

53442

DOWNTOWN MULTIPURPOSE ARENA

FIRST RESTATED  
DISPOSITION AND DEVELOPMENT AGREEMENT

DATED as of JULY 19, 1989

By and Between  
CITY OF PHOENIX, ARIZONA,

City,

and

PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP,  
Operator.

VOLUME III OF III

53442

DOWNTOWN MULTIPURPOSE ARENA  
FIRST RESTATED SUNS LICENSE AGREEMENT

By and Between

PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP,

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and

PHOENIX SUNS LIMITED PARTNERSHIP,

"Team."

July 19, 1989

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TABLE OF CONTENTS

	<u>PAGE</u>
RECITALS . . . . .	1
AGREEMENTS . . . . .	2
1. Definitions . . . . .	2
2. Term . . . . .	2
2.1 Abatement . . . . .	2
2.2 Termination . . . . .	3
2.3 Payment . . . . .	4
3. Use . . . . .	4
3.1 Games . . . . .	5
3.2 Practice . . . . .	6
3.3 Suite . . . . .	7
3.4 Compliance . . . . .	8
4. Scheduling . . . . .	8
5. Fees . . . . .	8
6. Tickets . . . . .	9
7. Radio and Television . . . . .	10
8. Concessions . . . . .	11
8.1 Soft . . . . .	11
8.2 Hard . . . . .	12
9. Parking . . . . .	12
10. Management . . . . .	14
11. Utilities and Maintenance . . . . .	15
12. Staffing . . . . .	16
13. Marketing . . . . .	18
13.1 Sponsor Signs . . . . .	18
13.2 Communication System . . . . .	19

TABLE OF CONTENTS

	<u>PAGE</u>
14. Improvements . . . . .	20
14.1 Operator . . . . .	20
14.2 Team . . . . .	20
15. Insurance . . . . .	21
15.1 Team . . . . .	21
15.2 Operator . . . . .	22
15.3 Provisions . . . . .	24
16. Damage or Destruction . . . . .	25
16.1 Team . . . . .	25
16.2 Operator . . . . .	26
16.3 Fees Abatement . . . . .	27
17. Condemnation . . . . .	27
18. Records . . . . .	29
19. Assignment . . . . .	30
20. Default . . . . .	31
20.1 Team . . . . .	31
20.2 Operator . . . . .	32
20.3 Termination Waiver . . . . .	34
21. Dispute Resolution . . . . .	34
22. Miscellaneous . . . . .	38
22.1 Relationship . . . . .	38
22.2 Subordination . . . . .	39
22.3 Assurance . . . . .	40
22.4 Force Majeure . . . . .	40
22.5 Notices . . . . .	41
22.6 Attorneys' Fees . . . . .	42
22.7 Interest . . . . .	43
22.8 Severability . . . . .	43
22.9 Reasonableness . . . . .	43
22.10 Interpretation . . . . .	44
22.11 Restatement . . . . .	45
22.12 No Amendment . . . . .	46
22.13 Governing Law . . . . .	46

TABLE OF CONTENTS

	<u>PAGE</u>
23. Liability Limitation . . . . .	47
23.1 Team . . . . .	47
23.2 Operator . . . . .	47
23.3 City . . . . .	48

FIRST RESTATED LICENSE AGREEMENT

THIS FIRST RESTATED LICENSE AGREEMENT ("License") is dated as of July 19, 1989 and entered into by and between the PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP, a Delaware limited partnership ("Operator"), and the PHOENIX SUNS LIMITED PARTNERSHIP, a Delaware limited partnership ("Team").

RECITALS:

A. Pursuant to the Operating Agreement between the Operator and the City of Phoenix, the Operator is to be the operator of a multipurpose arena to be constructed in downtown Phoenix, Arizona and owned by the City (the "Facility") and, in connection therewith, is empowered to enter into this License and other agreements for the use of the Facility.

B. The Team is the owner and operator of a professional basketball franchise known as the Phoenix Suns. The Operator and the Team desire for the Team to conduct its Home Games in the Facility as and if the Facility is constructed.

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

**AGREEMENTS:**

1. Definitions. As used in this License, capitalized terms shall have the meaning set forth in Schedule "1" hereto unless otherwise defined herein.

2. Term. This License shall be effective as a contract as of the date hereof but the Team's right and obligation to use the Facility, and therefore the License Term, shall not begin until the License Commencement Date and, subject to termination as herein provided, shall end on the License Expiration Date. Within ten days after the License Commencement Date, the parties shall confirm in writing the actual License Commencement and License Expiration Dates, which confirmation shall be attached hereto so as to become a part hereof. Within 15 days after the conclusion of any Abatement Period, the parties shall confirm in writing the date of commencement and the date of conclusion of such Abatement Period and the extended Thirtieth Anniversary Date and the extended License Expiration Date due to such Abatement Period if the duration of the Abatement Period was at least ninety (90) days. Each such confirmation shall be attached hereto so as to become a part hereof.

2.1 Abatement. If the cause or the effect of an Abatement Period prevents the playing of Home Games in the

Facility, then during the pendency of such Abatement Period, the Team shall not be required to play the Home Games in the Facility. Within fifteen (15) days after the commencement of any Abatement Period, the party claiming the right to abate any obligation hereunder due to the cause of such Abatement Period shall notify the other party of such claim and upon such notification may commence abating such obligation. If the party receiving such notice disputes such claim, such dispute shall be submitted to ADR within ten (10) days after receipt of such notice.

2.2 Termination. Notwithstanding and prevailing over any contrary provision hereof, (a) if the Construction Start Date has not occurred by September 30, 1990, then at any time thereafter and prior to November 15, 1990, by written notice to the Team, the Operator may terminate this License; (b) if the License Commencement Date has not occurred by December 31, 1993, this License automatically shall expire on that date; and (c) the Team may terminate this License as provided in the Assurance Agreement. In the event of a termination pursuant to this provision, upon payment of any sums then owing hereunder by either party to the other whether because of a default hereunder or otherwise, the parties shall be released from all future obligations hereunder but neither party shall be released from any liability that has accrued on



or before the date of such termination, including liabilities for a default of this License and any of the Related Agreements.

2.3 Payment. During such time, if any, after the Thirtieth Anniversary Date that a Non-Affiliate is the Operator of the Facility, as additional consideration to the Team for conducting the Home Games at the Facility during that period, the Operator shall pay to the Team the "Management Fee" in the amounts, times and manner provided in the Operating Agreement (the definition of "Management Fee" and the applicable provisions of the Operating Agreement as of this date are incorporated herein by this reference as though set forth herein and no amendment of those provisions shall be effective hereunder or binding upon the Team).

3. Use. For the uses hereafter provided and for no other purpose without the prior written consent of the Operator, the Operator grants to the Team the right to use the Facility during the License Term. The Operator shall not unreasonably interfere with the uses permitted the Team hereunder; shall permit the non-exclusive use of the Common Area by the Team, its employees, agents and guests; shall not materially modify or diminish the Common Area without the Team's prior written consent; shall not unreasonably deny or otherwise impede access to the Facility for the uses herein permitted to the Team, its employees, agents or guests; shall

not allow any person to enter the Arena during the Home Games without a Ticket for that Home Game; shall not allow any other Events to be conducted in the Facility during the Home Games without the Team's prior consent; and shall not allow any other professional basketball team to use the Facility without the Team's prior consent. The Operator shall provide or cause to be provided in the Facility at least two hours before and after, and during the Home Games, food and beverage service to the Suites which shall be comparable to that which is provided to the suites and private seating in comparable facilities. The players, coaches, executives and key staff personnel of the Team shall be provided without charge with full memberships and privileges in all health and other clubs in the Facility albeit they shall be required to pay for products or services at the same price and in the same manner as other members. The Operator shall provide for such memberships and privileges in all agreements executed with respect to such clubs.

3.1 Games. The Team shall play all of its Home Games at the Arena during the License Term. Such periods of use shall include the time reasonably necessary for the Home Games and related activities on the day of a Home Game including the following: basketball practice by the Team and the visiting team each for a period of two hours at such times as shall be determined by the Team consistent with NBA requirements and normally accepted NBA procedures; the

installation of equipment and other preparation activities incidental to the Home Game including, without limitation, Sponsor Signs, television, radio and press equipment; and the visiting team, game officials, cheerleaders and a reasonable number of other personnel involved in game pageantry shall be provided with separate locker rooms and showers. Except to the extent such time requirements are modified with the prior consent of the Team, the Operator shall cause the Facility to be available to the Team and ready for the playing of each Home Game no later than the earlier of five hours before the Home Game or 11:00 a.m. on the Home Game day except those Home Games which are played the day following another Event, as to which, the Operator need not cause the Facility to be ready for the Home Game until five hours before the Home Game.

3.2 Practice. If such use would not unreasonably interfere with other Events, the Team shall have the right to use the Arena for basketball practice at such times as the basketball floor is in place. The Operator shall maintain the floor in place for practice use by the Team at all times when it is not necessary to remove it to accommodate the preparation for, conduct of or equipment removal or cleaning following, other Events. Within 15 days after receipt of the invoice which the Operator shall issue to the Team each month together with an accounting of the Operator's Arena utilities costs and the allocation thereof to the Team for the preceding

month, the Team shall pay for the electricity and other utilities provided to the Team for its practice use of the Arena during the prior month. The allocation of such utilities costs to the Team shall be on the basis of the magnitude and duration of the Team's consumption of utilities for practice purposes as compared to the magnitude and duration of the consumption of utilities for other uses of the Arena during the prior month. Any dispute between the parties as to the allocation of utilities costs to the Team shall be resolved as provided in Section 21.

3 3 Suite. The Team, its employees, agents and guests, shall have the right to use the Team Suite for business use and during the Home Games but not during City Events unless the City consents. The Team shall have exclusive use of the Team Suite and it shall not be used by the Operator or anyone else without the prior consent of the Team. Contemporaneously with the completion of Schedule "4" hereto, the Team shall execute a Suite License and shall be bound by its terms; provided, however, that the Team's use of the Team Suite shall be without charge by the Operator except that the Team shall pay for Tickets, Soft Concessions and all other services to the Team Suite at the same price and in the same manner as the Suite Licensees are required to do pursuant to the Suite Licenses (albeit as to the Home Games, the Team may use Complimentary Tickets).

3.4 Compliance. The Team shall use the Facility in compliance with applicable governmental laws, ordinances, rules and regulations. At its expense, the Team shall obtain all governmental licenses and permits required for its use of the Facility. The Team shall comply with all federal, state and local laws, statutes, ordinances and regulations relating to the payment of Taxes, shall file tax returns, shall pay all Taxes and charges when due, and shall indemnify and hold the Operator and the City harmless against all cost and liability by reason of the Team's failure to comply with any such law or regulation or to pay any such Taxes or charges.

4. Scheduling. The Home Games shall be scheduled in accordance with the procedure and pursuant to the priority presently set forth in the Operating Agreement (the applicable provisions of the Operating Agreement as of this date are incorporated herein by this reference as though set forth herein and no amendment of those provisions shall be effective hereunder or binding upon the Team).

5. Fees. Subject to abatement as provided in Section 2.1 hereof and in Sections 2.2 and 3.1.12.2 of the Assurance Agreement, as the consideration to be paid to the Operator for the Team's use of the Facility as herein provided, the Team shall pay the Use Fee and all other sums payable by the Team pursuant to this License (collectively the "Fees")

without deduction, offset, prior notice or demand. Fees payable to the Operator shall be paid to the Operator Designate or at such other place or to such other person as the Operator from time to time may designate by notice hereunder. All payments shall be in lawful money of the United States of America in cash or other immediately available funds. On the 15th day of each calendar month following a month in which Home Games were played in the Facility, the Team shall provide the Operator with a copy of the official Ticket Receipts statements provided to the NBA for the Home Games played during the preceding month and at that time shall pay to the Operator the Use Fee applicable to the Ticket Receipts from such Home Games unless payment of the Use Fee is abated as provided in Section 2.2 hereof or in Sections 2.2 or 3.1.12.2 of the Assurance Agreement.

6. Tickets. The Team shall control the pricing, the advertising of and on, and the distribution of the Tickets, and shall receive all revenue from the Tickets issued for the Home Games, either directly by the Team or through agencies or other designees authorized by the Team. Tickets for the Suites shall be issued by the Team either with or without charge as provided in the Suite Licenses. The Operator shall not issue Tickets or authorize anyone else to do so. The Team shall be permitted to share with the Operator the use of the Facility ticket booths and box offices for the sale of the Tickets by the Team at such

times and in such manner as the Team and the Operator may establish from time to time. No person shall be admitted to a Home Game without a valid Ticket. During the Home Games, the Arena scorers' table, playing floor, press room and other designated media areas shall be under the exclusive control of the Team which shall issue all credentials and other Tickets therefor. Complimentary Tickets shall be the only Tickets not included in determining the Ticket Receipts for a Home Game. All other Tickets issued for a Home Game shall be deemed to have been sold at their face ticket price (less Taxes) and shall be included in Ticket Receipts, albeit Tickets issued in the ordinary course of business and in the exercise of its reasonable business judgement at a discount shall be included in Ticket Receipts only at the discounted price (provided that the Team does not receive any consideration in return for the issuance of such Tickets at a discount).

7. Radio and Television. The Team shall have the exclusive right to control and to receive the revenue from all radio, television and other broadcasts, reproductions and transmittals of the pictures, descriptions and accounts of the Home Games and all other activities of the Team and the visiting teams incidental to basketball in the Facility permitted by this License regardless of the nature of the technology and whether distributed locally, nationally or otherwise.

8. Concessions.

8.1 Soft. The Operator shall control, bear all expenses and retain 85 percent of the Soft Concessions Revenue. Subject to the designation of products by the Team as hereafter provided, the Operator shall determine the kind and quality of Soft Concessions and shall employ the sales personnel. The Team shall be permitted to designate the kinds of Soft Concessions products to be sold at the Home Games but the products shall be (a) in compliance with all contracts existing at the time of such product designation among the Operator, its concessionaires and the producers or manufacturers of concession products sold in the Arena; and (b) consistent with NBA requirements. The Team may elect to provide complimentary Soft Concessions to the Team Suite, the press room and other areas within the Facility, in which event, the Team shall obtain such Soft Concessions from a Facility concessionaire and the Team shall bear all expenses with respect thereto (albeit as to the press room and the Team locker room, the Team may use a provider other than a Facility concessionaire). Subject to the Soft Concessions Limitation, 15 percent of the Soft Concessions Revenue for the preceding month shall be paid by the Operator to the Team on the 15th day of each calendar month immediately after any month in which Home Games were played in the Facility and in which the Team



was required to pay and did in fact pay the amount set forth in Section 4(a) of the Suns Office Lease.

8.2 Hard. The Team shall control, bear all expenses and retain 90 percent of the Hard Concessions Revenue. The Team shall determine the kind and quantity of Hard Concessions and shall employ the sales personnel. The number and size of the locations in addition to the Arena Store where such products may be sold within the Facility shall be established by mutual agreement of the parties consistent with normally accepted NBA procedures. The Hard Concessions products shall be (a) in compliance with all contracts existing at the time of such product designation among the Operator, its concessionaires and the producers or manufacturers of Hard Concessions sold in the Facility; and (b) consistent with NBA requirements. Ten percent of the Hard Concessions Revenue for the preceding month shall be paid by the Team to the Operator on the 15th day of each calendar month in which Home Games were played in the Facility.

9. Parking. The Operator shall control, bear all expenses and retain all revenue from the use of the Arena Garage for the Home Games and shall establish parking charges and collect parking revenue in such manner as the Operator may determine. The Operator shall not discriminate against the Home Games by imposing a greater parking charge for the Home

Games than for other Events and, subject to Section 14.3 of the Operating Agreement, shall not rent or otherwise commit the Arena Garage in advance to other uses during the Home Games. The Operator shall (a) set aside 20 conveniently located parking spaces in the Facility as permitted by the design of the Facility for short term, temporary and complimentary use by visitors to the Facility ticket booths and box offices; (b) provide the Team with 30 covered, reserved and marked parking spaces either beneath the exhibition floor of the Arena or in a private portion of the Arena Garage for use at no charge by the Team, its coaches, players, executives and key staff personnel before, during and after the Home Games (these 30 spaces shall be the same as are provided to the Team for business use pursuant to the Suns Office Lease); (c) provide the Team with 30 unreserved parking spaces in the Facility for use at no charge before, during and after the Home Games for promotional and operational purposes; and (d) cooperate with and permit the Team to issue parking passes or vouchers to the holders of season Tickets at the regular parking charge and in such number as may be established by mutual agreement between the Operator and the Team from time to time. In addition to the Team's right to use or permit the use of parking spaces otherwise permitted by this Section 9, at the request of the Team's business invitees, the Operator shall validate their use of parking spaces in the Arena Garage at no charge, provided that each such use shall not exceed two hours and shall not

occur during the period commencing one hour before and terminating one hour after any Event. In denying or permitting a request for such validation, the Operator shall exercise its reasonable business judgment. To the extent that the final design drawings provide for parking spaces on the Site to the east of the Arena, the Team shall be entitled to use or permit the use of a reasonable number of such parking spaces for media, players and coaches without charge. Under no circumstances shall the Operator and the Team be entitled to more than an aggregate of ninety (90) parking spaces (without charge) in the Arena Garage for each Home Game.

10. Management. The Operator shall be responsible for the safety and security of the Home Games including, without limitation, the determination of security staffing levels and patterns, the inspection and approval of security measures and personnel and the exclusion or ejection of persons or items in the interest of safety or security. The Operator shall provide at the Team's expense such security personnel for the Home Games both within and outside the Facility as shall be necessary to maintain and ensure public order and safety in and around the Facility and to protect the parties and the users thereof (the expense to the Team shall be a Personnel Expense to be reimbursed to the Operator as provided in Section 12). The Team shall comply with such reasonable rules governing the security of the Facility as shall be established by the

Operator from time to time consistent with NBA requirements and the provisions of this License.

11. Utilities and Maintenance. Subject to the obligation of the Team to reimburse the Operator for its cost of electricity and other utilities as provided in Section 3.2, at its expense, during the License Term, the Operator shall furnish all water, heat, air-conditioning, electricity, gas, telephone, janitorial and other services and utilities necessary for the operation of the Facility for the conduct of the Home Games. The electricity for the Facility shall include lighting the Arena with the degree of illumination required for televising the Home Games. At its expense, the Operator also shall furnish, operate and maintain in good, clean order, condition and repair the Facility and its fixtures, machinery, equipment, improvements and other components including, without limitation, all plumbing, heating, air-conditioning, electrical and gas connections and systems; the Communication System; the Common Area; the Suites; the seating; and the playing floor; so that at all times as provided in Sections 3.1 and 3.2, the Facility shall be in a condition ready for each Home Game. The Arena shall include the playing floor; at least three backboards, basket rings, nets and hydraulic supports; directional and playing floor signs and markings; scorers' tables and chairs; player benches; training rooms (not including equipment), equipment room (not including equipment),

storage room, laundry room (not including equipment), whirlpools, dressing rooms, lockers and showers; X-ray room (not including equipment); lighting system; cooling system; Communication System; radio and television booths adequately equipped and wired; press room; and all other equipment and facilities as commonly provided by similar facilities and required for the conduct of the Home Games in compliance with NBA requirements and normally accepted NBA procedures. The Operator shall not diminish or eliminate any of the facilities or equipment required for the Home Games without the Team's prior written consent. At its expense, the Operator promptly shall make such replacements, repairs and renovations of the Facility and its equipment (excluding equipment provided by the Team) as is required so that at all times the Facility shall be in good, clean order, condition and repair in compliance with NBA and applicable governmental requirements and the standards described in A.R.S. § 33-1324(A). The Team shall provide the Operator with any changes in the NBA requirements or procedures as adopted, and the Operator promptly shall comply therewith at its expense.

12. Staffing. At its expense, the Team shall employ the players, officials, timers, scorekeepers, scoreboard operators, public address announcer and other persons directly engaged in the conduct of the Home Games. At its expense, the Operator shall furnish trained employees sufficient for the

operation and maintenance of the Facility for the Home Games including an event coordinator, parking lot attendants, plumbers, electricians, carpenters, maintenance crew and supervisors qualified to operate the Facility, its facilities and equipment. All necessary functions for the staffing and operation of the Facility, its facilities and equipment, shall be properly performed by the Operator so that the Home Games may be conducted with adequate protection of the interests of the parties and of the public. All cleaning of the Facility before and after the Home Games, and the employment and compensation of the janitors and cleaning crew, shall be the expense and responsibility of the Operator subject to the Team's obligation to pay the Personnel Expense as provided herein. The Operator also shall employ ticket sellers, ticket takers, ushers, first aid attendants, security personnel, doctors, janitors, cleaning personnel and other personnel in such number and with such qualifications as the Team may require for the conduct of the Home Games consistent with NBA requirements and normally accepted NBA procedures (collectively the "Personnel"). The hourly wages, workers' compensation, federal and state unemployment and other benefits and compensation of the Personnel shall comprise the "Personnel Expense," shall be reasonable in amount and subject to prior approval by the Team at such times and in such manner as the Team may request. On the 15th day of each calendar month in which Home Games were played in the Facility, the Operator

shall provide a monthly accounting to the Team of the Personnel Expense for the preceding month. If the Personnel Expense is consistent with the prior approval of the Team, or if the Personnel Expense has been incurred as a result of an emergency or other unanticipated event and the Team does not dispute such emergency or unanticipated expenditure, the Team shall pay the amount stated in each monthly accounting within 15 days after its receipt. If the Personnel Expense reflected therein is not consistent with the Team's prior approval, or if the Team disputes an emergency or other unanticipated expenditure, the Team shall notify the Operator within 15 days after receipt of the applicable accounting, whereupon if the Operator disputes the Team's objection, the matter shall be resolved as provided in Section 21.

13. Marketing. The Advertising shall be subject to the provisions of the Operating Agreement and the Advertising Agreement and in compliance with the exclusivity or other restrictions of the NBA and its marketing and advertising contracts.

13.1 Sponsor Signs. The Team shall control, bear all expenses and retain the revenue from the Sponsor Signs. The Sponsor Signs shall be reasonable in number, size and content; shall be situate on the backboard cushions, scorers' tables, player benches, equipment of the Team and its

trainer, visiting team equipment and that of its trainer, press room and other media areas, scoreboard streamers and such other locations within the Facility as are mutually acceptable to the parties; shall be covered or removed after each Home Game; and shall not violate the exclusivity or other restrictions of the Advertising contracts entered into by the Team or the contracts for the construction of the scoreboard(s) and other portions of the Communication System.

13.2 Communication System. Except for limited use by the Operator or the City as hereafter provided, the Team shall have exclusive use of the Communication System during the Home Games and shall have the right to arrange for and to retain the revenue from all visual and audio commercial announcements during the Home Games. Such commercial announcements shall be in conformity with the exclusivity and other restrictions of the Advertising contracts entered into by the Team and the contracts for the construction of the scoreboard(s) and other portions of the Communication System. The Operator and the City each shall have the right to use the scoreboard(s) and marquees of the Facility (a) at least once during each Home Game solely for disseminating a reasonable number of announcements concerning future Events at the Facility and (b) for a reasonable number of public service announcements.



14. Improvements.

14.1 Operator. Without the prior consent of the Team, the Operator shall not construct any Additions if (a) the construction or the Additions would unreasonably interfere with the Team's use of the Facility as provided in this License, or (b) the Additions would affect adversely the structural integrity, size, utility or value of the Facility. As a condition to such consent, the Team may impose such reasonable requirements as it may deem necessary.

14.2 Team. At its expense, the Team may place such Team Equipment in the home team locker room of the Facility as is necessary for the conduct of the Home Games and the other uses permitted to the Team hereunder. The Team Equipment shall be the property of the Team and may be removed at any time the Team is not in default hereunder. The Team shall not make Additions to the Facility without the Operator's prior consent and the prior written consent of the City, such consent not to be unreasonably withheld or delayed. As a condition to such consent, the Operator or the City may impose such reasonable requirements as either may deem necessary including, without limitation, the posting of appropriate bonds prior to the commencement of any such construction. Upon installation, the Additions shall become a part of the Facility and the property of the City. The Team shall keep the Facility

free from, and shall indemnify the Operator and the City with respect to, all Liens incurred or permitted by the Team in installing the Team Equipment or constructing Additions. If within 60 days following the filing or other assertion of any such Lien, the Team does not cause such Lien to be released in a manner satisfactory to the Operator and the City (such as by posting a bond or other acceptable security), the Operator shall have the right but not the obligation to cause the Lien to be released by any means the Operator deems proper including, without limitation, payment of the Lien. All reasonable sums paid and expenses (together with interest thereon from the date incurred until paid at the Premium Rate) incurred by the Operator in connection therewith including, without limitation, attorneys' fees and costs, shall be payable by the Team upon demand by the Operator.

15. Insurance

15.1 Team. At its expense, the Team shall procure and maintain during the License Term:

15.1.1 Extended coverage commercial general liability insurance with a broad form general liability endorsement which shall provide coverage against claims for bodily injury, death and property damage arising from the Team's occupancy or use of the Facility. The insurance shall

be specifically applicable to the Facility and shall be in the amount of \$5 million, single limit, subject to adjustment from time to time as the Team or the Operator reasonably may request so as to be in such amount as customarily is provided by other NBA teams.

15.1.2 Insurance on a special basis providing coverage against damage and destruction of the Team Equipment in the amount of its replacement value with customary deductibles and co-insurance.

15.2 Operator. At its expense, the Operator shall procure and maintain during the License Term:

15.2.1 Extended coverage commercial general liability insurance with a broad form general liability endorsement which shall provide coverage against claims for bodily injury, death and property damage occurring in, on or about the Facility. The insurance shall be in the amount of \$25 million, single limit, subject to adjustment from time to time as the Team or the Operator reasonably may request so as to be in the amount customarily provided for arenas used by other NBA teams. (The Operator shall be entitled to maintain a lesser amount with approval of the City as provided in the Operating Agreement, the provisions as to which are

incorporated herein and shall not be amended without approval by the Team.)

15.2.2 Insurance against loss or damage to the Facility by fire and against loss or damage by other risks now or hereafter embraced by so called "special all-risk extended coverage." The amount of the insurance shall be not less than the then full replacement cost of the Facility including any costs which may be required to bring it into compliance with then applicable NBA and governmental requirements. Full replacement cost shall be determined at reasonable intervals at the request of the Team by an appraiser designated by the Team and paid by the Operator. The required insurance shall be adjusted to reflect the results of the appraisal. Failure of the Team to request an appraisal shall not relieve the Operator from its obligations hereunder. Insurance proceeds shall be applied by the Operator to the restoration of the Facility and any improvements damaged or destroyed by the casualty giving rise to the insurance claim pursuant to Article 10 of the Operating Agreement, provided that the Team shall have reasonable approval rights with respect to restoration. Any insurance proceeds remaining after restoration and payment of all costs and expenses incurred in connection therewith shall belong to the Operator.

15.3 Provisions. All insurance required hereby shall be by valid and enforceable policies issued by insurance companies rated not lower than B+ XII in Best's Rating Guide (most current edition) and authorized to do business in Arizona. The policy of insurance of each party shall be endorsed: (a) to provide that the coverage shall not be invalid due to any act or omission of the other party, the City or their agents or employees; (b) to name the other party and the City as additional insureds and to provide for cross-liability; (c) to be primary as to any insurance maintained by the other party or the City, so that the latter shall be excess and not contributory to insurance provided by the insuring party; and (d) to provide that the waiver of recovery (subrogation) set forth hereafter shall not invalidate or have any adverse effect on the insuring agreements or liability of the insurer under the policy. The insurance companies issuing such insurance shall agree to notify the other party in writing of any cancellation, alteration or nonrenewal of the policy at least 30 days prior thereto. Within ten days after the License Commencement Date and thereafter before a policy period expires, each party shall deliver to the other party certificates evidencing the insurance coverage required herein, confirming that the premiums therefor have been paid and consenting to the waiver of recovery (subrogation) as herein provided. If either party fails to obtain the insurance or to deliver a certificate

thereof to the other party as herein required, the other party shall be entitled but without obligation to obtain the insurance coverage at the defaulting party's expense. The Operator, the Team and the City shall not be liable one to the other or to any insurance company (by way of subrogation or otherwise) insuring any party or the City for any loss or damage to property or injury to persons, or any resulting loss of income, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, the City, or their respective agents or employees, if any such loss or damage is covered by insurance benefiting the City or the party suffering such loss or damage; provided, however, that any limitation on the Operator's, the Team's or the City's liability pursuant to the preceding sentence shall only be to the extent of available insurance proceeds.

16. Damage or Destruction.

16.1 Team. In the event of any damage or destruction of the Facility caused by the negligence or willful acts of the Team, its employees or agents, at its expense, the Team promptly shall restore such damage or destruction and this License shall continue in effect without any diminution of the obligations of the Team hereunder. Such restoration shall be in accordance with the requirements of the Operating

Agreement. The restoration of any such damage or destruction to the Team's Additions or the Team Equipment shall be the expense and responsibility of the Team albeit the Team may elect not to restore. Except as provided in the Assurance Agreement, the Team waives the right to terminate this License or to discontinue the payment of Fees hereunder as the result of any damage or destruction of the Team Equipment or the Facility.

16.2 Operator. Except as provided in Section 16.1, in the event of any damage or destruction of the Team Equipment caused by the negligence or willful acts of the Operator, the City, or their employees or agents, or in the event of any damage or destruction of the Facility regardless of the cause, the Operator promptly shall repair such damage or destruction and this License shall continue in effect without reduction in the Fees or diminution of the other obligations of the Team hereunder except as provided in Section 16.3. All restoration shall be in accordance with the requirements of the Operating Agreement (the applicable provisions of which as of this date are incorporated herein and no amendment thereof shall be effective hereunder or binding upon the Team). Notwithstanding the foregoing, if pursuant to the Operating Agreement, the Operator is permitted to and elects not to restore, or if the Operator elects to restore but fails to commit or to complete the restoration within the times required

by the Assurance Agreement, then the Team may terminate this License as provided in the Assurance Agreement. If this License is so terminated, the Team shall not be entitled to a rebate of any Fees or to the reimbursement of any other prior payments made or expenses incurred hereunder or in connection herewith, and upon payment of all sums then owing hereunder by either party to the other, the parties shall be released from all future liability hereunder; provided, however, that no party shall be released from any liability that has accrued on or before the date of such termination.

16.3 Fees Abatement. If the damage or the restoration process described in Section 16.2 causes the Arena Garage to be inadequate or the Facility to fail to meet governmental or NBA requirements or otherwise prevents the playing of the Home Games in the Facility, then until the Facility has been restored as described in Section 16.2, the Team shall not be required to play the Home Games in the Facility.

17. Condemnation. If all or part of the Facility is taken by right of eminent domain, with or without litigation, or transferred in lieu of or under threat of such action (collectively a "Taking" or is "Taken"), the Operator promptly shall restore the Facility as provided in the Operating Agreement (the applicable provisions of which as of this date



are incorporated herein and no amendment thereof shall be effective hereunder or binding upon the Team) and this License shall continue in effect. All restoration shall be in accordance with the requirements of the Operating Agreement. If the Taking or the restoration process causes the Arena Garage to be inadequate or the Facility to fail to meet governmental or NBA requirements or otherwise prevents the playing of the Home Games in the Facility, then until the Facility has been restored as herein provided, the Team shall not be required to play the Home Games in the Facility. Notwithstanding the foregoing, if pursuant to the Operating Agreement, the Operator is permitted to and elects not to restore, or if the Operator elects to restore but fails to commit or to complete restoration within the times required by the Assurance Agreement, then this License may be terminated by the Team as provided in the Assurance Agreement. If this License is so terminated, the Team shall not be entitled to the rebate of any Fees or the reimbursement of any other prior payments made or expenses incurred hereunder or in connection herewith. Upon payment of all sums then owing hereunder by either party to the other, the parties shall be released from all future liability hereunder but neither party shall be released from any liability that has accrued on or before the date of such termination. The Team shall be entitled to that portion of the payment or other award from the condemnor (the "Award") equal to the Operator's share of the Award as is set

forth in the Operating Agreement as of this date (amendments of that provision of the Operating Agreement shall not be effective hereunder or binding upon the Team).

18. Records. The Team and the Operator shall maintain full, true and complete books and records of all transactions upon which all Fees and other sums payable hereunder are computed and each party shall employ an independent certified public accountant ("Accountant") to certify such records in accordance with generally accepted auditing principles. If they choose to do so, the parties may use the same Accountant. Within 120 days after each Basketball Season during the License Term, a certified audit report of the Ticket Receipts and Hard Concessions Revenue shall be provided to the Operator by the Team's Accountants and a certified audit report of the Personnel Expense and Soft Concessions Revenue shall be provided to the Team by the Operator's Accountants. If the audit report from the Team discloses an overpayment or underpayment of the Use Fee or the Operator's share of Hard Concessions Revenue, then within 15 days following the issuance of the audit report, the Team shall pay to the Operator, or the Operator shall refund to the Team, the applicable underpayment or overpayment. If the audit report from the Operator discloses an underpayment or overpayment of the Personnel Expense or the Soft Concessions Revenue, then within 15 days after the issuance of the audit report, the Operator shall pay

or refund to the Team or the Team shall pay or refund to the Operator, the applicable underpayment or overpayment.

19. Assignment. The Team shall have the right to assign or otherwise transfer this License in connection with the sale or other assignment of its Franchise in compliance with NBA requirements (the Team shall provide the Operator with a copy of the transfer application at the time it is submitted to the NBA). The Operator may assign or otherwise transfer this License only (a) to the City pursuant to the Operating Agreement; or (b) otherwise if the assignment (i) is conditioned upon the assignee agreeing to be bound by this License, (ii) is in connection with the sale or other assignment of the Operator's interest in the Operating Agreement, and (iii) is in compliance with the provisions of the Operating Agreement. (The Operator shall provide the Team with a copy of the instrument of transfer as it is executed.) Except for the foregoing, neither party shall assign or transfer its rights or interest in this License or in the Facility, if any.

20. Default.

20.1 Team.

20.1.1 If (a) the Team fails to pay when due any Fees payable to the Operator hereunder and such failure is not cured within seven days after receipt of written notice from the Operator, or (b) the Team fails to observe or perform any of the other provisions hereof and such failure is not cured within 30 days after receipt of written notice from the Operator (or such longer period as is necessary for the Team to cure the failure within a reasonable time in the exercise of due diligence), then in any of such events, the Team shall be in default hereof. In the event of a default by the Team, at its option, subject to the requirement to comply with Section 21, the Operator either may exercise such rights and remedies as are provided by law or equity, or at any time then or thereafter, the Operator may: (i) recover all damages provided by law or equity; or (ii) exercise any other right or remedy at law or in equity including, without limitation, obtaining an injunction and specific performance. In addition, the Operator shall have the right, but not the obligation, to render the performance required to cure a default by the Team and to charge the Team with all reasonable costs and expenses incurred in connection therewith together with interest thereon from the date incurred until paid at the Premium Rate. Subject

to the requirement to comply with Section 21, no remedy conferred herein upon the Operator shall be considered exclusive of any other remedy but shall be cumulative and in addition to all other lawful remedies.

20.1.2 Notwithstanding and prevailing over any contrary provision hereof, but subject to Section 21, if the Operator is not in default hereunder but the Team nonetheless plays a Home Game at another location or advertises or otherwise notifies the Operator that the Team will play a Home Game elsewhere than in the Facility, the Operator may seek an injunction, specific performance or other court order or may pursue any other lawful remedy to require the Team to play the Home Game in the Facility without need for notice to the Team or the expiration of any cure period with respect thereto.

## 20.2 Operator.

20.2.1 If (a) the Operator shall fail to observe or perform any of the provisions of this License and such failure is not cured within 30 days after notice by the Team to the Operator (or such longer period as is necessary for the Operator to cure the failure within a reasonable time in the exercise of due diligence), or (b) the Operator becomes in default of the Advertising Agreement, the Listing Agreement, the Suite Marketing Agreement or the Suns Office Lease at any

time that a Non-Affiliate is the operator of the Facility, then the Operator shall be in default hereof and without further notice, subject to the requirement to comply with Section 21, the Team may at any time thereafter: (i) recover all damages and losses resulting from the default; or (ii) effect a cure on the Operator's behalf and all costs and expenses so incurred by the Team together with interest at the Premium Rate shall be due and payable by the Operator on demand by the Team. Subject to the requirement to comply with Section 21, no remedy conferred herein upon the Team shall be considered exclusive of any other remedy but shall be cumulative and in addition all other lawful remedies.

20.2.2 Notwithstanding and prevailing over any contrary provision hereof, but without limiting the rights and obligations of the parties under Section 3.1.12 of the Assurance Agreement, and subject to Section 21 hereof, if the Team is not in default hereof but the Operator or the City nonetheless obstructs or in any other manner attempts to prevent the Team from using the Facility for a Home Game, or the Operator otherwise fails to make the Facility ready for a Home Game as herein required, the Team may seek an injunction, specific performance or other court order or may pursue any other lawful remedy to enable the Team to use the Facility for the Home Game without need for notice to the Operator or the expiration of any cure period with respect thereto.

20.3 Termination Waiver. Notwithstanding and prevailing over any contrary provision hereof, it is intended that this License shall not be subject to termination whether because of a default or otherwise except as provided in the Assurance Agreement. As to all other events and circumstances, each of the parties waives its right to terminate this License, albeit each party shall have the other rights and remedies set forth in this License.

21. Dispute Resolution. In the event of any default, breach or other dispute between the parties in connection with this License (collectively, the "Dispute"), the parties shall comply with the following procedures (all of which shall collectively be referred to as "ADR"): Within seven (7) Business Days after written request (the "Request") by either party, the parties promptly shall hold an initial meeting to attempt in good faith to negotiate a settlement of the Dispute. No Request concerning a Dispute may be made after the time allowed by any statute of limitations applicable to such Dispute. If within ten (10) days after the Request, the parties have not negotiated a settlement of the Dispute, the parties jointly shall appoint a mutually acceptable neutral person who is not affiliated with either of the parties, the Team or the City (the "Neutral"). If the parties are unable to agree upon the appointment of the Neutral within fourteen (14) days after the Request, either party may request the American

Arbitration Association or its successor ("AAA") to select the Neutral or may cause both parties to submit to any procedures of AAA to select the Neutral, including without limitation the selection of AAA as the Neutral. In order to resolve the Dispute, the parties shall develop a non-binding alternative dispute resolution procedure such as mediation or facilitation (the "Mediation") with the assistance of the Neutral. The Neutral shall make the decision as to how, when and where the Mediation will be conducted if the parties have been unable to agree on such matters by the earlier of seven (7) Business Days after the appointment of the Neutral or twenty-one (21) days after the Request. The parties shall participate in good faith in the Mediation to its conclusion. If the parties resolve their Dispute through their own negotiations or in the Mediation, the resolution shall be reduced to the form of a written settlement agreement which shall be binding upon both parties and shall preclude any litigation with respect to such Dispute. If the parties have not resolved the Dispute through the Mediation within thirty (30) days after the Request, then at any time thereafter and prior to resolution of the Dispute by the Mediation, upon written demand by either party, the Mediation shall cease and the Dispute shall be submitted to arbitration (the "Arbitration") for resolution by an arbitrator or a panel of arbitrators whose number shall be determined and who shall be selected and shall conduct the Arbitration in accordance with the rules of AAA. If the Arbitration results



in a determination by the arbitrator(s) that an Event of Default has occurred, the provisions of Section 20 shall govern the damages and other remedies which may be implemented or ordered by the arbitrator(s). Neither the requirement to utilize nor the pendency of any ADR procedures shall in any way invalidate any notices or extend any cure periods applicable to an Event of Default as provided in Section 20. Except as expressly provided to the contrary in this Section 21 or elsewhere herein, these ADR procedures require that the parties use these ADR procedures exclusively rather than litigation as a means of resolving their disputes hereunder or to determine the consequences of an Event of Default and the implementation of the remedies therefor as provided in Section 20. Notwithstanding any other provision of this Section 20 to the contrary, in the event either party may wish to seek interim relief, whether affirmative or prohibitive, in the form of a temporary restraining order or preliminary injunction or other interim equitable relief concerning a Dispute, including without limitation declaratory relief, provisional remedies, special action relief, stay proceedings in connection with special action relief and any similar relief of an interim nature, either before beginning the ADR procedures or at any point in the ADR procedures concerning such Dispute, such party may initiate the appropriate litigation to obtain such relief ("Equitable Litigation"). Nothing herein shall be construed to suspend or terminate the obligation of both parties promptly to

proceed with the ADR procedures to completion while such litigation and any appeal therefrom is pending. Notwithstanding any contrary provisions of rules 65(a)(2) of the Arizona Rules of Civil Procedure or Rule 65(a)(2) of the Federal Rules of Civil Procedure as either rule currently exists or may be amended, the parties agree there shall be no consolidation of any hearing for preliminary injunction in the Equitable Litigation with a trial of an action for permanent injunction on the same matter. Regardless of whether such interim relief is granted or denied or such Equitable Litigation is pending or any appeal is taken from the grant or denial of such relief, at all times the parties shall diligently proceed to complete the ADR procedures. Any interim or appellate relief granted in such Equitable Litigation shall remain in effect until, and only until, the ADR procedures concerning the Dispute that is the subject of such Equitable Litigation result in a settlement agreement or the issuance of an Arbitration award. Such written settlement agreement or award shall be the final determination on the merits of the Dispute (including but not limited to any equitable relief and monetary damages but excluding any award of attorneys' fees in the Equitable Litigation), shall supersede and nullify any decision in the Equitable Litigation on such merits and shall preclude any subsequent litigation on such merits, notwithstanding any determination to the contrary in connection with any Equitable Litigation granting or denying interim

relief or any appeal therefrom. The parties agree that any Disputes which arise out of such a written settlement agreement or award during the term of this License shall be resolved exclusively by the procedures set forth in this Section 21, provided that either party may institute legal proceedings in a court of competent jurisdiction to enforce judgment upon an Arbitration award in accordance with A.R.S. § 12-1501 et seq. or other applicable law. The fees and costs of the Neutral and AAA in the Mediation shall be an Operating Expense; provided, however, that the prevailing party in Arbitration shall be entitled to recover from the other party's own assets, and not from Facility Revenue, in addition to any other remedy, reimbursement for any costs of such proceeding, reasonable attorneys' fees, reasonable costs of investigation and any other expenses incurred in connection with the Arbitration or the Mediation. Any such recovered costs and expenses in such Arbitration shall not be included as Operating Expenses or paid from Facility Revenue.

22. Miscellaneous.

22.1 Relationship. The Team legally shall be considered as an independent contractor. The Team, its employees, agents, contractors and guests, shall not be considered employees or agents of the Operator or to have been authorized hereby to incur any expense on behalf of the

Operator or to act for or to bind the Operator or the Facility. Neither the Team nor the Operator shall be liable for any acts, omissions or negligence on the part of the other party, its employees or agents, resulting in either personal injury or property damages. The Operator and the Team shall not be construed to be either partners or joint venturers in the operation of the Facility or the conduct of the Team. The relationship created hereby is solely that of licensor-licensee, not that of landlord-tenant and the Team has no possessory or other interest or estate in the Facility other than the non-exclusive right to use it as provided in this License.

22.2 Subordination. At the Operator's option, this License shall be subordinate to any ground or other lease, mortgage, deed of trust or any other hypothecation for security (collectively "Encumbrance") now or hereafter placed upon the Facility or the Operator's interest in the Operating Agreement or the DDA, and to any and all advances thereunder and all renewals, modifications, consolidations, replacements and extensions thereof. Such subordination shall be effective only if the holder of the Encumbrance agrees to be bound by this License and to recognize and not disturb the Team's right to use the Facility as herein provided. If any such Encumbrance holder shall elect to have this License prior to the lien of its Encumbrance, and shall issue written notice thereof to the

Team, this License shall be deemed prior to such Encumbrance. The Team shall execute any agreement required to effectuate such subordination or to make this License prior to the lien of any Encumbrance, as applicable, and if the Team fails to do so within ten days after written demand, the Team irrevocably appoints the Operator as the Team's attorney-in-fact and in its name, place and stead, to do so.

22.3 Assurance. The Operator covenants that if, and so long as, the Team keeps and performs the provisions of this License, the Team peacefully and quietly shall enjoy its rights under this License with respect to the Facility, as such rights are defined, set forth and limited by this License and the Assurance Agreement, without hindrance or interference by the Operator or by any other person lawfully claiming the same by, through or under the Operator or the City.

22.4 Force Majeure. Except as provided in Sections 16 or 17, failure in performance by either party hereunder shall not be deemed an Event of Default, and the nonoccurrence of any condition hereunder shall not give rise to any right otherwise provided herein, when such failure or nonoccurrence is due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental

restrictions; unusually severe weather; inability (when both parties are faultless) of any contractor, subcontractor or supplier; acts or the failure to act, of any public or governmental agency or entity or any other causes beyond the control and without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause; provided, however, that if notice by the party claiming such extension is sent to the other party more than 30 days after the commencement of the cause, the period shall be deemed to commence 30 days prior to the giving of such notice. The period of delay due to any such cause shall be an Abatement Period. Times of performance under this Agreement may also be extended as mutually agreed upon in writing by the Operator and the Team. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure a default hereunder.

22.5 Notices. All notices and other communications pursuant to this License shall be in writing to the Operator c/o the Operator Designate or to the Team c/o the Team Designate, as applicable, and shall be deemed properly given if sent by personal delivery or by certified United

States mail, postage prepaid, return receipt requested,  
addressed as follows:

Team Designate:

The Phoenix Suns  
2910 North Central Avenue  
Phoenix, Arizona 85012  
Attention: President of  
General Partner

Operator Designate:

Phoenix Arena Development  
Limited Partnership  
2800 North Central Avenue  
Suite 1200  
Phoenix, Arizona 85004  
Attention: Arena Manager

Each party may by notice to the other specify a different address for subsequent notice purposes. Notice shall be deemed effective on the date of actual receipt or three days after the date of mailing, whichever is earlier. A copy of all notices issued hereunder shall be transmitted simultaneously to the City in the manner provided in the Assurance Agreement.

22.6 Attorneys' Fees. If either party hereto shall initiate, intervene in or is brought into any action at law or equity, whether in ADR, arbitration, court or otherwise, against or involving the other, which is in any way connected with this License, its interpretation or enforcement, then the party hereto which prevails in any such action shall recover and receive from the other party reasonable attorneys' fees, court costs and expenses as determined by the arbitrator, court or administrative agency and not by the jury, whether in ADR, arbitration, courts or agencies of original, appellate or bankruptcy jurisdiction, provided that nothing in this

Section 22.6 shall be construed to permit any action or proceeding not permitted under Section 21 of this License.

22.7 Interest. Except for the payment described in Section 2.3, the interest as to which shall be as provided in the Operating Agreement, any amounts which may be owed to either party by the other pursuant to this License whether as Fees, damages or otherwise, shall bear interest from the due date until paid at the Premium Rate. Payment of such interest shall not excuse or cure any default.

22.8 Severability. If any provision of this License is determined to be illegal or unenforceable by an arbitrator or by a court of competent jurisdiction, this License shall remain valid as if such provision had not been contained herein unless the omission of such provision permits the Team to terminate this License in accordance with the provisions of the Assurance Agreement.

22.9 Reasonableness. Whenever in this License the consent or approval of the Operator or the Team is required, unless expressly stated to the contrary, the granting of such consent or approval shall be governed by a standard of reasonableness. If either party contends that the standard has not been met, the matter shall be resolved as provided in Section 21. In the event that such resolution results in the



determination that the action was unreasonable, such determination shall not constitute a default of this License, operate to terminate it or give rise to any right to damages as a result thereof, but the sole remedy shall be limited to specific performance and the recovery of reasonable attorneys' fees and costs (including the fee of the arbitrators) in such resolution procedure.

22.10 Interpretation. This License, together with the Affiliated Agreements to the extent applicable, constitute the entire understanding of the parties with respect to the subject matter of this License. There are no oral or written statements, representations, agreements, understandings or surrounding circumstances which modify, amend or vary any of the provisions hereof. Except as provided in Section 22.11, all prior and contemporaneous representations, negotiations and agreements are superseded and replaced hereby and by the Affiliated Agreements to the extent applicable. All attachments hereto shall be deemed to have been incorporated herein so as to become a part of this License. This License shall not be amended or modified, and rights hereunder shall not be waived except with the prior approval of the City, and any attempt to amend, modify or waive any of the terms or provisions of this Lease without prior City approval shall be void. This License shall extend to and be binding upon the representatives, successors and assigns of the respective

parties hereto including, without limitation, any successor, assign or replacement of the Operator as the operator of the Facility whether pursuant to the Operating Agreement or otherwise. This License shall continue in effect notwithstanding, and neither this License nor the Team's rights hereunder shall be adversely affected by, a default under or termination of the Operating Agreement or any other agreements between the Operator and the City. The parties hereto mutually understand and declare that time is of the essence of this License. Section 19.14 of the Operating Agreement is incorporated herein by this reference.

22.11 Restatement. This License is a clarification and restatement of the original License between the parties dated as of July 19, 1989 (the "Initial License"), and each of the Affiliated Agreements is a clarification and restatement of the respective original Affiliated Agreements dated as of July 19, 1989 (the "Initial Affiliated Agreements"), all of which shall remain effective as restated. The Initial License and the Initial Affiliated Agreements contained inadvertent definitional, typographical, textual and other errors, omissions and inconsistencies. This License and the Affiliated Agreements have been prepared and executed so as to correct and eliminate such unintended errors, omissions and inconsistencies and thereby to clarify and restate the intentions of the parties. All references to this License and

to the Affiliated Agreements shall refer to the Initial License and the Initial Affiliated Agreements as clarified by this first restatement and by the first restatements of the Affiliated Agreements of even date herewith. Each of the parties warrants to the other, effective upon this restatement, that: (a) each of its authorizations, consents and approvals contained or referred to in the initial instruments is valid and effective, and each of its warranties contained in the initial instruments is correct and effective, and each of its covenants contained in the initial instruments is binding and effective, all as restated in this License and each of its covenants contained in the initial instruments is binding and effective, all as restated in this License and in the Affiliated Agreements to the same extent as if this restatement and the restatements of the Affiliated Agreements had been executed on July 19, 1989; (b) it agrees with, approves of and consents to all of the terms of the restatements of this License and the Affiliated Agreements; and (c) no further actions or proceedings are required to be taken by it to authorize this License and the Affiliated Agreements as restated.

22.12 No Amendment. No covenant, obligation or other provision of this License may be modified, amended or waived without the prior consent of the City and any attempt to do so shall be void.

22.13 Governing Law. This License shall be construed in accordance with and pursuant to the laws of the State of Arizona and all disputes arising out of this License shall be resolved in the appropriate forum in Arizona.

23. Liability Limitation.

23.1 Team. Notwithstanding and prevailing over any contrary provision or implication in this License, except for their criminal acts with respect hereto (i.e., acts which would constitute crimes were they prosecuted therefor and convicted thereof), the officers, directors, shareholders, employees, agents and limited partners of the Team (collectively "Team Personnel"), shall not in any way be liable under or with respect to this License; no deficiency or other monetary or personal judgment of any kind with respect to liability arising hereunder or with respect hereto shall be sought or entered against any of the Team Personnel; no judgment with respect to liability arising hereunder or with respect hereto shall give rise to any right of execution or levy against the assets of any of the Team Personnel other than their interest in the Team; and the liability of the Team hereunder shall be limited to the assets of the Team and its general partner.

23.2 Operator. Notwithstanding and prevailing over any contrary provision or implication in this License, except for their criminal acts with respect hereto (i.e., acts which would constitute crimes were they prosecuted therefor and convicted thereof), the officers, directors, shareholders, employees, agents and limited partners of the Operator (collectively "the Operator Personnel"), shall not in any way be liable under or with respect to this License; no deficiency or other monetary or personal judgment of any kind with respect to liability arising hereunder or with respect hereto shall be sought or entered against any of the Operator Personnel; no judgment with respect to liability arising hereunder or with respect hereto shall give rise to any right of execution or levy against the assets of any of the Operator Personnel other than their interest in the Operating Agreement or in the Facility, if any; and the liability of the Operator hereunder shall be limited to the assets of the Operator and its general partner.

23.3 City. Notwithstanding and prevailing over any contrary provision or implication in this License, the Team and the Operator acknowledge that this License imposes no obligations upon the City unless, until and only if the City expressly assumes in writing the obligations of the Operator as provided in the Operating Agreement; that the City is an express third party beneficiary of this License; that in the

event of a default under this License, of any kind or nature whatsoever, the Team shall look solely to the Operator at the time of the default for remedy or relief; and that no member, elected official, other official, employee, agent, independent contractor or consultant of the City shall be liable to the Team, or any successor in interest to the Team, in the event of any default or breach by the Operator for any amount which may become due to the Team, or any successor in interest to the Team, or on any other obligation under the terms of this License, except for their criminal acts with respect hereto (i.e., acts which would constitute crimes were they prosecuted therefor and convicted thereof).

IN WITNESS WHEREOF, the parties have hereunto set their hands to be effective as of July 19, 1989.

Operator:

PHOENIX ARENA DEVELOPMENT  
LIMITED PARTNERSHIP,

By Phoenix Arena Development  
Corporation, an Arizona  
corporation, General Partner,

By: Richard H. Dozer  
Richard H. Dozer  
President

Team:

PHOENIX SUNS LIMITED  
PARTNERSHIP,

By JDM Sports, Inc., an  
Arizona corporation,  
General Partner

By: Jerry J. Colangelo  
Jerry J. Colangelo  
President

STATE OF ARIZONA     )  
                                  )   ss.  
County of Maricopa    )

The foregoing instrument was acknowledged before me on this 26 day of September, 1989, by Jerry J. Colangelo as president of JDM Sports, Inc., an Arizona corporation, on behalf of the corporation as the general partner of the Phoenix Suns Limited Partnership, a Delaware limited partnership, on behalf of the partnership.

  
Notary Public

My Commission Expires:

~~My Commission Expires Jan. 25, 1992~~

STATE OF ARIZONA     )  
                                  )   ss.  
County of Maricopa    )

The foregoing instrument was acknowledged before me on this 26 day of September, 1989, by Richard H. Dozer as the president of Phoenix Arena Development Corporation, an Arizona corporation, on behalf of the corporation as the general partner of Phoenix Arena Development Limited Partnership, a Delaware limited partnership, on behalf of the partnership.

  
Notary Public

My Commission Expires:

~~My Commission Expires Jan. 25, 1992~~

SCHEDULE "1"

Definitions

As used in this License, the following terms shall have the following meanings:

1. "ADR" means the alternative dispute resolution procedures provided in Section 21 of this License.

2. "Abatement Period" means any period during which the License Term or the time for performance or the satisfaction of a condition is extended as provided by Sections 16, 17 and 22.4 of this License and as defined in and provided by the Operating Agreement and the Related Agreements.

3. "Additions" means permanent alterations or improvements to the Facility other than those included in the "Scope of Development" or "Change Orders" as defined by and constructed pursuant to the DDA regardless of whether paid for by the Operator or the Team.

4. "Advertising" means announcements, acknowledgments, banners, signs and other visual commercial messages displayed in the Facility excluding Sponsor Signs.

Schedule 1-1



5. "Advertising Agreement" means the Advertising Agreement between the Operator and the Team, attached to the DDA and dated as of July 19, 1989, as restated of even date herewith.

6. "Affiliate" shall have the meaning set forth in the Operating Agreement as restated of even date herewith (no amendment of that definition shall be effective hereunder or binding on the Team).

7. "Affiliated Agreements" means the Operating Agreement, the DDA and the Related Agreements.

8. "Arena" means the multipurpose arena in Phoenix, Arizona, as described in the DDA and depicted in the Facility Site Plan attached as Schedule "2" to this License.

9. "Arena Garage" means the parking structure included within the Facility as described in the DDA and depicted in Schedule "2" to this License.

10. "Arena Store" means that portion of the Facility which is described in and leased to the Team by the Operator pursuant to the Suns Office Lease.

Schedule 1-2

11. "Assurance Agreement" means the Downtown Multipurpose Arena Assurance Agreement among the Team, the City and the Phoenix Suns Marketing Limited Partnership, attached to the DDA and dated as of July 19, 1989, as restated of even date herewith.

12. "Basketball Season" means the period of the NBA basketball season as established from time to time by the NBA for the playing of pre-season, regular and play-off Home Games (presently October of each year through June of the following year).

13. "Business Days" means any Monday, Tuesday, Wednesday, Thursday or Friday excluding City holidays.

14. "City" means the City of Phoenix, a municipal corporation of the State of Arizona, and any of its administrative departments, divisions and functions and its successors and assigns.

15. "City Events" means Events which are conducted, sponsored or co-sponsored by the City in accordance with and as defined by the Operating Agreement.

Schedule 1-3

16. "Common Area" means the hallways, corridors, stairways, elevators, public restrooms, restaurant and other portions of the Facility depicted as such in Schedule "3" hereto, and such additional portions of the Facility as hereafter may be designated by the Operator from time to time for shared use by the users of the Facility.

17. "Communication System" means all audio and visual communication systems including, but not limited to, the scoreboards, television and loudspeaker systems, public address system, timers, clocks, message center, video screens, signs and marquees within or at the Facility.

18. "Completion Notice" means the notice which the Operator shall issue to advise the Team of the date when the Facility has been substantially completed as provided in the DDA, a certificate of occupancy has been issued and the Facility is ready for the playing of the Home Games as provided in the DDA (collectively "Completion"). The Operator shall issue the Completion Notice no later than five days after the date of Completion and may issue the Completion Notice in advance of the Completion, in which latter event, the date of the Completion Notice shall be deemed to be the later of the date of actual Completion or the date of Completion as set forth in the Completion Notice.

Schedule 1-4

19. "Complimentary Tickets" means (i) Tickets in an amount not exceeding 3.5 percent of the ticket manifest capacity of the Facility for each Home Game which are exchanged for goods or services to the Team or the Facility, or are transferred without charge; and (ii) Tickets issued in the exercise of the Team's reasonable discretion for the following purposes: (a) an unlimited number of Tickets to charities and credentialed media, (b) an unlimited number of Tickets pursuant to the ticket exchange program by which unused Tickets for prior Home Games are exchanged for Tickets to future Home Games, and (c) no more than the required minimum number of Tickets to NBA players and other personnel pursuant to NBA rules and regulations.

20. "Construction Start Date" has the meaning set forth in the DDA.

21. "DDA" means the Downtown Multipurpose Arena Disposition and Development Agreement between the Operator and the City, dated as of July 19, 1989, as restated of even date herewith.

22. "Events" means all revenue or nonrevenue producing sports, entertainment, cultural, civic and other

Schedule 1-5

activities and events which are conducted at the Facility, not including the Home Games or the other activities of the Team described in Section 3 of this License.

23. "Facility" means the Arena, the Arena Garage and the Site as described in the DDA and depicted on Schedule "2" to this License.

24. "Fees" means the Use Fee and the other charges to be paid by the Team for the use of the Facility as provided in Section 5 of this License, excluding any Use Fee and any amounts payable by the Team under Sections 11 and 12 with respect to any period during which Home Games are not required hereunder to be played in the Facility and Home Games are not in fact played in the Facility.

25. "Franchise" means and includes membership in and all of the rights, privileges and powers granted by the NBA to the Team, and its successors and assigns, to operate a team and conduct Home Games as a member of the NBA.

26. "Hard Concessions" means programs (excluding program advertising), novelties, souvenirs and similar nonedible items distributed at the Facility (except, to the extent provided in any use agreement for a City Event, such

Schedule 1-6

nonedible items as are sold during such City Event and not sold in the Arena Store).

27. "Hard Concessions Revenue" means the gross amount of money received by the Team from the sale of Hard Concessions at the Home Games and from the Arena Store (provided that, with respect to programs, such amount shall be limited to the net amount received by the Team) after excluding (i) any exchange of merchandise with other stores of the Team, (ii) returns to shippers or manufacturers, (iii) cash or credit refunds to customers, (iv) sales of trade fixtures, machinery or equipment after use thereof in the conduct of the Team's business, and (v) Taxes. "Hard Concessions Revenue" does not include reasonable discounts on sales to employees of the Team through the Arena Store.

28. "Home Games" means all regular season games and all playoff games between the Team and other NBA teams for which the Team is the home team responsible for procuring the playing site. "Home Games" also include such of the exhibition games as the Team plays in Maricopa County, Arizona, but do not include (a) games in which the Team is the visiting team or (b) games between the Team and other NBA teams that are not played at the Facility (but are played at another location in

Schedule 1-7

Maricopa County) because of an isolated scheduling conflict or an emergency condition that renders the Facility unusable.

29. "License Commencement Date" means the date of the beginning of the License Term and shall be that date within 60 days after the Completion Notice as the Team shall select by notice to the Operator within that 60-day period. Notwithstanding the foregoing, if the Completion Notice is issued between March 1 and July 1, by notice to the Operator no later than ten days after the Completion Notice, the Team may elect to defer the License Commencement Date until not later than the first day of the next Basketball Season which commences in the Fall of the calendar year in which the Completion Notice is issued.

30. "License Expiration Date" means the date of the ending of the License Term and shall be that date which is 40 years after the July 1 immediately prior to the License Commencement Date. Subject to the rounding requirement hereafter described, the License Expiration Date shall be extended for a period equal to the aggregate of (a) every Abatement Period having a duration of at least 90 days (91 days if the last day of such period falls in a leap year), and (b) the period of time during which a portion of the City's

Schedule 1-8

Ordinary Operating Fee Payments have been paid to the Team as Restoration Loss Payments as provided in the Assurance Agreement. The duration of the extension of the License Expiration Date shall be rounded to the nearest half year so that the License Expiration Date shall occur either on July 1 or January 1. The License Expiration Date is subject to earlier termination as provided in Section 2.2 of this License including, without limitation, obsolescence termination as provided in Section 6.2.4 of the Assurance Agreement.

31. "License Term" means the period of the Team's right and obligation to use the Facility pursuant to this License beginning with the License Commencement Date and ending on the License Expiration Date.

32. "Liens" means encumbrances, security interests, pledges, claims, mechanics' and other liens arising out of work performed, materials furnished or obligations incurred by the Team in connection with the Facility.

33. "Listing Agreement" means the Listing Agreement between the Operator and the Phoenix Suns Marketing Limited Partnership, attached to the DDA and dated as of July 19, 1989, as restated of even date herewith.

Schedule 1-9



34. "NBA" means the National Basketball Association and any successor or substitute association or other entity of which the Team is a member or joint owner and which engages in professional basketball competition in a manner comparable to the NBA.

35. "Non-Affiliate" is any Operator which is not the Team, PADLP or an Affiliate of PADLP or the Team.

36. "Operating Agreement" means the Downtown Multipurpose Arena Operating Agreement between the Operator and the City, attached to the DDA and dated as of July 19, 1989, as restated of even date herewith.

37. "Operator" means PADLP, its successors and assigns.

38. "Operator Designate" is the person authorized to issue and receive notices on behalf of Operator with respect to this License and shall be the person so designated in Section 22.5 of this License or such alternate as the Operator may appoint by notice to the Team as therein provided.

39. "PADLP" means the Phoenix Arena Development Limited Partnership, a Delaware limited partnership.

Schedule 1-10

40. "Personnel Expense" means the wages and other compensation paid to the "Personnel" which are subject to reimbursement by the Team to the Operator as provided in Sections 10 and 12 of this License.

41. "Premium Rate" means the rate of interest equal to two percent in excess of the rate of interest announced from time to time by the Valley National Bank of Arizona, or its successor bank, as its "prime rate" of interest.

42. "Related Agreements" means the Assurance Agreement, the Advertising Agreement, the Listing Agreement, the Suite Marketing Agreement and the Suns Office Lease.

43. "Site" means the land under and surrounding the Arena and the Arena Garage as described in the DDA and depicted in Schedule "2" to this License.

44. "Soft Concessions" means items of food and drink dispensed at the Facility.

45. "Soft Concessions Revenue" means the gross amount of money received by the Operator from the sale of Soft Concessions at the Home Games after excluding (i) returns to shippers or manufacturers, (ii) cash or credit refunds to

Schedule 1-11

customers, (iii) sales of trade fixtures, machinery or equipment after use thereof in the sale of Soft Concessions, and (iv) taxes. "Soft Concessions Revenue" does not include discounts on sales to employees of Operator through an employee cafeteria, stand or designated area. The "Soft Concessions Limitation" shall be \$100,000.00 for the first Basketball Season during the License Term increased at the annual rate of three percent compounded annually for each subsequent Basketball Season during the License Term.

46. "Sponsor Signs" means banners, signs and other temporary, moveable displays in the Facility which identify the Team or the Sponsors and which are installed before and removed after each Home Game so as to be visible only during the Home Games.

47. "Sponsors" means the radio, television and other sponsors of the Team or the Home Games.

48. "Suite License" means the form of that certain Suite License Agreement for execution by suite licensees and the Operator which is attached as an exhibit to the DDA, and all such forms of agreement as are executed and in effect from time to time.

Schedule 1-12

49. "Suite Licensees" means the licensees who have executed Suite Licenses with the Operator for the use of the Suites.

50. "Suite Marketing Agreement" means the Suite Marketing Agreement between the Phoenix Suns Marketing Limited Partnership and the Operator attached to the DDA and dated as of July 19, 1989, as restated of even date herewith.

51. "Suites" means the approximate 110 box seat enclosures in the location depicted on Schedule "3" to this License.

52. "Suns Office Lease" means the Downtown Multipurpose Arena Office and Store Lease Agreement between the Operator and the Team, attached to the DDA and dated as of July 19, 1989, as restated of even date herewith.

53. "Taxes" means federal, state and local excise, sales, transaction privilege and other taxes commonly called "sales" or "admissions" taxes which are imposed on the Hard Concessions, the Tickets, the gross receipts of the Team or for the Team's admitting the public to, or for conducting the Home Games in, the Facility.

Schedule 1-13

54. "Team" means the Phoenix Suns Limited Partnership, a Delaware limited partnership, its successors and assigns.

55. "Team Designate" is the person authorized to issue and receive notices and to act for and to bind the Team in all matters concerning this License and shall be the person designated in Section 22.5 of this License or such alternate as the Team may appoint by notice to Operator as therein provided.

56. "Team Equipment" means furniture, fixtures and other moveable equipment placed by the Team in the Facility at its expense.

57. "Team Suite" means a Suite at such location and with such components and improvements as shall be agreed upon by Operator and the Team prior to the License Commencement Date. Once so agreed, a site plan of the Team Suite shall be attached as Schedule "4" to this License and thereafter all references in this License to "Team Suite" shall refer to the Suite, the components and improvements shown on Schedule "4."

58. "Thirtieth Anniversary Date" means the date 30 years after July 1 immediately prior to the License

Schedule 1-14

Commencement Date. Subject to the rounding requirement hereafter described, the Thirtieth Anniversary Date shall be extended for a period equal to the aggregate of (a) every Abatement Period having a duration of at least 90 days (91 days if the last day of such period falls in a leap year), and (b) the period of time during which a portion of the City's Ordinary Operating Fee Payments have been paid to the Team as Restoration Loss Amount Payments as provided in the Assurance Agreement. The duration of the extension of the Thirtieth Anniversary Date shall be rounded to the nearest half year so that the Thirtieth Anniversary Date shall occur either on July 1 or January 1.

59. "Ticket" means the certificate, license, badge, pass, press credentials and other indicia by which admission to the Facility for the Home Games is permitted and controlled.

60. "Ticket Receipts" means the gross amount of money received by the Team from the sale of the Tickets after first deducting therefrom all applicable Taxes but no other charges or costs. All money received from premiums and other charges for, or in any way related to the use of, club or other preferred seating, or related rights or privileges, before, at or after the Home Games shall be included in "Ticket

Schedule 1-15

Receipts." "Ticket Receipts" do not include the fees or other sums payable to Operator by the Licensees of the Suite Licenses but do include additional Tickets purchased by such Licensees plus any additional premiums or charges thereon.

61. "Use Fee" shall be five percent of the Ticket Receipts for each Home Game played at the Facility during the term of this License, provided that such fee shall not accrue or be payable with respect to any period during which Home Games are not required hereunder to be played in the Facility and Home Games are not in fact played in the Facility.

Schedule 1-16

Suns License

1306h\*

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SCHEDULE "2"  
Facility Site Plan

Schedule 2

Suns License

1306h\*

5344



SCHEDULE "3"

Facility Diagram

(To depict Common Area per Section 3 and Schedule 1-2)

Schedule 3

Suns License

1306h\*

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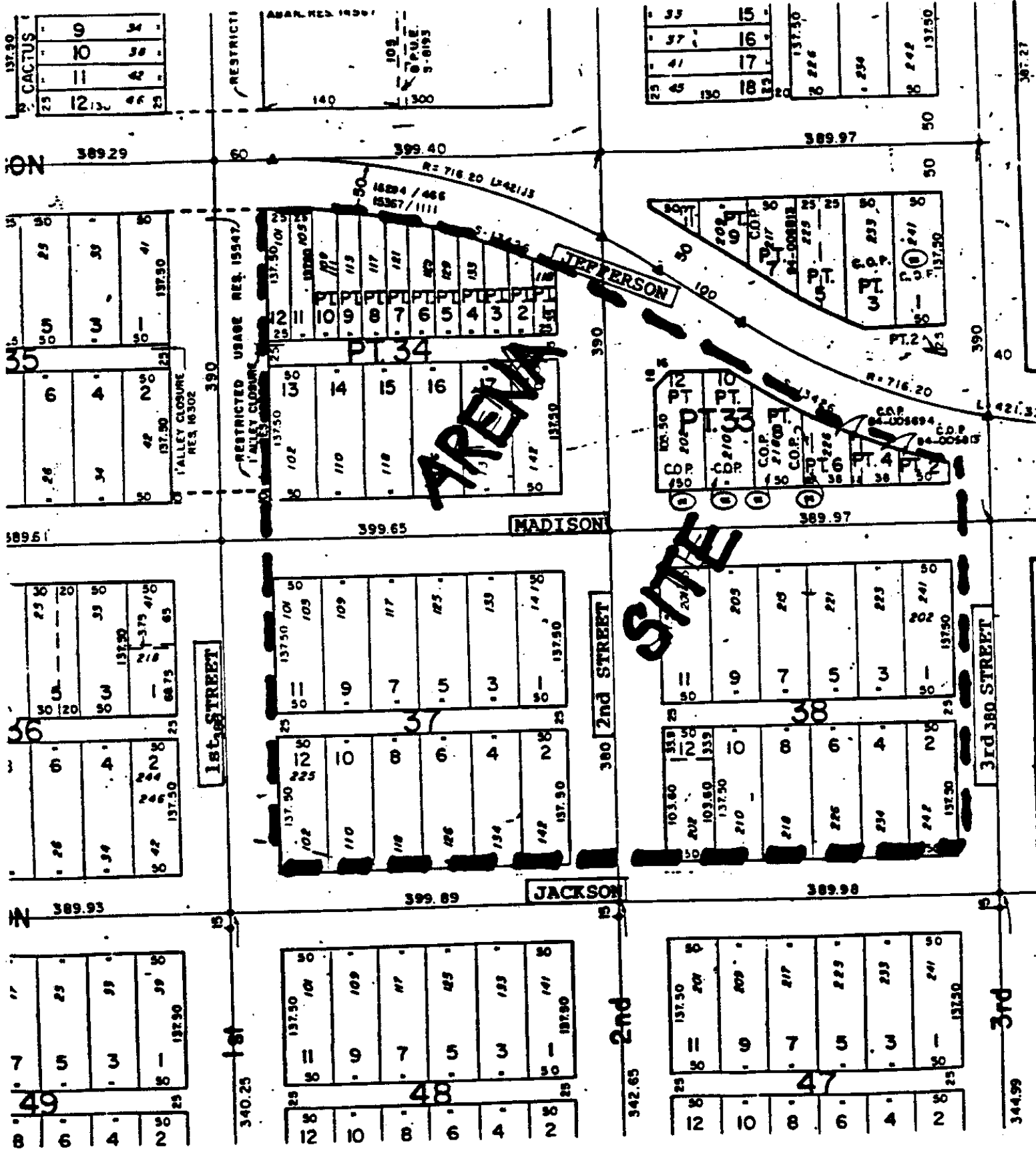
SCHEDULE "4"

Team Suite Site Plan

(To Be Completed)

Schedule 4

ARENA SITE



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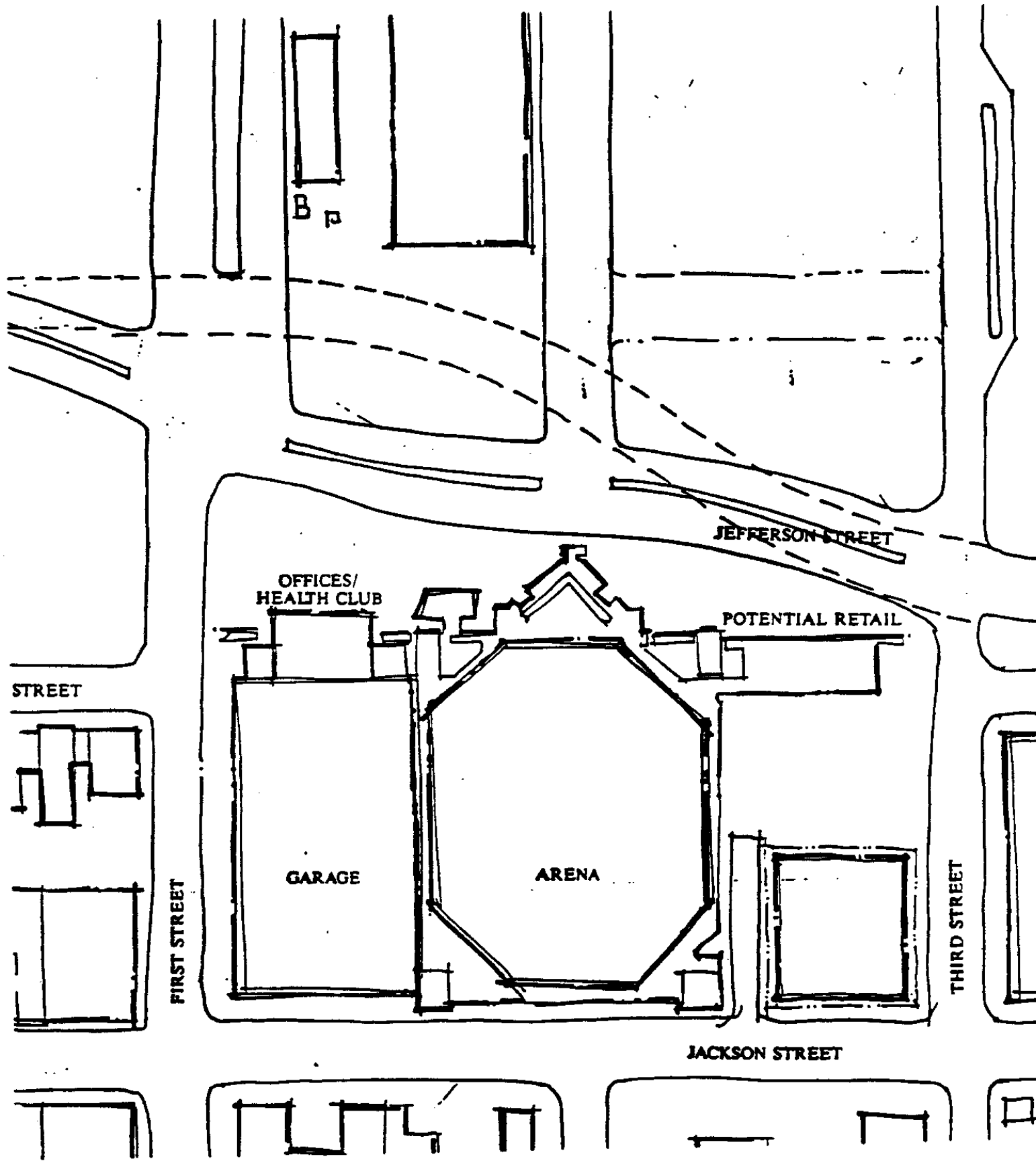


EXHIBIT D-82 (b)

GENERAL DESCRIPTION OF THE  
PROPOSED  
SPORTS ARENA SITE

Blocks 37 and 38, OFFICIAL PLAT OF THE ORIGINAL TOWNSITE OF PHOENIX, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps at page 51;

TOGETHER WITH that part of Blocks 33 and 34 in said OFFICIAL PLAT OF THE ORIGINAL TOWNSITE OF PHOENIX that lies Southerly of the South right of way line of realigned Jefferson Street.

Prepared May 15, 1989 in  
Technical Writer Section,  
Real Estate Division  
by HAROLD A. EGY,  
Real Estate Technical Writer II

*Harold A. Egy*

Checked *[Signature]* Date 5-16-89

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