

**Talking Stick Resort Arena Renovation Project
Term Sheet
December 5, 2018**

Recitals

- A.** The City of Phoenix, Arizona (“Phoenix”) and Phoenix Arena Development Limited Partnership (“Operator”) are Parties to the Downtown Multipurpose Arena First Restated Operating Agreement dated July 19, 1989, as amended (collectively, the “Operating Agreement”), and Related Agreements (as such term is defined in the Operating Agreement).
- B.** Under the Operating Agreement and the Related Agreements, Phoenix granted to the Operator the right to manage and operate Talking Stick Resort Arena and related office and practice facilities located at 201 East Jefferson Street, Phoenix (the “Facility” or “Talking Stick Resort Arena”). In turn, the Operator granted Suns Legacy Partners, LLC (“Team”) the right to use the Facility for home basketball games and practices and to sell Suites and certain Commercial Advertising.
- C.** The Operating Agreement’s Expiration Date is June 30, 2032. But the Operator may terminate the agreement effective June 30, 2022 if the Facility is determined to be obsolete, as provided in the agreements. Phoenix and the Operator are sometimes referred to individually as a “Party” and collectively as the “Parties.”
- D.** The Parties now desire to renovate the Facility and to extend the Expiration Date under the Operating Agreement. The preliminary scope for the project renovation is attached as Exhibit A, and this scope is referred to as the “Project” in this Term Sheet.
- E.** This Term Sheet sets forth the key terms, process, and framework by which the Parties shall negotiate an agreement regarding the potential financing, design, development, renovation, operation, use, maintenance, and repair of the Facility renovation. The Facility as renovated will continue to serve as the Team’s home, and it will continue to host a wide variety of events, including concerts, sporting events, family shows, and community-oriented events.
- F.** The Term Sheet will be presented to the City Council for consideration in December 2018. If the City Council approves this Term Sheet, the Parties shall

negotiate an amendment to the Operating Agreement (the “Amended Operating Agreement”) and any Related Agreements. The Parties shall prepare the Amended Operating Agreement consistent with the terms set forth in this Term Sheet, together with other agreed terms customarily included in similar agreements for comparable projects. The Parties shall finalize and sign the Amended Operating Agreement on or before December 31, 2018. If any inconsistency exists between the Amended Operating Agreement and this Term Sheet, the terms of the Amended Operating Agreement will govern and control.

- G.** The Parties intend that the Project will be undertaken as a cooperative, mutual endeavor in which the Parties actively work together in good faith and with due diligence.
- H.** This Term Sheet does not bind the Parties. The terms outlined below must be approved by City Council and the National Basketball Association (the “NBA”), and the Amended Operating Agreement must be signed by the Parties on or before December 31, 2018.

Terms

Capitalized terms used in this Term Sheet, but not otherwise defined, have the meanings set forth in the Operating Agreement and Related Agreements.

- 1. Effect.** The transaction outlined in this Term Sheet is intended to modify the Parties’ Operating Agreement and Related Agreements only as and to the extent specifically set forth in this Term Sheet. Except as specifically modified in this Term Sheet, all terms and conditions of the Operating Agreement and Related Agreements remain in full force and effect, including the Operating Agreement “waterfall” and rent provisions.
- 2. Renovation of Talking Stick Resort Arena.** The Parties shall renovate Talking Stick Resort Arena in accordance with this Term Sheet, as further described in Exhibit A. Phoenix’s investment in the renovation must be utilized for capital repairs, replacement, and improvements to the Facility’s infrastructure. This infrastructure includes, but is not limited to, basic building systems, such as mechanical, electrical, plumbing, and HVAC; building structural elements, such as the roof; vertical circulation and concourse circulation; essential building components, such as replacement of the Facility commissary; health-and-safety improvements; building security and technology

infrastructure; and other similar features related to the Facility's basic building functions (collectively "Infrastructure").

2.1. Procurement. The renovation must be developed, designed, and constructed in accordance with Arizona's public works competitive-procurement law. The Operator is responsible for completing the renovation and all of the items identified in the Project. Phoenix may hire an owner's representative to monitor the expenditure of Phoenix's funds. The cost of the owner's representative will be reimbursed to Phoenix from the Project budget in an amount not to exceed \$500,000.

2.2. Cost. Phoenix and the Operator shall contribute the following amounts to fund the Project: (a) Phoenix shall contribute \$150,000,000 to renovate Facility Infrastructure; (b) the Operator shall contribute \$80,000,000 to renovate the Facility, and the Operator shall also pay all costs incurred to relocate and develop, design, and construct the Team's new practice facility. The Parties' respective contributions, regardless of financing mechanism used, are outside of—and unaffected by—the Operating Agreement "waterfall" and rent provisions.

2.2.1 The Operator is responsible for any total Project cost overruns in excess of \$230,000,000. Phoenix is not liable for any total project cost overruns once the contributions of Phoenix set forth in Section 2.2 have been exhausted.

2.2.2 The Operator's contribution may include a combination of equity and/or debt, provided that any debt must not be secured by the Facility or related real estate and that any payments on debt will not flow through the Operating Agreement waterfall.

2.2.3 The Parties shall proportionally deposit \$100,000,000 of Project funding into the Renewal and Replacement Account ("R&R Account"). Phoenix's contribution will be \$65,217,391, and the Operator's contribution will be \$34,782,609. As Project work progresses and the initial \$100,000,000 installment is drawn down, the Parties shall proportionally deposit additional installments into the R&R Account at Operator's written request, based on the draw schedule for the Project. The Operator shall pay and discharge all total Project cost overruns in excess of

\$230,000,000 in accordance with Section 2.2.1 above. Any cost savings on the Project must be deposited in the R&R Account.

2.2.4 Except as provided in this Term Sheet, each Party shall pay the fees and expenses of its own counsel and other consultants.

2.2.5 Notwithstanding anything in this Term Sheet or in the Amended Operating Agreement to the contrary, either Party may terminate the Amended Operating Agreement before the commencement of Project construction if either Party is prohibited by law from providing the Project funding set forth herein.

2.3 Limitation. Except as set forth in Section 4.2 below, Phoenix's share of the Facility renovation cost must not exceed \$150,000,000.

2.4 Schedule. Phoenix and the Operator shall work cooperatively and make all commercially reasonable efforts to complete Project construction on or before August 1, 2021. As soon as commercially practicable after this Term Sheet's execution, the Parties shall develop a detailed, comprehensive project schedule that depicts all of the tasks necessary to complete the Project ("Schedule"). The Schedule shall be included in the Amended Operating Agreement.

2.5 Project Security. The Operator shall require the Project general contractor to obtain performance and payment bonds for the Project. If Project costs exceed \$230,000,000 for the renovation, the Operator shall either deposit an amount equal to the anticipated cost overrun in the R&R Account or obtain a letter of credit in the same amount. Phoenix may draw down the account or letter of credit to cure any Operator failure to cover the cost overrun as required under the Amended Operating Agreement.

3. Team's Practice Facility. The Team shall construct a new practice facility within Phoenix's city limits by no later than October 1, 2021. The Team will privately own and operate the practice facility, and the practice facility is not subject to the terms of the Operating Agreement. The Team is solely responsible for all costs to acquire land for the practice facility and for all practice facility costs (including overruns). The practice facility's development, design, and construction are not subject to Arizona's public works competitive-procurement law. The Team is responsible for all practice facility operating,

maintenance, and repair costs. Phoenix is not obligated in any respect for the practice facility. The Team shall pay any and all applicable taxes for the practice facility, including property taxes.

4. Facility Renewal and Replacement Account. The Parties shall deposit the following amounts into the R&R Account for the uses set forth in the Operating Agreement (as amended hereunder):

4.1 Commencing one year after the date on which the renovation has been substantially completed, the Operator shall contribute \$1,000,000 annually for each of the next 12.5 years into the R&R Account, for a total, maximum contribution of \$12,500,000. All payments made by the Operator under this Section 4.1 will be outside of, and will not flow through, the Operating Agreement waterfall.

4.2 Commencing one year after the date on which the renovation has been substantially completed, Phoenix shall contribute \$2,000,000 annually for each of the next 12.5 years into the R&R Account, for a total, maximum contribution of \$25,000,000. All payments made by Phoenix under this Section 4.2 will be outside of, and will not flow through, the Operating Agreement waterfall.

4.3 If reasonably requested in writing by the Operator and approved by Phoenix, and except as otherwise limited by Section 4.2 above, amounts deposited into the R&R Account in accordance with this Section 4 may be used for capital repairs or replacement in addition to Capital Improvements (as defined in the Operating Agreement).

4.4 Any future capital expenditures exceeding the amounts outlined above will be negotiated by the Parties in good faith.

The Operator shall pay for capital repairs to Talking Stick Resort Arena from the R&R Account in accordance with the terms of the Operating Agreement. Any remaining balance in the R&R Account at the expiration or earlier termination of the Operating Agreement must be distributed to Phoenix.

5. Extension of Operating Agreement. The Operating Agreement's term ends June 30, 2032, subject to the obsolescence procedure outlined in section 6.2.4 of the Assurance Agreement. This Term Sheet supersedes the term and

obsolescence sections of the Assurance Agreement and Related Agreements as follows.

- 5.1 Term.** The Operating Agreement's term—including the Team's obligation to play all of its home basketball games at Talking Stick Resort Arena—is extended through June 30, 2037. The term may be extended for up to an additional five years at the Operator's request, in its sole discretion, by delivering a written request to Phoenix on or before December 31, 2035.
- 5.2 Obsolescence.** By developing, designing, and renovating the Talking Stick Resort Arena as outlined in this Term Sheet, the Parties have satisfied, in full, all of their respective obligations under the Assurance Agreement's obsolescence section. Therefore, that section is hereby deemed mutually rescinded, and it has no further force or effect.
- 5.3 Applicable Standard.** The Operator shall operate and maintain the Facility to meet all of its intended functions during the building's entire remaining life cycle and in accordance with the Operating Agreement. Phoenix retains the right to conduct a Facility audit/assessment to confirm that the Operator is satisfying all applicable operation-and-maintenance standards set forth in the Operating Agreement. The cost of the audit/assessment shall be paid solely by Phoenix and shall not be paid for or reimbursed from the R&R Account.
- 5.4 Assurance Agreement.** The Parties agree to amend the Assurance Agreement to extend the Team's obligation to play its home games in the Facility through the Expiration of the Term. Section 6.8.2 of the Assurance Agreement shall be further amended to provide that the Liquidated Damages Amount shall be commensurate with the amounts deposited by Phoenix in accordance with Section 2.2 of this Term Sheet, and in no event greater than \$200,000,000. The Assurance Agreement shall be further amended to delete Section 6.2.4 in its entirety.
- 5.5 Facility Revenue and Waterfall.** The Operator must continue to pay the Priority Operating Fee and Ordinary Operating Fee advance payments to Phoenix during the Term. If Phoenix is unable to fund its contributions to the Project or the R&R Account as required in the Amended Operating

Agreement, the Operator may fund the contributions on Phoenix's behalf ("Initial Project Funding Advance"). The Operator may then retain all Priority Operating Fee and Ordinary Operating Fee advance payments owed to Phoenix until the Initial Project Funding Advance has been repaid to the Operator.

5.6 The Operator's Debt Service Payments and both Parties' R&R Account Payments will no longer be included as part of the priority of payments in Operating Agreement Section 5.1.7. Notwithstanding the previous sentence, the Operator is entitled to include its existing Debt Service Payments in effect as of this Term Sheet's date until the existing debt has been paid in full (but not later than January 1, 2023).

5.7 The Team releases and forever discharges the Operator and Phoenix of and from all accrued, unpaid Suns Payments under the Operating Agreement. Accordingly, Section 5.2 of the Operating Agreement is deleted in its entirety. As of November 30, 2018, the accrued and unpaid Suns Payments equal \$169,374,421.

6. Community Benefits. The Parties shall discuss and implement a defined community-benefits program.

7. Approvals. This Term Sheet and the resulting amendment to the Operating Agreement must be formally approved by the Phoenix City Council and the NBA.

8. Miscellaneous. The Parties agree to consider in good faith potential modifications to the auditing thresholds and financial reporting dates in the

Operating Agreement. The Parties shall discuss a mutually agreeable marshalling plan for event trucks in the Amended Operating Agreement.

Dated December 5, 2018

[signature page to follow.]

THE CITY OF PHOENIX, ARIZONA

By: Ed Zurcher
Name: ED ZURCHER
Title: CITY MANAGER

PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP

By: _____
Name:
Title:


SUNS LEGACY PARTNERS, LLC

By: _____
Name:
Title:

THE CITY OF PHOENIX, ARIZONA

By: _____
Name:
Title:

PHOENIX ARENA DEVELOPMENT LIMITED PARTNERSHIP

By:  _____
Name: R. Sarver
Title: MANAGING PARTNER.

SUNS LEGACY PARTNERS, LLC

By:  _____
Name: R. Sarver
Title: MANAGER