval or confirmation by the Reviewing Party of or to a matter submitted to it by the Submitting Party shall neither, unless specifically otherwise provided (a) relieve the Submitting Party of its duties, obligations or responsibilities under this Agreement with respect to the matter so submitted nor (b) shift the duties, obligations or responsibilities of the Submitting Party with respect to the submitted matter to the Reviewing Party.

9. Voting. Both the City and Team shall have one (1) vote on any matter subject to the vote of the Development Committee, regardless of the number of that Party's Representatives in attendance at the meeting. All decisions of the Development Committee shall require the affirmative vote of each Party. All decisions that are made in the Development Committee meetings shall be memorialized in minutes of the meeting, subject to approval of the Authorized Representatives.

10. Disputes. The Development Committee will attempt in good faith to resolve expeditiously any disputes concerning the approval of or consent to any submission to the Development Committee. In the event that there are any disputes that arise, and which cannot be resolved by within the Development Committee, with respect to any decisions that need to be made by the Development Committee, such disputes shall be submitted to the City Manager and the Team's Governor for resolution recommendations. If any such disputes cannot be resolved by the City Manager and the Team's Governor, then the Parties shall resolve any issues through the expedited arbitration process under **Section 9.16** of the Agreement.