

# NBA Constitution and By-Laws - 2019

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# Preface

*If you are only interested in a pdf or epub of the Constitution and By-Laws, then please click on the download icon at the top left (it is next to the “A”) and select the format you wish to download.*

The NBA’s Constitution and By-Laws were released to the public in the wake of the Donald Sterling incident. The NBA now hosts their own version of their Constitution and By-Laws on [nba.official.com](http://nba.official.com) with the most recent version here. In the interest of having these documents a bit easier to navigate – as I previously did with the NBA’s 2017 Collective Bargaining Agreement (CBA) – I have parsed the Constitution and By-Laws and formatted the two documents via bookdown.

I do not own any rights to the Constitution or By-Laws and am simply redistributing them in a different format. This is not the official version of either the Constitution and By-Laws and I am not responsible for any errors that might be present in this document. If you believe you have found an error, please let me know and I will correct it.

Contact: via email, through Github, or on Twitter



# Chapter

# INTERPRETATION

- (a) For purposes of this Constitution and By-Laws of the National Basketball Association, the following capitalized terms shall have the following meanings:
  - (1) “Active List” shall mean the list of Players who have signed player contracts with a Member and are otherwise eligible to participate in a Regular Season Game in accordance with Section 6.02 of the By-Laws.
  - (2) “Armed Services List” shall mean the list of those Players who have entered the Armed Services and are serving on active duty.
  - (3) “Association” shall mean the National Basketball Association.
  - (4) “Entity” shall mean any corporation, partnership, limited liability company, trust, unincorporated association, sole proprietorship, or other organization.
  - (5) “Exhibition Game” shall mean any game in which an NBA team participates other than a Regular Season Game or a Playoff Game.
  - (6) “Governor” or “Alternate Governor” shall mean a person who has been appointed by a Member as a member or alternate member of the Board of Governors of the Association in accordance with Article 18. For purposes of this Constitution and By-Laws, any action that may be taken by a Governor may be taken in his or her absence by an Alternate Governor appointed by the same Member, and such action shall have the same force and effect as an action taken by the Governor.
  - (7) “Inactive List” shall mean the list of Players who have signed player contracts with a Member but are otherwise ineligible to participate in a Regular Season Game or a Playoff Game, in accordance with Section 6.03 of the By-Laws.
  - (8) “Member” shall mean a person or Entity that has been granted a Membership in the Association. For purposes of this Constitution

and By-Laws, an action on behalf of a Member by any of its Owners, employees, officers, directors, managers, agents or representatives, or its Governor or Alternate Governors, shall be the action of a Member.

- (9) "Membership" shall mean the rights, privileges, and benefits granted to a Member by the Association, including, without limitation, the right to organize and operate a professional basketball team to play in the league operated by the Association.
- (10) "NBA Draft" or "Draft" shall mean the process by which Members select certain incoming NBA players.
- (11) "NBA Draft List" shall mean the list of those Players who have been selected in accordance with the NBA Draft.
- (12) "Owner" shall mean a Member and each individual or Entity (including both the trustees and beneficiaries of any trust) that, directly or indirectly (including through one or more intermediate Entities), owns of record or beneficially an interest in, or has effective control over, a Member or its Membership.
- (13) "Player" shall mean either a person carried on any Player List of a Team or, where the context permits, a person eligible to be carried on any such Player List.
- (14) "Player List" shall mean any of the following lists referred to herein: Active List, Inactive List, Two-Way List, Suspended List, NBA Draft List, Voluntarily Retired List, and Armed Services List.
- (15) "Playoff Game" shall mean any game included in the Association's schedule of playoff games during a Season.
- (16) "Playoff Roster" shall mean the list of fifteen (15) Players from each Member who have been designated as eligible to compete in Playoff Games in accordance with the By-Laws.
- (17) "Prospective Owner" shall mean any person or Entity that directly or indirectly owns, seeks to own, or has been identified to the Association as a prospective owner of, an interest in an applicant for Membership under Article 4 or a proposed transferee under Article 5.
- (18) "Referee" shall mean a person employed as a game official by the Association.
- (19) "Regular Season" shall mean the period beginning on the day of the first Regular Season Game of the Association's schedule and ending at the end of the day on which the last Regular Season Game is played.
- (20) "Regular Season Game" shall mean any game included in the Association's schedule of regular season games during a Season, and shall not include Playoff Games or Exhibition Games.
- (21) "Season" shall mean the period beginning the day of the first Regular Season Game of the Association's schedule and ending at the end of the day on which the last Playoff Game is played.
- (22) "Suspended List" shall mean the list of those Players who, for proper cause, have been suspended by the Association or by the Member



having the right to so suspend, and have therefore been removed from the Active, Inactive, or Two-Way Lists of their Teams.

- (23) “Team” shall mean the professional basketball team organized and operated by a Member to play in the league operated by the Association.
- (24) “Two-Way Contract” shall mean a player contract between a Player and a Member that provides for a tiered salary based on whether the Player is performing services on a particular day for (i) an NBA G League team, or (ii) an NBA Team, in accordance with the NBA/NBPA Collective Bargaining Agreement then in effect.
- (25) “Two-Way List” shall mean the list of Players who have signed Two-Way Contracts with a Member and are eligible to provide services to a team in the NBA G League, in accordance with Section 6.04 of the By-Laws and the NBA/NBPA Collective Bargaining Agreement then in effect.
- (26) “Two-Way Player” means a Player under a Two-Way Contract in accordance with the NBA/NBPA Collective Bargaining Agreement then in effect.
- (27) “Voluntarily Retired List” shall mean the list of those Players who have formally retired as players in the Association.
- (28) “Writing” or “Written Notice” shall mean any written communication delivered personally or sent by certified mail (return receipt requested), facsimile, internationally recognized overnight courier service, or electronic mail system utilized by the Association.
- (b) All references to “Articles” or “Sections” shall be references to the Articles and Sections of the Constitution and By-Laws, as they may be amended, modified, supplemented, or restated from time to time.
- (c) Terms for which meanings are defined in this Constitution and By-Laws shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine or feminine form. The term “including,” whenever used in any provision of this Constitution and By-Laws, shall mean including without limiting the generality of any description preceding or succeeding such term. Each reference to a person or Entity shall include a reference to the successors and assigns of that person or Entity.



# Chapter

# CONSTITUTION

## 1 NAME OF ASSOCIATION

The name of this Association shall be the National Basketball Association.

## 2 PRINCIPLES OF ORGANIZATION

This Constitution and By-Laws constitutes a contract among the Members of the Association. This Association is organized to operate a league consisting of professional basketball teams, each of which shall be operated by a Member of the Association. The Association and each of its Members shall be subject to the oversight and control of the Board of Governors of the Association as set forth herein and shall be governed by the Constitution and By-Laws, rules, regulations, resolutions, and agreements of the Association, as they may be modified or amended from time to time.

## 3 CONFLICTS OF INTEREST

- (a) No Owner, or director, officer, manager, coach, employee, agent or representative of an Owner, shall (i) hold a position with, or directly or indirectly exercise control or any management authority over any other Member or Membership, or (ii) hold any direct or indirect financial interest in any other Member or Membership, unless, in the case of this clause (ii), (x) the facts in connection with such financial interest are disclosed in detail in an application provided to the Commissioner by the applicable Owner and, in addition to any approvals that may be required under

Article 5, such interest is expressly approved for purposes of this Article 3 in accordance with the approval procedures set forth in Article 5(f) and 5(h)(i) and (ii), or (y) such interest represents less than one percent (1%) of any outstanding class of securities that are publicly traded on any generally recognized stock exchange or over-the-counter market.

- (b) No Owner shall, directly or indirectly, lend money to or become a surety or guarantor for any Member other than a Member in which it owns an interest, any Player of any Member other than a Member in which it owns an interest, any Referee, the Commissioner or any other employee of the Association, except that Owners that engage in commercial lending as a principal business activity may enter into such lending, surety, or guarantee arrangements with such other Members or persons if (i) such arrangements are disclosed in detail to the Board of Governors and approved by three-fourths (3/4) vote of all Governors, or (ii) such Owners do not have effective control of a Member, the lending, surety, or guarantee arrangements are between the Owner and a Player, Referee, or employee of the Association, and such arrangements are on terms customarily offered to similarly situated individuals not affiliated with the Association.
- (c) Neither the Commissioner nor any Referee nor any other employee of the Association shall, directly or indirectly, hold stock or have a financial interest in any Owner or lend money to or become a surety or guarantor for any Owner.
- (d) No Owner, or director, officer, manager, coach, employee, agent or representative of an Owner, shall hold any direct or indirect financial interest in, any position with, or directly or indirectly exercise any management authority over, any other professional basketball association or league or any member or team thereof, unless the facts in connection with such financial interest, position, or management authority are disclosed in detail to the Board of Governors and approved by a three-fourths (3/4) vote of all Governors; provided, however, that the foregoing prohibition shall not preclude any such financial interest that represents less than one percent (1%) of any outstanding class of securities that are publicly traded on any generally recognized stock exchange or over-the-counter market. This Article 3(d) does not apply to financial interests in, any executive position with, or any management authority over, a professional basketball team in the NBA G League.

## 4 APPLICATION FOR MEMBERSHIP

- (a) Each applicant for Membership shall make a written application to the Commissioner specifying the city that the applicant wishes to represent in the Association. Upon receipt of such application, the Commissioner shall have the right to require from the applicant and each Prospective Owner, and the applicant and each Prospective Owner shall furnish to the Com-

missioner, such information as the Commissioner shall request about the application, the applicant and each Prospective Owner, any persons or Entities with which the applicant or any Prospective Owner is associated or affiliated, and such other matters, whether or not confidential, as the Commissioner shall deem relevant in his sole discretion. The applicant and each Prospective Owner shall also execute, deliver, and perform and shall cause such other parties (including their respective controlled subsidiaries and affiliates) as the Commissioner shall direct to execute, deliver, and perform such documents in such forms as the Commissioner shall prescribe.

- (b) The Association shall have no obligation to consider any application that is submitted under this Article or to solicit applications from more than one applicant for any potential new Membership.
- (c) All applications shall contain a binding agreement of the applicant and each Prospective Owner providing that if the application is approved by the Association, the applicant and each Prospective Owner shall be bound by the Constitution and By-Laws, rules, regulations, resolutions, and agreements of the Association, and any modifications or amendments thereof.
- (d) Upon receipt of any application for Membership in the Association that the Association wishes to consider, the Commissioner shall conduct such investigation thereof as the Commissioner deems appropriate. Following the completion of such investigation, the Commissioner shall submit the application to the Members for approval, together with such information as the Commissioner deems pertinent. Each Prospective Owner must be approved by the affirmative vote of not less than three-fourths (3/4) of all Governors at a meeting duly called for such purpose.
- (e) Each application for Membership shall be accompanied by a certified check in the amount of \$1,000,000 (the "Application Fee"). If the application for admission is accepted, the Application Fee shall be used to pay the fees, costs, and expenses (including attorneys' fees) incurred by the Association in considering the application and all related matters, and any remaining balance shall be applied as a credit against the Membership fee to be paid by the applicant. If the application for admission is denied, the Application Fee shall be used to pay the fees, costs, and expenses (including attorneys' fees) incurred by the Association in considering the application and all related matters, and any remaining balance shall be repaid to the applicant. There shall be no obligation to pay interest on any Application Fee submitted to and held by the Association.

## 5 TRANSFER OF MEMBERSHIP

No Membership, nor any direct, indirect, contingent, or convertible interest therein (regardless of the size of the interest), may be sold, pledged, hypothe-

cated, assigned, or otherwise transferred or encumbered (each a “transfer”) in whole or in part, directly or indirectly, except in accordance with and subject to the following provisions of this Article 5: (a) An application requesting approval of a transfer must be made in writing to the Commissioner by the applicable Member (on behalf of the transferring Owner) promptly after an agreement with respect to such transfer has been reached. The Commissioner may waive this requirement and accept an application directly from a Prospective Owner that has a security interest previously approved by the Association in the interest proposed to be transferred or when, in the Commissioner’s sole judgment, the best interests of the Association would be served. (b) Upon receipt of such application, the Commissioner shall have the right to require from the transferring Owner, and the transferring Owner shall furnish or cause the proposed transferee to furnish to the Commissioner, such information as the Commissioner shall request about the transfer, the proposed transferee and each Prospective Owner, any persons or Entities with which the transferee or any Prospective Owner is associated or affiliated, and such other matters, whether or not confidential, as the Commissioner shall deem relevant in his sole discretion. The transferring Owner and its proposed transferee and each of its Prospective Owners shall also execute, deliver, and perform, and shall cause such other parties (including their respective controlled subsidiaries and affiliates) as the Commissioner shall direct to execute, deliver, and perform, such documents in such forms as the Commissioner shall prescribe. It shall be the obligation of the transferring Owner to ensure that the Commissioner timely receives all information that the Commissioner may request under this Article 5. (c) Any agreement to transfer an interest in a Member or Membership, and any application requesting approval of such transfer, shall include a binding agreement of the proposed transferee and each of its Prospective Owners stating that if the transfer is approved by the Association, the proposed transferee and each of its Prospective Owners (and each of their respective controlled subsidiaries and affiliates) shall be bound by the Constitution and By-Laws, rules, regulations, resolutions, and agreements of the Association, and any modifications or amendments thereof. (d) An application requesting approval of a transfer of an interest in a Member or Membership equal to or larger than ten percent (10%), or such smaller interest as may result in a change of control over such Member or Membership, shall be accompanied by a certified check from the transferring Owner to the order of the Association in the sum of \$50,000 to defray all expenses (including, but not limited to, attorneys’ fees) incurred by the Association in investigating, reviewing, and processing the application. Following the disposition of any application, the Association shall repay to the applicant the sum of \$50,000, less all expenses incurred in connection with the application. If these expenses exceed \$50,000, the additional expenses shall be assessed against the Member and promptly paid to the Association. (e) With respect to an application requesting approval of a transfer of an interest in a Member or Membership of less than ten percent (10%) (other than a transfer that would result in a change of control over such Member or Membership), all expenses incurred by the Association in investigating, reviewing, and processing the application (including, but not limited to,

attorneys' fees) shall be assessed against the Member and promptly paid to the Association. (f) Upon receipt of an application requesting approval of a transfer, the Commissioner shall conduct such investigation as the Commissioner deems appropriate. Upon the completion of the investigation, the Commissioner shall submit the proposed transfer to the Members for approval, together with all information in respect thereto that the Commissioner deems pertinent. A transfer shall only become effective if approved by the affirmative vote of not less than three-fourths (3/4) of all Governors at a meeting duly called for such purpose. (g) The Commissioner shall appoint a committee to assist him in matters relating to proposed transfers of Membership interests (for purposes of this Article 5, the "Committee"). (h) Notwithstanding the provisions of Article 5(f): (i) If a proposed transfer involves (x) a larger than five percent (5%) but smaller than ten percent (10%) interest in a Member or Membership (including an interest subject to Article 5(h)(iii)), or (y) the transfer of a Membership or an interest in a Member or Membership to a different Entity owned by substantially the same Owners in substantially the same proportions (provided that the aggregate direct and indirect changes in ownership, if any, do not equal or exceed ten percent (10%)), the Committee shall have the power, in its sole discretion, to approve such proposed transfer without submitting it to the Members for approval under Article 5(f) above, unless (A) the transfer would result in any person or Entity (or group of persons or Entities acting in concert) that has not been approved by the Members directly or indirectly owning an interest of ten percent (10%) or larger in a Member or Membership, or (B) the effect of such proposed transfer is or may be to change the ownership of effective control of such Member or Membership. (ii) If a proposed transfer involves (x) a five percent (5%) or smaller interest in a Member or Membership, or (y) the transfer of a Membership or an interest in a Member or Membership to a different Entity owned by substantially the same Owners in substantially the same proportions (provided that the aggregate direct and indirect changes in ownership, if any, do not exceed five percent (5%)), the Commissioner shall have the power, in his sole discretion, to approve such proposed transfer without submitting it to the Members for approval under Article 5(f) above, unless (A) the transfer would result in any person or Entity (or group of persons or Entities acting in concert) that has not been approved by the Committee or the Members directly or indirectly owning an interest of larger than five percent (5%) but smaller than ten percent (10%) in a Member or Membership, (B) the transfer would result in any person or Entity (or group of persons or Entities acting in concert) that has not been approved by the Members directly or indirectly owning an interest of ten percent (10%) or larger in a Member or Membership, or (C) the effect of such proposed transfer is or may be to change the ownership of effective control of such Member or Membership. (iii) This Article 5 shall not be applicable to a proposed transfer of any interest in a Member or other Owner in which the number of individuals and Entities directly or indirectly owning interests prior to such proposed transaction exceeds five hundred (500), unless (w) the interest proposed to be transferred represents a direct or indirect interest of five percent (5%) or larger in a Member or Membership, (x) the transfer would

result in any person or Entity (or group of persons or Entities acting in concert) that has not been approved by the Committee or the Members directly or indirectly owning an interest of at least five percent (5%) but less than ten percent (10%) in a Member or Membership, (y) the transfer would result in any person or Entity (or group of persons or Entities acting in concert) that has not been approved by the Members directly or indirectly owning an interest of ten percent (10%) or larger in a Member or Membership, or (z) the effect of such proposed transaction is or may be to change the ownership of effective control of such Member or Membership. (iv) If a proposed transfer is in the form of a pledge, lien or hypothecation of a Membership or an interest in a Member or Membership in connection with the incurrence of indebtedness that does not exceed the then-current Association limits on secured indebtedness of a Member, the Commissioner shall have the power, in his sole discretion, to approve such proposed transfer without submitting it to the Members for approval under Article 5(f) above, upon and subject to such conditions as the Commissioner shall determine. (i) Any addition, replacement, or substitution of a trustee or a beneficiary of a trust that is an Owner shall be deemed a transfer of the entire interest owned by that trust, unless the Commissioner shall determine that the interest to be transferred is only a portion of the interest owned by the trust (in which case the interest deemed to be transferred for purposes of this Article 5 shall be such portion). (j) Absent a compelling reason to the contrary as determined by the Board of Governors, it shall be the policy of the Association not to approve a proposed transfer of an interest in a Member or Membership to (i) any governmental or quasi-governmental authority, agency, or instrumentality, or (ii) any person or Entity not satisfying any minimum ownership criteria that may be established from time to time by the Commissioner, the Committee, or the Board of Governors. (k) Any violation of the provisions of this Article 5 shall constitute a violation of Article 13(b).

## 6 LIMITATIONS ON INDEBTEDNESS

The Board of Governors (and such committees of the Board as it or the Commissioner may appoint) shall have the right to establish limits on the indebtedness and other obligations that any Member or Owner may incur.

## 7 RELOCATION

A Member may transfer its Team, city of operation, or playing site of any or all of its home games to a different location within or outside its existing Territory, as defined in Article 10, only in accordance with and subject to the provisions of this Article 7 and, where applicable, the provisions of Articles 8 and/or 9.



- (a) Application to relocate must be made in writing by the Member to the Commissioner. The application shall identify the proposed new location and the arena in which the Member proposes to play its home games, and shall be accompanied by an Application Fee (in the form of a certified check to the order of the Association) in the sum of \$50,000, if the proposed new location is within the Member's Territory, or \$250,000, if the proposed new location is outside of the Member's Territory, to defray the costs of the investigation of the application. Following the disposition of any application, the Association shall repay to the applicant the amount of the Application Fee, less all expenses reasonably incurred in connection with the investigation of the application (including attorneys' fees). If these expenses exceed the Application Fee, the additional expenses shall be assessed against the Member and promptly repaid to the Association.
- (b) No application to relocate may be made after the first day of March preceding the Season in which the proposed relocation is to take effect. Within ten (10) days of the receipt of an application to relocate, the Commissioner shall refer the application to a committee for investigation (the "Relocation Committee"). The Relocation Committee shall be appointed by the Commissioner and shall consist of no fewer than five (5) Governors or Alternate Governors. Within one hundred twenty (120) days from the Commissioner's receipt of the application, the Committee shall report to the Board of Governors with respect to the results of its investigation and its recommendation of whether the application should be granted or denied. The recommendation of the Relocation Committee shall be based solely and exclusively upon the following factors:
  - (i) The support of the Member's Team in the existing location by fans, telecasters, broadcasters, and sponsors. In evaluating this factor, the Relocation Committee shall consider the Member's past performance in the management and operation of its Team in the existing location.
  - (ii) The ability of the Member's existing location to support a Team in the Association. In evaluating this factor, the Relocation Committee shall consider the following criteria with respect to the Member's existing location: existing and projected population, income levels, and age distribution; existing and projected markets for radio, broadcast television, cable television, and other forms of audio-visual transmission of Association games; existing and projected business environment; the size, quality, and location of the Member's existing arena and any other arena in the existing location, and the terms, if any, on which that other arena would be available to the Member; and the presence, history, and popularity in the existing location of other professional sports teams and other forms of entertainment.
  - (iii) The ability of the proposed new location to support a Team in the Association or, if the proposed new location is within the existing Territory of a Member, the ability of the proposed new location to support another Team. In evaluating this factor, the Relocation Committee shall consider the following criteria with respect to the pro-

posed new location: projected support of the Member's team by fans, telecasters, and sponsors; existing and projected population, income levels and age distribution; existing and projected markets for radio, broadcast television, cable television, and other forms of audio-visual transmission of Association games; existing and projected business environment; the size, quality and location of the arena in which the Member proposes to play its home games; and the presence, history and popularity in the proposed new location of other professional sports teams and other forms of entertainment.

- (iv) The Member's ability to operate an Association team successfully in the proposed new location. In evaluating this factor, the Relocation Committee shall consider the applicant's present and projected financial condition and its financial resources.
- (v) The Member's past performance in the management and operation of its Team in the Association.
- (vi) The effect of the proposed relocation on the Association's ability to market and promote Association basketball on a nationwide basis in a diverse group of geographic markets.
- (vii) The effect of the proposed relocation on the Association's existing or prospective commercial relationships with telecasters, broadcasters, sponsors, and others.
- (viii) The extent to which the proposed new location presents particular disadvantages for the operation of the Association, such as by creating significant traveling or scheduling difficulties or because of adverse laws or regulations.
- (ix) The interest of other Members, in addition to the applicant, in transferring their Teams to the proposed new location, or the interest of other persons or Entities in obtaining a new Membership to operate an NBA team in the proposed new location. In any such event: (A) Except as otherwise provided herein, all applicants shall follow the procedures set forth in Article 4 or this Article 7, as the case may be. All additional applications to establish an NBA team in the proposed new location for the Season to which the initial application relates shall be made within forty-five (45) days of the Commissioner's receipt of the initial application referred to in subparagraph (a), and the one hundred twenty (120) day period provided for in subparagraph (b) of this Article 7 shall be extended by no longer than forty-five (45) days after the Commissioner's receipt of the initial application. (B) The Relocation Committee shall investigate each of the applications and shall recommend which of the applications, if any, should be granted. In reaching its recommendation, the Relocation Committee shall consider all factors listed in subparagraphs (b)(i-viii) of this Article 7 and shall also consider:
  - (i) which applicant is likely to operate most successfully in the proposed new location, or otherwise best serve the interests of the Association; and

- (ii) in the case of a proposed expansion team to be operated by a new Member, whether the interests of the Association would best be served by expanding the number of Members in the Association.
- (c) The Relocation Committee is empowered to require from the applicant, and the applicant shall furnish, such information as the Relocation Committee deems appropriate for the conduct of its investigation. The Relocation Committee may engage consultants or other experts to assist it in the investigation of the application and may also request such additional information from the Commissioner as the Committee may deem appropriate for the conduct of its investigation. All information supplied to the Relocation Committee pursuant to this subparagraph (c) (other than confidential communications of counsel) shall be made available to the applicant, and the applicant shall be afforded an opportunity to appear before the Committee to present whatever additional information or arguments the applicant desires. Any other member of the Board of Governors or his representative, or any other party from which the Relocation Committee wishes to hear, may also appear before the Relocation Committee to present whatever information or arguments such Governor or party desires.
- (d) The report and recommendation of the Relocation Committee shall be delivered to each member of the Board of Governors. The Commissioner shall call a meeting of the Board of Governors to consider the Relocation Committee's report and recommendation, which meeting shall be held no sooner than seven (7) days and no later than thirty (30) days after delivery of the Committee's report and recommendation. The applicant shall be afforded an opportunity to appear before the Board of Governors to present whatever information or arguments the applicant desires. The question whether to approve the proposed relocation shall be decided by a majority vote of all of the Members, and no vote by proxy shall be permitted. The vote of each Governor on the proposed relocation shall be based solely and exclusively upon the factors listed in subparagraphs (b)(i–ix) of this Article.
- (e) The Board of Governors shall have the right to attach reasonable and appropriate conditions to its approval of a proposed relocation, including, but not limited to, that the Member indemnify and release the Association from any and all claims arising out of the proposed relocation and that the Member pay a reasonable fee in connection with the relocation of its Team. In establishing the amount of such a fee, the Board of Governors may consider, among other factors, the value to the Association of the business opportunity represented by the relocation, and any increase in the value of the Member that results from the relocation. Any fee so charged may be distributed among the other Members of the Association in such proportion as the Board of Governors shall determine.

## 8 ARENAS

- (a) The Commissioner shall have the power from time to time (i) to establish minimum standards for the design, construction, and operation of NBA-quality arenas in areas related to the production and marketing of NBA basketball games and events; (ii) to establish minimum standards for the conditions under which NBA basketball games and events are conducted, and to regulate the in-arena presentation of those games and events; (iii) to establish procedures for ensuring compliance with this Article 8; and (iv) to enforce such standards and procedures, including through the imposition of appropriate penalties. It shall be the responsibility of the Member, and not the responsibility of the Association, to ensure that the Member's arena complies with all applicable statutes, regulations, and ordinances. Nothing contained in Articles 8(b)-(d) below shall be construed as limiting the applicability of this Article 8(a) to all Members.
- (b) In addition to complying with Article 7 and the other provisions of this Article 8, any Member seeking to transfer the playing site of any or all of its home games to a different location (other than a proposed transfer under Article 9) shall be subject to and shall comply with the following provisions:
  - (i) If a Member seeks to relocate to an arena that will be newly constructed or substantially renovated for use by the Member's team:
    - (A) the Member shall obtain a written determination from the Commissioner (or the Commissioner's designee) at least thirty (30) days prior to the commencement of the arena's construction or renovation that all designs, plans, and specifications for the newly-constructed or renovated arena required to be submitted pursuant to Article 8(a) above have been submitted and comply substantially with the minimum arena standards of the Association; and
    - (B) the Member shall obtain a written determination from the Commissioner (or the Commissioner's designee) prior to holding any practice, exhibition, or game involving NBA players at the newly-constructed or renovated arena that the construction or renovation of the arena has been completed in substantial compliance with the minimum arena standards of the Association.
  - (ii) If a Member seeks to relocate to an already-existing arena that will not be substantially renovated for its use, the Board of Governors shall have no obligation to consider the Member's Article 7 application at the meeting called for that purpose unless the Member shall obtain a written determination from the Commissioner (or the Commissioner's designee) at least thirty (30) days prior to such meeting either stating (x) that the arena substantially complies with the minimum arena standards of the Association (as determined by the Commissioner or the Commissioner's designee), or (y) that specified

modifications are necessary in order for the arena to comply substantially with such standards, that the Team has agreed in a Writing to make such modifications, and that the Team has supplied to the Commissioner (or the Commissioner's designee) design plans sufficient to evidence its intent to make such modifications. If specified modifications are required, the Member shall not hold or attempt to hold any practice, exhibition, or game involving NBA players at the arena unless it has received a written determination from the Commissioner (or the Commissioner's designee) that the modifications have been completed and that the arena substantially complies with the minimum arena standards of the Association.

- (iii) No Member's application to relocate will receive final approval under Article 7 unless the Member has received the written determination(s) of the Commissioner (or the Commissioner's designee) required under either clause (i) or clause (ii) above.
- (iv) For purposes of this Article 8, "substantial compliance" with the NBA's minimum arena standards shall be solely determined by the Commissioner (or the Commissioner's designee).
- (v) Any Member that fails to comply with any of the provisions of this subparagraph (b) shall be subject to a fine of up to \$5,000,000 to be imposed by the Commissioner.
- (c) In addition to any other arena compliance obligations it may have under Article 8(a), a Member who receives approval to relocate under Article 7 shall ensure that its arena continues to comply with the NBA's minimum arena standards in effect at the time the Member received the written determination(s) required by paragraph (b) above.
- (d) For any violation of Article 8(a) or 8(c) above, the Commissioner shall have the right to impose a fine against the Member of up to \$250,000 per game (Exhibition, Regular Season, or Playoff) for each game that the Member's team plays in the arena during the period when it is in violation of such provisions.

## 9 CERTAIN PLAYING SITE RELOCATIONS

Articles 7, 8(b), and 8(c) shall not apply to a request by a Member, in accordance with this Article 9, to transfer the home playing site of one or more of its Regular Season or Playoff Games to a different facility under the following circumstances:

- (a) the usual home playing site is unavailable on a date scheduled for a Playoff Game; (b) an unanticipated event or emergency renders the usual home playing site temporarily unavailable or unsuitable and the Member wishes to play its home games during such period at another facility; or (c) the Member seeks to schedule up to four (4) of its Regular Season home games at another playing site within its Territory.

In order for a Member to transfer the home playing site of any of its Regular Season or Playoff Games under the circumstances set forth in Article 9(a), 9(b), or 9(c) above, the Member must make an application in writing to the Commissioner, who is empowered to grant or deny such application, either unconditionally or upon specific conditions, as in his judgment shall be in the best interests of the Association (based on such factors as the Commissioner deems appropriate, including the extent to which the arena to which the Member seeks to relocate complies with the NBA's minimum arena standards). An application pursuant to Article 9(a) or 9(b) shall be made promptly upon the occurrence of the event rendering the home playing site unavailable or unsuitable, and an application pursuant to Article 9(c) must be made on or before the first day of May preceding the Season in which the Member proposes to play up to four (4) of its home games at the additional playing site. An application pursuant to this Article 9 shall specify the reasons for the proposed transfer and shall be accompanied by such further information and documentation as the Commissioner may deem appropriate.

## 10 TERRITORY

- (a) Subject to any rules, regulations, resolutions, or agreements of the Association, or any agreement between the affected Members that has been approved by the Association, (i) the Territory of a Member shall be the territory within an area of seventy-five (75) air miles of the corporate limits of the city of operation, except that when the line circumscribing the Territory of a Member intersects with the line circumscribing the Territory of another Member, the respective Territories shall be evenly divided by a line between the two (2) points of intersection ("Territory") and (ii) a Member may also conduct and authorize promotions, community events and sponsor advertising and activities (x) within the area of the U.S. state in which the Member's home games are played that is outside the Territory of such team, and (y) within an area of one-hundred-fifty (150) air miles of the corporate limits of its city of operation (collectively, "Expanded Marketing Territory"), provided that a Member's Expanded Marketing Territory shall not extend into the Territory of another Member.
- (b) Except in accordance with any rules, regulations, resolutions, or agreements of the Association, (i) a Team operated by a Member shall have no right to play in the Territory of another Member without the consent of the resident Member; and (ii) subject to Article 10(a)(ii) and (c), no Team shall conduct any of its operations outside of its Territory.
- (c) In addition to the territorial rights set forth in Article 10(a) above, a Member shall have priority within the corporate limits of any city in which its Team has played not less than three (3) home Regular Season Games during the preceding Season, provided that it has requested and receives the prior approval of the Association to play in such location. Such prior-

ity shall continue so long as such Member's Team continues to play not less than three (3) home Regular Season Games in such city in each succeeding consecutive Season; provided, however, that the Commissioner, in his discretion, may, by Written Notice to each of the Members of the Association, excuse the failure of the Team of any Member to play such minimum number of games in such city in any one (1) Season, in which event such Member's priority in such city shall continue notwithstanding its Team's failure to play such minimum number of games in such city during such Season. "Priority," as used in this paragraph (c), means a preference granted to schedule and play home Regular Season Games and home pre-season Exhibition Games within the corporate limits of such city.

## 11 RESIGNATION OF A MEMBER

A Member may resign from the Association at the end of any Season provided Written Notice of such resignation shall have been given to the Commissioner and other Members of the Association at least three (3) calendar days prior to the commencement of the NBA Draft immediately following such Season. However, such resignation shall be effective only if, within thirty (30) days of such notice, the resigning Member shall have (a) made full payment of all dues or other debts owing to the Association, its Members, and any third-party creditors designated by the Association; and (b) assigned to the Commissioner the contracts of its Players, its arena lease (if assignable) and its Membership, in each case free and clear of all liens, claims, and encumbrances. The Commissioner shall have the power to deal with and dispose of such contracts, lease, and Membership as if said Member had suffered an event described in Article 14A hereof. Upon the effective date of such resignation, the resigning Member shall hold no further interest in its Player Contracts, lease, or Membership.

## 12 BANKRUPTCY OF A MEMBER

For purposes of this Article 12, a Member shall be deemed to be involved in a bankruptcy proceeding if it makes an assignment for the benefit of creditors, a receiver is appointed for all or substantially all of its assets, it voluntarily files a petition for relief under Title 11 of the United States Code or any foreign or state law providing for relief of debtors, or any such petition is filed against it and not discharged within thirty (30) days. The Members of the Association each acknowledge that substantial hardship may result to the creditors of a Member involved in a bankruptcy proceeding, to the other Members of the Association, and to the public if the operations of such Member's Team are not continued under the direction of a qualified person having no relationship to such Member.

Therefore, if any Member is involved in a bankruptcy proceeding, the Association shall have the option, exercisable by a vote of three-fourths (3/4) of the Board of Governors (the Member involved in the bankruptcy proceedings not being considered a Member of the Board of Governors for purposes of this Article), to cause such Member and its assets and properties to be placed under the management and control of the Commissioner. Upon exercise of such option, the Commissioner shall be deemed authorized to take the following actions: to appear on behalf of the Association in any court in which a bankruptcy proceeding is pending; to cause the Member's Team to continue to play its Exhibition, Regular Season, and Playoff Games; to collect all revenues from every source payable to the Member and apply such revenues, to the extent available, to the payment of such Member's operating expenses; and to take such further action as he shall deem advisable to accomplish the purpose of the option, all subject to the supervision and control of the court having jurisdiction over the bankruptcy proceeding. The management and control by the Commissioner shall continue until the first to occur of termination of the bankruptcy proceeding, transfer of such Member's Membership in the Association in accordance with and subject to Article 5, termination of such Member's Membership in the Association, or a determination by a majority of the Board of Governors (the Member involved in the bankruptcy proceeding not being considered a Member of the Board of Governors for purposes of this Article) that continuation of such management and control is no longer advisable. The existence or exercise of the option shall not impose upon the Association or any of its Members any requirement to provide funds to a Member involved in a bankruptcy proceeding or any liability for another Member's debts or obligations.

### **13 TERMINATION OF OWNERSHIP OR MEMBERSHIP**

The Membership of a Member or the interest of any Owner may be terminated by a vote of three fourths (3/4) of the Board of Governors if the Member or Owner shall do or suffer any of the following:

- (a) Willfully violate any of the provisions of the Constitution and By-Laws, resolutions, or agreements of the Association.
- (b) Transfer or attempt to transfer a Membership or an interest in a Member without complying with the provisions of Article 5.
- (c) Fail to pay any dues or other indebtedness owing to the Association within thirty (30) days after Written Notice from the Commissioner of default in such payment.
- (d) Fail or refuse to fulfill its contractual obligations to the Association, its Members, Players, or any other third party in such a way as to affect the Association or its Members adversely.



- (e) Wager or countenance wagering by its officers or employees on any game in which a Team operated by a Member of the Association participates.
- (f) Willfully permit open betting, pool selling, or any other form of gambling upon any premises owned, leased, or otherwise controlled by the Member or an Owner, except, subject to Article 8(a), for gambling activities that are lawful in the applicable jurisdiction and do not involve in any way, directly or indirectly, gambling with respect to any aspect of the Association's games, events, property, players, or other personnel.
- (g) Offer, agree, conspire, or attempt to lose or control the score of any game participated in by a Team operated by a Member of the Association, or fail to suspend immediately any officer or any Player or other employee of the Member who shall be found guilty, in a court of law or in any hearing sanctioned by this Constitution and By-Laws, of offering, agreeing, conspiring, or attempting to lose or control the score of any such game or of being interested in any pool or wager on any game in which a Team operated by a Member of the Association participates.
- (h) Disband its Team during the Season, dissolve its business, or cease its operation.
- (i) Willfully fail to present its Team at the time and place it is scheduled to play in an Exhibition, Regular Season, or Playoff Game.
- (j) Willfully misrepresent any material fact contained in its application for Membership in the Association.

## 14 PROCEDURE FOR TERMINATION

The Membership of a Member or the interest of any Owner shall be terminated on the occurrence of any of the events described in Article 13 by the following procedure:

- (a) Any Member of the Association or the Commissioner may charge that a Member or Owner has violated one (1) or more of the provisions of Article 13. Said charge shall be made in Writing and shall be filed with the Commissioner, who shall, no later than three (3) business days after the charges are filed, cause a copy thereof to be served by a Writing upon the Member or Owner against whom such charges have been made.
- (b) The Member or Owner so charged shall, within five (5) days after receipt of the charges, file with the Commissioner its written answer thereto. The Commissioner shall thereupon transmit said charges and answer to each of the Governors of the Association and shall call a special meeting of the Governors to hear the charges, to be held on a date not more than ten (10) days after the filing of a Member's or Owner's answer, due notice to be given.
- (c) Willful failure by a Member or Owner so charged to answer the charges during such five (5) day period or to appear at the hearing shall be deemed

an admission by said Member or Owner of the total validity of the charges as presented.

- (d) At such hearing, the Chairman of the Board of Governors shall be the presiding officer, except that if the Chairman of the Board of Governors represents either the complaining Member or the Member charged, then the Commissioner shall designate an alternate Chairman for purposes of the hearing.
- (e) At the hearing, the Member or Owner so charged shall have the right to be represented by counsel. Strict rules of evidence shall not apply, and all relevant and material evidence submitted prior to and at the hearing may be received and considered.
- (f) After duly considering all the evidence, the Board of Governors shall vote upon the proposition that the charges have been sustained in whole or in part. The affirmative vote of three-fourths (3/4) of all the Governors shall be required to sustain the charges.
- (g) If, by a three-fourths (3/4) vote, the Board of Governors votes to sustain the charges, the Membership of the guilty Member or the Member in which the guilty Owner has an interest shall automatically be terminated, unless, following a motion duly made and seconded, two-thirds (2/3) of all the Governors vote instead to terminate the ownership interest of the guilty Owner or to invoke the provisions of Article 15.
- (h) Notwithstanding Article 14(g) above, in the case of a violation of Article 13 by an Owner who has an interest of ten percent (10%) or less in, and does not have effective control over, a Member, the Membership of such Member may not be terminated solely because of such Owner's violation. In such case, if the charges are sustained against such Owner by a three-fourths (3/4) vote of the Board of Governors, the ownership interest of that Owner shall be automatically terminated unless, following a motion duly made and seconded, two-thirds (2/3) of all the Governors vote to invoke the provisions of Article 15.
- (i) If any Membership or interest of an Owner shall be terminated pursuant to this Article 14, the provisions of Article 14A shall apply.
- (j) The decisions of the Association made in accordance with the foregoing procedure shall be final, binding, and conclusive, and each Member and Owner waives any and all recourse to any court of law to review any such decision.

## 141) CONSEQUENCES OF TERMINATION

- (a) When the Membership of a Member is terminated, such Member and its assets, properties and operations shall be placed under the management and control of the Commissioner, who shall have the following powers: to cause the Member's Team to continue to play its Exhibition, Regular Season, and Playoff Games; to collect all revenues from every source payable to the Member and apply such revenues, to the extent available, to the

payment of such Member's debts and obligations; and, as directed by a majority of the Board of Governors (the Member whose Membership was terminated not being considered a Member of the Board of Governors for the purposes of this Article), either to transfer such Member's Membership (including its Player Contracts and other assets) in accordance with and subject to Article 5 or to liquidate the Player Contracts and other assets of the Member in an orderly manner in the best interests of the Member and its creditors, and the Association, in each case at such prices and on such terms as the Commissioner shall deem reasonable and appropriate.

- (b) When the interest of any Owner is terminated, that interest shall, unless the Commissioner has approved an alternative arrangement, be placed under the management and control of the Commissioner, who shall have the power to exercise all of the rights otherwise exercisable by the Owner of that interest, including, but not limited to, any management or voting rights and the right to transfer all or any portion of that interest in accordance with and subject to Article 5 at such prices and on such terms as the Commissioner shall deem reasonable and appropriate.
- (c) All proceeds from any transfer of a Member's Membership or the liquidation of its Player Contracts and other assets, or of an Owner's interest in a Member, shall be applied first to discharge the liabilities and obligations to all creditors of the Member (or Owner), including the Association and its Members but excluding any Owner of the Member, second to discharge the liabilities and obligations to any Owner of the Member, and any balance shall be remitted to the Member (or Owner). The existence or implementation of this Article 14A shall not impose upon the Association or any of its Members any requirement to provide funds to any Member (or Owner) or any liability for any debts or obligations of any Member (or Owner).

## 15 ALTERNATIVES TO TERMINATION

If a charge that a Member or Owner has committed any of the offenses described in Article 13 is sustained, two-thirds (2/3) of all the Governors may waive the remedy of termination, and instead direct the Member or Owner to pay a stated fine in a stipulated manner and by a stipulated date, which fine may be required to be paid, in whole or in part, to any other Member or Members as compensation to such Member or Members for damages sustained by it or them by reason of such act or acts of omission or commission by such offending Member or Owner. Such fine shall be payable within five (5) days after its imposition. Moreover, the Board of Governors may, in its discretion, either in addition to, or in lieu of, such fine, direct the forfeiture of the offending Member's Draft rights.

## 16 DISSOLUTION

The Association may be dissolved at any time by a three fourths ( $3/4$ ) vote of all the members of the Board of Governors at a meeting duly called for this purpose. Upon dissolution, the assets of the Association shall be distributed in accordance with the laws of the State of New York.

## 17 AMENDMENTS

- (a) Except as otherwise provided for in this Constitution and By-Laws, the Constitution and By-Laws of the Association may be amended by the votes of three-fourths ( $3/4$ ) of all the Governors at any meeting of the Board of Governors, provided that the nature of the proposed amendment is set forth in the Written Notice of the meeting.
- (b) The Constitution and By-Laws may also be amended at any other meeting of the Board of Governors, without prior notice of the amendment, provided there is complete attendance of all the Governors and there is unanimous consent to the adoption of the amendment at the meeting.
- (c) Any amendment to this Constitution and By-Laws and any proposal to amend this Constitution and By-Laws which fails of passage shall not be submitted again to the Board of Governors for reconsideration for one (1) year after the passage of such amendment or submission of such proposal to amend, without the consent of two-thirds ( $2/3$ ) of all the Governors.

## 18 BOARD OF GOVERNORS

- (a) The Members of the Association shall have the general supervision of the affairs of the Association, which general supervision shall be carried out through a Board of Governors. At the annual meeting, the Board of Governors shall elect a Chairman whose duties shall be:
  - (i) to be an ex-officio member of all Committees;
  - (ii) to act as liaison between the Commissioner's Office and the Board of Governors; and
  - (iii) to preside at Board of Governors meetings in the absence of the Commissioner.
- (b) Each Member shall be represented on the Board of Governors by a Governor who may be replaced at will by such Member (and who shall be an individual who is an Owner, or a director, officer, or authorized employee of such Member), and who shall be vested with the full power and authority to represent such Member and to bind such Member by his or her vote. Each Member shall submit to the Commissioner in a Writing the name of such Governor and the names of up to three Alternate Governors, who

may be replaced at will by such Member (and who shall be persons qualified to serve as Governors). No Player shall be permitted to serve as a Governor or Alternate Governor or to vote at any meeting of the Board of Governors. The authority of such Governor and each Alternate Governor shall become effective only after the name of such Governor or Alternate Governor shall be filed with the Commissioner of the Association.

- (c) The Board shall have the right to appoint committees and to authorize and direct the Commissioner to appoint committees to assist the Commissioner in the performance of his duties.
- (d) A Governor or Alternate Governor may be removed with substantial cause by a vote of three-fourths (3/4) of all Governors at a meeting called for such purpose. If a Governor is so removed, the Member must appoint a new Governor within ten (10) days. The Board may fine a Governor or Alternate Governor up to the amount of \$10,000,000 for willful violations of the Constitution and By-Laws.
- (e) All actions duly taken by the Board of Governors shall be final, binding and conclusive, as an award in arbitration, and enforceable in a court of competent jurisdiction in accordance with the laws of the State of New York.

## 19 MEETINGS OF THE BOARD OF GOVERNORS

The following meetings of the Board of Governors shall be held in each year:

- (a) An annual meeting of the Board of Governors shall be held, at about the same time each year, on a date and at a place to be fixed by the Commissioner.
- (b) Special meetings may be called by the Commissioner at any time and shall be called by the Commissioner whenever a request is made for such meeting by six (6) or more Members by a Writing.

## 20 NOTICE OF MEETINGS

Prior Written Notice of all meetings of the Board of Governors shall be given to each Governor. Each such notice shall set forth so far as is reasonably possible the purpose for which the meeting is called and shall be given sufficiently in advance of the meeting so that in the normal course the Writing will be received no later than ninety-six (96) hours prior to the meeting. Notice of the meeting may be waived by any Member and shall be deemed waived by a Member's attendance at a meeting unless the Member shall object to the absence of timely notice at the outset of the meeting.

## 21 QUORUM

Governors representing a majority of the Members shall constitute a quorum for the transaction of any business unless otherwise provided herein. No quorum, once present, shall be broken by the departure of any Governors.

## 22 VOTE REQUIRED AT MEETINGS

- (a) Subject to the other provisions of this Constitution and By-Laws requiring a greater number of votes, questions arising at meetings of the Board of Governors shall be decided by a majority vote of those present and voting. In the absence of a Member's Governor or Alternate Governor, a Member shall be entitled to vote by proxy so long as (a) the proxy is given only to another Governor or Alternate Governor, (b) its validity is limited to the one (1) meeting for which it is granted, (c) the Commissioner is informed of the proxy so granted prior to the commencement of the meeting, and (d) an announcement of the proxy is made prior to the transaction of any business at the meeting; provided, however, that no vote by proxy shall be counted in favor of an application for Membership pursuant to Article 4, or of termination of a Membership pursuant to Article 13, or of dissolution of the Association pursuant to Article 16.
- (b) On all votes of the Board of Governors, the roll shall be called and votes cast in alphabetical rotation according to the name of the home city of each Member, beginning with the name of the Member whose Governor voted second in the last roll call vote taken at any meeting of the Board of Governors. Any vote cast, including an abstention or any waiver of the right of any Member to vote, once recorded, may not be withdrawn or altered on that roll call.

## 23 ALTERNATIVES TO IN-PERSON MEETINGS

- (a) Any action or resolution which may be taken or adopted at a meeting of the Board of Governors may be taken or adopted by a Writing setting forth the action so taken or the resolution so adopted manually signed or consented to in a Writing by three-fourths (3/4) of the members of the Board of Governors; provided, however, that any action to approve an application for Membership in the Association pursuant to Article 4, or requiring termination of a Membership pursuant to Article 13, or to dissolve the Association pursuant to Article 16, may not be taken or adopted except at a meeting of the Board of Governors or by a Writing consented to by all the members of the Board of Governors.

- (b) In lieu of calling a special meeting of the Board of Governors under Article 19(b), the Commissioner may call a meeting in which members of the Board of Governors participate by teleconferencing or any other means of communication that enables all persons participating in the meeting to hear each other. All provisions of this Constitution and By-Laws applicable to special meetings (including, but not limited to, provisions relating to quorums and voting) shall apply to such meetings, except that the Written Notice of such meetings shall be given to the Governors so that in the normal course it will be received no later than 48 hours prior to the meeting. Notice of meeting may be waived by any Member and shall be deemed waived by a Member's participation in the meeting unless the Member shall object to the absence of timely notice at the outset of the meeting. Members of the Board of Governors shall not be permitted to participate by such alternative means of communication in meetings called under Article 19.

## **24 AUTHORITY AND DUTIES OF THE COMMISSIONER**

- (a) A Commissioner shall be elected by the affirmative vote of three-fourths (3/4) of all the Governors. The Commissioner shall serve as the Chief Executive Officer of the League and shall be charged with protecting the integrity of the game of professional basketball and preserving public confidence in the League. The Commissioner's term of office may be terminated by a vote of three-fourths (3/4) of the Governors at a meeting duly called for such purpose.
- (b) The Commissioner shall have no financial interest, direct or indirect, in any professional sport.
- (c) The Commissioner shall have the responsibility for the general supervision and direction of all business and affairs of the League and shall have all such other powers as may be necessary or appropriate to fulfill this responsibility.
- (d) The Commissioner shall have exclusive, full, complete, and final jurisdiction of any dispute involving two (2) or more Members of the Association.
- (e) The Commissioner shall have the right to investigate all charges, accusations, or other matters that may adversely affect the Association or its Members.
- (f) The Commissioner shall have all rights and powers accorded to him by any collective bargaining agreement.
- (g) The Commissioner, on behalf of the Association, may incur any expense

which, in his discretion, is necessary to conduct and transact the business of the Association, including but not limited to, the leasing of office space, the hiring of employees, and the engaging of other assistance or services; provided, however, that the Commissioner shall not have the authority to incur any expense inconsistent with expenses incurred for similar assistance or services during the past five (5) years, without prior approval of the Board of Governors.

- (h) The Commissioner shall preside at all meetings of the Board of Governors and shall discharge all duties imposed upon him by the Constitution and By-Laws, and by the Board of Governors. The Commissioner shall interpret and from time to time establish policy and procedure in respect to the provisions of the Constitution and By-Laws, rules, regulations, resolutions, and agreements of the Association and any enforcement thereof, and any decision emanating therefrom shall be final, binding, conclusive, and unappealable.
- (i) (i) The Commissioner shall have the power to suspend a Player, Coach, Member, Owner, or other person subject to the Commissioner's jurisdiction for a definite or indefinite period and to impose such fines and other penalties as are authorized by Article 35, 35A or any other Article or Section relating thereto of this Constitution and By-Laws. The Commissioner shall have the power to declare null and void any Player transaction made by and between Members of the Association or by and between Members of the Association and any organization outside of the Association.
- (ii) The Commissioner shall represent Members in disputes with operators of teams in other leagues or associations as to rules of ownership of contracts or rights to services of Players.
- (j) The Commissioner shall be empowered to withhold all revenues due to any Member in the event that said Member has, in the Commissioner's determination, failed to discharge its financial obligations to the Association or any Member thereof.
- (k) The Commissioner shall have the right to set the date and time of all games, including Playoff Games, consistent with:
  - (i) the obligations of the Association under its media contracts;
  - (ii) the availability of arenas; and
  - (iii) what in the Commissioner's judgment are the best interests of all Teams involved.
- (l) The Commissioner shall, wherever there is a rule for which no penalty is specifically fixed for violation thereof, have the authority to fix such penalty as in the Commissioner's judgment shall be in the best interests of the Association. Where a situation arises which is not covered in the Constitution and By-Laws, the Commissioner shall have the authority to make such decision, including the imposition of a penalty, as in his judg-



ment shall be in the best interests of the Association. The penalty that may be assessed under the preceding two sentences may include, without limitation, a fine, suspension, and/or the forfeiture or assignment of draft choices. No monetary penalty fixed under this provision shall exceed \$10,000,000.

- (m) Following an opportunity for the affected party to submit evidence and be heard, all actions duly taken by the Commissioner pursuant to this Article 24 or pursuant to any other Article or Section of the Constitution and By-Laws, which are not specifically referable to the Board of Governors, shall be final, binding and conclusive, as an award in arbitration, and enforceable in a court of competent jurisdiction in accordance with the laws of the State of New York. In connection with all actions, hearings, or investigations taken or conducted by the Commissioner pursuant to this Article 24, (i) strict rules of evidence shall not apply, and all relevant and material evidence submitted may be received and considered, and (ii) the Commissioner shall have the right to require testimony and the production of documents and other evidence from any Member, Owner, or Referee, any employee of any Member or Owner, and/or any employee of the Association, and any person or Entity not complying with the requirements of the Commissioner shall be subject to such penalty as the Commissioner may assess.

## 25 DEPUTY COMMISSIONER

A Deputy Commissioner may be elected at any time by the affirmative vote of three-fourths (3/4) of all the Governors and, if elected, shall perform such duties as are delegated to him by the Commissioner or the Board of Governors. On the death, resignation, incapacity or absence of the Commissioner, the Deputy Commissioner shall assume the duties, rights, and powers of the Commissioner and shall continue as such until the return of the Commissioner or a new Commissioner is elected by the Board of Governors.

## 26 VICE PRESIDENTS

The Commissioner may appoint such Vice President or Vice Presidents as the Commissioner may decide, and each such Vice President shall perform such duties as are assigned to him or her by the Commissioner or the Board of Governors.

## **27 SECRETARY**

A Secretary may be elected by the affirmative vote of three-fourths (3/4) of all the Governors and, if elected, shall have the care and custody of the official records and papers of the Association; shall keep accurate minutes of all meetings of the Board of Governors; shall issue all official notices and attend to all necessary correspondence; and shall prepare and furnish such reports as may be called for by the Commissioner or Board of Governors. In default of election of a Secretary, or while the office is vacant, the Commissioner shall have the power to appoint a Secretary from among the Governors who, when so appointed, shall have the power to certify to the correctness of the minutes of any meeting of the Board of Governors.

## **28 TREASURER**

A Treasurer may be elected by the affirmative vote of three-fourths (3/4) of all the Governors and, if elected, shall be the custodian of all Association funds, receive all dues, fines and assessments and make such payments as shall be ordered by the Commissioner or the Board of Governors, and shall be bonded by companies, and in an amount, satisfactory to the Board of Governors. The Treasurer shall annually render a report of all his receipts and disbursements to the Board of Governors. At the expiration of the Treasurer's term of office, the Treasurer shall account for the delivery to the Board of Governors of all monies, books, papers, and property received by the Treasurer by virtue of that office. In default of election of a Treasurer, or while the Treasurer's office is vacant, the Commissioner shall act as Treasurer.

## **29 SALARIES OF OFFICERS**

The officers shall receive such salaries as the Board of Governors shall annually determine and shall be reimbursed for all proper expenses actually incurred by them in the service of the Association. The Association may exact from them such surety bond for the faithful performance of their duties as the Board of Governors may deem proper.

### **30 INDEMNIFICATION OF COMMISSIONER AND EMPLOYEES OF THE ASSOCIA- TION**

The Commissioner and the employees of the Association will be indemnified by the Association against expenses actually and necessarily incurred by them in connection with the defense of any action, suit or proceeding to which they are made a party, and against any judgments which may be rendered against them therein, by reason of their being or having been Commissioner or an employee of this Association, except in relation to matters as to which a court of competent jurisdiction, in a proceeding to which they are a party, shall have adjudged that such indemnification is contrary to law or against public policy. Such right of indemnification shall not be deemed exclusive of any other rights to which the Commissioner and/or Association employees may be entitled under the Constitution and By-Laws, any agreement with the Association, any vote by the Board of Governors, or otherwise.

### **31 ASSESSMENTS**

- (a) Each Member shall contribute to the capital of the Association a fixed annual capital contribution of \$6,000.
- (b) In return for the services provided by the Association to the Members, each Member shall be required from time to time to pay assessments to the Association in an amount equal to six percent (6%) of the gross gate receipts derived from all of its Regular Season home games played in each Season, or \$30,000 per Season, whichever is greater. Each Member shall immediately after each such game send to the Commissioner a report, on forms furnished by the Association, of all the information required as to such game. The books with respect to such payments shall be open to all Members of the Association.
- (c) After giving effect to the capital contributions made by the Members to the Association pursuant to Article 31(a) and the assessments paid by the Members to the NBA pursuant to Article 31(b), the NBA may from time to time require additional funds to pay its costs, expenses, obligations and liabilities or to establish reasonable reserves therefor (the "NBA Costs"). If the Commissioner determines at any time that the NBA does not have sufficient funds to pay NBA Costs incurred in accordance with budgets approved by the Board of Governors (or otherwise approved by the Board of Governors), the Commissioner shall have the authority to make assessments on the NBA Members on a pro rata basis sufficient to pay such remaining NBA Costs ("Assessments"), and each NBA Member shall be required to pay its Assessment in return for the services provided by the NBA to the NBA Members.

- (d) As used in this Constitution and By-Laws, “gross gate receipts” shall mean the actual receipts derived by any Member from the sale of tickets to a home game (including any receipts attributable under Association rules to luxury suites, seat licenses, and club or other premium seats), less refunds, returns and expenses permitted to be deducted under Association rules, and exclusive of excise, sales, and admissions taxes imposed by any governmental authority based on the sale of such tickets (to the extent deductible under Association rules).

## 32 CAPITAL CONTRIBUTIONS

In addition to the assessments described in Article 31, the Board of Governors may, at any meeting of which notice has been given as to the subject matter to be acted on, fix by a vote of the majority of all the Governors an additional amount which can be either a percentage of the gross gate receipts derived from all Regular Season home games played in each Season, or a fixed sum that each Member shall contribute in order to defray the expenses and liabilities of the Association.

## 33 PLAYOFF PAYMENTS

- (a) Each Member engaging in the Playoffs shall, after each home Playoff Game, send a true report covering the sale of tickets for such game and shall also send a check payable to the Association, as agent for the Members, for twenty percent (20%) of its gross gate receipts (as defined in Article 31(d)).
- (b) The monies so received by the Association as agent shall be applied:
  - (i) To the payment of the Player Playoff Pool.
  - (ii) To the payment of traveling and maintenance costs of the contesting Playoff Teams.
  - (iii) To the payment of a sum, to the Head Coach of each Member participating in the Playoffs, equal to the aggregate amount received from the Player Playoff Pool by the Players on the Head Coach’s Team, divided by the maximum number of Players permitted to be listed on the Member’s Active List during the Regular Season.
  - (iv) To the payment of the fees and traveling and maintenance costs of the Referees appointed for the games.
  - (v) The balance, if any, shall be distributed equally to the Members.
- (c) In the event that the monies so received by the Association are insufficient to pay the items referred to in Paragraph (b) hereof, the deficit shall be supplied equally by the Members.

## 34 MEMBERS, THEIR POWERS AND RESPONSIBILITIES

In circumstances where a rule is not provided by the Constitution and By-Laws, rules, regulations, resolutions, or agreements of the Association, each Member shall conduct its operations in accordance with its own business judgment.

## 35 MISCONDUCT

The provisions of this Article 35 shall govern all Players in the Association.

- (a) Each Member shall provide and require in every contract with any of its Players that they shall be bound and governed by the provisions of this Article. Each Member, at the direction of the Board of Governors or the Commissioner, as the case may be, shall take such action as the Board or the Commissioner may direct in order to effectuate the purposes of this Article.
- (b) The Commissioner shall direct the dismissal and perpetual disqualification from any further association with the Association or any of its Members, of any Player found by the Commissioner after a hearing to have been guilty of offering, agreeing, conspiring, aiding or attempting to cause any game of basketball to result otherwise than on its merits.
- (c) If in the opinion of the Commissioner any act or conduct of a Player at or during an Exhibition, Regular Season, or Playoff Game has been prejudicial to or against the best interests of the Association or the game of basketball, the Commissioner shall impose upon such Player a fine not exceeding \$50,000, or may order for a time the suspension of any such Player from any connection or duties with Exhibition, Regular Season, or Playoff Games, or he may order both such fine and suspension.
- (d) The Commissioner shall have the power to suspend for a definite or indefinite period, or to impose a fine not exceeding \$50,000, or inflict both such suspension and fine upon any Player who, in his opinion, (i) shall have made or caused to be made any statement having, or that was designed to have, an effect prejudicial or detrimental to the best interests of basketball or of the Association or of a Member, or (ii) shall have been guilty of conduct that does not conform to standards of morality or fair play, that does not comply at all times with all federal, state, and local laws, or that is prejudicial or detrimental to the Association.
- (e) Any Player who, directly or indirectly, entices, induces, persuades or attempts to entice, induce, or persuade any Player, Coach, Trainer, General Manager or any other person who is under contract to any other Member of the Association to enter into negotiations for or relating to his services or negotiates or contracts for such services shall, on being charged with such tampering, be given an opportunity to answer such charges after due

notice and the Commissioner shall have the power to decide whether or not the charges have been sustained; in the event his decision is that the charges have been sustained, then the Commissioner shall have the power to suspend such Player for a definite or indefinite period, or to impose a fine not exceeding \$50,000, or inflict both such suspension and fine upon any such Player.

- (f) Any Player who, directly or indirectly, wagers money or anything of value on the outcome of any game played by a Team in the league operated by the Association shall, on being charged with such wagering, be given an opportunity to answer such charges after due notice, and the decision of the Commissioner shall be final, binding and conclusive and unappealable. The penalty for such offense shall be within the absolute and sole discretion of the Commissioner and may include a fine, suspension, expulsion and/or perpetual disqualification from further association with the Association or any of its Members.
- (g) Except for a penalty imposed under Paragraph (f) of this Article 35: (i) any challenge by a Team to the decisions and acts of the Commissioner pursuant to Article 35 shall be appealable to the Board of Governors, who shall determine such appeals in accordance with such rules and regulations as may be adopted by the Board in its absolute and sole discretion, and (ii) any challenge by a Player to the decisions or acts of the Commissioner pursuant to Article 35 shall be governed by the provisions of Article XXXI of the NBA/NBPA Collective Bargaining Agreement then in effect.

### **351) MISCONDUCT OF PERSONS OTHER THAN PLAYERS**

The provisions of this Article 35A shall apply only to Members and Owners; to Officers, Managers, Coaches, and other employees, agents or representatives of a Member or Owner; and to all Referees and other employees of the Association; except that the term “employees” as used in this Article 35A shall mean employees other than Players. The word “persons” as used herein shall include all such Members, Owners, Officers, Managers, Coaches, Referees, employees, agents or representatives of Members, Owners, or the Association, other than Players.

- (a) Each Member must provide and require in every contract with any of its Owners, Officers, Managers, Coaches or other employees that they shall be bound and governed by the Constitution and By-Laws, rules, regulations, resolutions and agreements of the Association, as they may be modified or amended from time to time. Each Member, at the direction of the Board of Governors or the Commissioner, as the case may be, shall take such action as the Board or Commissioner may direct in order to effectuate the purposes of this Article.
- (b) The Commissioner shall direct the dismissal and perpetual disqualification

from any further association with the Association or any of its Members, of any person found by the Commissioner after a hearing to have been guilty of offering, agreeing, conspiring, aiding, or attempting to cause any game of basketball to result otherwise than on its merits.

- (c) Any person who gives, makes, issues, authorizes or endorses any statement having, or designed to have, an effect prejudicial or detrimental to the best interests of basketball or of the Association or of a Member or its Team, shall be liable to a fine not exceeding \$5,000,000 and/or a suspension for a definite or indefinite period to be imposed by the Commissioner. The Member whose Owner, Officer, Manager, Coach or other employee has been so fined shall pay the amount of the fine should such person fail to do so within ten (10) days of its imposition.
- (d) The Commissioner shall have the power to: (i) suspend for a definite or indefinite period, or to impose a fine not exceeding \$5,000,000, or inflict both such suspension and fine upon any person who, in his opinion, shall have been guilty of conduct prejudicial or detrimental to the Association, and (ii) impose the forfeiture of Draft picks held by the Member employing or otherwise affiliated with the offending person or the transfer of such Draft picks to another Member.
- (e) No person may, directly or indirectly, (i) entice, induce, persuade or attempt to entice, induce or persuade any Coach, Trainer, General Manager or any other person who is under contract to any other Member of the Association to enter into negotiations for or relating to his services or negotiate or contract for such services or (ii) otherwise interfere with any such employer-employee relationship of any other Member of the Association. The Commissioner, either in his discretion or at the request of any Member who alleges that its employee has been tampered with, shall conduct an investigation into whether a person has violated the anti-tampering rule set forth in the prior sentence. In the event that, following such investigation and a hearing at which the person (and the Member employing the person allegedly tampered with) has an opportunity to be heard after due notice, the Commissioner determines that the anti-tampering rule has been violated, he shall have the power, in his sole discretion, to impose a penalty for such offense, which penalty may include (without limitation) the suspension of such person for a definite or indefinite period; the prohibition of the Member employing or otherwise affiliated with the offending person from hiring the person being tampered with for a definite or indefinite period; the forfeiture of Draft picks held by the Member employing or otherwise affiliated with the offending person or the transfer of such Draft picks to the Member aggrieved by the tampering; and/or the imposition of a fine upon the offending person and/or the Member employing or otherwise affiliated with such offending person in an amount not to exceed \$10,000,000. In the event that the Commissioner imposes a fine, he may direct that some or all of the fine be paid directly to the Member

aggrieved by the tampering.

- (f) No person may, directly or indirectly, (i) entice, induce, persuade, or attempt to entice, induce or persuade, any Player who is under contract to, or whose exclusive negotiating rights are held by, any other Member of the Association to enter into negotiations for or relating to his services or negotiate or contract for such services or (ii) otherwise interfere with any such employer-employee relationship (or prospective employer-employee relationship in the case of a Player subject to exclusive negotiating rights) of any other Member of the Association. The Commissioner, either in his discretion or at the request of a Member who alleges that its Player has been tampered with, shall conduct an investigation into whether a person has violated the anti-tampering rule set forth in the prior sentence. In the event that, following such investigation and a hearing at which the person (and the Member employing the person allegedly tampered with) has an opportunity to be heard after due notice, the Commissioner determines that the anti-tampering rule has been violated, he shall have the power, in his sole discretion, to impose a penalty for such offense, which penalty may include (without limitation) the suspension of such person for a definite or indefinite period; the prohibition of the Member employing or otherwise affiliated with the offending person from hiring the Player tampered with for a definite or indefinite period; the forfeiture of Draft picks held by the Member employing or otherwise affiliated with the offending person or the transfer of such Draft picks to the aggrieved Member; and/or the imposition of a fine upon the offending person and/or the Member employing or otherwise affiliated with such offending person in an amount not to exceed \$10,000,000. In the event that the Commissioner imposes a fine, he may direct that some or all of the fine be paid directly to the Member aggrieved by the tampering.
- (g) No person may:
  - (i) directly or indirectly wager money or anything of value on the outcome of any game played by a Team in the league operated by the Association;
  - (ii) directly or indirectly disclose confidential or non-public Association or Team information (which includes but is not limited to confidential or non-public information concerning the medical, personal, or other condition of any Player, Coach, or Referee; any Player transaction; any disciplinary action taken or to be taken by the Association or a Team; and Referee schedules, assignments, statistics, and ratings) to any individual or entity, under circumstances where the person knows or should know that such individual or entity intends to use such information in connection with wagering money or anything of value on the outcome of any game played by a Team in the league operated by the Association;
  - (iii) directly or indirectly induce or attempt to induce any individual or



entity to wager money or anything of value on the outcome of any game played by a Team in the league operated by the Association; or

- (iv) engage in any other conduct related to wagering money or anything of value on the outcome of any game played by a Team in the league operated by the Association that the Commissioner deems prejudicial or detrimental to the Association.

Any person who is charged with such conduct shall be given an opportunity to answer such charges after due notice, and the decision of the Commissioner shall be final, binding, conclusive, and unappealable. The penalty for such offense shall be within the absolute and sole discretion of the Commissioner and may include a fine, suspension, expulsion and/or perpetual disqualification from further association with the Association or any of its Members.

- (h) Any person who has been convicted of (including a plea of guilty, no contest, or nolo contendere to) a crime involving the use, possession, or distribution of heroin, cocaine or any other substance for which a Player could be dismissed or disqualified from further association with the Association or any of its Members under the terms of the collective bargaining agreement then in effect, shall be subject to dismissal and disqualification from further association with the Association or any of its Members. Notwithstanding the foregoing, after a period of at least two years from the time of such person's dismissal and disqualification, such person may apply for reinstatement. However, such person shall have no right to reinstatement under any circumstance and the reinstatement shall be granted only with the prior approval of the Board of Governors, which may be conditioned upon such terms as the Board may determine in its sole discretion.
- (i) All persons shall comply with such anti-drug programs as may be instituted by the Board of Governors from time to time. Such programs may include drug testing and penalties for violators. Penalties may include fines, suspensions, or dismissal and disqualification from further association with the Association or any of its Members. Any person dismissed and disqualified from further association with the Association or any of its Members pursuant to an anti-drug program instituted by the Board of Governors may apply for reinstatement after a period of at least two years from the time of such dismissal and disqualification. However, such person shall have no right to reinstatement under any circumstance and the reinstatement shall be granted only with the prior approval of the Board of Governors, which may be conditioned upon such terms as the Board may determine in its sole discretion.

## **36 PENALTIES FOR FAILURE OF TEAM APPEARANCE**

A Member whose Team for any reason fails to appear for or complete any scheduled game, whether Exhibition, Regular Season or Playoff, including overtime, except for causes beyond its reasonable control, (i) shall pay, in the discretion of the Commissioner, a sum in an amount not to exceed \$2,500,000 for each of such games to the Member operating the opposing Team and, (ii) in the discretion of the Commissioner, shall be liable to a fine not exceeding \$5,000,000, to a forfeit of the game, or both.

## **37 BONUSES**

No Team or Player bonus may be offered or paid to a Team or Player for winning a particular game or series of games or for attaining a certain position in the standing of the league operated by the Association as of a certain date. This prohibition shall not include bonus payments to individual Players made at the close of a Regular Season based on the performance of the individual Player during the entire Season or qualification by the Team for a Playoff position, or selection of a Player for one of the All-Star Teams.

## **38 PROTEST**

- (a) In order for a Member to protest against or appeal from the result of a game, notice thereof must be given to the Commissioner within forty-eight (48) hours after the conclusion of said game, by a Writing, stating therein the grounds for such protest. No protest may be filed in connection with any game played during the Regular Season after midnight of the day of the last game of the Regular Season. A protest in connection with a Playoff Game must be filed not later than midnight of the day of the game protested. A game may be protested only by a Governor, Alternate Governor, General Manager, or Head Coach. The right of protest shall inure not only to the allegedly aggrieved contestants, but to any other Member who can show an interest in the grounds of protest and the results that might be attained if the protest were allowed. No protest shall be valid unless the Written Notice to the Commissioner thereof is accompanied by a check in the sum of \$10,000 (the "Protest Fee") payable to the order of the Association. If the Member filing the protest prevails, the Protest Fee is to be refunded. If the Member does not prevail, the Protest Fee is to be forfeited and retained in the Association treasury.
- (b) Upon receipt of a protest, the Commissioner shall at once notify the Member operating the opposing Team in the game protested and require both

of said Members within five (5) days to file with him such evidence as he may desire bearing upon the issue. The Commissioner shall decide the question raised within five (5) days after receipt of such evidence.

## **39 RULE CHANGES**

Playing rule changes may only be made by two-thirds (2/3) vote of all the Governors at a meeting called for this purpose.

## **40 EFFECTIVE TIME**

- (a) In computing any period of time under this Constitution and By-Laws, (i) a letter shall be deemed to have been mailed on the date shown on the postmark appearing on the envelope, and (ii) any other Writing shall be deemed to have been sent on the date appearing thereon, provided that such date can be verified by receipt or other independent means.
- (b) In computing any period of days prescribed or allowed by the Constitution and By-Laws, the day of the act, event, or default from which the designated period of time begins to run shall not be included. When the period of time is less than ten (10) days, Saturdays, Sundays and legal holidays shall be excluded from the computation. When the period of time is ten (10) days or greater, Saturdays, Sundays and legal holidays shall be included in the computation, except that if the last day of the designated period falls on a Saturday, Sunday or legal holiday, then the last day of such designated period shall instead be deemed to fall on the following business day. As used herein, "legal holiday" means New Year's Day, Birthday of Martin Luther King, Jr., President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- (c) Except as provided otherwise herein, wherever an hour is referred to in this Constitution and By-Laws in connection with a basketball game, or the happening of any other event, such time shall be the local time then current in the city in which the game was, or is to be played, or where the event was, or is to have, occurred.

## **41 OFFICIAL STATEMENTS**

No person, other than the Commissioner, shall have the right to issue any information concerning business transacted at meetings of the Board of Governors or reveal or make public any official business of the Association. Any person violating such rule shall be subject to, in the discretion of the Commissioner, a fine

of not more than \$1,000,000. The foregoing shall not be construed to limit the power of the Commissioner as set forth in Article 35A(c) of the Constitution.

## **42 FISCAL YEAR**

The fiscal year of the Association shall commence on October 1 and terminate on September 30.

## **43 NO THIRD PARTY BENEFICIARIES**

The Constitution and By-Laws, rules, regulations, resolutions, and agreements of the Association, and any amendments or modifications thereof, are solely for the benefit of the Association and its Members and Owners, and shall not benefit or create any right or cause of action in or on behalf of any other person or Entity, and may not be relied upon or enforced by any other person or Entity.

## **44 AFFILIATES AND SUBSIDIARIES**

Each Owner shall cause each of its affiliates and subsidiaries over which it has or can exercise effective control to comply with the Constitution and By-Laws, rules, regulations, resolutions, and agreements of the Association, and any amendments and modifications thereof. If any such affiliates or subsidiaries of an Owner violates the foregoing sentence, such Owner and, in the case of violations committed on behalf of, as agent for, or for the benefit of, a Member (including, but not limited to, actual or proposed compensation arrangements with Players that violate NBA rules), the applicable Member shall be subject to the same penalties as if that Owner (or Member) had itself committed that violation.

## **45 CONFLICT WAIVER**

Each Member and Owner acknowledges that from time to time they and the Association will jointly retain one or more law firms or experts to represent and advise them ("League Advisors"). Each Member and Owner agrees and consents to the representation of the Association and the other Members and Owners by League Advisors in connection with any and all controversies and disputes, including any litigation or other adversarial proceeding adverse to such Member or Owner. In any such adverse representation, the current or prior representation of such Member or Owner by that League Advisor, and the

information that was conveyed to that League Advisor in the course of such representation, shall not be asserted as, and shall not constitute, a basis to disqualify that League Advisor from the adverse representation.

## 46 LITIGATION COSTS

- (a) In any action in which a claim or counterclaim is brought by one or more Members or their Owners (each a “Claiming Party”) against any of (i) the Association, (ii) a majority of the Members (or the Owners of a majority of the Members), (iii) any Entity directly or indirectly owned or controlled by a majority of the Members (or a majority of the direct or indirect owners of such Entity), or (iv) the Commissioner or any other executive or employee of the Association (clauses (i) – (iv) collectively, the “Association Parties”), the following shall apply:
  - (i) unless the Claiming Parties shall fully prevail on the merits of each and every claim or counterclaim brought against the Association Parties, the Claiming Parties shall jointly and severally indemnify and hold harmless the Association Parties against all costs, fees and expenses of every kind and description that the Association Parties may incur in connection with the action (including, but not limited to, all reasonable attorneys’ fees incurred in such action between the Claiming Party and the Association Parties) (collectively, “Litigation Costs”);
  - (ii) even if a Claiming Party prevails on the merits of each and every claim or counterclaim brought against the Association Parties, it shall remain liable for its share of all Litigation Costs incurred by the Association Parties in connection with the action (the Claiming Party’s share to be determined by dividing the Litigation Costs by the number of members of the Association); and
  - (iii) each Member and Owner hereby waives any right it may have to recover its Litigation Costs from the Association Parties, and agrees not to seek or accept reimbursement of such Litigation Costs, in connection with any action in which such Member or Owner is a Claiming Party.
- (b) In any action in which a claim is brought by the Association Parties against one or more Members or their Owners (each a “Defending Party”), the following shall apply:
  - (i) if the Association Parties shall prevail on the merits of any claim brought against the Defending Parties, the Defending Parties shall jointly and severally indemnify and hold harmless the Association Parties against all Litigation Costs that the Association Parties may incur in connection with such claim; and
  - (ii) even if the Association Parties do not prevail on each and every claim brought against the Defending Parties, each Defending Party shall re-

main liable for its share of all Litigation Costs incurred by the Association Parties in connection with the action (the Defending Party's share to be determined by dividing the Litigation Costs by the number of Members of the Association).

# Chapter

## BY-LAWS

### 1 CHAMPIONSHIP

#### 11) Conferences

The league operated by the Association shall be divided into two (2) conferences, the Eastern and the Western Conferences. Each Conference shall contain three (3) divisions of five (5) or more Teams. The Atlantic, Central and Southeast Divisions shall comprise the Eastern Conference and the Southwest, Northwest and Pacific Divisions shall comprise the Western Conference. There shall be established three (3) championships: the Championship of the Eastern Conference, the Championship of the Western Conference, and the Championship of the Association. The aforementioned may be changed prior to the commencement of any Season by a two-thirds (2/3) vote of the Board of Governors.

#### 12) Standings

If the operations of a Member are suspended during a Season, the games won and lost by its Team during that Season prior to the suspension shall not count in the records of the other Teams.

### 2 ELIGIBILITY OF PLAYERS

#### 21) Good Character

All Players shall be of good moral character and possess qualities which will make them proper members of their respective Teams. The Commissioner shall

have the right to disqualify a Player if the Commissioner finds that the Player does not possess the requisite qualities of character and morality. Such disqualification may be made by the Commissioner only after a hearing before the Commissioner, at which hearing the Player shall be afforded the right to call witnesses, to submit written evidence, and to be represented by counsel. The decision of the Commissioner shall be appealable to the Board of Governors who, upon receipt of said appeal, shall require all interested parties within ten (10) days to file with the Board of Governors such evidence as they may desire bearing upon the issue. The Board of Governors shall decide the appeal within ten (10) days after receipt of such evidence.

## **22) Eligibility**

No person shall be eligible as a Player unless he complies with the eligibility rules set forth in this Constitution and By-Laws and/or the NBA/NBPA Collective Bargaining Agreement then in effect. A Player who is not eligible under those rules may not be signed by a Member to any agreement, nor may his future services in any way be negotiated for, contracted for, or otherwise reserved. Any negotiations or agreements with any such person shall be null and void and shall confer no rights whatsoever. No Member violating the provisions of this Section shall be permitted to acquire the rights to the services of such person at any time thereafter.

## **23) Formal Contract**

A person who has not entered into a Player Contract that is valid and binding for the then-current Season in accordance with this Constitution and By-Laws and the NBA/NBPA Collective Bargaining Agreement then in effect shall not be eligible to participate as a Player in any Exhibition, Regular Season, or Playoff Game.

## **24) Consequences of Ineligibility**

Any Team that utilizes the services of any person not eligible (in accordance with the NBA/NBPA Collective Bargaining Agreement then in effect, this Constitution and By-Laws, or otherwise) to participate as a Player in any Exhibition, Regular Season, or Playoff Game shall, regardless of the actual final score of the game, be deemed, for all purposes, to have lost such game, and the opposing Team shall be deemed, for all purposes, to have won such game. A person's services are "utilized" for purposes of this Section if he dresses in a Team uniform for a game.



### **3 CONTRACTUAL MATTERS**

#### **31) Title to Player Contracts**

Each Member must have absolute title to the contract and rights and services of each of its Players. The use of loaned Players is prohibited.

#### **32) Filed Documents**

The Commissioner shall file at the Association Office all Player Contracts, documents relating to intra-Association assignments of contractual rights, and other similar documents governing the rights of Members and Players. Information contained in any such filed document may, in the discretion of the Commissioner, be made available to any Member.

#### **33) Violations**

Any Member entering into a contract with a Player or a prospective Player in violation of the NBA/NBPA Collective Bargaining Agreement then in effect and/or this Constitution and By-Laws shall be liable to such penalties as set forth in the NBA/NBPA Collective Bargaining Agreement then in effect, and/or in the discretion of the Commissioner, to such penalties as in the Commissioner's judgment shall be in the best interests of the Association.

### **4 INTRA-ASSOCIATION ASSIGNMENT OF CONTRACTUAL RIGHTS**

#### **41) Trading Dates/Compliance**

- (a) From the start of the Season and until 3 p.m. (eastern time) on the second Thursday prior to that Season's All-Star Game, Members may, by trade or sale, assign to other Members the contracts of Players, draft rights to particular Players, or draft choices in accordance with these By-Laws (an "Assignment Transaction"). No Assignment Transactions are permitted after 3 p.m. (eastern time) on the second Thursday prior to that Season's All-Star Game and until the day following the last Regular Season Game. On the day following the last Regular Season Game, Teams may again engage in Assignment Transactions; provided, however, that (i) no Member whose team is participating in the Playoffs may assign the contract of a Player on its Playoff Roster until the team is eliminated from the Playoffs, and (ii) no Assignment Transactions may take place

during the Moratorium Period (as such term is defined in the collective bargaining agreement then in effect).

- (b) An Assignment Transaction must comply with all rules relating to such transactions as set forth in the NBA/NBPA Collective Bargaining Agreement then in effect.

## **42) Trade Procedures**

- (a) In order to conduct any Assignment Transaction, the parties thereto shall state their agreement on the terms and conditions of the transaction during a conference call with the Association Office (the “Trade Call”). Such terms and conditions shall include, without limitation, all details with respect to amounts of money, terms of payment, and draft choices, if any. An Assignment Transaction shall not be deemed to be completed until all conditions thereof agreed upon during the Trade Call have been satisfied and the parties thereto have received written notice from the Association Office confirming that all such conditions to the Assignment Transaction have been satisfied. Any term or condition of an Assignment Transaction not disclosed to the Association Office on the Trade Call shall not be enforceable. If it is subsequently discovered by the Association Office that an Assignment Transaction included a term or condition not disclosed on the Trade Call, then the Commissioner shall have the right to impose a fine on each of the parties to the Assignment Transaction in an amount not to exceed \$5,000,000.
- (b) All terms and conditions of an Assignment Transaction shall be set forth in detail in a Trade Memorandum to be prepared by the Association Office following the Trade Call. In the event of any subsequent dispute concerning the terms and conditions of the transaction, the Trade Memorandum shall govern.
- (c) The Commissioner shall be empowered to establish such additional procedures as are necessary and appropriate to foster the orderly conduct of Assignment Transactions.
- (d) No Assignment Transaction shall be valid and enforceable unless conducted pursuant to the procedures set forth in this Section 4.

## **43) Full Disclosure**

- (a) A Member shall disclose during a Trade Call all relevant information in its possession, custody, or control concerning the health of a Player whose contract or negotiating rights the Member is assigning. For purposes of the foregoing sentence, “relevant information” shall include any information concerning current or prior injuries, illnesses, or other health conditions that could affect the Player’s ability to play skilled basketball at any point

#### 4. INTRA-ASSOCIATION ASSIGNMENT OF CONTRACTUAL RIGHTS<sup>51</sup>

during the Player's career. No Member shall misrepresent or fail to disclose any such relevant information.

- (b) No Member shall make any other material misrepresentation or fail to disclose any other material information during the Trade Call.
- (c) If any Member is found, after a hearing before the Commissioner, to have violated subsections (a) or (b) above, the Member shall be subject to penalty. Such penalty shall be within the absolute and sole discretion of the Commissioner and may include a fine (not to exceed \$1,000,000), suspension of the offending employee, rescission of the Assignment Transaction, and/or forfeiture or transfer of the offending Member's draft choices.

#### 44) Allocation of Obligations

- (a) In the event that the contract of a Player is assigned by one Member to another during the Regular Season, the salary of the Player so assigned shall be apportioned on a per diem basis utilizing the entire number of days in the Regular Season, without regard to Playoff Games or Exhibition Games. The assignor shall be responsible for the portion of the salary through the day of the assignment and the assignee shall be responsible for the salary of the Player after said date. In cases where the Player actually dresses in a uniform for a game for the assignee team on the date of the Assignment Transaction, then the assignee shall be responsible for the salary on that date.
- (b) The assignee shall assume all of the obligations of the assignor that are contained in the Player's contract and disclosed to the assignee on the Trade Call to the same extent as if the contract had originally been between the assignee and the Player.
- (c) The foregoing provisions relating to the allocation of obligations may be modified by the agreement of the parties.
- (d) Any financial or contractual obligation not disclosed to the assignee on the Trade Call shall remain the responsibility of the assignor.

#### 45) Additional Trade Rules

- (a) A Member who has assigned its rights to the services of a Player may not retain any rights to such Player, conditional or otherwise, following consummation of the Assignment Transaction.
- (b) A Member who has assigned its rights to the services of a Player may not reacquire such rights prior to the end of the Season in which the assignment occurred, or, if the assignment occurred between Seasons, prior to the end of the next succeeding Season; provided, however, that the foregoing prohibition shall not apply in the event that the assignee shall have first offered the services of such Player to all other Members through the waiver procedure.

- (c) In addition to the prohibition set forth in Section 4.05(b) above, if a Player is assigned and the assignee Team subsequently places the Player on waivers, the assignor Team shall not be permitted to sign the Player to a new Player Contract (or claim the rights to the Player off of waivers) before the earlier of: (i) one (1) year following the date all conditions to the Assignment Transaction were satisfied; or (ii) the July 1 following the last Season of the Player's Player Contract.
- (d) No Player Contract may be assigned during a game for which the Player is dressed to play.
- (e) The Association Office will not conduct a Trade Call unless and until each party thereto has room on its Active List, Inactive List, or Two-Way List (or will have room after the Trade Call is completed) for the Player(s) whose contract(s) it is receiving in the transaction.

## **5 INTRA-ASSOCIATION WAIVER OF CONTRACTUAL RIGHTS**

### **51) Waiver Right**

Except for sales and trading between Members in accordance with these By-Laws, no Member shall sell or otherwise assign the contract with, or right to negotiate with, a Player without complying with the waiver procedure prescribed by this Constitution and By-Laws.

### **52) Waiver Price**

The waiver price shall be \$1,000 per Player.

### **53) Waiver Procedure**

A Member desiring to secure waivers on a Player shall notify the Commissioner or the Commissioner's designee, who shall, on behalf of such Member, immediately notify all other Members of the waiver request. Such Player shall be assumed to have been waived unless a Member shall notify the Commissioner or the Commissioner's designee in accordance with Section 5.04 of a claim to the rights to such Player. Once a Member has notified the Commissioner or the Commissioner's designee of its desire to secure waivers on a Player, such notice may not be withdrawn. A Player remains the financial responsibility of the Member placing him on waivers until the waiver period set by the Commissioner or the Commissioner's designee has expired.

**54) Waiver Period**

If the Commissioner or the Commissioner's designee distributes notice of request for waiver, any Members wishing to claim rights to the Player shall do so by giving notice by telephone and in a Writing of such claim to the Commissioner or the Commissioner's designee within forty-eight (48) hours after the time of such notice. A Team may not withdraw a claim to the rights to a Player on waivers. Notwithstanding Article 40 of the NBA Constitution, Saturdays, Sundays and legal holidays shall be included when computing the above-referenced waiver period.

**55) Waiver Preferences.**

- (a) In the event that more than one (1) Member shall have claimed the rights to a Player placed on waivers, the claiming Member with the lowest team standing at the time the waiver was requested shall be entitled to acquire the rights to such Player. If the request for waiver shall occur after the last day of the Season and before 11:59 p.m. eastern time on the following November 30, the standings at the close of the previous Season shall govern.
- (b) If the winning percentage of two (2) or more claiming Teams are the same, then the tie shall be determined, if possible, on the basis of the Regular Season Games between the two (2) or more Teams during the current Season or, if the waiver request shall occur after the last day of the Season and before 11:59 p.m. eastern time on the following November 30, during the preceding Season. If still tied, a toss of a coin shall determine priority.

**56) Players Acquired Through Waivers**

A Member who has acquired the rights and title to the contract of a Player through the waiver procedure may not sell or trade such rights for a period of thirty (30) days after the acquisition thereof; provided, however, that if the rights to such Player were acquired between Seasons, the 30-day period described herein shall begin on the first day of the next succeeding Season.

**57) Additional Waiver Rules**

The Commissioner or the Board of Governors may from time to time adopt additional rules (supplementary to those set forth in this Section 5) with respect to the operation of the waiver procedure. Such rules shall not be inconsistent with the provisions of this Section 5 and shall apply to but shall not be limited to the mechanics of notice, inadvertent omission of notification to a Member, and rules of construction as to time.

## **6 PLAYER LISTS AND ROSTERS**

### **61) Player Lists**

The Player Lists shall be the Active List, Inactive List, Two-Way List, Suspended List, NBA Draft List, Voluntarily Retired List, and Armed Services List. Except as expressly set forth in this Constitution and By-Laws and the NBA/NBPA Collective Bargaining Agreement then in effect, there shall be no limit on the maximum number of Players that a Member may carry on any Player List; provided, however that such maximum number of Players, and the duration of time that a Player may be carried on any such List, shall be established from time to time by the Board of Governors. The names of Players on the aforementioned Lists shall be maintained in the Association Office and shall be disseminated from time to time to all the Members.

### **62) Active List**

- (a) Only Players whose names appear on the Active List shall be permitted to dress for and be eligible to participate in an Exhibition, Regular Season, or Playoff Game.
- (b) Each Member shall carry twelve (12) or thirteen (13) Players on its Active List, except that any Member may from time to time as appropriate, but for no more than two (2) consecutive weeks at a time during the Regular Season, have eleven (11) Players on its Active List. Notwithstanding the foregoing, during the period from the day following the last day of the Regular Season (or, for Members that qualify for the playoffs, the day following the Member's last playoff game) until the day before the first day of the following Regular Season, the maximum number of Players (including Two-Way Players) that a Member may carry on its Active List shall be twenty (20).

### **63) Inactive List**

- (a) During the Regular Season, each Member: (i) may carry a maximum of two (2) Players and as few as one (1) Player on its Inactive List if the Member has thirteen (13) Players on its Active List in accordance with Section 6.02(b) above; and (ii) may carry a maximum of three (3) Players and a minimum of (2) Players on its Inactive List if the Member has eleven (11) or twelve (12) Players on its Active List in accordance with Section 6.02(b) above, except that (A) any Member with thirteen (13) Players on its Active List may, from time to time as appropriate, but for no more than two (2) consecutive weeks at a time during the Regular Season, have zero (0) Players on its Inactive List, and (B) any Member with eleven

- (11) or twelve (12) Players on its Active List may from time to time as appropriate, but for no more than two (2) consecutive weeks at a time during the Regular Season, have one (1) Player on its Inactive List. For each Two-Way Player that a Member places on the Active List or Inactive List during the Regular Season, the Inactive List requirements set forth in this Section 6.03(a) shall be increased by one (1) for that Member.
- (b) For Members that do not qualify for the playoffs, the Inactive List shall exist only during the Regular Season; all Players on the Inactive List of any such Member shall be transferred to the Active List on the day following the last day of the Regular Season.
- (c) During the playoffs, each Member that is participating in the playoffs may carry a maximum of three (3) Players on its Inactive List if the Member has twelve (12) Players on its Active List in accordance with Section 6.02(b) above, or a maximum of two (2) Players on its Inactive List if the Member has thirteen (13) Players on its Active List in accordance with Section 6.02(b) above. Subject to 6.05(c) below, for each Two-Way Player that a Member places on the Inactive List during the playoffs, the Inactive List requirements set forth in this Section 6.03(c) shall be increased by one (1) for that Member.
- (d) For Members that qualify for the playoffs, the Inactive List shall exist only for so long as the Member continues to participate in Playoff Games; any Player listed on the Inactive List of such a Member shall be transferred to the Active List on the day following such Member's last Playoff Game.

#### **64) Two-Way List**

- (a) No Member may have on its roster at any one time more than two (2) Two-Way Players. A Two-Way Player shall be placed on his Member's (i) Active List or Inactive List (as applicable) while the Two-Way Player is providing services to the NBA Team, and (ii) Two-Way List while the Two-Way Player is providing services to an NBA G League team (or, during a period prior to the start of NBA G League training camp or after the completion of the NBA G League playoffs, while the Player is not providing services to the NBA Team).
- (b) For Members that do not qualify for the playoffs, the Two-Way List shall exist only during the Regular Season; all Players on the Two-Way List of any such Member shall be transferred to the Active List on the day following the last day of the NBA Regular Season.
- (c) For Members that qualify for the playoffs, the Two-Way List shall exist only for so long as the Member continues to participate in Playoff Games; any Player listed on the Two-Way List of such a Member shall be transferred to the Active List on the day following such Member's last Playoff Game.

**65) Playoff Eligibility**

- (a) Each Member must submit a Playoff Roster consisting of Players from its Active, Inactive, and Suspended Lists by 3 p.m. (eastern time) on the day following the last day of the Regular Season. Any Player signed by a Member to a Player Contract prior to the start of the Member's last Regular Season Game is eligible to participate in Playoff Games, except that a Player with respect to whom a request for waiver has been made after midnight on March 1 is not eligible to participate in Playoff Games during the then-current Season unless the Player has been acquired by a Member whose Active List is reduced to eight (8) Players due to injury or illness.
- (b) Only Players whose names appear on a Member's Active List and Playoff Roster shall be permitted to dress for and be eligible to participate in a Playoff Game.
- (c) Notwithstanding 6.05(a) above, a Two-Way Player is not eligible to be designated on a Member's Playoff Roster or participate in Playoff Games; however, such Player is permitted to travel and practice with the Team and remain on the Member's Inactive List during the playoffs.

**66) Suspended List**

- (a) Any Player on a Team's Active List, Inactive List, or Two-Way List may be suspended by the Member employing him or by the Commissioner for failure to discharge his contractual obligations, or for failure to comply with training schedules or other disciplinary rules or procedures. In the event that any Member shall suspend a Player, it shall give prior Written Notice of such suspension to the Commissioner. A notice of suspension shall include the name and address of the Player to be suspended, the cause and duration of the suspension (including whether the suspension is indefinite), and such other information as the Member invoking the suspension may deem relevant.
- (b) Any Player who is suspended by the Commissioner must be placed on his Team's Active List during the term of the suspension, except if the suspension is for more than five (5) games, in which case, following the fifth game of the suspension, the Member may transfer the Player from the Active List to the Suspended List and substitute a Player in his stead.
- (c) Any Player who is suspended by his Team may be placed on his Team's Active List or Inactive List during the term of the suspension. If a Player has been suspended by his Team for more than three (3) games, the Member may, following the third game of the suspension, transfer the Player from the Active List or Inactive List to the Suspended List and substitute a Player in his stead.
- (d) Notwithstanding Section 6.06(b) and (c) above, suspensions of Two-Way Players and Players on work assignments with the NBA G League shall be



governed in accordance with the provisions of the NBA/NBPA Collective Bargaining Agreement then in effect.

### **67) Minimum Number of Players**

Throughout the Season, no Team shall appear for any Exhibition or Regular Season Game unless at least eight (8) Players are dressed for and eligible and able to participate in such Game. During the Playoffs, no Team shall appear for any Playoff Game unless at least nine (9) Players are dressed and eligible and able to participate in such Playoff Game.

### **68) Hardship**

In the event that the application of the provisions of these By-Laws pertaining to Player Lists and replacement of Players shall, in any particular case, cause extreme hardship, such provisions, upon application by the Member claiming hardship, may be waived or modified, and special rules may be invoked for the Member claiming such hardship; provided, however, that such provisions may only be waived or modified by the affirmative vote of a majority of the entire Board of Governors (the Governor representing the Member claiming hardship not voting). Notwithstanding the foregoing, in the event that a Member has three (3) Players (other than Two-Way Players) on its Active List and/or Inactive List who are unable to perform playing services due to injury or illness and such Member has an additional Player (other than a Two-Way Player) who becomes unable to perform playing services due to injury or illness, it may substitute a Player in his stead after the following has occurred:

- (a) each of the three (3) injured or ill Players and the additional injured or ill Player has missed a minimum of three (3) consecutive games due to injury or illness; and
- (b) the Commissioner's Office has determined, through an independent physician, if necessary, that at the time the replacement Player is signed, each of the three (3) injured or ill Players on the Member's Active and/or Inactive List, and the additional injured or ill Player, will continue to be unable to perform playing services due to injury or illness.

The Commissioner, in his sole discretion, may permit a Member to replace additional injured or ill Players on that Member's Active List or Inactive List.

### **69) Voluntarily Retired List**

A Player who has not completed the playing services called for under his Player Contract may be transferred to the Voluntarily Retired List only after the Commissioner is notified in a Writing by both the Player and the Team with which he

is under contract. No Player whose name appears on any Member's Voluntarily Retired List shall, without the unanimous consent of the Board of Governors, be permitted to engage in any Exhibition, Regular Season, Playoff Game, or NBA G League game as a Two-Way Player or Player on work assignment, within a period of one (1) year from the date that his name shall have been first placed on such List. If such Player desires to become an active Player in the Association, and the Member for which he last played does not desire to acquire his services, the right to acquire such services shall be determined in accordance with the waiver procedure.

### **610) Armed Services List and Returning Servicemen**

- (a) Members shall continue to have rights to the services of a Player who has been inducted into the Armed Services by placing the name of the Player on its Armed Services List. The name of such Player, unless removed from such List in accordance with the provisions hereof, shall remain on such List during his active duty and for thirty (30) days thereafter. As used herein "active duty" shall not include performance of periodic reserve obligations of any such Player.
- (b) Notwithstanding the foregoing, a Player in the Armed Services may be retained or placed on a Member's Active List or Inactive List and may play in Exhibition, Regular Season and, if otherwise eligible, Playoff Games, if his retention on such Active List or Inactive List will not result in exceeding the maximum provided in Sections 6.02 and 6.03 of these By-Laws. A Player may be placed on a Member's Armed Services List at any time after such Player has been inducted into the Armed Services; provided, however, that a Player may be placed on such Armed Services List from the Member's Active List or Inactive List only once during the same period of active service in the Armed Services if such Player has played in any Exhibition, Regular Season, or Playoff Games during the period of active service.
- (c) A Player who was under contract with a Member at the time of his induction into the Armed Services and who, upon his release, requests re-employment prior to February 15, must be tendered a contract on the same terms and conditions as the contract in existence at the time he was so inducted. Such Player must be "tried out" and, notwithstanding the provision of Sections 6.02 and 6.03 of these By-Laws governing the maximum number of Players that may be carried on an Active List or Inactive List, may participate in Exhibition, Regular Season, and Playoff Games. If such a returning Player requests re-employment on or after February 15, he must similarly be tendered a contract and "tried out" and, notwithstanding the provisions in said Sections 6.02 and 6.03 of these By-Laws, may participate in Exhibition and Regular Season Games but may not participate in Playoff Games.
- (d) The provisions of this Section 6.10 shall also apply to returning servicemen

not previously under contract with a Member; provided, however, that no more than two (2) such Players may be “tried out” by a Member at any one time.

- (e) A Player who has played in any Regular Season Game or Playoff Game while in the Armed Services and who, upon his release from the Armed Services, is entitled to employment or reemployment pursuant to the provisions of subsections (c) and (d) hereof must, notwithstanding the provisions of those subsections, be included in determining the maximum number of Players on the Member’s Active List and Inactive List provided for in Sections 6.02 and 6.03 of these By-Laws.

### **611) Effect of Waiver on Player Lists**

A Player with respect to whom a request for waiver has been made will be removed, immediately upon receipt of such request by the Commissioner or the Commissioner’s designee, from the Member’s Player Lists.

### **612) Transfer Between Player Lists**

Members are required to provide written notice to the Association Office immediately upon transferring any Player from one Player List to another. No such transfers shall be permitted within the sixty-minute period prior to the publicly announced start time of a Exhibition, Regular Season or Playoff Game; provided, however, that the Commissioner (or his designee) shall be entitled to grant exceptions to the foregoing rule upon a showing of extreme hardship.

## **7 NBA DRAFT**

### **71) Draft Date**

The annual Draft of prospective NBA basketball players shall be held on a date to be fixed by the Commissioner.

### **72) Draft Preferences and Choosing Players**

Draft choices shall be made as follows:

- (a) For the first round of the NBA Draft, each Team shall make one selection to be determined as follows:
  - (i) There shall be a drawing among the fourteen (14) Teams that do not participate in the Playoffs in the preceding Season (the “Lottery Teams”) to determine the first four (4) selections. Such drawing

shall be made on the basis of each participating Team being assigned the following odds (Team 1 having had the worst record during the Regular Season and Team 14 having had the best record among the Lottery Teams during the Regular Season):

Team	Chances
Team 1:	14.0%
Team 2:	14.0%
Team 3:	14.0%
Team 4:	12.5%
Team 5:	10.5%
Team 6:	9.0%
Team 7:	7.5%
Team 8:	6.0%
Team 9:	4.5%
Team 10:	3.0%
Team 11:	2.0%
Team 12:	1.5%
Team 13:	1.0%
Team 14:	0.5%

The Commissioner shall determine the appropriate procedure for breaking ties;

- (ii) The remaining Teams that did not qualify to participate in the Playoffs in the preceding Season shall then select, in inverse order of their consolidated standings at the end of the preceding Season; and
  - (iii) The Teams that participate in the Playoffs shall then select, in inverse order of their consolidated standings at the end of the preceding Season. The foregoing shall afford each Team one selection.
- (b) In the second round of the NBA Draft, draft choices shall be made in inverse order of the consolidated standings of all Teams at the close of the preceding Season, one selection at a time.
- (c) In the first round of the NBA Draft, if any Teams are tied on a percentage basis, then priority in selection as between such Teams is to be established on the basis of a drawing among the Teams involved, except that if the tied Teams are Lottery Teams, priority in selection may be determined by the Lottery. As between the Teams participating in any such drawing, the winner shall have the right to the earliest selection in the first round of the Draft, followed by the other tied Teams participating in the drawing, in accordance with the results of the drawing. In the second round of the Draft, the tied Teams shall select in inverse order of the order in which they selected in the first round.
- (d) A Member that has drafted a Player in the NBA Draft shall have such rights to negotiate with and sign such Player consistent with the rules and regulations that may be adopted from time to time by the Board of Gov-

errors and/or with provisions of any collective bargaining agreement(s) entered into by the Association.

### **73) First Round Draft Choice**

No Member may sell its rights to select a player in the first round of any NBA Draft for cash or its equivalent, or trade or exchange its right to select a player in the first round of any NBA Draft if the result of such trade or exchange may be to leave the Member without first-round picks in any two (2) consecutive future NBA Drafts.

### **74) Contact with Prospective Draftees.**

- (a) Prior to the annual NBA Draft, Members may have preliminary discussions with players eligible for the Draft, but may not discuss the matter of compensation.
- (b) Members may not, directly or indirectly, have or engage in, or attempt to have or engage in, any discussions, communications, or contacts whatsoever with any player who has remaining intercollegiate basketball eligibility or is otherwise ineligible to be selected in an upcoming Draft; provided, however, that the foregoing shall not apply to discussions, communications, or contacts between a Member and any player who was previously eligible to be selected in an NBA Draft.

### **75) Additional Rules Concerning Draft**

The Board of Governors shall, from time to time, be free to adopt such additional rules and regulations regarding the annual Draft as it shall determine. Such rules and regulations shall not be inconsistent with the Constitution and By-Laws.

## **8 MISCELLANEOUS PROVISIONS**

### **81) Exhibition Games**

No Member may participate in an Exhibition, charity, or all-star Game during the Season without the approval of a majority of the Board of Governors.

### **82) Regular Season Game**

No Member shall be required, without its consent, to participate as the visiting Team in any Regular Season Game to be played in any city in which the home

Team does not have exclusive rights as provided in this Constitution and By-Laws.

### **83) Television and Gate Receipts.**

- (a) The revenues derived from network, national, and international television contracts shall be shared equally among the Members of this Association. Each Member may pledge, grant a lien on, or otherwise hypothecate all of its share of the revenue derived from such television contracts, subject to its first having obtained all required approvals under the Constitution and By-Laws (including Article 5 of the Constitution) and to the execution and delivery of such documentation as may be satisfactory to the Commissioner, including documentation that assures to the satisfaction of the Commissioner the payment of such Member's obligations to the Association, the other Members of the Association and their respective affiliates out of such Member's share of the revenue derived from such television contracts.
- (b) The visiting Team shall not be entitled to any portion of the gate receipts derived from any Regular Season Game.

### **84) Protection for Referees**

- (a) Each Member shall provide at its arena two separate dressing rooms for the exclusive use of the Referees, and shall take all steps necessary to insure that no person, without the permission of the Referees, gains access to such dressing room.
- (b) No person affiliated with any Member shall enter such dressing room except with the permission of the Referees.
- (c) Each Member shall provide at its arena adequate police protection for the Referees.
- (d) A Member failing to comply with the provisions of Subsections (a) or (c) and any person affiliated with any Member failing to comply with the provision of Subsection (b) shall be liable to a fine not exceeding \$10,000 to be imposed by the Commissioner. The foregoing shall not be construed to limit the power of the Commissioner as set forth in Articles 8 and/or 24(l) of the Constitution.
- (e) All Referees shall report any breach of this Section to the Commissioner.

## 9 TELEVISION CONTRACT TERMS

### 91) Mandatory Television Contract Terms

All contracts entered into by any Member of the Association for the telecasting of any of its games by any means whatsoever shall contain provisions in the form required by the Association:

- (a) Reserving to the Association the copyright in all games telecast; and
- (b) Rendering such contracts subject to (i) the Constitution and By-Laws and all other rules, regulations, and resolutions of the Association as they presently exist and as they may from time to time be amended or modified; (ii) the terms of any existing or future contracts entered into by the Association for the telecasting of basketball games; and (iii) the approval of the Commissioner of the Association, with whom all contracts must be filed within ten (10) days of their execution, and who may disapprove such contracts, thereby rendering them null and void, only on the ground that they fail to comply with the requirements of this Section 9.

## 10 RADIO CONTRACT TERMS

### 101) Mandatory Radio Contract Terms

All contracts entered into by any Member of the Association for the broadcasting of any of its games by radio shall contain provisions in the form required by the Association:

- (a) Reserving to the Association the copyright in all games broadcast; and
- (b) Rendering such contracts subject to (i) the Constitution and By-Laws and all other rules, regulations, and resolutions of the Association as they presently exist and as they may from time to time be amended or modified; (ii) the terms of any existing or future contracts entered into by the Association for the broadcasting of basketball games; and (iii) the approval of the Commissioner of the Association, with whom all contracts must be filed within ten (10) days of their execution, and who may disapprove such contracts, thereby rendering them null and void, only on the ground that they fail to comply with the requirements of this Section 10.