

**PROPERTY USE AGREEMENT**

THIS PROPERTY USE AGREEMENT ("Agreement") is made this 5<sup>th</sup> day of August, 2010, by and between the SAN JOSE ARENA MANAGEMENT, LLC, a Delaware limited liability company ("MANAGER"), also known as HP Pavilion Management, and the CITY OF SAN JOSE ("CITY") for the use of Suite C-11 in the HP Pavillon at San Jose located at 225 West Santa Clara St, San Jose, California 95113 (the "City Suite").

**RECITALS**

**WHEREAS**, on December 19, 2000, the CITY and MANAGER entered into that certain Amended and Restated San Jose Arena Management Agreement pursuant to which MANAGER operates the City owned Arena known as HP Pavilion at San Jose (the "Arena"), which Agreement has been subsequently amended from time to time and together with such amendments shall be referred to as the "Management Agreement").

**WHEREAS**, pursuant to, and as consideration under the Management Agreement, CITY retains the use of Suite C-11 for all events at the Arena.

**WHEREAS**, in June 1990, the CITY approved the creation of the San Jose Arena Authority, a nonprofit corporation formed to oversee the operation and management of the Arena on behalf of the City.

**WHEREAS**, on June 15, 2010, the City Council adopted the FY2010-11 Budget, and specifically, Manager's Budget Addendum #43, approving for Fiscal Year 2010-11 only, the lease of the use of Suite C-11 for ten (10) San Jose Sharks home games as an interim measure to supplement City funding for the Arena Authority.

NOW, THEREFORE, it is agreed as follows:

1. **Grant of Temporary Use.**

a. CITY hereby grants to MANAGER temporary use ("Temporary Use") of Suite C-11 for the purposes of leasing the Suite to others for ten (10) San Jose Sharks games as specified in EXHIBIT A "SCHEDULE", which is attached hereto and incorporated herein.

b. MANAGER expressly agrees and acknowledges that this Agreement constitutes a license for use of Suite C-11 during the scheduled time periods only and does not and shall not grant MANAGER any right of possession, estate, title or other interest whatsoever in or to Suite C-11 for any other time or purpose.

c. Manager shall retain all proceeds from such Temporary Use. Manager shall not need further City approval to affect such Temporary Use except as to the approval of insurance policies set forth in Section 7 below.

2. Duration of Temporary Use. Subject to the limits herein stated, the Temporary Use is a non-exclusive right to use of Suite C-11 during the period of time beginning on the effective date of this Agreement, and ending at twelve midnight on June 30, 2011, (but only on the dates set forth herein) after which time it shall automatically terminate.

3. Fee. In consideration for such Temporary Use, THIRTY THOUSAND DOLLARS (\$30,000) shall be paid to City on execution of this Agreement and THIRTY THOUSAND DOLLARS (\$30,000) shall be paid to City on or before November 1, 2010.

4. City Contact. Unless otherwise stated herein, CITY Project Coordinator for any purposes related to this Agreement shall be Sheila Tucker, Senior Executive Analyst, or such other person as may be designated by CITY.

5. Assignment. MANAGER shall only have the right to sell a license for the Suite for the San Jose Sharks Hockey Games listed on EXHIBIT A. This Agreement is made and entered into solely for the benefit of the CITY and MANAGER, and no other third person shall have any right of action under this Agreement.

6. No Agent. MANAGER does not become an agent or employee of CITY by virtue of this Agreement and/or the Temporary Use, and the parties expressly agree that no agency or employment relationship is created by this Agreement.

7. Insurance. MANAGER agrees at no cost to City to have or cause to have and maintain insurance coverage in effect for every Game listed on EXHIBIT A. Said coverage will be a broad form comprehensive general liability or commercial general liability policy of Insurance, including contractual liability coverage for obligations under this Agreement and host liquor liability coverage, covering the Suite in the amount of \$1,000,000, combined single limit. Policy shall be in the occurrence form and name MANAGER as an additional insured. This policy shall provide primary coverage to MANAGER; when any policy issued to MANAGER provides duplicate coverage or is similar in coverage, MANAGER's policy will be excess over this policy. This policy shall be with a company and in a form reasonably satisfactory and acceptable to MANAGER.

All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. MANAGER agrees to provide CITY with a copy of said policies, certificates and/or endorsements before the first game listed on EXHIBIT A.

8. Indemnification. MANAGER shall defend, indemnify and hold harmless the CITY, its respective officers, agents, directors and employees, from and against all claims, suits, actions, causes of action or liability of any kind, nature or description, brought by any and all persons for or on account of any loss, damage, death of or injury of persons, property or any interest, tangible, or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly arising or resulting from the performance or obligations of MANAGER under this Agreement or the failure of MANAGER to perform under this Agreement, except as may arise from the gross negligence or willful default of CITY, or its officers, agents, directors and employees.

9. Condition of Suite C-11. After each use under this Agreement, MANAGER shall return Suite C-11 to the CITY in as good a condition as when received. MANAGER shall be liable to the CITY for any and all damages to Suite C-11 which results from any actions or omissions of MANAGER, its employees, agents, or licensees.

10. Termination.

a. CITY may terminate this Agreement only in event MANAGER doesn't pay the Fee as required, or provide the Insurance coverage as required, or Manager is in violation of any federal, state or local law, and then only after giving MANAGER two (2) calendars days' written notice of such failure and opportunity to cure.

b. CITY's City Manager is empowered to terminate this Agreement on behalf of CITY.

11. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as:

To CITY: City of San Jose  
Attention: Sheila Tucker  
200 East Santa Clara Street, 16<sup>th</sup>  
Floor Tower  
San Jose, CA 95113  
(408) 535-8115

To MANAGER: San Jose Arena Management, LLC  
Attention: EVP Business Operations  
525 West Santa Clara Street  
San Jose, CA 95113  
(408) 999-5792

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against CITY, its officers or employees shall also be served in the manner specified above to the following address:

To CITY ATTORNEY: City of San Jose  
Richard Doyle, City Attorney  
200 East Santa Clara Street, 16<sup>th</sup> Floor Tower  
San Jose, CA 95113  
[Richard.Doyle@sanjoseca.gov](mailto:Richard.Doyle@sanjoseca.gov)

To General Counsel: San Jose Arena Management, LLC  
Don Gralnek, General Counsel  
525 West Santa Clara Street  
San Jose, CA 95113  
[dgralnek@svse.net](mailto:dgralnek@svse.net)

Notice shall be deemed effective on the date delivered or, if appropriate, on the date delivery is refused.

12. Nondiscrimination. MANAGER shall not discriminate, in any way, against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

13. Conflict of Interest. MANAGER shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Agreement. MANAGER shall disclose any conflict of interest, or potential conflict of interest, which exists or arises at any time during the term of this Agreement.

14. Gifts.

a. MANAGER is familiar with CITY's prohibition against the acceptance of any gift by any CITY officer or designated employee, which prohibition is found in the San Jose Municipal Code.

b. MANAGER agrees not to offer any CITY officer or designated employee any gift prohibited by said Code.

c. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Contractor. CITY may exercise any remedies it has in law or equity.

15. Compliance With Laws. This Agreement is expressly conditioned on MANAGER's compliance with all applicable laws, ordinances, codes and regulations of the federal, state and local governments with respect to MANAGER's operation and use of Suite C-11.

16. Governing Law. CITY and MANAGER agree that the law governing this Agreement shall be that of the State of California.

17. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara or, where appropriate, in the United States District Court for the Northern District of California, San Jose, California.

18. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
PATRICIA A. DEIGNAN  
Chief Deputy City Attorney

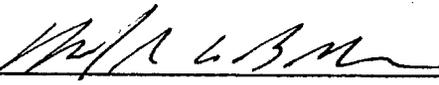
"CITY"

CITY OF SAN JOSE, a municipal corporation

By   
\_\_\_\_\_  
~~DEANNA SANTANA~~ *ED SUHODA*  
Deputy City Manager  
*ASSISTANT*

"MANAGER"

SAN JOSE ARENA MANAGEMENT, LLC,  
a Delaware limited liability company

By   
\_\_\_\_\_  
Malcolm Bordelon

**EXHIBIT A**

**SCHEDULE**

**The CITY hereby provides the right to use Suite C-11 to MANAGER for the following San Jose Sharks Games:**

October 27, 2010 vs. New Jersey

November 9, 2010 vs. Anaheim

November 30, 2010 vs. Detroit

December 13, 2010 vs. Dallas

January 6, 2011 vs. Buffalo

January 11, 2011 vs. Toronto

February 1, 2011 vs. Phoenix

March 12, 2011 vs. New York Rangers

March 23, 2011 vs. Calgary

April 4, 2011 vs. Los Angeles