

# CITY CLERK ORIGINAL

C-8531  
07/08/2013

## NON-RELOCATION AGREEMENT

This **Non-Relocation Agreement** (this "**Agreement**") is entered into as of July 8, 2013 (the "**Effective Date**"), by and between the City Of Glendale, an Arizona municipal corporation (the "**City**"), IceArizona Hockey Co. LLC, a Delaware limited liability company (the "**Team Owner**"), and IceArizona Manager Co. LLC, a Delaware limited liability company (the "**Arena Manager**").

### RECITALS

A. Team Owner and Arena Manager have represented to the City that, immediately subsequent to the closing of the purchase by the parent affiliate of Team Owner of all of the membership interests in Coyotes Newco, LLC and Arena Newco, LLC (the entities currently holding the Franchise (as defined directly below) and other assets relating to the Team (as defined directly below)) pursuant to a purchase agreement between IceArizona AcquisitionCo, LLC, a Delaware limited liability company and NHL Coyotes Holdings, LLC, a Delaware limited liability agreement (the "**NHL Purchase Agreement**") and then the substantially concurrent merger of Coyotes Newco, LLC with the Team Owner, the Team Owner will be the owner of the franchise (the "**Franchise**") for the operation of the NHL hockey team currently bearing the designation "Phoenix Coyotes" (the "**Team**").

B. The parties hereto desire to clarify, confirm and agree that following the transactions described in the immediately preceding recital the Team will play its Home Games at the Arena Facility, subject to the terms and conditions set forth in this Agreement and the terms of the Arena Lease and Management Agreement (as defined below); and

C. The parties hereto acknowledge and agree that they will derive a substantial benefit from the Team's use of the Arena Facility and have, accordingly, agreed to enter into this Agreement.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the Arena Manager and the Team Owner agree as follows:

1. **DEFINITIONS.** Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Arena Lease and Management Agreement (as defined below). The following terms as used herein shall have the following meanings:

"**Arena Lease and Management Agreement**" means the Professional Management Services and Arena Lease Agreement, dated as of the Effective Date, by and among the City, the Team Owner and the Arena Manager, as amended from time to time.

**“NHL Rules”** means the NHL constitution, as amended from time to time, and all then applicable NHL policies, procedures, provisions, rules, regulations, by-laws, articles, contracts and directives that govern the rights, duties, privileges and obligations of members of the NHL.

## **2. NON-RELOCATION OBLIGATIONS.**

During the Term, except as otherwise provided in the Arena Lease and Management Agreement:

(a) the Team Owner shall maintain its principal place of business in the City as a registered business in good standing under the laws of the State of Arizona;

(b) the Team Owner shall maintain the Franchise as a validly existing and participating NHL franchise under NHL Rules;

(c) the Team Owner shall not relocate, and not permit the relocation of, the Franchise outside of the City; and

(d) the Team Owner shall cause the Team to play all of its Home Games assigned to it under NHL Rules (which shall include Regular Season Games and Play-Off Games), at the Arena Facility; provided, however, the Team Owner shall be permitted to play what would otherwise be a Home Game at a location other than the Arena Facility only as follows:

(i) during such time that the conditions of both subsection (d)(i)(A) and subsection (d)(i)(B) below are satisfied:

(A) as provided in the Arena Lease and Management Agreement in connection with material damage or destruction to, or condemnation of, the Arena in whole or in part (such that such damage, destruction or condemnation prevents the reasonable use of the Arena by Team Owner for the purposes contemplated by the Arena Lease and Management Agreement) or due to a “Force Majeure” as defined in the Arena Lease and Management Agreement;

(B) if necessary and required in accordance with NHL Rules for reasons of public safety or because of rescheduling due to a Force Majeure event (including, without limitation, work stoppage caused by contract negotiations); provided, that if game that otherwise would have been a Home Game is played at a location other than the Arena Facility, the Team Owner shall share fairly with the City, in a proportionate manner based on their respective losses (which with respect to the City shall include lost sales, use or ticket taxes that would have been collected by the City in respect of the Home Game, including but not limited to, the City Surcharge and the Supplemental Surcharge, and all anticipated parking revenues), any compensatory payment made to the Team Owner in respect of the lost game(s) by the NHL or any other person; or

(ii) during a period in which NHL teams are playing no games, in which case, when League plays resumes, all remaining Home Games assigned to the Team under NHL Rules (be such games Regular Season Games or Play-off Games) shall be played at the Arena.

(e) Nothing in this Section 2 is intended to (nor does) alter the obligations of Arena Manager and Team Owner as set forth in the Arena Lease and Management Agreement.

### 3. TERM.

The “**Term**” of this Agreement shall commence on the Closing Date (as defined in the Arena Lease and Management Agreement) and shall be co-terminous with the Term of the Arena Lease and Management Agreement. Notwithstanding earlier execution of this Agreement, Team Owner’s obligations hereunder shall commence on the Closing Date (as defined in the Arena Lease and Management Agreement); and to the extent the Closing never occurs, then this Agreement shall be null and void.

### 4. DEFAULT.

A “**Team Default**” shall mean the violation of, or failure to comply with, any provision of Section 2; provided, however, that with respect to any such default, Team Owner and Manager shall be entitled to cure such default within 30 days after the Team Owner’s and the Arena Manager’s receipt from the City of notice of such breach. Any violation of, or failure to comply with, any provision of Section 2(d) that is not additionally in connection with a violation of Section 2(b) or Section 2(c) shall be a “**Home Game Default.**” In the event of a Home Game Default, the City’s remedies shall be as provided in the Arena Lease and Management Agreement. In the event of a violation of Section 2(a), the City shall have all remedies as provided in the Arena Lease and Management Agreement.

### 5. REMEDIES FOR TEAM DEFAULT

#### 5.1 City Remedies.

(a) The Team Owner acknowledges and agrees that a Team Default will cause the City irreparable harm, that money damages would not be a sufficient remedy for any such event, and that the City may, but is not required to, seek an injunction, specific performance, or other court order without any requirement for showing economic loss or the securing or posting of any bond in connection with such remedy.

(b) Alternatively upon the occurrence of a Team Default (which has not been cured as provided for in Section 4), the City may terminate this Agreement by written notice to Team Owner (a “**Team Default Notice**”) without any further obligation to the Team Owner, and recover from the Team Owner, as liquidated damages and not as a penalty, an aggregate amount in accordance with the schedule set forth on Exhibit “A” hereto (“**Liquidated Damages**”). The Team Owner, and the City acknowledge that it would be extremely difficult if not impossible to

ascertain the City's actual damages and that the amount specified on Exhibit "A" hereto is a reasonable forecast of just compensation to the City resulting from a Team Default under this Agreement and is not a penalty. The Team Owner and the City expressly agree that this provision is a material and bargained-for component of the consideration for this Agreement and that defining the remedies in the event of a Team Default is of mutual benefit to each of the Team Owner and the City. The Team Owner and the City further expressly agree not to contest, in any proceeding, the validity or enforceability of this provision and expressly and knowingly waive the right to do so. In the event that City invokes this Liquidated Damages provision, Team Owner's payment of such Liquidated Damages is the Team Owner's sole liability and entire obligation under this Agreement.

(c) The City shall have all other remedies specified in this Agreement.

5.2 Jurisdiction. Any litigation relating to or arising from this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in Maricopa County, Arizona and the Parties irrevocably submit to such exclusive jurisdiction and expressly waive all rights to seek venue in any other jurisdiction.

## 6. INDEMNIFICATION.

The Parties' indemnity obligations under this Agreement shall be the same as those set forth in Section 20 of the Arena Lease and Management Agreement.

## 7. REPRESENTATIONS AND WARRANTIES.

7.1 Representations and Warranties of the Team Owner and the Arena Manager. The Team Owner and the Arena Manager jointly and severally represent and warrant to the City that the statements below are correct and complete as of the Effective Date and will remain correct and complete at all times during the term of this Agreement.

(a) Valid Existence. Each of the Team Owner and the Arena Manager is duly organized, validly existing and in good standing under the laws of the state(s) of its organization and is duly authorized, qualified and licensed under the laws of the State of Arizona to carry on its business in the places and in the manner as presently conducted.

(b) Power. Each of the Team Owner and the Arena Manager has full right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. All limited liability company action of the Team Owner and the Arena Manager necessary to approve the execution, delivery and performance of this Agreement has been taken.

(c) No Conflict. The execution, delivery and performance of this Agreement by the Team Owner and the Arena Manager do not: (i) violate, conflict with, or result in, the breach of any provision of the Team Owner's or the Arena Manager's Articles of Organization or agreements among members; (ii) conflict with or violate any Applicable Law applicable to the Team Owner or the Arena Manager or any of their respective assets, properties or businesses; or (iii) conflict with, result in any breach of, constitute a default (or event which with the giving of

notice or lapse of time would become a default) under, require any consent under, or give to any other person any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage, indenture, contract, agreement, license, permit, authorization, franchise or other instrument or arrangement to which the Team Owner or the Arena Manager is a party or by which any of their respective assets or properties are bound or affected.

(d) Valid Execution and Binding Effect. Each of the Team Owner and the Arena Manager has duly executed and delivered this Agreement, and (assuming due authorization, execution and delivery by the City) this Agreement constitutes a legal, valid and binding obligation of each of the Team Owner and the Arena Manager enforceable against each of the Team Owner and the Arena Manager in accordance with its terms.

(e) Franchise Ownership; NHL Good Standing. Upon the closing of the NHL Purchase Agreement, the Team Owner will own the Franchise, and the Franchise will be in good standing with the NHL, and the Team Owner is in compliance with the NHL Rules, except as would not have a material adverse effect on the results of operations of the Team.

7.2 Representations and Warranties of the City. The City represents and warrants to the Arena Manager and the Team Owner (with respect to this Agreement only) that the statements below are correct and complete as of the Effective Date and will remain correct and complete at all times during the term of this Agreement.

(a) Valid Existence. The City is duly organized, validly existing and in good standing under the laws of the state(s) of its organization and is duly authorized, qualified and licensed under all Applicable Laws to carry on its business in the places and in the manner as presently conducted.

(b) Power. The City has full right, power and authority to execute and deliver this Agreement. This execution and delivery of this Agreement have been duly authorized and approved, and all action of the City and the City Council necessary to approve the execution and delivery of this Agreement has been taken.

(c) No Conflict. The execution, delivery and performance of this Agreement by the City do not: (i) violate, conflict with or result in the breach of any provision of the City's charter; (ii) conflict with or violate any Applicable Law applicable to the City or its assets, properties or activities; or (iii) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time would become a default) under, require any consent under, or give to any other person any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any lien on the assets or the properties of the City pursuant to any note, bond, mortgage, indenture, contract, agreement, license, permit, authorization, franchise or other instrument or arrangement to which the City is a party or by which any of its assets or properties are bound or affected.

(d) Valid Execution. The City has duly executed and delivered this Agreement, and (assuming due authorization, execution and delivery by the Team Owner and the Arena Manager).

## 8. MISCELLANEOUS.

8.1 Entire Agreement. This Agreement, together with the Arena Lease and Management Agreement and the Related Agreements, represents the entire agreement among the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations or agreements, written or oral, pertaining to the subject matter of this Agreement.

8.2 Amendments. No modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon the City, the Team Owner or the Arena Manager unless in writing signed by the City, the Team Owner or the Arena Manager, respectively.

8.3 Choice of Law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Arizona, without giving effect to conflict of laws provisions.

8.4 Severability; Interpretation. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Applicable Law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, such provision or portion thereof, only, shall be ineffective without in any manner invalidating or affecting the remaining provisions of this Agreement or the valid portion of such provision, which provisions are deemed severable.

8.5 No Implied Waivers. No waiver by a party of any term, obligation, condition or provision of this Agreement shall be deemed to have been made, whether due to any course of conduct, continuance or repetition of non-compliance, or otherwise, unless such waiver is expressed in writing and signed and delivered by the party granting the waiver, nor shall any forbearance by either party to seek a remedy for any breach by the other party be a waiver by such party of any rights or remedies with respect to such or any subsequent breach. No express waiver shall affect any term, obligation, condition or provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

8.6 Successors and Assigns. Each party binds itself and its successors and authorized assigns to the other and to the successors and authorized assigns of the other party with respect to all covenants of this Agreement. This Agreement may be assigned only to a Person who simultaneously is acquiring ownership of the Team and shall otherwise comply with the terms and conditions of the Arena Lease and Management Agreement.

8.7 Interpretation. The Parties agree that they have been represented by counsel during the negotiation, drafting, preparation and execution of this Agreement and, therefore,

waive the application of any law or rule of construction providing that ambiguities in a contract or other document will be construed against the party drafting such contract or document.

8.8 Notices. All notices, demands, certificates or other communications under this Agreement shall be in writing (except as expressly provided otherwise in this agreement) and shall be deemed to be delivered: (a) when actually received if personally delivered by hand or by reputable commercial overnight courier service; or (b) three (3) Business Days after deposit in the U.S. Mail, postage prepaid, certified mail, return receipt requested, and in each case properly addressed to the City or Team Owner, as follows:

**If to the City:**

City Manager  
City Of Glendale  
5850 W. Glendale Avenue  
Glendale, AZ 85301

With a copy (which shall not constitute notice) to:

City Attorney  
City of Glendale  
5850 W. Glendale Avenue  
Glendale, AZ 85301

**If to the Team Owner:**

IceArizona Hockey Co. LLC  
c/o IceArizona Acquisition Co. LLC  
5709 Val Verde Street  
Suite 100  
Houston Texas, 77057  
Attn: Avik Dey

With a copy (which shall not constitute notice) to:

Snell & Wilmer  
400 East Van Buren Street  
Phoenix, Arizona 85004  
Attn: Nicholas J. Wood Esq.  
Joyce Wright Esq.

**If to the Arena Manager:**

IceArizona Management Co. LLC  
c/o IceArizona Acquisition Co. LLC  
5709 Val Verde Street  
Suite 100  
Houston Texas, 77057

Attn: Avik Dey

With a copy (which shall not constitute notice) to:

Snell & Wilmer  
400 East Van Buren Street  
Phoenix, Arizona 85004  
Attn: Nicholas J. Wood Esq.  
Joyce Wright Esq.

Any party, by written notice to the other parties, may change its address for purposes of this Agreement.

8.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same fully executed agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

8.10 Survival. The payment obligations for amounts due and payable prior to the expiration or any other termination of this Agreement, and the rights and obligations for indemnification, shall survive the termination of this Agreement.

8.11 Recordation of Agreement and Amendments. This Agreement will be recorded in the Official Records of Maricopa County, Arizona, within ten (10) calendar days after its approval and execution by the City and Team Owner.

8.12 Conflict of Interest. Notice is hereby given of the applicability of A.R.S. § 38-511. As of the date hereof, the parties hereto acknowledge and agree that they are aware of no such applicable conflict of interest invoked by A.R.S. § 38-511.

8.13 Attorneys Fees. In the event of any controversy, claim or dispute between or among the parties arising from or relating to this Agreement, the prevailing party or parties shall be entitled to recover reasonable costs, expenses and attorneys' fees.

8.14 Immigration Law Compliance.

a. The Team Owner and the Arena Manager warrant, to the extent applicable under A.R.S. §41-4401, compliance with all federal and state immigration laws and regulations that relate to its employees, including, without limitation, A.R.S. §23-214(A) which requires registration and participation with the E-Verify Program.

b. A breach of the warranty set forth in clause (a) may be considered a material breach of this Agreement which could be subject to penalties up to and including termination of this Agreement to the extent such breach, under the facts and circumstances of such breach would have a material and adverse effect on the Team, Team Owner or the City.

c. The City retains the legal right to inspect the papers of the Team Owner and the Arena Manager to ensure that the Team Owner, the Team and the Arena Manager each are compliant with the warranty under this Section.

d. The City may conduct random inspections, and, upon the request of the City, the Team Owner and the Arena Manager will provide copies of papers and records of the Team Owner and the Arena Manager demonstrating continued compliance with the warranty under this Section.

e. The Team Owner and the Arena Manager each agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with the City in the exercise of its statutory duties and not deny access to their business premises or applicable papers or records for the purposes of enforcement of this Section.

f. Team Owner's and the Arena Manager's warranties and obligations under this Section to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this Section is no longer a requirement.

g. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

8.15 Iran and Sudan Prohibitions. Team Owner certifies under A.R.S. §§ 35-391 et seq. and 35-393 et seq., that it does not, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

*[Signature page follows.]*

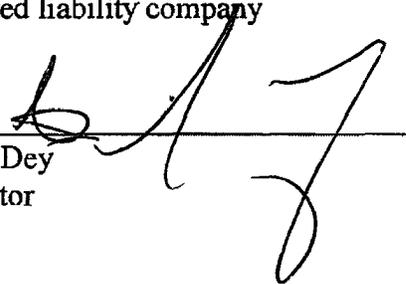
**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

**ARENA MANAGER:**

ICEARIZONA MANAGER CO., LLC, a Delaware limited liability company

By: Renaissance Sports & Entertainment, LLC, a Delaware limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: Avik Dey  
Its: Director

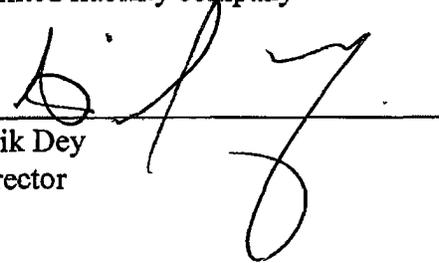


**TEAM OWNER:**

ICEARIZONA HOCKEY CO., LLC, a Delaware limited liability company

By: Renaissance Sports & Entertainment, LLC, a Delaware limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: Avik Dey  
Its: Director



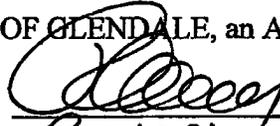
CITY:

CITY OF GLENDALE, an Arizona municipal corporation

By:

Name:

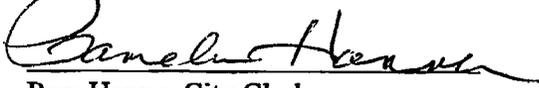
Its:



RICHARD A. BOWERS

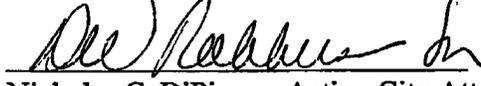
ACTING CITY MANAGER

ATTEST:



Pam Hanna, City Clerk

APPROVED AS TO FORM:



Nicholas C. DiPiazza, Acting City Attorney

**EXHIBIT A**

**LIQUIDATED DAMAGES**

NINE MILLION DOLLARS (\$9,000,000) for each Fiscal Year or partial Fiscal Year remaining during the Term of the Arena Lease and Management Agreement following a Team Default.