

Agreement Regarding Extended Payment of Owners' Fee

**C-8616
09/20/2013**

THIS AGREEMENT REGARDING EXTENDED PAYMENT OF OWNERS' FEE (this "Agreement"), dated as of September 20, 2013 (the "Effective Date"), is made and entered into by and between the National Hockey League, a joint venture organized as an unincorporated association not for profit (the "NHL"), and the City of Glendale, an Arizona municipal corporation (the "City").

Recitals

WHEREAS, Coyotes Newco, LLC, a Delaware limited liability company ("Coyotes Newco"), and Arena Newco, LLC, a Delaware limited liability company ("Arena Newco" and, together with Coyotes Newco, the "Owners"), and the City were parties to that certain 2010-2011 Arena Management and Operations Agreement (as amended, the "AMOA"), dated as of May 20, 2010 and as last amended as of September 11, 2013, pursuant to which, among other things, the Owners agreed to manage and operate Jobing.com Arena (the "Arena") and cause the NHL hockey franchise known as the Phoenix Coyotes (the "Team") to play its home games at the Arena, provided that the City funded the payment of a fee to the Owners not to exceed \$25,000,000.00 (the "Owners' Fee"), in order to give the City and the Owners sufficient time to consummate the sale of the Team to a new owner;

WHEREAS, in connection with the AMOA, the Owners, the City and Bank of America, National Association, a national banking association duly organized and existing under the laws of the United States of America (the "Escrow Agent"), entered into that certain Escrow Agreement (as amended, the "Escrow Agreement"), dated as of May 11, 2011 and as last amended as of September 11, 2013, pursuant to which, among other things, the City has previously deposited the sum of \$20,000,000.00 (the "Initial Payment") as a portion of the Owners' Fee and agreed to deposit an additional \$5,000,000.00 as the balance of the Owners' Fee (the "Final Payment" and, together with the Initial Payment and any Interest (as defined below) thereon, the "Escrow Fund") into an escrow account with the Escrow Agent (the "Escrow Account");

WHEREAS, Coyotes Newco and the NHL entered into that certain Assignment Agreement Regarding Owners' Fee Rights (the "Assignment"), dated as of August 5, 2013, pursuant to which Coyotes Newco conveyed, assigned, transferred and delivered to the NHL all of Coyotes Newco's right, title and interest in, to and under Coyotes Newco's rights to be paid the Owners' Fee and all Coyotes Newco's related enforcement rights under the AMOA and the Escrow Agreement (the "Owners' Fee Rights"), and the NHL accepted such assignment;

WHEREAS, as a result of such assignment, the NHL is currently entitled to be paid the entire Owners' Fee in the amount of \$25,000,000.00 pursuant to the terms of the AMOA, and the Owners have no rights to all or any portion of such Owners' Fee;

WHEREAS, NHL Coyotes Holdings, LLC, a Delaware limited liability company and the direct parent of the Owners, and IceArizona AcquisitionCo, LLC, a Delaware limited liability

company ("IceArizona"), have consummated a purchase agreement (the "Coyotes Purchase Agreement"), dated as of August 5, 2013, pursuant to which, upon the terms and subject to the conditions set forth in the Coyotes Purchase Agreement, IceArizona has purchased all of the membership interests in the Owners;

WHEREAS, the City has entered into that certain Professional Management Services And Arena Lease Agreement (the "Arena Lease"), dated as of July 8, 2013, with IceArizona Manager Co., LLC, a Delaware limited liability company ("IceArizona Manager"), and IceArizona Hockey Co., LLC, a Delaware limited liability company ("IceArizona Hockey"), which provides, among other things, for the lease, professional management, and use of the Arena, upon the terms and subject to the conditions set forth in the Arena Lease, all of which were effective as of August 5, 2013;

WHEREAS, the City has entered into that certain Non-Relocation Agreement (the "Non-Relocation Agreement"), dated as of July 8, 2013, with IceArizona Manager and IceArizona Hockey, which provides, among other things, for the Team to play its home games at the Arena, upon the terms and subject to the conditions set forth in the Non-Relocation Agreement;

WHEREAS, in connection with the transactions contemplated by the Coyotes Purchase Agreement, the Arena Lease and the Non-Relocation Agreement, the City has requested that the NHL, as assignee with respect to the Owners' Fee Rights pursuant to the Assignment, agree to extend the time for payment of the Owners' Fee such that the NHL will be paid the Owners' Fee in five (5) equal installments, and the NHL is willing to agree to such extension upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, concurrently with the execution of this Agreement, the NHL, the City and the Escrow Agent are entering into an amendment to the Escrow Agreement to conform to the terms of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and intending to be legally bound, the NHL and the City hereby agree as follows:

1. Extension of Payment Obligation. Notwithstanding anything in the AMOA to the contrary (it being understood that, to the extent the terms of this Agreement conflict with the terms of the AMOA, this Agreement shall supersede the AMOA and the AMOA shall be deemed to be amended accordingly), the Owners' Fee shall be paid as follows:
 - a. On the Effective Date (the "Initial Payment Date"), the NHL shall be permitted to draw the sum of \$5,000,000.00 from the Escrow Account in accordance with Article III of the Escrow Agreement (as amended in accordance with Section 2 of this Agreement).
 - b. On or after each of the first, second, third and fourth anniversaries of the Initial Payment Date (each such anniversary, a "Subsequent Payment Date"), the NHL

shall be permitted to draw the sum of \$5,000,000.00 (each, a "Draw") from the Escrow Account in accordance with Article III of the Escrow Agreement (as amended in accordance with Section 2 of this Agreement).

- c. To the extent that the Initial Payment Date or any Subsequent Payment Date would fall on a day other than a Business Day, such Initial Payment Date or Subsequent Payment Date shall be deemed to be the next Business Day. For purposes of this Agreement, the term "Business Day" shall mean any day other than a Saturday, a Sunday or any other day when banking institutions in New York, New York, Chicago, Illinois, or Glendale, Arizona, are authorized or required by law or executive order to be closed.
- d. Notwithstanding anything in the Escrow Agreement (as amended in accordance with Section 2 of this Agreement) to the contrary, all net earnings from any investment of the funds held in the Escrow Account, including but not limited to interest, dividends, distributions, gains, capital gains, and the like ("Interest") earned with respect to the Escrow Fund from and after the date the Escrow Account was established (as such Escrow Fund may be reduced from time-to-time by annual draws in accordance with Section 1(a) and Section 1(b) of this Agreement and the Escrow Agreement (as amended in accordance with Section 2 of this Agreement) or other permitted withdrawals by the Escrow Agent) shall belong to, inure to the benefit of, and be paid to the City. The City shall receive accrued and unpaid Interest from the Escrow Account at the same time that the NHL makes a Draw in accordance with Section 1(b) of this Agreement and the terms of the Escrow Agreement (as amended in accordance with Section 2 of this Agreement); provided, that the amount, if any, of accrued and unpaid Interest the City shall receive from the Escrow Account at any time shall be limited to an amount such that immediately following such receipt and assuming timely payment by the City of the Final Payment, the amount of the Escrow Fund remaining in the Escrow Account shall be no less than the amount necessary to satisfy in full the remaining Draws by the NHL.
- e. At any time from and after the Effective Date, in accordance with the terms of the Escrow Agreement (as amended in accordance with Section 2 of this Agreement), the City, in its sole discretion, shall have the right to direct the investment of the Owners' Fee then being held by the Escrow Agent. Such investment shall be in accordance with the Escrow Account Investment Selection Form attached as Exhibit B to the Escrow Agreement (as amended in accordance with Section 2 of this Agreement).
- f. Not later than the third anniversary of the Initial Payment Date, the City shall deposit an additional \$5,000,000.00 into the Escrow Account as the City's Final Payment, it being acknowledged and agreed that, notwithstanding anything in Section 2.2 of the AMOA to the contrary, the City shall have no obligation to make such Final Payment prior to the third anniversary of the Initial Payment Date. If the City fails to deposit any portion of the Final Payment into the Escrow

Account on such due date, (i) the Final Payment shall be immediately due and payable, (ii) the City shall pay the Final Payment directly to the NHL and not deposit the Final Payment into the Escrow Account and (iii) interest shall accrue on the overdue amount from the due date up to and including the date of actual payment in full of the Final Payment to the NHL (both before and after judgment) at ten percent (10%) per annum ("Default Interest"). Any Default Interest shall be immediately payable by the City to the NHL on demand by the NHL.

- g. The City acknowledges and agrees that, if for any reason the funds in the Escrow Account are not sufficient to pay all or any portion of a Draw requested by the NHL on any Subsequent Payment Date (such shortfall, the "Shortfall Amount"), the City remains obligated to pay the Shortfall Amount on such Subsequent Payment Date and the City shall make such payment directly to the NHL. If the City fails to pay the Shortfall Amount to the NHL on such Subsequent Payment Date, interest shall accrue on the Shortfall Amount from such Subsequent Payment Date up to and including the date of actual payment to the NHL of the Shortfall Amount (both before and after judgment) at ten percent (10%) per annum ("Shortfall Default Interest"). Any Shortfall Default Interest shall be immediately payable by the City to the NHL on demand by the NHL.
 - h. In no event shall the NHL be entitled to receive more than \$25,000,000.00 as required by the AMOA, plus any applicable Default Interest and Shortfall Default Interest. At such time as the NHL has drawn the Owners' Fee in its entirety (that is, an amount equal to \$25,000,000.00) from the Escrow Account, the City shall receive all remaining sums contained in the Escrow Account, if any, and the parties shall promptly execute and deliver such documents as may reasonably be required by Escrow Agent to terminate the Escrow Agreement and all related transactions.
2. Concurrent Execution of Related Documents. The effectiveness of this Agreement is conditioned upon the concurrent execution of and delivery by the parties of an "Amendment No. 15 to the Escrow Agreement" consistent with the provisions of this Agreement.
3. Acknowledgement of Rights. The City hereby acknowledges and confirms (a) its receipt for purposes of the AMOA of the statement of Actual Cash Losses (as defined in the AMOA) attached as Annex A hereto, and (b) that, based on the Actual Cash Losses set forth in such statement, the NHL is entitled to be paid, and to draw upon the Escrow Account in an amount equal to, \$25,000,000.00 in accordance with the AMOA and this Agreement. The NHL hereby acknowledges and confirms that the Owners have no further right, title or interest in or to all or any portion of the Owners' Fee.
4. General Provisions.
- a. Integration. This Agreement, the AMOA (as amended hereby) and the Escrow Agreement (as amended as contemplated hereby) reflect and constitute the entire

agreement among the parties hereto with respect to the subject matter addressed herein, and supersede any and all previous agreements, contracts, representations, warranties and covenants among the parties, whether written or oral, with respect to such subject matter. In the event of a conflict between any term or provision of this Agreement and any term or provision of the AMOA, this Agreement shall prevail and control.

- b. Amendments. No provision of this Agreement may be modified, supplemented or amended except by a written instrument executed by each of the parties hereto.
- c. Assignment. Except as provided below, neither this Agreement nor any rights, duties or obligations under it are assignable (directly, indirectly, by operation of law, change of control or otherwise) by any party hereto without the prior written consent of the other party. The City may assign this Agreement and any of its rights, duties or obligations under this Agreement, to a statutory district or corporate entity that is solely controlled by the City; however, such assignment will not relieve the City of any obligations under this Agreement unless the City secures the express written consent of the NHL. The NHL may assign this Agreement and its rights, duties and obligations under this Agreement in whole or in part, including its right to receive the Owners' Fee (including related rights to enforce this Agreement and the AMOA) to one or more of its affiliates. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by, each party hereto and its successors and permitted assigns.
- d. Headings. All descriptive headings of this Agreement are for convenience only and do not control or affect the meaning or construction of any of the provisions of this Agreement.
- e. Counterparts; Signatures. This Agreement may be executed in one or more counterparts and by different parties in separate counterparts, each of which when executed will be deemed to be an original but all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature to this Agreement by facsimile or emailing of a pdf file will be as effective as delivery of a manually-executed counterpart of this Agreement.
- f. Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer or confers upon any person that is not a party hereto, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- g. Notices. Unless otherwise specified herein, all notices, requests, demands, consents and other communications under this Agreement must be transmitted in writing and shall be deemed given (i) when personally delivered, or (ii) one (1) Business Day after sending if delivered by Federal Express or other nationally recognized overnight courier. All such notices shall be addressed as follows:

If to the NHL:

National Hockey League
1185 Avenue of the Americas
New York, New York 10036
Attention: William Daly

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

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: Marc R. Packer

If to the City:

City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: City Manager

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

City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: City Attorney

- h. Waivers. No waiver of any provision, or consent to any exception to the terms of this Agreement, is effective unless in writing and signed by the parties or, in the case of a waiver, by the party waiving compliance. No failure on the part of any party to exercise, or delay in exercising, any right hereunder may be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.
- i. Legal Representation. Each party acknowledges that it has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or legal decision that provides for an interpretation of any claimed ambiguities in this Agreement against the party that drafted it has no application and is expressly waived. The provisions of this Agreement must be interpreted in a reasonable manner to effect the intent of the parties.
- j. Severability. If any term or provision of this Agreement is held invalid, unenforceable or contrary to law, that term or provision will be deemed to be severable from the other terms and provisions hereof, but only to the extent necessary to bring this Agreement within the requirements of law, and the remainder of this Agreement must be given effect as if the parties had not

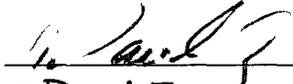
included the severed term herein; provided, that, if the severance affects a material inducement to enter into this Agreement, including, without limitation, the City's obligation to pay the Owners' Fee, then the parties shall negotiate in good faith to modify this Agreement so as to give effect to the original intent of the parties as closely as possible in a manner that would be valid and enforceable, and, if they are unable to do so, the party that is disadvantaged by the severance will be entitled to seek an adjudication that this Agreement should be terminated on that ground.

- k. Governing Law. This Agreement is governed by, and construed in accordance with, the laws of the State of Arizona without regard to principles of conflicts or choice of laws, or any other law that would make the laws of any other jurisdiction otherwise applicable hereto.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first written above.

"NHL":

NATIONAL HOCKEY LEAGUE

By: 
Name: David Zimmerman
Title: Executive Vice President, Chief legal officer
and General Counsel

"CITY":

CITY OF GLENDALE

Name: Brenda S. Fischer
Title: City Manager

Approved as to form

City Attorney

ATTEST:

City Clerk

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first written above.

"NHL":

NATIONAL HOCKEY LEAGUE

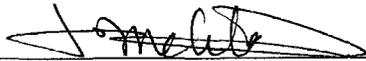
By: _____

Name:

Title:

"CITY":

CITY OF GLENDALE

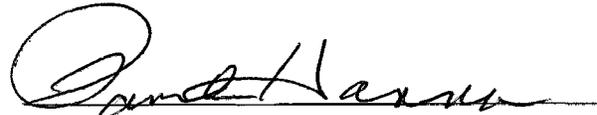
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for: Name: Brenda S. Fischer
Title: City Manager

Approved as to form

 _____
City Attorney

ATTEST:

 _____
City Clerk

Annex A

Statement of Actual Cash Losses

Reference is made to (a) the 2010-2011 Arena Management and Operations Agreement (as amended, the "AMOA"), dated as of May 20, 2010 and as last amended as of September 11, 2013, by and among Coyotes Newco, LLC, a Delaware limited liability company, and Arena Newco, LLC, a Delaware limited liability company, and the City of Glendale, an Arizona municipal corporation (the "City") and (b) the Agreement Regarding Extended Payment of Owners' Fee (the "Extended Payment Agreement"), dated as of September [•], 2013, by and between the National Hockey League, a joint venture organized as an unincorporated association not for profit, and the City. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the AMOA.

Pursuant to Section 2.4 of the AMOA and Section 3 of the Extended Payment Agreement, this Statement sets forth the Actual Cash Losses incurred or accrued by the Owners during the period that commenced on July 1, 2011 and ended on June 30, 2012. The Actual Cash Losses for the calendar months ended July 31, 2011, August 31, 2011, September 30, 2011, October 31, 2011, November 30, 2011, December 31, 2011, January 31, 2012, February 29, 2012, March 31, 2012, April 30, 2012, May 31, 2012 and June 30, 2012 and the period that commenced on July 1, 2011 and ended on June 30, 2012 are as follows:

<u>Period</u>	<u>Actual Cash Losses</u>
July 2011	\$1,392,923
August 2011	\$1,985,107
September 2011	\$1,101,684
October 2011	\$5,363,952
November 2011	\$5,541,214
December 2011	\$5,894,500
January 2012	\$6,229,129
February 2012	\$3,866,579
March 2012	\$4,873,414
April 2012	\$353,750
May 2012	\$954,061
June 2012	\$2,536,158
July 1, 2011 – June 30, 2012	\$40,092,471