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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re

DEWEY RANCH HOCKEY, LLC,

COYOTES HOLDINGS, LLC,

COYOTES HOCKEY, LLC, and

ARENA MANAGEMENT GROUP, LLC,

Debtors.

Case No. 2:09-bk-09488
(Jointly Administered)

Chapter 11

**DEBTORS' STATEMENT OF
POSITION REGARDING: (I)
MANAGING MEMBERS' AUTHORITY
TO COMMENCE THESE CASES AND
TO EXECUTE AN ASSET PURCHASE
AGREEMENT ON BEHALF OF THE
DEBTORS; AND (II) THE NATIONAL
HOCKEY LEAGUE'S VIOLATION OF
THE AUTOMATIC STAY BY
ATTEMPTING TO EXERCISE
CONTROL OVER THE DEBTORS AND
THEIR ESTATES THROUGH VOTING
PROXIES**

**Date of Hearing: N/A
Time of Hearing: N/A**

This Filing Applies to:

- ☒ All Debtors
☐ Specified Debtors

DEWEY RANCH HOCKEY, LLC ("**Dewey**"), COYOTES HOLDINGS, LLC ("**Holdings**"), COYOTES HOCKEY, LLC ("**Hockey**"), and ARENA MANAGEMENT GROUP, LLC ("**Arena Management**") and, together with Dewey, Holdings, and Hockey, the

“**Debtors**”), debtors-in-possession in the above-captioned Chapter 11 cases (the “**Cases**”), file this Statement of Position regarding: (i) the authority of Debtors’ managers and managing members to commence these Cases and to execute an asset purchase agreement on behalf of the Debtors; and (ii) violations of the automatic stay under Section 362(a) of Title 11 of the United States Code (the “**Bankruptcy Code**”) by the National Hockey League (the “**NHL**”) in its attempt to take control of the Debtors and their estates, and to enforce its pre-petition claims against the Debtors, through certain voting proxies, which, in any event, cannot serve that purpose.

As explained below, the NHL is a creditor in these Cases as a result of certain cash advances made by the NHL to Hockey beginning in November, 2008, and a line of credit from the NHL to Hockey secured by substantially all of Hockey’s assets. The Debtors estimate that the current outstanding principal balance of the NHL’s cash advances to Hockey is approximately \$23.6 million, and that Hockey currently owes the NHL approximately \$13.4 million on the secured line of credit.

Jerry and Vickie Moyes indirectly own 100% of Holdings, 100% of Arena Management, and 91.79% of Hockey.¹ In addition, Jerry Moyes is the manager of the Debtors either individually (as the manager of Dewey, and as the sole member of Holdings’ board of managers) or through his ownership and control of Holdings, which is the managing member of both Hockey and Arena Management.

The Cases were filed on May 5, 2009, at 3:12 p.m. (PDT). Since these Cases have been filed, the NHL has stated publicly that it has removed Mr. Moyes from all positions of authority

¹ A chart illustrating the Debtors’ corporate family and their relation to Jerry and Vickie Moyes is attached to this Motion as **Exhibit 1** (the “**Organizational Chart**”).

to act on behalf of the Debtors; and the NHL has also suggested that Mr. Moyes lacked the authority to commence these Cases on behalf of the Debtors:

We have just become aware of today's Bankruptcy Court filing purportedly made on behalf of the Phoenix Coyotes. We are investigating the circumstances surrounding the petition, including the propriety of the filing. We have removed Jerry Moyes from all positions of authority to act for or on behalf of the Club. . . .

"NHL News Release" dated May 5, 2009, a copy of which is attached hereto as **Exhibit 2**.

In addition, the NHL reportedly has stated that it will appear before this Court in these Cases as the "owner" of the Phoenix Coyotes:

The NHL took control of the team Tuesday after the team owner Jerry Moyes filed for bankruptcy protection on behalf of the Coyotes. Part of that Chapter 11 filing calls for the hockey team to be sold for \$213 million to a Canadian businessman who wants to move the team from Glendale, Arizona to Ontario, Canada. . . . ***NHL Deputy Commissioner Bill Daly said in a statement Tuesday that the league would appear as the Coyotes owner in bankruptcy court.***

Sunnucks and Casacchia, *NHL to ask court to dismiss Coyotes bankruptcy*, Phoenix Business Journal, May 6, 2009 (emphasis added), a copy of which is attached hereto as **Exhibit 3**.

The Debtors dispute the NHL's contentions that Mr. Moyes has been removed from his position of authority to act on behalf of the Debtors, that the NHL owns the Coyotes, or that these Cases were not commenced by a valid representative of the Debtors. In addition, the Debtors dispute any contention of the NHL that Mr. Moyes lacked the authority to execute an asset purchase agreement on behalf of the Debtors for the sale of their assets. The NHL apparently believes that its Commissioner controls the Debtors by virtue of certain voting proxies that the Debtors, and related, entities executed in favor of the Commissioner when the NHL agreed to provide cash advances to Hockey. What the NHL and the Commissioner fail to recognize (or simply ignore) is the fact that the voting rights that were granted to the Commissioner under the proxies are ***expressly limited*** only to matters, if any, that ***actually***

require a vote by the members of the applicable entity. The operative document to determine what actions require member votes are the operating agreements for the entities to which the proxies applied. None of the actions that relate to these Cases requires such a vote under the applicable operating agreements. Instead, the Debtors' managers (i.e. Jerry Moyes, either individually or in his capacity as the owner and controlling shareholder of the Debtors' managers) has the exclusive authority, among other things, to commence bankruptcy proceedings on behalf of the Debtors and to sell the Debtors' assets **without the vote or consent** of the Debtors' members.²

Furthermore, notwithstanding the fact that the NHL is mistaken regarding the scope and effect of the proxies, its attempt to take control of the Debtors and their estates is a clear violation of the automatic stay . See Bankruptcy Code § 362(a)(3) (“any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate” is a stay violation; *see also* Bankruptcy Code § 362(a)(6) (“any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under [Title 11]” is a stay violation).

The Debtors, therefore, respectfully file this Statement of Position in advance of their first-day hearing so that these Cases may proceed in an orderly fashion while, at the same time, providing the Court with an opportunity to consider these issues immediately to whatever extent the Court deems necessary.

This Statement of Position is supported by the attached Memorandum of Points and Authorities.

² The NHL is represented by the New York offices of Skadden Arps, a sophisticated international commercial law firm. It must be assumed the parties to the proxies understood the extent and limitations of the proxies drafted by the NHL and its counsel.

Dated: May 7, 2009.

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: /s/ Thomas J. Salerno

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MEMORANDUM OF POINTS AND AUTHORITIES

JURISDICTION AND VENUE

1. On May 5, 2009, at 3:12 p.m. (PDT), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Arizona (the “**Court**”).

2. The Debtors continue to operate their businesses and manage their assets as debtors-in-possession under 11 U.S.C. §§ 1107 and 1108.

3. This Court has jurisdiction over the Cases under 28 U.S.C. §§ 157 and 1334. These matters constitute core proceedings under 28 U.S.C. § 157(b)(2).

4. Dewey Ranch Hockey, LLC is an Arizona limited liability company with its principal place of business located in Yavapai County, Arizona. The remaining Debtors are affiliates of Dewey Ranch Hockey, LLC. Accordingly, venue of the Cases is proper in this District under 28 U.S.C. §§ 1408 and 1409.

OVERVIEW OF THE DEBTORS

5. Hockey owns and operates the Phoenix Coyotes professional hockey team (the “**Team**”). Arena Management manages Jobing.com Arena (the “**Arena**”) and, as such, is responsible for the operation, direction, management, and supervision of the Arena and its staff. Holdings is a holding company of both Hockey and Arena Management. Dewey is a wholly-owned subsidiary of Hockey.

6. Additional background regarding the Debtors’ operations, their capital structure, and the events leading to the commencement of these Cases is set forth in the “Omnibus Statement of Facts in Support of Chapter 11 Petitions and First Day Motions,” filed by the Debtors on the Petition Date (Docket No. 7) (the “**Omnibus Statement**”).

OWNERSHIP AND MANAGEMENT OF HOCKEY AND HOLDINGS

Coyotes Hockey, LLC

7. **Operating Agreement.** Hockey is a Delaware limited liability company formed on April 7, 2000, under the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, *et seq.* (the “**Act**”). Hockey operates under its “Second Amended and Restated Limited Liability Company Agreement of Coyotes Hockey, LLC” dated as of September 25, 2006, as amended by the “First Amendment to Second Amended and Restated Limited Liability Company Agreement of Coyotes Hockey, LLC” dated as of April 23, 2009 (the “**Hockey Operating Agreement**”), copies of which are attached hereto as **Exhibit 4**.

8. **Manager.** Holdings is the Managing Member of Hockey. *See* Hockey Operating Agreement, Article 16, p. 30 (definition of “Managing Member”).

9. **Ownership.** Hockey is owned by Holdings (91.79% of the membership interests in Hockey) and six non-debtor individuals or other entities (8.2% of the membership interests in Hockey). *See* Exhibit A to Hockey Operating Agreement; *see also* Organizational Chart.

Coyotes Holdings, LLC

10. **Operating Agreement.** Holdings is a Delaware limited liability company formed on December 9, 2009, under the Act. Holdings operates under its “Amended and Restated Limited Liability Company Agreement of Coyotes Holdings, LLC” dated as of September 25, 2006 (the “**Holdings Operating Agreement**”), a copy of which is attached hereto as **Exhibit 5**.

11. **Manager.** Holdings is managed by a Board of Managers consisting of a single member, Jerry Moyes. *See* Organizational Chart.

12. **Ownership.** Holdings is owned by two non-debtor entities that, in turn, are owned or controlled by Jerry and Vicki Moyes: (i) The Jerry and Vickie Moyes Family Trust

(75.14% of the membership interests Holdings) (the “**Trust**”); and (ii) Coyotes Holdings MemberCo., LLC (24.86% of the membership interests in Holdings) (“**Holdings MemberCo**”). See Exhibit A to Holdings Operating Agreement; *see also* Organizational Chart.

MANAGEMENT AUTHORITY

13. Under both the Hockey Operating Agreement and the Holdings Operating Agreement, the manager of those entities is granted extensive and exclusive rights and powers to act on behalf of the companies. For example, Article 6 of the Hockey Operating Agreement, as amended, provides as follows with respect to the rights, powers, and duties of the Managing Member (i.e. Holdings, which is 100% owned and controlled, indirectly, by Jerry and Vickie Moyes):

6.1. Rights and Powers of the Managing Member.

Except as otherwise expressly provided in this Agreement, ***the Managing Member shall have full, exclusive and complete power to manage and control the business and affairs of the Company*** and all of the rights and powers provided to the Managing Member by the Act. ***The Managing Member may not be removed.***

In the event that Jerry Moyes (“Moyes”) is at any time removed from his position as manager of Coyotes Holdings, LLC, or Coyotes Holdings, LLC is removed as Managing Member of the Company, then immediately upon such event, (i) the Managing Member’s powers and authority under this Section 6.1 shall cease and all such powers and authority shall thereafter be exercised exclusively by Moyes to the full extent that such powers and authority could previously have been exercised by the Managing Member, and (ii) any vote, consent, or dissent required or permitted of the Managing Member hereunder shall thereafter be deemed to be a vote, consent, or dissent required or permitted of Moyes.

Without limiting the foregoing, and in addition to all of the rights provided by this Agreement to the Managing Member, ***the Managing Member shall have the full power and authority***, but not the obligation, at any time and from time to time, ***to take the following actions on behalf of the Company, without the consent of any of the other Members on such terms and conditions as the Managing Member shall deem appropriate***, unless expressly provided to the contrary in Section 6.3 or in any other section of this Agreement:

* * *

6.1.3. **To sell**, convey, assign, lease, rent, develop, exchange and otherwise dispose of in whole or in part **the real and personal assets of the Company**;

* * *

6.1.6. **To borrow money on behalf of the Company, and, in connection therewith, to execute** and deliver for, on behalf of and in the name of the Company . . . **agreements and documents creating liens on, or granting security interests in or otherwise affecting, all or part of the assets and properties of the Company** . . .

6.1.7. **To enter into sale** and leaseback financing **arrangements with respect to all or any part of the assets and properties of the Company** and, in connection therewith, to execute for and on behalf of the Company any instruments and documents relating thereto;

* * *

6.1.9. To do all things which the Managing Member, in its sole discretion, deems necessary or appropriate to own, hold, manage, operate, develop and lease any of the Company's property or assets;

* * *

6.1.13. **To dissolve and liquidate the Company**; . . .

* * *

6.1.20. **To execute and deliver any and all instruments and documents, and to do any and all other things necessary or appropriate, in the Managing Member's sole discretion, for the accomplishment of the business and purposes of the Company** or necessary or incident to the protection and benefit of the Company; . . .

* * *

6.1.27. **To approve a plan of merger or consolidation of the Company with or into one or more business entities**, and to abandon the same; . . .

* * *

6.1.30. **To act in its sole discretion on behalf of the Company with respect to any matters relating to or affecting the Company's membership in the NHL**; . . .

Hockey Operating Agreement, Section 6.1, p. 7 (emphasis added).³

14. Accordingly, the Managing Member of Hockey has essentially unlimited authority to take any action on behalf of Hockey without any vote or consent of Hockey's other

³ This Section of the Hockey Operating Agreement expressly states that the Managing Member's rights and duties may be limited by Section 6.3 of the operating agreement. Section 6.3, however, contains no such restrictions whatsoever. See Hockey Operating Agreement, Section 6.3 ("Intentionally Omitted").

members. The scope and extent of the exclusive rights and powers of Holdings' Board of Managers (the sole member of which is Jerry Moyes) is similarly broad. See Holdings Operating Agreement, §§ 4.1 and 4.5.

BACKGROUND AND GRANTING OF THE PROXIES

The NHL Priority Advances

15. Hockey suffered approximately \$73 million of total operating losses for the three fiscal years of 2005 through 2008. In addition to over \$200 million in equity, Jerry Moyes provided Hockey with over \$150 million of funds necessary to cover Hockey's operating losses as unsecured loans. These funds have been provided under the terms of a "Sixth Amended and Restated Revolving Loan Agreement" and a corresponding "Sixth Amended and Restated Promissory Note" each in the principle amount of \$95 million and dated April 16, 2008 (together, the "**Moyes Revolver**"). Coyotes Hockey owes Moyes approximately \$104.4 million in principal and unpaid interest under the Moyes Revolver. Omnibus Statement, ¶¶ 26, 33.

16. In November of 2008, Mr. Moyes notified the NHL that he would no longer provide the funds to cover Hockey's operating losses. Together, the NHL, Mr. Moyes, and Hockey reached an agreement evidenced by a letter dated November 21, 2008 (as subsequently modified, the "**NHL Letter Agreement**"), under which the NHL made certain cash advances to Hockey in the amount of approximately \$31.4 million (the "**NHL Priority Advances**"). The NHL Priority Advances represent advances of cash that Coyotes Hockey is likely to be entitled to receive from its share of the NHL's league-generated television revenues from the 2008–2009 season and other potential distributions calculated for the 2008–2009 season. The NHL Priority Advances accrue interest at a rate tied to the NHL's own cost of borrowing from the date any

such advance is made until repaid or set off against amounts owing from the NHL to Hockey. Omnibus Statement, ¶ 35.

The Proxies

17. In mid-November, 2008 — in connection with the NHL's agreement to provide loans to the entities in the form of the NHL Priority Advances — Holdings, MemberCo, the Trust, Jerry Moyes, and Vickie Moyes each granted proxies to the Commissioner of the NHL to exercise their respective "Voting Rights" (described on pages 12-13, below) as members of Hockey, Arena Management, Holdings, and MemberCo (collectively, the "**Proxies**"):

a. **Voting Rights in Hockey.** Holdings granted a proxy to the Commissioner with respect to Holdings' Voting Rights as the holder of a 91.79% membership interest in, and as the managing member, of Hockey (the "**Hockey Proxy**"). A copy of the Hockey Proxy, which is identical to the other Proxies described below in all material respects for the purpose of this Statement of Position, is attached hereto as **Exhibit 6.**

b. **Voting Rights in Arena Management.** Holdings also granted a proxy to the Commissioner with respect to Holdings' Voting Rights as the sole member of Arena Management.

c. **Voting Rights in Holdings.** MemberCo granted a proxy to the Commissioner with respect to MemberCo's Voting Rights as the holder of a 24.86% membership interest in Holdings. Similarly, the Trust granted a proxy to the Commissioner with respect to the Trust's Voting Rights as the holder of a 75.14% membership interest in, and as the "Moyes Member" of, Holdings.

d. **Voting Rights in the MemberCo.** Jerry Moyes granted a proxy to the Commissioner with respect to his Voting Rights as the holder of a 99% membership interest in

MemberCo. Similarly, Vickie Moyes granted a proxy with respect to her Voting Rights as the holder of a 1% membership interest in MemberCo.

18. *As explained below, the Proxies vest little or no power in the Commissioner to exercise control over the Debtors.* By virtue of the Proxies, the Commissioner has the sole authority to vote on or consent to any matters *that require a vote or consent* under the Debtors' respective operating agreements or under applicable law. No such vote or consent is required, however, to commence bankruptcy proceedings or to sell assets on behalf of the Debtors. In addition, neither the Operating Agreements nor Delaware law make any provision for the removal of a Debtor's manager by any vote or consent of the Debtor's members. Accordingly, the Commissioner has no Voting Rights with respect to any of these actions.

The NHL's Senior Secured Line of Credit

19. On February 24, 2009, after the NHL notified Hockey that it would no longer fund the NHL Priority Advances, the NHL and Hockey entered into a "Secured Credit Agreement" (the "**Senior Secured Line of Credit**"). The Senior Secured Line of Credit is an open-ended line of credit secured by substantially all of Hockey's assets. While there is no cap on the amount that could be borrowed under the Senior Secured Line of Credit, the NHL is under no obligation to make loans under the Senior Secured Line of Credit. The Debtors estimate that Hockey owes the NHL approximately \$13.4 million under the Senior Secured Line of Credit as of the Petition Date. All obligations under the Senior Secured Line of Credit are due on demand. Omnibus Statement of Fact, ¶ 37.

LIMITED SCOPE AND EFFECT OF THE PROXIES

20. Through the Proxies, the grantors granted the Commissioner the sole authority to vote their membership interests on all matters, but only ***"to the extent [the grantors] are entitled***

to vote or express consent or dissent (whether by operation of law or otherwise)” on such matters. In this regard, the Hockey Proxy is a representative example of the “Voting Rights” that are granted to the Commissioner under the Proxies:

The undersigned hereby irrevocably appoints, with immediate effect, the Commissioner of the NHL (whoever he or she is now or from time to time hereafter may be) (the “Commissioner”), ***as its true and lawful attorney and proxy in respect of all of the undersigned’s interest and rights in the Club [i.e. Hockey], including without limitation a 91.79% ownership interest in, and all rights as managing member of, the Club*** (collectively, referred to herein as the “Coyotes Interests”; the term “Coyotes Interests” shall be deemed to include, without limitation, all of the limited liability company interests, shares, membership interests or units issued by the Club or any successor that, in the future, may be registered in the name of the undersigned, whether voting or non-voting), ***with all powers the undersigned possesses, and with full power of substitution and resubstitution, to vote or express consent or dissent in the sole discretion of such proxy in respect of all of the Coyotes Interests to the extent they are entitled to vote or express consent or dissent (whether by operation of law or otherwise) in each case for any and all purposes and upon any and all subjects, matters and issues (collectively, the “Voting Rights”), including without limitation, the following: . . .***

Hockey Proxy, ¶ 2 at 1 (emphasis added).

21. Each Proxy then provides a non-exclusive list of seven matters for which the Commissioner may exercise his or her Voting Rights ***to the extent*** (as noted above) that such matters require a member vote, including, among other things: (a) the removal or appointment of managers and managing members; (b) the voluntary or involuntary bankruptcy, liquidation, or reorganization of the company; and (c) the sale of all or substantially all of the company’s assets. See, e.g., Hockey Proxy, pp. 1-2.

22. What the NHL apparently assumes (or simply ignores) is the fact that none of those matters requires a member vote. Rather, each of those matters is within the sole discretion of the managers under the Operating Agreements, and actions with respect to those matters can

be taken by the managers without any vote or consent. Therefore, any purported attempt by the NHL to exercise its so-called “Voting Rights” with respect to those matters is a nullity.

The Sale of Hockey’s Assets Does Not Require a Vote

23. In conjunction with the commencement of these Cases, the Debtors filed motions for authorization to sell substantially all of Hockey’s assets, including the Team, to PSE Sports & Entertainment L.P. (the “**Proposed Buyer**”) for \$212 million under a proposed “Asset Purchase Agreement” (the “**APA**”), subject to higher and better bids obtained at an auction of the assets through proposed bid procedures. *See* Docket Nos. 18 and 19.

24. Under Sections 6.1 and 6.1.3 of the Hockey Operating Agreement, Hockey’s manager member (*i.e.* Holdings or, in other words, Jerry Moyes as the sole member of Holdings’ Board of Managers) has the exclusive authority to sell Hockey’s assets without any vote or consent of the other members:

[T]he Managing Member shall have the full power and authority . . . to take the following actions on behalf of the Company, ***without the consent of any of the other Members*** on such terms and conditions as the Managing Member shall deem appropriate . . .

6.1.3. To sell, convey, assign, lease, rent, develop, exchange and otherwise dispose of in whole or in part the real and personal assets and property of [Hockey].

Hockey Operating Agreement §§ 6.1 and 6.1.3, pp. 7-8 (emphasis added); *see also* Act § 18-302(a) (“A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members A limited liability company agreement may provide that any member or class or group of members shall have no voting rights.”).

25. Accordingly, no vote or consent of any member is required in connection with the sale of Hockey's assets under the APA, and the Commissioner has no Voting Rights with respect to any such sale.

The Commencement of These Cases Did Not Require a Vote

26. Similarly, no vote or consent of any of the Debtors' members is required to commence a bankruptcy proceeding. On the contrary, Jerry Moyes (either individually, as the manager of Dewey and as the sole member of Holdings' board of managers, or through his ownership and control of Holdings, which is the managing member of both Hockey and Arena Management) has the sole and discretionary authority to commence bankruptcy proceedings on behalf of the Debtors. With respect to Hockey, for example, Mr. Moyes (through his ownership and control of Hockey's managing member) has the "full, exclusive and complete power to manage and control the business and affairs" of Hockey "without the consent" of its other members, including, without limitation, the power to "dissolve and liquidate" Hockey, to "approve a plan of merger or consolidation" of Hockey with other entities, and to "do all things which the Managing Member, in its sole discretion, deems necessary or appropriate to own, hold, manage, operate, develop and lease any of [Hockey's] property or assets." See Hockey Operating Agreement §§ 6.1, 6.1.9, 6.1.13, and 6.1.27, pp. 7-10; *accord* Holdings Operating Agreement, §§ 4.1 and 4.5.

27. Accordingly, the Commissioner has no Voting Rights with respect to the commencement of bankruptcy proceedings on behalf of the Debtors, and the Debtors' Chapter 11 petitions were properly authorized and filed.

The Commissioner Has No Authority to Usurp Mr. Moyes' Control of the Debtors

28. Similarly, the Commissioner has no Voting Rights to remove Mr. Moyes' authority to control and act on behalf of the Debtors. Neither the Operating Agreements nor Delaware law make any provision for the removal of the Debtors' managers by a vote or consent of their members. On the contrary, the Hockey Operating Agreement expressly states that the "Managing Member may not be removed." See Hockey Operating Agreement § 6.1, as amended.⁴

29. Likewise, under the Holdings Operating Agreement, only the "Moyes Member" (which is defined in that operating agreement as the Trust) has the sole authority, without the taking of any vote or the consent of any other party, to remove a manager of Holdings. See Holdings Operating Agreement § 4.4 ("A Manager may be removed, with or without cause, by the Moyes Member."); see also *id.* at § 4.2 ("Each Manager shall be appointed from time to time by the Moyes Member and shall hold office, subject to the other provisions of this Agreement, until death, resignation, or removal by the Moyes Member."). Although the Trust did execute a Proxy to the Commissioner with respect to its Voting Rights as the Moyes Member, removal of a manager of Holdings is not a matter which requires or is effected through any vote or consent. The Commissioner, therefore, has no Voting Rights with respect to removal of a manager of Holdings.

30. Accordingly, the NHL's apparent attempt to usurp Mr. Moyes' authority to control and act on behalf of the Debtors is based on the false premise that the Proxies grant the Commissioner the authority to take any action whatsoever with respect to the Debtors, whether or not such action requires any vote or consent. On the contrary, however, the Commissioner's

⁴ In any event, even if Holdings could be removed as Managing Member of Hockey, which it cannot, all rights and powers of Holdings in its capacity as Managing Member of Hockey would automatically vest in Jerry Moyes personally. See Hockey Operating Agreement § 6.1, as amended.

rights under the Proxies is expressly limited to “Voting Rights,” and the tenure of the Debtors’ managers are not subject to any vote or consent of their members.

31. To the extent that the NHL had intended or desired to have the right to simply exercise all rights of the grantors of the Proxies, either as managers or members of the Debtors, it would have been quite easy to have provided as much in the Proxies. In fact, the way to accomplish that would have been simply to leave out of the Proxy the specific language that limits the Proxy rights to those rights of the grantors “to vote or express consent or dissent...to the extent they are entitled to vote or express consent or dissent (whether by operation of law or otherwise).” But that language controls the exercise of the Proxies, and cannot be ignored or read out of the Proxies as the NHL would apparently like to do.

32. In addition to being contrary to the express language of the Proxies, a more expansive interpretation of the “Voting Rights” under the Proxies to include all rights that a member/grantor has under the Operating Agreements, whether or not requiring a vote or consent, would produce illogical and unsupportable results. For instance, the Proxies provide that, immediately upon execution, the grantor “shall have no right or ability to exercise any Voting Rights”. If the Voting Rights were somehow construed to include rights that a member has to take action on its own initiative, without any requirement for a vote or consent, then Holdings as the Managing Member of Hockey, would have been stripped of the authority to manage Hockey immediately upon granting the Proxy in November 2008. In that case, there would have been nobody managing Hockey for the last six months. And, indeed, if that was the case, why would the NHL have felt it necessary to attempt to remove Jerry Moyes from the management of the Debtors now? The NHL undoubtedly wishes that it had proxies that gave it the ability to take the

actions it would like to take in order to assume control over the Debtors. But the Proxies it does have do not provide a basis to take control of the Debtors.

VIOLATION OF THE STAY

33. The NHL is a creditor in these Cases. That is an undisputed fact.

34. Under Bankruptcy Code § 362(a), the filing of a bankruptcy petition operates as a stay, applicable to all entities, of, among other things:

any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; and

any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under [the Bankruptcy Code].

See Bankruptcy Code §§ 362(a)(3) and (a)(6).

35. Courts have applied the automatic stay provisions of Bankruptcy Code § 362(a)(3) in order to prevent creditors from gaining control of a debtor's estate through the exercise of corporate governance rights given to the creditor in connection with the creditor's loan. See *In re Fairmount Comm. Corp.*, No. 92 B 44861 (Bankr. S.D.N.Y. Mar. 3, 1993), *appeal docketed*, No. 93 Civ. 2388 (S.D.N.Y. Apr. 14, 1993), *oral decision cited by* Harvey Miller, *Corporate Governance in Chapter 11: The Fiduciary Relationship Between Directors and Stockholders of Solvent and Insolvent Corporations*, 23 Seton Hall L. Rev. 1467, 1469 (1993); see also *In re Bicoastal*, 1989 Bankr. LEXIS 2046 (Bankr. M.D. Fla. 1989).

36. In *Fairmount*, the Bankruptcy Court applied Bankruptcy Code § 362(a)(3) to prevent a creditor from appointing additional members to the debtor's board of directors pursuant to certain irrevocable proxies that the creditor had been granted to ensure repayment of the creditor's loan. The creditor had obtained the proxies from the debtor's shareholders in connection with the debtor's acquisition of several companies from the creditor in a LBO. The proxies entitled the creditor to elect additional directors to the debtors' board. The Bankruptcy

Court, however, held that Bankruptcy Code § 362(a)(3) barred the creditor's attempt to exercise the proxy rights because the exercise of those rights was an attempt to ensure payment of the debtor's indebtedness to the creditor. *See Miller, supra*, 23 Seton Hall L. Rev. 1467 at 1512.

37. A similar result was reached in *Biocoastal*, where the Bankruptcy Court held that Bankruptcy Code § 362(a)(3) prevented a creditor (which was also a preferred shareholder) of the debtor from exercising its right to elect a majority of the debtor's board of directors, which right arose from the debtor's failure to timely repay a loan to the creditor / preferred shareholder under a promissory note. The Court acknowledged that normal corporate governance principals (such as a shareholder's right to convene meetings and elect directors) are generally permissible under Chapter 11. However, because the shareholder was also a creditor, application of the stay under Bankruptcy Code § 362(a) was appropriate. Specifically, the Court noted that the creditor was seeking to take control of the debtor "in order to assure that th[e] promissory note was repaid." *In re Biocoastal*, 1989 Bankr. LEXIS 2046, *15 (Bankr. M.D. Fla. 1989). The Court also noted that "it could be argued with some force that what [the creditor is] attempting to do is indirectly to force the repayment of the loan, which would be clearly prohibited by Bankruptcy Code § 361(a)(1)." *Id.*

38. The situation here is no different. Here, the NHL is attempting to exercise the Commissioner's Voting Rights under the Proxies (which, in any event, are ineffective) to exercise control over the Debtors and their estates for the purpose of ensuring repayment of the NHL Priority Advances and the Senior Secured Line of Credit. This is improper and a clear violation of the automatic stay under Bankruptcy Code § 362(a).

39. Moreover, if the NHL truly believes that it controls the Debtor, then it must recognize that it has a fiduciary duty to maximize the value of the Debtors' assets for the benefit

of all creditors, not only for the NHL's benefit. In that regard, the NHL should be supporting the sale of Hockey's assets under the APA, subject to higher and better bids through a Court-approved auction. Under those circumstances, if the NHL does not support such a sale, what is its true agenda?

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order granting any relief the Court deems appropriate related to the issues raised in this Statement of Position.

Dated: May 7, 2009.

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: /s/ Thomas J. Salerno
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Jordan A. Kroop
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(602) 528-4000

Proposed Counsel to Debtors-in-Possession

Exhibit 1
(Organizational Chart)

Exhibit 2
(NHL News Release)

Exhibit 3
(Phoenix Business Journal Article)

Exhibit 4
(Hockey Operating Agreement)

Exhibit 5
(Holdings Operating Agreement)

Exhibit 6
(Hockey Proxy)

Exhibit 1
(Organizational Chart)

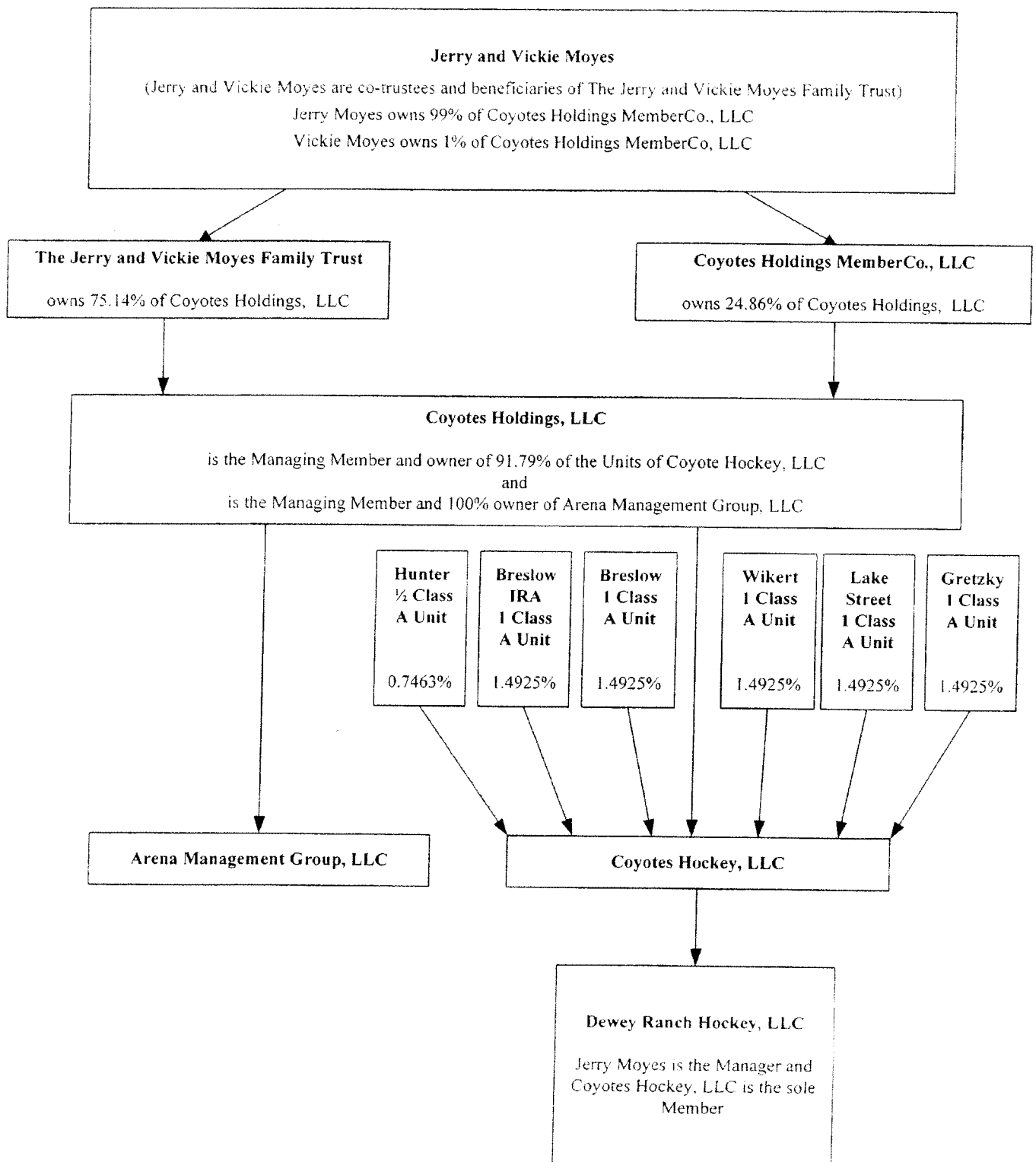


Exhibit 2
(NHL News Release)



NEWS RELEASE



FOR IMMEDIATE RELEASE

MAY 5, 2009

STATEMENT BY NHL DEPUTY COMMISSIONER BILL DALY REGARDING THE PHOENIX COYOTES

NEW YORK (May 5, 2009) - National Hockey League Deputy Commissioner Bill Daly issued the following statement regarding the Phoenix Coyotes:

"We have just become aware of today's Bankruptcy Court filing purportedly made on behalf of the Phoenix Coyotes. We are investigating the circumstances surrounding the petition, including the propriety of its filing. We have removed Jerry Moyes from all positions of authority to act for or on behalf of the Club. The League will appear and proceed before the Bankruptcy Court in the best interests of all of the Club's constituencies, including its fans in Arizona and the League's 29 other Member Clubs."

###

NATIONAL HOCKEY LEAGUE

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media.NHL.com • NHL.com

Exhibit 3
(Phoenix Business Journal Article)

Phoenix Business Journal - May 6, 2009
/phoenix/stories/2009/05/04/daily34.html

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Phoenix Business Journal

Wednesday, May 6, 2009, 1:00pm MST | Modified: Wednesday, May 6, 2009, 2:45pm

NHL to ask court to dismiss Coyotes bankruptcy

Phoenix Business Journal - by [Mike Sunnucks](#) and [Chris Casacchia](#)

The **National Hockey League** is expected to ask a U.S. Bankruptcy Court judge Thursday to dismiss a Chapter 11 filing by the **Phoenix Coyotes**.

The NHL took control of the team Tuesday after team owner Jerry Moyes filed for bankruptcy protection on behalf of the Coyotes. Part of that Chapter 11 filing calls for the hockey team to be sold for \$213 million to a Canadian businessman who wants to move the team from Glendale to Ontario, Canada.

The NHL and city of Glendale, where the Coyotes have a 30-year lease to play at Jobing.com Arena, have opposed Moyes' efforts to sell the team to Research in Motion CEO Jim Balsillie.

NHL Deputy Commissioner Bill Daly said in a statement Tuesday that the league would appear as the Coyotes owner in bankruptcy court.

Dan Gaffney, a bankruptcy attorney for Snell & Wilmer LLP, said if the NHL's takeover of the team is legal then it could have standing to ask for dismissal or changes in the filing. That could keep the team in the Phoenix market.

NHL Commissioner Gary Bettman said the Coyotes should remain in Arizona and questioned whether Moyes had the authority to file bankruptcy and sell the team.

The league loaned money to the Phoenix Coyotes in February, a deal that included provisions to take over the team if need be. Moyes and the NHL have been looking for possible investors and new owners amid the team's financial troubles.

"This is about the league rules and the enforceability of our rules, whether or not Mr. Moyes even had the authority to file a bankruptcy petition is something we're going to get into," Bettman said in statements on the league run Web site NHL.com. "This is more about the tactic and I think a challenge to league rules than it is about economic conditions of the club, which we believe, with new ownership and with accommodations the city of Glendale is prepared to make, we think can succeed."

Squire Sanders & Dempsey LLP is representing Moyes in the bankruptcy case. Squire Sanders attorney Tom Salerno could not immediately be reached for comment. The bankruptcy filing gives the federal bankruptcy court the power to decide whether the league or Moyes owns the team, Gaffney said. Bankruptcy courts can undo lease terms and could help Moyes avoid NHL restrictions on the team's sale, he said.

It also offers more latitude for sale of the team and the ability to avoid a \$750 million lease penalty, should the team be moved from Glendale, according to officials familiar with the case.

The Coyotes moved to the Phoenix market in 1996 from Winnipeg.

Moyes would lose his \$207 million equity stake in the team under the proposed sale, said Steve Roman, a spokesman for Moyes.

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Exhibit 4
(Hockey Operating Agreement)

SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
OF
COYOTES HOCKEY, LLC,
a Delaware limited liability company

THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") is dated as of this 25th day of September, 2006, by and among Coyotes Holdings, LLC, a Delaware limited liability company, as Managing Member (the "Managing Member") of COYOTES HOCKEY, LLC, a Delaware limited liability company (the "Company") and each of the other parties executing this Agreement or a counterpart of this Agreement, either personally or by a duly constituted attorney-in-fact, as Class "A" Members (the "Class 'A' Members") or as Class "B" Members (the "Class 'B' Members").

WHEREAS, the Company was formed on April 7, 2000 under the name Los Arcos Sports, LLC, a Delaware limited liability company;

WHEREAS, the members of the Company previously entered into an Amended and Restated Limited Liability Company Agreement, dated as of the 14th day of February, 2001 (as amended, the "Existing Agreement");

WHEREAS, the members of the Company are entering into this Second Amended and Restated Limited Liability Company Agreement in order to amend and restate, in its entirety, the Existing Agreement;

WHEREAS, effective as of the date hereof, Arizona Hockey Management, Inc., an Arizona corporation ("AHM") has transferred and assigned to the Managing Member all right title and interest in the two (2) Class A Units in the Company held by AHM and has assigned to the Managing Member all of AHM's interest in and to the Company as a Class "A" Member and as Managing Member of the Company, including, without limitation, all Units and Profits Interests in the Company held by AHM and AHM's interest as Managing Member of the Company;

WHEREAS, effective as of the date hereof, the Managing Member has become the sole holder of (i) the \$39,500,000 Series A Debenture convertible into Class B Units of the Company (the "Series A Debenture") and (ii) the \$20,000,000 Series B Debenture convertible into Class A Units of the Company (the "Series B Debenture" and, together with the Series A Debenture, the "Debentures");

WHEREAS, effective as of the date, the Series A Debenture is being converted into 39.5 Class B Units and the Series B Debenture is being converted into 20 Class A Units;

WHEREAS, as of the date hereof, the Managing Member is the holder of approximately \$146,855,719.05 in principal amount of indebtedness owed by the Company (the "Holdings Debt"), plus accrued interest on such amount;

WHEREAS, effective as of the date hereof, the Managing Member and the Company have agreed that (i) the Managing Member shall forgive and discharge approximately \$69,375,879.16 of indebtedness owing by the Company (such amount comprised of accrued interest on the Debentures and the Holdings Debt) and (ii) \$146,855,719.05 in principal amount of the Holdings Debt shall be converted into priority capital in the Company (the "Priority Capital Contribution"), which Priority Capital Contribution shall be distributed to the Managing Member prior to any distribution of Net Cash from Operations and Net Cash from Sales and Refinancing being made to any other Member hereof; and

WHEREAS, the parties hereto have agreed to enter into this Second Amended and Restated Limited Liability Company Agreement in order to set forth their mutual agreements and understandings.

NOW THEREFORE, in consideration of the foregoing premises and in consideration of the mutual promises and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that, effective as of the date hereof, the Existing Agreement shall be amended and restated as set forth herein.

ARTICLE 1. -- FORMATION

1.1. Formation. The Company was formed April 7, 2000 by filing a Certificate of Formation with the Office of the Secretary of State of Delaware. The parties to this Agreement intend to continue the Company formed pursuant to the Delaware Limited Liability Company Act (the "Act") in accordance with the terms and conditions of this Agreement. Upon the request of the Managing Member or as required by law, the parties shall promptly execute all amendments to the Certificate of Formation and all other documents that are needed to enable the Company or its authorized agents to accomplish all filing, recording, publishing and other acts necessary or appropriate to comply with all requirements for the formation and continuation of the Company under the Act.

1.2. Intent. It is the intent of the Members that the Company be operated in a manner consistent with its treatment as a "partnership" for federal and state income tax purposes. No Member shall take any action inconsistent with the express intent of the parties hereto as set forth herein.

1.3. Definitions. All capitalized terms used in this Agreement shall have the meaning set forth in Article 16.

ARTICLE 2. -- GENERAL PROVISIONS

2.1. Name. The name of the Company shall be Coyotes Hockey, LLC or such other name as the Managing Member shall select from time to time. The Managing Member shall cause an amendment to the Certificate of Formation to be executed and filed reflecting the name of the Company as amended hereby.

2.2. Principal Office and Place of Business. The principal office and place of business of the Company shall be located at c/o Jeff Shumway, Swift Aviation Company, 2710 E. Old

Tower Road, Phoenix, AZ 85034, or such other place as the Managing Member shall determine from time to time.

2.3 COMPANY PURPOSES. THE PURPOSES OF THE COMPANY ARE TO ACQUIRE, OWN AND OPERATE THE PHOENIX COYOTES PROFESSIONAL HOCKEY TEAM FRANCHISE (THE "TEAM"), CERTAIN ASSETS INCIDENTAL TO THE OWNERSHIP OF AN NHL FRANCHISE, CERTAIN FIXED ASSETS USED IN CONNECTION WITH THE FOREGOING, AND CERTAIN TRADEMARKS AND OTHER ASSETS; TO OPERATE THE TEAM'S PLAYING VENUE, AND TO DO SUCH OTHER THINGS AS MAY VALIDLY BE UNDERTAKEN BY A DELAWARE LIMITED LIABILITY COMPANY. THE COMPANY SHALL HAVE THE POWER TO DO ANY AND ALL ACTS AND THINGS NECESSARY, APPROPRIATE, PROPER, ADVISABLE, INCIDENTAL TO OR CONVENIENT FOR THE FURTHERANCE AND ACCOMPLISHMENT OF SUCH PURPOSES, INCLUDING, WITHOUT LIMITATION, THE ENTERING INTO OR ACQUIRING OF ANY PROPRIETORSHIPS, PARTNERSHIPS, JOINT VENTURES, CORPORATIONS, LIMITED LIABILITY COMPANIES, OR OTHER SIMILAR ENTITIES OR ARRANGEMENTS TO ENGAGE IN ANY OF THE FOREGOING AND (I) ENTERING INTO THAT CERTAIN CREDIT AGREEMENT BETWEEN THE COMPANY, AS BORROWER, AND SOF INVESTMENTS, L.P., AS LENDER (TOGETHER WITH ITS SUCCESSORS AND ASSIGNS IN SUCH CAPACITY, THE "JUNIOR LENDER"), DATED AS OF DECEMBER 21, 2003 (AS AMENDED, RESTATED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "SOF CREDIT AGREEMENT") AND OTHER "LOAN DOCUMENTS" REFERENCED IN THE SOF CREDIT AGREEMENT, FOR PURPOSES AS SET FORTH IN THE SOF CREDIT AGREEMENT AND (II) ENTERING INTO THAT CERTAIN LOAN AGREEMENT BETWEEN THE COMPANY, AS BORROWER, AND FORTRESS CREDIT OPPORTUNITIES I LP, AS LENDER (TOGETHER WITH ITS SUCCESSORS AND ASSIGNS IN SUCH CAPACITY, THE "SENIOR LENDER"), DATED AS OF MAY 13, 2004 (AS AMENDED, RESTATED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "FORTRESS LOAN AGREEMENT") AND THE OTHER "LOAN DOCUMENTS" REFERENCED IN THE FORTRESS LOAN AGREEMENT, FOR PURPOSES SET FORTH IN THE FORTRESS LOAN AGREEMENT.

2.3. Term. The term of the Company commenced on the filing of the Certificate of Formation and shall continue until dissolved, wound-up and terminated in accordance with Article 13 of this Agreement.

2.4. Registered Office. The address of the registered office of the Company in the State of Delaware is c/o Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801-1120.

2.5. Registered Agent. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware are Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801-1120.

ARTICLE 3. -- CAPITAL CONTRIBUTIONS; CAPITAL CALLS

3.1. Capital Contributions by the Members. Each of the Class "A" Members have, upon acceptance by the Managing Member of such Class "A" Member's subscription for Equity Interests, contributed to the capital of the Company the sum of money or other property designated next to its name on Exhibit A attached hereto or shall tender to the Company for conversion to Units any debentures issued by the Company that are convertible into Units according to the terms of such debentures and receive the number of Units set forth thereon. As of the date hereof, the Managing Member, in its capacity as the holder of the Series B Debenture, has tendered the Series B Debenture to the Company for conversion into 20 Class A Units of the Company and has received a credit to its Capital Account in the amount of \$20,000,000. Each of the Class "B" Members have, upon acceptance by the Managing Member of such Class "B" Member's subscription for Equity Interests, contributed to the capital of the Company the sum of money or other property designated next to its name on Exhibit A attached hereto or shall tender to the Company for conversion to Units any debentures issued by the Company that are convertible into Units according to the terms of such debentures and receive the number of Units set forth thereon. As of the date hereof, the Managing Member, in its capacity as the holder of the Series A Debenture, has tendered the Series A Debenture to the Company for conversion into 39.5 Class B Units of the Company and has received a credit to its Capital Account in the amount of \$39,500,000. As of the date hereof, the Managing Member has contributed to the Company certain promissory notes evidencing indebtedness of the Company to the Managing Member in an aggregate original principal amount equal to \$146,855,719.05 in exchange for the interest of the Managing Member herein to the Priority Capital Contribution in the amount of \$146,855,719.05, and has received a credit to the Priority Capital Account maintained by the Company for the benefit of the Managing Member in an amount equal to \$146,855,719.05.

3.2. Equity Interests of the Managing Member. Notwithstanding any other provision hereof, the Managing Member may, but shall not be required to, subscribe for Equity Interests in the Company. In such event, the Managing Member shall have the same rights, powers, duties and responsibilities granted to the Class "A" Members under this Agreement in addition to the rights, powers, duties and responsibilities granted to the Managing Member under this Agreement.

3.3. Investment of Proceeds and Reserves. The proceeds of Class "A" and Class "B" Members' Capital Contributions awaiting investment shall be held in an interest-bearing account in a federally insured bank or banks. The cash reserves and working capital of the Company may be invested in short-term highly liquid investments where there is appropriate safety of principal, as the Managing Member may determine.

3.4. Capital Calls. The Managing Member, at its discretion, shall have the right to require Members to make one or more additional Capital Contributions in such amounts and at such times as the Managing Member deems necessary for operations, reserves, or other needs of the Company. Capital calls shall be made by all Members on a pro rata basis based upon the ratio which each such Member's Capital Contributions to the Company pursuant to Section 3.1 and this Section 3.4 bears to the total Capital Contributions to the Company under such sections. The failure of any Member to make its required Capital Contributions within thirty (30) days after the call is received shall result in a downward adjustment of such Member's Equity Interest in the

Company in accordance with the ratio which such Member's total Capital Contribution bears to the total Members' Capital Contributions of the Company following the response of Members to the capital call; and there will be a corresponding upward adjustment to the Equity Interests of those Members which have made the additional Capital Contribution. The Profit Interest of any Member which fails to make its required Capital Contribution shall be adjusted downward to equal .65 multiplied by the ratio which such Member's total Capital Contribution bears to all Members' Capital Contributions after the capital call; and there will be a corresponding upward adjustment to the Profit Interests of those Members on a pro rata basis which have made the additional Capital Contribution. Notwithstanding anything otherwise provided for in this Agreement, a decision by any Member not to make a Capital Contribution shall not be a default under this Agreement.

3.5 Membership Certificates. The interests of any Member in the Company shall be evidenced by one or more Certificates of Membership Interests in such form as determined by the Managing Member pursuant to Section 6.4.6 of this Agreement. Each Certificate of Membership Interests in the Company shall constitute a "security" within the meaning of (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware, and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995. The Managing Member on behalf of the Company shall maintain a ledger showing the holder of any such certificate from time to time. To the fullest extent permitted by law, no transfer of any such certificate shall be effective if carried out in violation of the restrictions on transfer set forth in this Agreement. Any permitted transferee of any such certificate shall promptly give notice of such transfer to the Company, in which event the books and records of the Company shall be updated accordingly.

ARTICLE 4. -- DISTRIBUTIONS

4.1. Net Cash from Operations and Net Cash from Sales or Refinancing. Subject to the obligations, if any, of the Company to its creditors and to the Managing Member for the Managing Member Administration Fee, and except as otherwise provided in Article 13 hereof, and except to the extent the Managing Member elects, in its sole discretion, not to distribute cash, Net Cash from Operations and Net Cash from Sales and Refinancing, if any, calculated after giving effect to the repayment of any indebtedness for borrowed money of the Company, shall be distributed at such times as the Managing Member may determine, as follows:

(a) First, all Net Cash from Operations and Net Cash from Sales and Refinancing shall be distributed to the Managing Member until the Managing Member has received an amount equal to its Unrecovered Priority Capital.

(b) Second, all Net Cash from Operations and Net Cash from Sales and Refinancing remaining following satisfaction of sub-part (a) shall be distributed to each Class "A" Member, *pari passu* in accordance with the First Distribution Ratio until each

Class "A" Member's Unrecovered Capital Contributions, inclusive of capital contributed in response to a call made in accordance with Section 3.4 hereof, equals zero.

(c) Third, all Net Cash from Operations and Net Cash from Sales and Refinancing remaining following satisfaction of the above-mentioned credit obligations and the obligations of sub-parts (a) and (b) of this Section 4.1 shall be distributed to the Class "B" Members, *pari passu*, until each Class "B" Member's Unrecovered Capital Contribution, inclusive of capital contributed in response to a capital call as provided in Section 3.4 hereof, equals zero.

(d) Fourth, 65% of all Net Cash from Operations and Net Cash from Sales and Refinancing remaining following satisfaction of the above-mentioned credit obligations and the obligations of sub-parts (a), (b), and (c) of this Section 4.1 shall be distributed to the Class "A" Members and Class "B" Members (pro rata in accordance with the number of Units held by them), and the remaining 35% shall be distributed to the Managing Member.

4.2. Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Company or the Members shall be treated as amounts distributed to the Members pursuant to this Article 4 for all purposes under this Agreement. The Managing Member may allocate any such amounts among the Members in any manner that is in accordance with applicable law.

4.3. Tax Distribution. Subject to the obligations, if any, of the Company to its creditors and to the Managing Member for the Managing Member Administration Fee, the Managing Member may distribute funds to the Class "A" Members and Class "B" Members and Managing Member sufficient to cover their respective federal and state income tax liability for Company income allocated to them but not actually distributed, but is under no obligation to do so. Such Distributions shall be made at the highest effective federal and Arizona state (net of federal benefits) income tax rates regardless of the actual tax rate of any specific Member (unless such capital and Member is not subject to tax).

ARTICLE 5. -- PROFITS AND LOSSES; METHOD OF ACCOUNTING:

5.1. Profits and Losses.

a. Profits shall be allocated:

- (i) First, to the Class "A" Members and Class "B" Members and the Managing Member, *pari passu*, to the extent of, and in proportion to, the amount by which Losses previously allocated pursuant to Section 5.1(b)(iv) exceed Profits previously allocated pursuant to this Section 5.1(a)(i);
- (ii) Second, to the Managing Member to the extent of, and in proportion to, the amount by which Losses previously allocated pursuant to Section 5.1(b)(iii) exceed Profits previously allocated pursuant to this Section 5.1(a)(ii);

- (iii) Third, to the Class "A" Members and Class "B" Members to the extent of, and in proportion to, the amount by which Losses previously allocated pursuant to Section 5.1(b)(ii) exceed Profits previously allocated pursuant to this Section 5.1(a)(iii); and
- (iv) Thereafter, to the Class "A" Members and Class "B" Members and the Managing Member, *pari passu*, in accordance with their respective Profit Interests.

b. Losses shall be allocated:

- (i) First, to the Class "A" Members and Class "B" Members and the Managing Member, *pari passu*, to the extent of, and in proportion to, the amount by which Profits previously allocated pursuant to Section 5.1(a) exceed Losses previously allocated pursuant to this Section 5.1(b)(i);
- (ii) Second, to the Class "A" Members and Class "B Members" and Managing Member *pro rata* in accordance with the positive balances in their respective Capital Accounts until their Capital Accounts equal zero;
- (iii) Third, to the Managing Member in an amount equal to the positive balance in its Priority Capital Account until its Priority Capital Account equals zero; and
- (iv) Thereafter, to the Class "A" Members, the Class "B" Members, and the Managing Member, *pari passu*, in accordance with their respective Profit Interests.

5.2. Method of Accounting. Throughout the full term of the Company, the Company shall use the accrual method of accounting.

ARTICLE 6. -- THE MANAGING MEMBER

6.1. Rights and Powers of the Managing Member. Except as otherwise expressly provided in this Agreement, the Managing Member shall have full, exclusive and complete power to manage and control the business and affairs of the Company and all of the rights and powers provided to the Managing Member by the Act. The Managing Member may not be removed without its consent. Without limiting the foregoing, and in addition to all of the rights provided by this Agreement to the Managing Member, the Managing Member shall have the full power and authority, but not the obligation, at any time and from time to time, to take the following actions on behalf of the Company, without the consent of any of the other Members on such terms and conditions as the Managing Member shall deem appropriate, unless expressly provided to the contrary in Section 6.3 or in any other section of this Agreement:

6.1.1. To purchase, lease, rent, exchange or otherwise acquire any real or personal assets and properties for the Company including without limitation and Section

6.4. notwithstanding, entering into a lease for the New Arena with an Affiliate of the Managing Member as Landlord;

6.1.2. To hold, service, collect, operate, maintain, develop, construct, improve, rebuild, repair, raze and otherwise manage the real and personal assets and properties of the Company including, without limitation, renaming the Team;

6.1.3. To sell, convey, assign, lease, rent, develop, exchange and otherwise dispose of in whole or in part the real and personal assets and property of the Company;

6.1.4. To grant options, easements, licenses, servitudes and rights of way with respect to the real and personal assets and properties of the Company, and enter into agreements respecting their use;

6.1.5. To execute and deliver for, on behalf of and in the name of the Company any agreements, endorsements, contracts, certificates, deeds, bills of sale, pledges, assignments, leases, subleases, stock powers and other instruments and documents with respect to the real and personal assets and properties of the Company in connection with the management and operation of the business and affairs of the Company;

6.1.6. To borrow money on behalf of the Company, and, in connection therewith, to execute and deliver for, on behalf of and in the name of the Company, bonds, notes, mortgages, deeds of trust, pledges, debentures, security agreements, financing statements, assignments and other agreements and documents creating liens on, or granting security interests in or otherwise affecting, all or part of the assets and properties of the Company and extensions, renewals and modifications thereof, and to prepay in whole or in part, refinance, recast, increase, modify or extend any indebtedness of the Company;

6.1.7. To enter into sale and leaseback financing arrangements with respect to all or any part of the assets and properties of the Company and, in connection therewith, to execute for and on behalf of the Company any instruments and documents relating thereto;

6.1.8. To engage, on behalf of and at the expense of the Company, all officers, employees, agents, architects, engineers, contractors, attorneys, accountants, consultants or any other Persons (including Affiliates of the Managing Member) as the Managing Member, in its sole discretion, deems appropriate in connection with the conduct, operation and management of the Company's business and affairs, all on such terms and for such compensation as the Managing Member, in its sole discretion, deems proper, including, without limitation, entering into an employment agreement with Wayne Gretzky, on such terms as the Managing Member, in its sole discretion, deems proper;

6.1.9. To do all things which the Managing Member, in its sole discretion, deems necessary or appropriate to own, hold, manage, operate, develop and lease any of the Company's property or assets;

6.1.10. To prosecute, defend, settle or compromise, at the Company's expense, any actual or threatened suits, actions or claims at law or in equity to which the Company

is a party or by which it is affected as may be necessary, desirable or proper in the Managing Member's sole discretion, to enforce or protect the Company's interests, and to satisfy out of Company's funds any judgment, decree or decision of any court, board, agency or authority having jurisdiction or any settlement of any suit, action or claim prior to judgment or final decision thereon;

6.1.11. To determine, subject to the provisions of this Agreement, when and in what aggregate amounts distributions to the Members shall be made;

6.1.12. To pay the expenses of the Company from the funds of the Company, provided that all of the Company expenses shall be billed directly to and paid by the Company and reimbursement to the Managing Member and Affiliates shall be allowed for all reasonable expenses incurred and paid by the Managing Member or Affiliates or as otherwise set forth in this Agreement;

6.1.13. To dissolve and liquidate the Company;

6.1.14. To make loans (including pre-organizational loans and loans which may be converted to Class "B" Members' Interests upon the occurrence of events set forth in any documents, including, without limitation, notes, debentures, mortgages or deeds of trust, pledge agreements and collateral assignments. (however denominated) evidencing such Loans to the Company and receive interest on such loans at the rates determined by the Managing Member (subject to any applicable usury laws), with such loans payable upon the Managing Member's demand;

6.1.15. To admit as Class "A" Members or Class "B" Members any Persons to whom Transfers of Interests are made and whom the Managing Member approves pursuant to Article 12 of this Agreement and to admit as Class "A" Members or Class "B" Members any other persons on terms acceptable to the Managing Member acting in its sole discretion and to allocate the consideration paid for such Interests to repayment of any loans made by the Managing Member or any affiliate of the Managing Member;

6.1.16. To vote at any election or meeting of any corporation, association or other business entity, including but not limited to the NHL, in person, or by proxy, on behalf of the Company, and to appoint agents to do so in its place and stead;

6.1.17. To file, on behalf of the Company, all required local, state, foreign and federal tax returns relating to the Company or its assets and properties and to make or determine not to make any and all elections with respect thereto;

6.1.18. To invest and reinvest the funds of the Company and to establish bank, money market and other accounts for the deposit of Company funds and permit withdrawals therefrom upon such signatures as the Managing Member may designate;

6.1.19. To obtain casualty and liability insurance on behalf of and for the protection of the Company, the Managing Member, its Affiliates, creditors, and the Class "A" Members and Class "B" Members;

6.1.20. To execute and deliver any and all instruments and documents, and to do any and all other things necessary or appropriate, in the Managing Member's sole discretion, for the accomplishment of the business and purposes of the Company or necessary or incident to the protection and benefit of the Company;

6.1.21. To establish and maintain a working capital reserve for operating expenses, development of the Company's property and other capital expenditures, normal repairs, replacements, contingencies, and other anticipated costs relating to the assets and properties of the Company, including, but not limited to, paying any assessments or other obligations to the NHL, by retaining a percentage of proceeds from the Class "A" Members' and Class "B" Members' Capital Contributions and regular receipts as determined from time to time by the Managing Member to be reasonable under then-existing circumstances;

6.1.22. To purchase property in the Managing Member's own name (and assume loans in connection therewith) and temporarily hold title thereto for the purpose of facilitating the acquisition of such property by the Company or the borrowing of money or obtaining of financing for the Company, or the completion of construction on the property or any other purpose related to the business of the Company;

6.1.23. To amend this Agreement, provided that such amendment (i) does not adversely affect the Class "A" Members or Class "B" Members in any material respect, or (ii) is necessary or desirable to comply with any applicable law or governmental regulation, NHL policy or rule, or is otherwise enacted pursuant to the terms of this Agreement, or (iii) is required by any third-party lender as a condition to making any loan to the Company, which loan the Managing Member believes to be in the Company's best interests. Any other amendments to this Agreement shall be effected pursuant to Section 15.13 hereof.

6.1.24. To compromise, without the consent of any of the Class "A" Members or Class "B" Members, the obligation of any Member to make a contribution or to return money or other assets paid or distributed in violation of the Act;

6.1.25. To enter into partnerships, joint ventures, limited liability companies and other entities with other persons, companies, partnerships or other entities;

6.1.26. To require Class "A" Members and Class "B" Members to make additional Capital Contributions to the Company on such terms as the Managing Member deems appropriate, provided such Capital Contributions shall be required from all Class "A" Members and Class "B" Members (including the Managing Member, if a Class "A" or Class "B" Member), in accordance with the terms of Section 3.4 hereof;

6.1.27. To approve a plan of merger or consolidation of the Company with or into one or more business entities, and to abandon the same;

6.1.28. To determine, in the Managing Member's sole and absolute discretion, whether an event terminating the membership of any Member in the Company, as such events are set forth in Section 18-801(b) of the Act, has occurred, as the same is defined

in the Act, but no determination that such an event has occurred shall cause the Company to dissolve, without a specific decision to that effect by the Managing Member;

6.1.29. To redeem or repurchase Equity Interests on behalf of the Company;

6.1.30. To act in its sole discretion on behalf of the Company with respect to any matters relating to or affecting the Company's membership in the NHL;

6.1.31. To assign its right, title and interest as Managing Member of the Company to any other Person on such basis as the Managing Member deems appropriate, including any Affiliate of the Managing Member; and

6.1.32. To appoint, in the Managing Member's sole and absolute discretion, an Advisory Board, consisting of one or more persons (who may, but need not be, Members) to provide advice to the Managing Member, as the Managing Member may request from time to time, but other than reimbursement of reasonable expenses, no member of the Advisory Board shall receive remuneration for his or her service thereon and neither the Advisory Board nor any of its members, as such, shall have any authority to act for the Company.

6.2. Fees, Compensation and Reimbursements to Managing Member and Its Affiliates.

6.2.1. Fees and Compensation. The Managing Member or an Affiliate designated by the Managing Member shall be entitled to receive the Administration Fee as an obligation of the Company that is senior to and separate from any Member's right to return of capital or distribution of profits.

6.2.2. Reimbursements. The Managing Member or its Affiliates shall be entitled to receive, in addition to the Administration Fee hereof, reimbursement for all reasonable expenses incurred and paid by the Managing Member or any Affiliate on behalf of the Company, including, but not limited to, legal fees, accounting fees for the maintenance of the Company's books and records, the preparation of income tax returns, telephone, postage, courier and other communication expenses, travel and entertainment expenses and promotion costs, and similar items.

6.2.3. Fee or Reimbursement Loans. If the Company is unable to reimburse or pay the Managing Member or its Affiliates promptly for any amounts due to any of them as reimbursements or fees, the amounts that are not reimbursed or that are not paid shall be treated as a loan by the Managing Member or its Affiliates to the Company and interest shall accrue on the unpaid principal amount of such loan at the greater of a rate equal to (i) the Prime Rate plus two percentage points, or (ii) the Managing Member's or Affiliate's actual cost of funds plus two percentage points, with such loan payable upon the Managing Member's or Affiliate's demand, subject to such subordination requirements as may be imposed from time to time by third party lenders to the Company.

6.3. [Intentionally Omitted].

6.4. Duties and Obligations of The Managing Member.

6.4.1. The Managing Member shall take all actions which may be necessary or appropriate (i) for the continuation of the Company's valid existence as a limited liability company under the laws of the State of Delaware and qualified to transact business in the State of Arizona, and (ii) for the acquisition, development, maintenance, preservation and operation of Company property in accordance with the provisions of this Agreement; provided that the Managing Member shall be entitled to cause the termination of the Company's existence in the event that substantially all the membership interests of, or substantially all the assets of, the Company are sold.

6.4.2. The Managing Member shall take such action as may be necessary or appropriate in order to form and qualify the Company as a limited liability company under the laws of the States of Delaware and Arizona, respectively, and in order to continue in effect such formation or qualification; provided that the Managing Member shall be entitled to cause the termination of the Company's existence in the event that substantially all the membership interests of, or substantially all the assets of, the Company are sold. The Managing Member shall file or cause to be filed in the office of the appropriate authorities of the States of Delaware and Arizona, as applicable, such certificates (including Certificate of Formation and fictitious name certificates) and other documents as are required by the applicable statutes, rules or regulations of such state or as are required to reflect the identity of the Members and the amount of their respective Capital Contributions.

6.4.3. The Managing Member shall prepare or cause to be prepared and shall file on or before the due date (or any extension thereof) any federal, foreign, state or local tax returns required to be filed by the Company. The Managing Member shall cause the Company to pay any taxes payable by the Company.

6.4.4. The Managing Member shall obtain and keep in force, or cause to be obtained and kept in force, during the term hereof, fire and extended coverage, workmen's compensation and public liability insurance in favor of the Company with such insurers and in such amounts as the Managing Member shall deem advisable, but in amounts not less (and with deductible amounts not greater) than those customarily maintained with respect to properties comparable to the Company's properties and assets.

6.4.5. [Intentionally Omitted].

6.4.6. The Managing Member shall issue Certificates of Membership Interest to the Members in such form as the Managing Member may determine, provided that all such Certificates of Membership Interest shall state (i) the name of the Company and the date and state of its organization; (ii) the name of the Member and the Equity Interests held by such Member in the Company, expressed in Units; (iii) whether such Member is a Class "A" Member or a Class "B" Member; and (iv) such restrictive legends on such certificate as may be required by the Managing Member.

6.5. Managing Member May Have Activities Outside the Company. The Managing Member shall not be required to manage the Company as the Managing Member's sole and exclusive function and the Managing Member and its Affiliates may engage, independently or with others, in other business and investment activities of every nature and description in addition to those relating to the Company including, without limitation, the construction, ownership, operation, management, syndication and development of residential, commercial, industrial and other real estate. Neither the Company nor any Member shall have any right, solely by virtue of this Agreement or its relationship to the Managing Member or the Company, to share or participate in any such other investments or activities of the Managing Member or to the income or proceeds derived therefrom. The Managing Member shall not have any obligation to disclose any such other investments or activities to the Members unless it actually or potentially adversely affects the business or property of the Company.

6.6. Confirmation of Authority. Any document to be executed on behalf of the Company, including but not limited to, agreements, leases, deeds, mortgages, deeds of trust, notes, bonds, assignments, stock powers and other forms of contracts, and all amendments, modifications or rescissions of the same, shall be binding upon and considered as authorized for the Company when signed on its behalf by the Managing Member, or by such other Person as the Managing Member shall specify in writing.

6.7. Liability and Indemnification of the Managing Member. The Managing Member, its agents, Affiliates, employees, attorneys and all others acting on the Managing Member's behalf shall not be liable, responsible or accountable in damages or otherwise to the Company or to any of the Members for any act or omission performed or omitted by the Managing Member or such other persons enumerated herein, in good faith pursuant to the authority granted to the Managing Member by this Agreement in a manner reasonably believed by it or any of them to be within the scope of the authority granted to it by this Agreement and in or not opposed to the best interest of the Company or the Members; provided, however, that the Managing Member shall not be relieved of liability in respect of any claim, issue or matter as to which such Managing Member or any such other person shall have been adjudged to be liable for gross negligence or willful misconduct; and, subject to such limitation in the case of any such judgment of liability, the Company shall indemnify the Managing Member and any such other person against any loss or damage incurred by it including but not limited to, any resulting solely by reason of serving as Managing Member and against reasonable expenses (including attorneys fees and costs) actually and reasonably incurred by them in connection with the defense or settlement of any threatened, pending or completed action or suit by any Member in connection therewith. The satisfaction of any indemnification and any saving harmless shall be from and limited to Company assets, and no Member shall have any personal liability on account thereof.

6.8. Withdrawal of Managing Member. The Managing Member may withdraw or resign from the Company upon 5 days written notice to the Members.

ARTICLE 7. -- RIGHTS AND LIABILITIES OF CLASS "A" MEMBERS AND CLASS "B" MEMBERS

7.1. Rights. The Class "A" Members and Class "B" Members shall not take part in the management or control of the Company's business or affairs, participate in decisions

regarding the Company's business or affairs or have the power to act for or bind the Company except to the extent that the Member may also be the Managing Member and then only in the capacity as the Managing Member within the scope of such authority hereunder.

7.2. Limited Liability. Except as otherwise provided by the Act, no Member shall be personally liable for any of the debts of the Company or any of the Losses thereof beyond the amount contributed by such Member to the Company and the share of undistributed profits of the Company attributable to such Member.

7.3. Return of Capital. No Class "A" Member or Class "B" Member shall be entitled to the return of or interest on such Member's Capital Contributions to the Company, except as provided herein.

7.4. Voting Rights of Class "A" Members and Class "B" Members. Except as otherwise provided in this Agreement, the Class "A" and Class "B" Members shall have the right to vote on the selection and admission of a successor or additional Managing Member, and, upon the affirmative vote of the Class "A" and Class "B" Members at the time owning more than eighty-five percent (85%) of the Equity Interests, with the concurrence of the Managing Member (if one is then serving) and in accordance with Article 11 hereof, such successor or additional Managing Member shall have all the rights granted to Managing Members hereunder. All actions taken pursuant to the provisions of this Section 7.4 shall require the Junior Lender's and Senior Lender's prior consent for so long as the Obligations remain unpaid.

7.5. Withdrawal of Class "A" Members and Class "B" Members. Class "A" Members and Class "B" Members may not withdraw from the Company except upon a Transfer permitted in accordance with Article 12 of this Agreement, subject to the Managing Member's authority to determine that a Member has committed an event terminating such Member's membership in the Company as described in Section 6.1.28.

7.6. Acknowledgment of Obligations under Consent Agreement; Mandatory Redemption of Member's Interests for Violation of NHL Prohibitions on Gambling. Each Member hereby acknowledges and agrees that he, she or it is subject to and bound by the terms of that certain Consent Agreement which the NHL requires of owners of NHL franchises, a copy of which is attached hereto as Exhibit B. Without limiting the foregoing, each Member acknowledges that in the event the Managing Member or the NHL reasonably determines that a Member has engaged in conduct that violates the NHL's restrictions on gambling set forth in the Consent Agreement (as the same may be amended from time to time), then the Managing Member will have the right to cause the Company to redeem such Member's Interest in the Company in exchange for payment of an amount equal to such Member's Capital Account as reflected on the books of the Company as of the date of the determination. The Company shall, at the sole option of the Managing Member, make the redemption payment to such Member in the form of either (i) cash (payable by check or wire transfer), or (ii) a promissory note with principal and interest amortized over not more than five (5) years and bearing interest at a rate per annum equal to the sum of (x) the prime lending rate published by the Wall Street Journal at the date of redemption plus (y) 2%, and with principal and interest payable annually, and which note contains provisions subordinating the Company's obligations therein as may be imposed from time to time by the Company's lenders.

ARTICLE 8. -- MEETINGS

8.1. Meetings of Members. The Managing Member may at any time call a meeting of the Members, on matters on which they are entitled to vote or as otherwise determined by the Managing Member, and must call for a meeting following receipt of the written request therefor by Class "A" or Class "B" Members holding eighty-five percent (85%) or more of the Equity Interests as of the date of receipt of such written request. Within 15 days after the Managing Member's determination to call a meeting, or within 15 days after the Managing Member's receipt of such written request, the Managing Member shall notify all Members of record as of the date of receipt of such written request as to the time and place of the Company meeting, if called, and the general nature of the business to be transacted thereat or, if no such meeting has been called, of the matter or matters to be voted upon and the date upon which the votes will be counted. Any Company meeting or the date upon which such votes, without a meeting, will be counted (regardless of whether the Managing Member has called for such meeting or vote upon the request of Members or has initiated such event without such request) shall be held no less than 15 nor more than 75 days following mailing of the notice thereof by the Managing Member. All expenses of voting and such notification shall be borne by the Company.

8.2. Method of Voting. A Member shall be entitled to cast his vote(s) (a) at a meeting, in person, by written proxy or by a signed writing directing the manner in which he desires his vote(s) be cast, which writing must be received by the Managing Member prior to such meeting, or (b) without a meeting, by a signed writing directing the manner in which he desires that his vote(s) be cast, which writing must be received by the Managing Member prior to the date upon which the votes of the Members are to be counted. Only the votes of Members of record on the notice date which Members are not in default hereunder, whether at a meeting or otherwise, shall be counted. Unless expressly provided to the contrary in this Agreement, the Managing Member shall not be entitled to vote in its capacity as Managing Member. Class "A" Members and Class "B" Members shall vote as a single group, not as separate groups, for all purposes hereunder.

8.3. Action Without a Meeting. Any action may be taken by the Class "A" and Class "B" Members, without a meeting, by a written consent stating the action so taken and signed, for that percentage of the Members required by this Agreement or the Act to take or approve the action.

ARTICLE 9. - [INTENTIONALLY OMITTED]

ARTICLE 10. -- BOOKS, RECORDS, REPORTS AND ACCOUNTING

10.1. Records. The Managing Member, or such Person designated by the Managing Member, shall keep or cause to be kept at the Principal Office of the Company the following: . . . (a) a current list of the full name and last known business, residence or mailing address of each Member; (b) a copy of the initial Certificate of Formation of the Company and all amendments thereto; (c) copies of all written limited liability company agreements and all amendments to the agreements, including any prior written limited liability company agreements no longer in effect; (d) copies of any written and signed promises by the Members to make Capital Contributions to the Company; (e) copies of the Company's federal, foreign, state and local income tax returns and reports, if any, for the four most recent years; (f) copies of any prepared financial statements

of the Company for the four most recent years; and (g) minutes of every meeting of the Members, as well as any written consents or actions taken by the Managing Member or the Members without a meeting. Any such records maintained by the Company may be kept on or be in the form of any information storage device, provided that the records so kept are convertible into legible written form within a reasonable period of time.

10.2. Access to Records. Members and their designated representatives shall be permitted access to the records specified in Section 10.1 of the Company at the Principal Office of the Company upon notice given to the Managing Member at least ten (10) business days in advance, during ordinary business hours, and shall have the right to make copies thereof at their own expense. Upon written request, after payment of the reasonable expenses of duplication, a Member shall be provided with a copy of the Certificate of Formation, any amendments thereto and the current list of Members' names, last known business address and Capital Contributions. The Company shall not otherwise be required to deliver or mail a copy of the list of Members, Certificate of Formation, this Agreement, or any amendment thereto. The Members shall have the further right to obtain from the Managing Member from time to time upon reasonable demand in writing (i) true and full information regarding the state of the business and financial condition of the Company, (ii) promptly after becoming available, a copy of the Company's federal, foreign, state and local income tax returns for the preceding year and (iii) such other information regarding the affairs of the Company as is required in accordance with the Act. The Managing Member may charge the greater of the actual reasonable administrative costs (including personnel time, copying charges, and similar items) or a fee of \$25.00 to cover the cost of supplying copies of the Company records. The Managing Member shall have the right to keep confidential from the Members, for such period of time as the Managing Member deems reasonable, any information which the Managing Member reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Managing Member in good faith believes is not in the best interest of the Company, or could damage the Company or its business or which the Company is required by law or by agreement with a third party to keep confidential.

10.3. Confidentiality. The Members acknowledge that prior to the date hereof they have had access to and been entrusted with, and from and after the date hereof they will continue to have access to and be entrusted with, Confidential Information, the use by or the disclosure of which to competitors of the Company or the Managing Member, as applicable, or to the general public would be highly detrimental to the best interests of the Company and the Members. The Members further acknowledge and agree that the right to maintain the confidentiality of the Confidential Information constitutes a proprietary right which the Company and the Managing Member are entitled to protect. Accordingly, the Members covenant and agree with the Company and the Managing Member that neither they nor their respective Affiliates will at any time disclose, reveal or make known any of such Confidential Information to any Person nor shall they or any of them use the same for any purpose detrimental to the Company or the Managing Member or their respective Affiliates, without the prior written permission of the Managing Member, which can be withheld for any reason in the sole and absolute discretion of the Managing Member. The covenants and agreements contained in this Section 10.3 shall survive, without limitation as to time, the expiration or earlier termination of this Agreement.

10.4. Audit. The books of the Company shall be audited annually at Company's expense by such independent public accounting firm as the Managing Member shall designate.

10.5. Fiscal Year and Accounting. The Fiscal Year of the Company shall be the calendar year or such other tax year required by the Code. Except as otherwise determined by the Managing Member, all amounts computed for the purposes of this Agreement and all applicable questions concerning the rights of Members shall be determined using the method of accounting selected by the Managing Member or required by the Code. All decisions as to other accounting matters, except as specifically provided to the contrary herein, shall be made by the Managing Member.

10.6. Reports. The Managing Member shall furnish to each Member audited financial statements within 180 days after the end of the Fiscal Year (or such earlier time as they are available) and quarterly unaudited financial statements within 45 days after the end of each of the first three fiscal quarters of each Fiscal Year, and otherwise from time to time or upon reasonable demand true and full information regarding the business and financial condition of the Company, subject to Section 10.2. Such financial information for the four most recent Fiscal Years of the Company shall be kept at the Company's Principal Office.

10.7. Preparation of Tax Returns. The Managing Member shall arrange for the preparation and timely filing of all returns of Company income, gains, deductions, losses and other items necessary for income tax purposes and shall cause to be furnished to the Members the tax information reasonably required for income tax reporting purposes, within 90 days after the end of each fiscal year. The classification, realization and recognition of income, gain, losses and deductions and other items, for federal, foreign, state or local income tax purposes, shall be on that method of accounting as the Managing Member shall determine or as otherwise required by the Code or prevailing law.

10.8. Tax Elections. The Managing Member shall determine whether to make any available elections pursuant to the Code.

10.9. Tax Controversies. The Members hereby designate the Managing Member as the Tax Matters Member. The Tax Matters Member is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Members agree to cooperate with the Tax Matters Member and to do or refrain from doing any or all things reasonably required by the Tax Matters Member to conduct those proceedings. The Tax Matters Member agrees to promptly notify the Members upon the receipt of any correspondence from any federal, foreign, state or local tax authorities relating to any examination of the Company's affairs.

10.10. Withholding and Tax Advances.

10.10.1. Authority to Withhold. To the extent the Company is required by law to withhold or to make tax payments on behalf of or with respect to a Member (e.g., (i) backup withholding, (ii) withholding with respect to Members that are neither citizens nor residents of the United States, or (iii) withholding with respect to Members that are not residents of a particular state) ("Tax Advances"), the Company may withhold such amounts and make such tax payments as may be required.

10.10.2. Repayment of Tax Advances. All Tax Advances made on behalf of a Member will, at the option of the Managing Member, either be (i) promptly paid to the Company by that Member, or (ii) repaid by reducing the amount of the current or next succeeding Distribution or Distributions that would otherwise have been made to that Member (or, if such Distributions are not sufficient for that purpose, by reducing the proceeds of liquidation otherwise payable to that Member). Whenever the Managing Member selects option (ii) pursuant to the preceding sentence for repayment of a Tax Advance by a Member, for all other purposes of this Agreement such Member will be treated as having received all Distributions (whether before or upon liquidation) without reduction by the amount of such Tax Advance.

10.10.3. Indemnification. Each Member hereby agrees to indemnify and hold harmless the Company and the Managing Member for, from and against any liability with respect to Tax Advances made on behalf of or with respect to such Member.

10.10.4. Certification. Each Member will promptly give the Company any certification or affidavit that the Managing Member may request in connection with this Section 10.10.

ARTICLE 11. -- TRANSFER OF MANAGING MEMBER'S INTERESTS; LIMITED RIGHT OF FIRST REFUSAL; DRAG ALONG RIGHTS

11.1. Transfers of Managing Member's Interest

11.1.1. Restriction. Subject to the provisions of this Article 11, the Managing Member may Transfer all or any portion of its Interests including, without limitation, a Transfer of a right to Profits, Losses or Distributions to a transferee.

11.1.2. Requirements for Transferee Becoming a Substitute Managing Member. No Person shall become a Substitute Managing Member in the Company unless the following conditions precedent are satisfied: (i) the transferee has assumed any and all of the obligations under this Agreement with respect to the Interest to which the Transfer relates; (ii) all reasonable expenses required in connection with the Transfer have been paid by or for the account of the transferee; (iii) approval of the National Hockey League, if required, shall have been obtained; and (iv) all agreements, articles, minutes, written consents and all other necessary documents and instruments have been executed and filed and all other acts have been performed which the Managing Member deems necessary to make the transferee a Substitute Managing Member of the Company and to preserve the status of the Company as a limited liability company.

11.1.3. Permitted Transfers. The Managing Member may transfer all or any portion of its Interest to any Affiliate of the Managing Member; provided that the Managing Member shall have determined, upon the advice of counsel acceptable to the Company, that the Transfer will not violate any applicable federal or state securities laws.

11.1.4. Costs and Transfer Fee. Prior to being admitted as a Substitute Managing Member, the transferee shall pay to the Company all third party, out-of-pocket costs incurred by the Company in connection with such Transfer.

11.1.5. Section Applicability Under Certain Circumstances. Notwithstanding the generality of this Article 11, pledges and other grants of security interests to the Company's lenders, including, without limitation, the Junior Lender or Senior Lender, their respective designees, purchasers, assignees, or transferees (each, a "Permitted Transferee") upon an Event of Default shall be permitted under this Agreement and this Article 11. Such Permitted Transferee shall become a Substitute Managing Member under this Article 11 with all of the rights and benefits of the Managing Member under this Agreement, and the other provisions of this Article 11 shall not in any manner restrict the Permitted Transferee from so becoming a Substitute Managing Member under this Article 11 nor shall the other provisions of this Article 11 place conditions on or otherwise impose requirements upon the Permitted Transferee's so becoming a Substitute Managing Member. Capitalized terms used in this Section 11.1.5 and not defined in this Agreement shall have the meanings ascribed thereto in the SOF Credit Agreement (as defined in Section 2.3) and in the Fortress Loan Agreement (as defined in Section 2.3), as applicable.

11.2. [Intentionally Omitted].

11.3. Drag Along of Member's Interests. In the event that a purchaser which is not an Affiliate of the Managing Member, but which is approved by the Managing Member desires to purchase all (but in no event less than all) of the Interests of all Members in conjunction with its acquisition of the Managing Member's Interests, then the Offer shall so state such desire in the form of a binding commitment subject only to NHL approval, which Offer shall further specify a stated cash price of the proposed acquisition of the Company. In conjunction with the closing of the transaction which results in the third party purchaser becoming the Substitute Managing Member pursuant to the Offer, the Members must contemporaneously sell their Interests to the third party purchaser and the third party purchaser shall acquire the Interests of the Members. The net proceeds of such transaction shall be distributed to the Members in accordance with Section 4.1 hereof. The Members must cooperate as requested by the Managing Member in order to complete the transaction in accordance with the terms of the Offer.

ARTICLE 12. -- TRANSFER OF COMPANY INTERESTS

12.1. Transfers.

12.1.1. Restriction. Except as provided in Section 12.1.3, a Member who is not a Managing Member shall not make any Transfer of all or any portion of his Interest including, without limitation, a Transfer of a right to Profits, Losses or Distributions to a transferee without the written consent of the Managing Member, in its sole discretion.

12.1.2. Requirements for Transferee Becoming a Substitute Member. No Person shall become a Substitute Member in the Company unless the following conditions precedent are satisfied: (i) the transferee has assumed any and all of the obligations under this Agreement with respect to the Interest to which the Transfer relates; (ii) all reasonable expenses required in connection with the Transfer have been paid by or for the account of the transferee; (iii) approval of the National Hockey League, if required, shall have been obtained; (iv) the Managing Member and the other Members, as applicable,

have waived their rights of first refusal, or such rights have otherwise expired; and (v) all agreements, articles, minutes, written consents and all other necessary documents and instruments have been executed and filed and all other acts have been performed which the Managing Member deems necessary to make the transferee a Substitute Member of the Company and to preserve the status of the Company as a limited liability company.

12.1.3. Permitted Transfers. Subject to the restrictions for becoming a Substitute Member contained in Section 12.1.2, a Class "A" Member or Class "B" Member may transfer all or any portion of his Interest without the consent set forth in Section 12.1.1 to (i) any member of the transferor's Family; or (ii) the transferor's executor, administrator, trustee or personal representative to whom such Interests are transferred at death or involuntarily by operation of law; provided that the Managing Member shall have determined, upon the advice of counsel acceptable to the Company, that the Transfer will not violate any applicable federal or state securities laws.

12.1.4. Costs and Transfer Fee. Prior to being admitted as a Substitute Member, the transferee shall pay to the Company all third party, out-of-pocket costs incurred by the Company in connection with such Transfer. In addition, the Managing Member may charge a fee of \$250 for transfers effective December 31 or January 1 of the calendar year of the Transfer or a fee of \$1,000 for a Transfer at any other time.

12.1.5. Section Applicability Under Certain Circumstances. Notwithstanding the generality of this Article 12, pledges under the Security Documents and Transfers of the Collateral to the Company's lenders, their designees, purchasers, assignees or transferees (each, a "Permitted Transferee") upon an Event of Default shall be permitted under this Article 12, such Permitted Transferee shall become a Substitute Member under this Article 12, and the other provisions of this Article 12 shall not apply.

12.2. Right of First Refusal. Whenever a Class "A" Member or Class "B" Member has received a bona fide offer to sell all or any portion of its Interests to a third party, including another Member, the Member receiving the offer shall submit it in writing to the Managing Member. The Managing Member shall have fifteen (15) days from receipt of such offer in which to determine whether it agrees to purchase such Member's Interests on the same terms as contained in the offer. If the Managing Member declines to agree to purchase on such terms, or fails to respond within fifteen (15) days, then the Interests shall be offered on the same basis to all other Class "A" Members or Class "B" Members, each of which shall have the right to purchase its pro rata share of such Interests, or such shares as the Class "A" Members or Class "B" Members may mutually agree, so long as all of the Interests offered by the offering Member are purchased. If within thirty (30) days the Class "A" Members or Class "B" Members fail to agree to purchase the Interests, then, subject to fulfillment of the conditions specified in Sections 12.1.1 and 12.1.2, the offering Member shall be permitted to sell the Interests to the third party on terms no more preferential than those contained in the offer.

12.3. No Transfers of Fractional Interests. Notwithstanding any other provision hereof, fractional Interests may not be transferred without the consent of the Managing Member, which may be withheld in its sole and unfettered discretion.

12.4. Restriction on Transfers; Benefit Plan Investors. Notwithstanding anything to the contrary contained herein, a Transfer may not be made (and shall be invalid) if after the Transfer twenty-five percent (25%) or more of all Equity Interests (excluding Equity Interests held by the Managing Member or its Affiliates) will be held by Benefit Plan Investors. "Benefit Plan Investors" shall have the same definition as in Regulation § 2510.3-101(F) (2) promulgated by the United States Department of Labor.

12.5. Acknowledgment of NHL Restrictions on Transfer. Notwithstanding any other provision hereof, each Member hereby acknowledges and agrees to the restrictions on Transfer imposed by the NHL, which restrictions appear on the cover page of this Agreement.

ARTICLE 13. -- DISSOLUTION AND WINDING UP

13.1. Dissolution. The Company shall dissolve only upon the occurrence of one or more of the following events:

13.1.1. the election of the Managing Member to dissolve the Company;

13.1.2. upon the occurrence of any event that requires or, upon the taking of any action permitted therein, causes the dissolution of the Company under Section 18-801 of the Act;

13.1.3. the occurrence of any event which makes it unlawful for the business of the Company to be carried on or for the Managing Member to carry on the business of the Company; or

13.1.4. the sale or other disposition of all or substantially all of the Company's assets and properties and the collection of all notes received in connection with such sale or other disposition.

13.2. Continuation of the Company. The occurrence of any of the events terminating the membership of any Member set forth in Section 18-801(b) of the Act shall not dissolve the Company, unless such Member is the last remaining Member.

13.3. Filing Upon Dissolution. As soon as possible following the dissolution of the Company, the liquidating trustee of the Company shall execute and file a Notice of Winding Up as required by the Act. Upon the dissolution of the Company, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until the Articles of Termination have been filed as required by the Act or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

13.4. Liquidation. Upon dissolution of the Company, the business and affairs of the Company shall be wound up and liquidated as rapidly as business circumstances permit, the Managing Member shall act as the liquidating trustee, and the assets of the Company shall be liquidated and the proceeds thereof shall be paid (to the extent permitted by applicable law) in the following order:

13.4.1. First, to creditors, including Members that are Creditors, in the order of priority as required by applicable law and by this Agreement;

13.4.2. Second, to a reserve for contingent liabilities to be distributed at the time and in the manner as the liquidating trustee determines in its reasonable discretion;

13.4.3. Third, to the Managing Member, until the Managing Member's Priority Capital Account has been reduced to zero;

13.4.4. Fourth, to the Class "A" Members, the Class "B" Members, and the Managing Member *pari passu* based upon the positive aggregate amount of their Capital Account balances, after giving effect to all contributions, distributions, and allocations for all periods, until such capital accounts are equal to zero; and

13.4.5. Thereafter, to the Class "A" Members, Class "B" Members, and Managing Member, *pari passu*, based on their respective Profit Interests.

If the Managing Member determines that an immediate sale of the Company's assets and liquidation of the Company would cause undue losses to the Members, the Managing Member may defer liquidation of any assets, other than those assets necessary to satisfy current obligations, for a reasonable time, or may distribute such assets in kind according to the order and priority set forth in this section: Any assets distributed in kind shall be valued and treated as though the assets were sold and the cash proceeds were distributed.

13.5. Reasonable Time for Winding Up. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Section 13.4 to minimize any losses otherwise related to that winding up. A reasonable time shall include the time necessary to market and sell the assets.

13.6. Deficit Capital Account. Except as otherwise provided herein, upon liquidation, each Member shall look solely to the assets of the Company for the return of that Member's Capital Contribution. No Member shall be personally liable for a deficit Capital Account balance of any other Member, it being expressly understood that the distribution of liquidation proceeds shall be made solely from existing Company assets.

13.7. Articles of Termination. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to Members, Articles of Termination shall be executed and filed as required by the Act.

ARTICLE 14. -- POWER OF ATTORNEY

Each Class "A" Member and Class "B" Member, by the execution of the subscription agreement, by which such Member subscribed for such Member's Equity Interests, or by execution of this Agreement or a counterpart of this Agreement, either personally or by duly constituted attorney-in-fact, irrevocably constitutes and appoints the Managing Member and each of them, if there are more than one, as his true and lawful attorney and agent, with the full power and authority in his name, place and stead to make, execute, swear to, acknowledge, deliver, file

and record, if necessary, (a) the Certificate of Formation and this Limited Liability Company Agreement and any amendment thereto, as required by the Act, including any amendment required for the issuance of additional Equity Interests, the transfer of Interests, and admission, substitution or deletion of Members and the continuation of the Company after the death, dissolution, Bankruptcy, insanity, incompetence, removal, retirement or withdrawal of the Managing Member; (b) any cancellation of this Agreement and the Certificate of Formation as required by the Act upon the dissolution and termination of the Company; (c) all certificates, instruments, documents and other papers (including without limitation any business certificate, fictitious name certificate, and additional powers of attorney) and amendments thereto which may from time to time be required under the laws of the United States of America, the State of Delaware, the State of Arizona, or any other jurisdiction in which the Company determines to do business, or required by any political subdivision or agency of any of the foregoing or otherwise, or which the Managing Member deems appropriate or necessary, to qualify or continue the qualification of the Company as a limited liability company or a partnership for income tax purposes, to carry on the objects and intent of this Agreement, to conduct the business and affairs of the Company, to admit, substitute or delete Members and to effect the termination and dissolution of the Company; (d) all instruments which the Managing Member deems appropriate to reflect an amendment change or modification of the Company in accordance with the terms of this Agreement; and (e) all conveyances and other instruments which the Managing Member deems appropriate to effect the Transfer of Interests, to admit, substitute or delete Members, to sell, exchange or dispose of assets or properties of the Company, to borrow money and otherwise enter into financing transactions and to reflect the dissolution and termination of the Company.

The power of attorney granted herein shall be deemed to be a power coupled with an interest, shall survive the death or legal incapacity of a Class "A" Member or a Class "B" Member and shall survive the Transfer by a Member of all or any portion of an interest or any interest therein except where the transferee thereof has been approved by the Managing Member for admission to the Company as a Substitute Member, the power shall survive such Transfer with respect to the Interests so Transferred only for the purpose of enabling the Managing Member to execute, acknowledge and file any instrument necessary to effect such substitution.

ARTICLE 15. -- GENERAL

15.1. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

15.2. Notices. Notices may be delivered either by mail, private messenger service, facsimile or telecopier. Any notice or document required or permitted hereunder to a Member shall be in writing and shall be deemed to be given on the date received by the Member; provided, however, that all notices and documents mailed to a Member in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Member at his or its respective address as shown in the records of the Company, shall be deemed to have been received five days after mailing, and all notices and documents delivered by facsimile or telecopier to a Member at his or its respective facsimile number as shown in the records of the Company shall be deemed to have been received twenty-four hours after transmission. The address and facsimile number of each of the Members shall for all purposes be as set forth in the

Company's records unless otherwise changed by such Member by notice to the Managing Member and the Company as provided herein. Unless the Managing Member decides otherwise, e-mail communications shall not be effective to give notice to any Member.

15.3. Partition. Each Member hereby waives any right to partition or the right to take any other action which might otherwise be available to such Member for the purpose of severing his relationship with the Company or his interest in the assets and properties held by the Company from the interest of the other Members until the dissolution of the Company.

15.4. Severability. If any provision of this Agreement shall be conclusively determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby.

15.5. Binding Effect. Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the Members and their respective successors and, where permitted, assigns.

15.6. Titles and Captions. All article, section and paragraph titles and captions contained in this Agreement are for convenience only and are not a part of the context hereof.

15.7. Pronouns and Plurals. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the appropriate Person(s) may require.

15.8. No Third Party Rights. This Agreement is intended to create enforceable rights between the parties hereto only, and creates no rights in, or obligations to, any other persons whatsoever.

15.9. Time is of Essence. Time is of the essence in the performance of each and every obligation herein imposed.

15.10. Further Assurances. The parties hereto shall execute all further instruments and perform all acts which are or may become necessary to effectuate and to carry on the business contemplated by this Agreement.

15.11. Estoppel Certificates. The Members hereby agree that, at the request of the Managing Member, or any of the Company's lenders including, without limitation, the Junior Lender under the SOF Credit Agreement, or the Senior Lender under the Fortress Loan Agreement, they will execute and deliver an estoppel certificate stating that this Agreement is in full force and effect.

15.12. Schedules Included in Exhibits; Incorporation by Reference; Modification of Exhibits and Schedules. Any reference to an Exhibit to this Agreement contained herein shall be deemed to include any Schedules to such Exhibit. Each of the Exhibits referred to in this Agreement, and each Schedule to such Exhibits, is hereby incorporated by reference in this Agreement as if such Schedules and Exhibits were set out in full in the text of this Agreement. The Managing Member may modify or update the Exhibits and Schedules from time to time to

reflect changes in the Members of the Company or otherwise to accurately document the membership of the Company.

15.13. Amendments. Except as provided in Section 6.1.23, this Agreement may not be amended except upon specific written consent of the Managing Member and the affirmative vote of the Members at the time owning more than eighty-five percent (85%) percent of Equity Interests then held by all Members.

15.14. Counterparts. This Agreement may be executed in counterparts. Signatures sent by facsimile will be as valid as original signatures.

15.15. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter hereof. No oral understandings, oral statements, oral promises or oral inducements exist. No representations, warranties, covenants or conditions, express or implied, whether by statute or otherwise, other than as set forth herein, have been made by the parties hereto.

15.16. Statutory or Regulatory Provisions. Any statutory or regulation references in this Agreement shall include a reference to any successor to such statute or regulation and/or to the referred to provision of such statute or regulation.

15.17. Acknowledgment of Role of Counsel. The Class "A" and Class "B" Members acknowledge that this Agreement was prepared by counsel for the Managing Member, that such counsel does not represent any of the other Class "A" and Class "B" Members individually, and that the interests of the Managing Member may be adverse to those of the Class "A" and Class "B" Members. Each Class "A" and Class "B" Member further acknowledges that such Class "A" or Class "B" Member has had the opportunity to have this Agreement reviewed by counsel of such Class "A" or Class "B" Member's choosing.

15.18. ACKNOWLEDGMENT OF TAX MATTERS. BY THEIR SIGNATURES BELOW, EACH OF THE UNDERSIGNED ACKNOWLEDGES THAT (I) S/HE IS AWARE OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, INCLUDING THE CANCELLATION AND CONVERSION OF INDEBTEDNESS CONTEMPLATED HEREIN, (II) S/HE HAS HAD AN OPPORTUNITY TO REVIEW THE DOCUMENTS REFERENCED HEREIN, (III) S/HE AGREES TO THE PRIORITY CAPITAL ACCOUNT ESTABLISHED HEREIN, (IV) THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING THE CANCELLATION AND CONVERSION OF INDEBTEDNESS MAY RESULT IN TAX LIABILITY TO SUCH MEMBER, AND (V) S/HE HAS BEEN ADVISED BY THEIR OWN ADVISORS AS TO THE MATTERS CONTEMPLATED HEREIN.

ARTICLE 16. -- DEFINITIONS

The following terms used in this Agreement shall have the meaning described below:

"Act" means the Delaware Limited Liability Company Act, as amended.

“Adjusted Capital Contributions” means, as of any day, a Member’s Capital Contributions adjusted as follows:

(a) increased by the amount of any Company liabilities which, in connection with distributions pursuant to Sections 4.1 and 13.4 hereof, are assumed by such Member or are secured by any Company property distributed to such Member; and

(b) reduced by the amount of cash and the Gross Asset Value of any Company property distributed to such Member pursuant to Sections 4.1 and 13.4.3 hereof and the amount of any liability of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company. In the event any Member transfers all or any portion of his Equity Interests in accordance with the terms of the Agreement, his transferee shall succeed to the Adjusted Capital Contribution of the transferor to the extent it relates to the transferred Equity Interests.

“Administration Fee” means an amount equal to 1.25% of gross revenues of the Company, as reported on the Company’s financial statements, before the New Arena opens for business, and 1.50% of such gross revenues thereafter. Such fees shall be paid on a quarterly basis, or on such other basis as the Managing Member may determine.

“Affiliate” means a Person who, with respect to any other Person: (a) directly or indirectly controls, is controlled by or is under common control with such other Person; (b) owns or controls 10 percent or more of the outstanding voting securities of such other Person; (c) is an officer, director, partner or member of such other Person; (d) is an officer, director, partner or member of any Person for which such other Person acts in any such capacity; (e) is a member of the immediate family of such other Person; or (f) is a family trust of which such other Person is the settlor or grantor.

“Agreement” means this Second Amended and Restated Limited Liability Company Agreement as it may be amended from time to time.

“Bankruptcy” means, as to a Member, the happening of any of the following: (a) the making by such Member of an assignment for the benefit of creditors generally; (b) the filing by such Member of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing such Member’s inability to pay such Member’s debts as they become due; (c) the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating such Member to be bankrupt or insolvent; (d) the filing by such Member of a petition or answer seeking for such Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (e) the filing by such Member of any answer or other pleading admitting the material allegations of, or such Member consenting to, or defaulting in answering, a bankruptcy petition filed against such Member in any bankruptcy proceeding; (f) the filing by such Member of an application or other pleading or such Member’s otherwise seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of such Member or of all or any substantial part of such Member properties; (g) the commencement of any proceeding against such Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation which has not been dismissed or stayed for any

consecutive period of 120 days; or (h) the appointment without the consent or acquiescence of such Member of a trustee, receiver or liquidator of such Member or of all or any substantial part of such Member's properties without such appointment being vacated or stayed within 90 days or without such appointment being vacated within 90 days after the expiration of any such stay.

"Capital Account" shall mean the accounting record of each Member's capital interest in the Company in respect of its Capital Contributions (but not its Priority Capital Contribution). There shall be credited to each Member's Capital Account (a) the amount of any contribution of cash by that Member other than the Priority Capital Contribution, (b) the Gross Asset Value of property contributed by that Member, (c) the amount credited to the holder of any debentures issued by the Company that are, by their terms, convertible to Units on the terms set forth in the debentures (including without limitation the amount of the Series A Debenture and the Series B Debenture), (d) that Member's allocable share of Profits and any items in the nature of income or gain that are specially allocated to that Member, and (e) the amount of any Company liabilities that the Member assumes or takes subject to under Code Section 752. There shall be debited against each Member's Capital Account (i) the amount of all distributions of cash to that Member (other than in respect of the Priority Capital Contribution), unless a distribution to the Member is a loan or is deemed a payment under Code Section 707(c), (ii) the Gross Asset Value of property distributed to that Member by the Company, (iii) that Member's allocable share of Losses and any items in the nature of expenses or losses which are specially allocated in the discretion of the Managing Member, and (iv) the amount of any liabilities of that Member that the Company assumes or takes subject to under Code Section 752. The transferee of all or a portion of the Interest shall succeed to that portion of the transferor Member's Capital Account that is allocable to the portion of the Interest transferred. A Member who has more than one interest in the Company may have a separate Capital Account to reflect each such interest. There shall be separate Capital Accounts maintained for the benefit of the Managing Member in respect of its Priority Capital Contribution. This definition of Capital Account and the other provisions herein relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with those Treasury Regulation Sections. In the event the Managing Member determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or which are assumed by the Company or the Members), are computed to comply with that Treasury Regulation, the Managing Member may make such modification. The Managing Member shall also make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulation Sections 1.704-1(b) and 1.704-2.

"Capital Contribution" means, with respect to any Member, the amount of money, the amount credited to the holder of any debentures issued by the Company that are, by their terms, convertible into Units on the terms set forth in the debentures, amounts contributed pursuant to Section 3.4 hereof, and the initial Gross Asset Value of any property (other than money) contributed to the Company with respect to the Equity Interests held by such Member other than the Priority Capital Contribution. The principal amount of a promissory note that is not readily traded on an established securities market and that is contributed to the Company by the maker of the note shall not be included in the Capital Account of any Person until the Company makes

a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Treasury Regulation § 1.704-I(b) (2) (iv) (d) (2).

“Certificate of Formation” means the Certificate of Formation filed with the Delaware Secretary of State by which the Company became a legally organized limited liability company under the Act.

“Certificate of Membership Interests” means the Certificate issued to a Member that evidences such Member’s Interest in the Company.

“Class “A” Member(s)” means any Person who executes this Agreement or a counterpart of this Agreement either personally or by a duly constituted attorney-in-fact as a Class “A” Member, and any other Person admitted to the Company as a Substitute Class “A” Member and that has not made a Transfer of such Person’s entire Interest.

“Class “B” Member(s)” means any Person who executes this Agreement or a counterpart of this Agreement either personally or by a duly constituted attorney-in-fact as a Class “B” Member, and any other Person admitted to the Company as a Substitute Class “B” Member and that has not made a Transfer of such Person’s entire Interest.

“Code” shall mean the Internal Revenue Code of 1986 (or successor thereto), as amended from time to time.

“Company” means the limited liability company formed pursuant to this Agreement under the laws of the State of Delaware, as such entity may from time to time be constituted.

“Confidential Information” means all confidential, proprietary and non-public information and trade secrets, know-how and intellectual property relating to the Company, the Company’s business and the Members and the Members’ assets and business interests, as applicable, including without limitation, all confidential, proprietary and non-public:

- i. information contained in any Confidential Information Memorandum and Presentation to Investors, or similar documents no matter how denominated, prepared by the Company, its Affiliates, or the agents of any of the foregoing;
- ii. information relating to the business and assets of the Managing Member and its Affiliates;
- iii. information provided to the Members pursuant to Section 10.2 hereof;
- iv. business, sales, technical or creative plans, policies or practices, product designs, specifications, marketing or promotion; and
- v. information received from third parties that the Company and/or the Members, as applicable, is obligated to keep confidential.

Confidential Information shall not include information that:

- vi. is or subsequently becomes public knowledge without a breach by a Member of any obligation owed to the Company, the Managing Member or others;
- vii. became known to the Member prior to disclosure by the Company, the Managing Member, or agents or affiliates of either;
- viii. became known from a third party other than by the breach of a confidentiality obligation owed to the Company or the Managing Member.

“Debt” means a loan.

“Depreciation” means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to the Company’s assets for such year, or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization, or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member.

“Distribution(s)” means all distributions of cash or property by the Company to the Member in accordance with this Agreement.

“Equity Interest” means the interest of a Class “A” Member or a Class “B” Member in the Company as a Member representing such Member’s rights, powers and privileges as specified in this Agreement, but not the interest of the Managing Member, as such, in the Company.

“Family” means a Member’s spouse, lineal. ancestors or descendants by birth or adoption, siblings, and trusts for the benefit of a Member or any of the foregoing individuals.

“First Distribution Ratio” means one million dollars per Unit for every issued and outstanding Unit in the Company regardless of classification.

“Fiscal Year” means the year on which the accounting and federal income tax records of the Company are kept.

“Gross Asset Value” shall mean with respect to any Company asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

1. the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of that asset, as determined by the contributing Member and the Managing Member;
2. the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managing Member, as of

the date upon which any of the following occurs: (i) the acquisition of an additional interest in the Company after the date hereof by any new or existing Member, in exchange for more than a de minimis Capital Contribution or the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company, if the Managing Member determines that such adjustment is necessary or appropriate to reflect the relative economic interest of the Members of the Company; and (ii) the liquidation of the Company within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g);

3. the Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of that asset on the date of distribution; as determined by the Member receiving that distribution and the Managing Member; and

4. if an election under Code Section 754 has been made, the Gross Asset Value of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of the assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that those adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m) and Section 5.3 hereof; provided, however, that Gross Asset Value shall not be adjusted pursuant to this subsection (d) to the extent that the Managing Member determines that an adjustment pursuant to subsection (2) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (4).

If the Gross Asset Value of an asset -has been determined or adjusted hereby, that Gross Asset Value shall thereafter be further adjusted by the Depreciation, if any, taken into account with respect to that asset for purposes of computing Profits and Losses.

"Interest(s)" means either Equity Interest(s) or Profit Interest(s) or both as the context may require.

"Managing Member" means Coyotes Holdings, LLC, a Delaware limited liability company, or its successor as may be designated from time to time in accordance with the provisions of this Agreement.

"Members" means the Managing Member, the Class "A" Members, and the Class "B" Members.

"Net Cash From Operations" means the gross cash proceeds from Company operations less the portion thereof used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements and contingencies, all determined by the Managing Member. "Net Cash From Operations" shall not be reduced by depreciation, amortization, cost recovery deductions or similar allowances.

"Net Cash From Sales or Refinancing" means the net cash proceeds from all sales and other dispositions and all refinancing of Company property, less any portion thereof used to establish reserves, all as determined by the Managing Member. "Net Cash From Sales or Refinancing" shall include all principal and interest payments with respect to any note or other

obligation received by the Company in connection with sales and other dispositions of Company property.

"New Arena" the multi-purpose arena located in Glendale, Arizona, or at another location.

"Person" means an individual, firm, partnership, corporation, estate, trust, pension or profit-sharing plan or other entity.

"Priority Capital Account" means the separate Capital Account of the Managing Member's interest in the Company with respect to the Priority Capital Contribution. As of the date hereof, the Priority Capital Account balance of the Managing Member is \$146,855,719.05. There shall be credited to the Priority Capital Account the Managing Member's allocable share of Profits and any items in the nature of income or gain that are specially allocated to it pursuant to Section 5.1(a)(ii). There shall be debited against the Priority Capital Account (i) the amount of all Distributions to the Managing Member in respect of the Priority Capital Contribution (but not Distributions in respect of any other Capital Contributions), and (iii) the Managing Member's allocable share of Losses and any items in the nature of expenses or losses which are specially allocated in the discretion of the Managing Member pursuant to Section 5.1(a)(iv). The transferee of all or a portion of the Managing Member's interest in the Priority Capital Contribution shall succeed to that portion of the transferor Managing Member's Priority Capital Account that is allocable to the portion of such interest transferred.

"Priority Capital Contribution" means, with respect to the Managing Member, an amount equal to \$146,855,719.05.

"Prime Rate" means the "prime rate" published in the "Money Rates" or equivalent section of the Western Edition of The Wall Street Journal, provided that if a "prime rate" range is published by The Wall Street Journal, then the highest rate of that range will be used, or if The Wall Street Journal ceases publishing a prime rate or a prime rate range, then the Managing Member will select a prime rate, a prime rate range or another substitute interest rate index that is based upon comparable information.

"Principal Office" means the principal office and place of business of the Company and the place where the records of the Company are kept as required by the Act.

"Profits" and "Losses" shall mean for each Fiscal Year or other period as determined by the Managing Member, an amount equal to the Company's taxable income or loss for that year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

1. any income of the Company exempt from federal income tax not otherwise taken into account in computing Profits or Losses shall be added to that taxable income or loss;

2. any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i), shall be subtracted from that taxable income or loss;

3. in the event the Gross Asset Value of any Company asset is adjusted as required by subsections (1) or (2) of the definition of Gross Asset Value, the amount of that adjustment shall be taken into account as gain or loss from the disposition of that asset (assuming the asset was disposed of just prior to the adjustment) for purposes of computing Profits or Losses in the Fiscal Year of adjustment;

4. gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted basis of that property may differ from its Gross Asset Value;

5. in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing the taxable income or loss, there shall be taken into account the Depreciation for the Fiscal Year or other period; and

6. any items of income, gain, loss or deduction that are specially allocated pursuant as permitted hereunder shall not be taken into account in computing Profits or Losses.

"Profit Interests" means the Profit Interests of the Managing Member, the Class "A" Members, and of the Class "B" Members initially as set forth on Exhibit A, and as may be adjusted from time to time in accordance with Section 3.4 hereof.

"Substitute Managing Member" means any Person who becomes a Managing Member pursuant to the provisions of Section 11.1 hereof.

"Substitute Member" means any Person who becomes a Member pursuant to the provisions of Section 12.1 hereof.

"Tax Matters Member" means the "tax matters partner" as defined in Code Section 6231(a)(7), and the Tax Matters Member shall be the Managing Member.

"Transfer" means any direct or indirect offer, sale, transfer or other disposition or pledge or hypothecation to any Person other than the Company.

"Treasury Regulations" means pronouncements which clarify, interpret and apply the provisions of the Code, and which are designated as "Treasury Regulations" by the United States Department of Treasury.

"Units" means the Equity Interests of a Member in the Company, expressed as 1 Unit for each \$1 Million of capital contributed by the Class "A" Members, and 1 Unit for each \$1 Million or greater amount of capital, as the subscriber and the Managing Member may agree, contributed by the Class "B" Members.

“Unrecovered Capital Contribution” means, with respect to the Class “A” Members and the Class “B” Members, an amount equal to such Member’s Capital Contribution, less all distributions to such Member in the nature of return of Capital Contributions pursuant to Section 4.1 (c) and 4.1(d) hereof.

“Unrecovered Priority Capital” means, with respect to the Managing Member, an amount equal to the Priority Capital Contribution, less all distributions to the Managing Member in the nature of return of Priority Capital Contributions pursuant to Section 4.1 (b) hereof.

EXHIBIT A
Class "A" Members
as of September 25, 2006

Members	Capital Contribution	Equity Interest	Ownership Interest	Profits Interest	Tax ID No.
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Class "A" Members

Coyotes Holdings, LLC	\$61,500,000	22 Class A Units 39.5 Class B Units	91.7900%	59.6635%	
Wayne Gretzky	\$1,000,000	One Class A Unit	1.4925%	14.9701%	
Lake Street Leasing Corp.	\$1,000,000	One Class A Unit	1.4925%	0.9701%	
Jim Wikert	\$1,000,000	One Class A Unit	1.4925%	0.9701%	
John A. Breslow	\$1,000,000	One Class A Unit	1.4925%	0.9701%	
John A. Breslow Rollover IRA	\$1,000,000	One Class A Unit	1.4925%	0.9701%	
Shawn Hunter	\$500,000	One-Half Class A Unit	0.7463%	3.4851%	
Totals	\$67,000,000	100%	100%	65%	
Managing Member Coyotes Holdings, LLC	-0-	-0-	-0-	18 ¹ %	
Totals		100%		100%	

¹ Coyotes Holdings, LLC, in its capacity as Managing Member of the Company has been granted a 35% profits interest in the Company. Pursuant to certain employment arrangements with Wayne Gretzky and Shawn Hunter, the Managing Member, and/or its predecessors, has granted a 14% profits interest in the Company to Wayne Gretzky and a 3% profits interest in the Company to Shawn Hunter. Such grant is made by the Managing Member out of its 35% profits interest.

EXHIBIT B
Consent Agreement

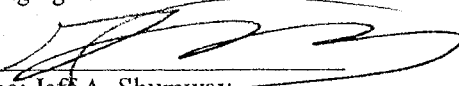
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SIGNATURE PAGE TO
SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
OF
COYOTES HOCKEY, LLC

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

Members:

COYOTES HOLDINGS, LLC, a Delaware limited liability company, as Member and Managing Member

By: 

Name: Jeff A. Shumway

Title: CEO Manager

WAYNE GRETZKY, an individual

By: _____

SHAWN HUNTER, an individual

By: _____

JIM WIKERT, an individual

By: _____

LAKE STREET LEASING CORP.

By: _____

Name: _____

Title: _____

JOHN A. BRESLOW, an individual

By: _____

JOHN A. BRESLOW ROLLOVER IRA

By: _____

Name: _____

Title: _____

Signature Page to Second Amended and Restated Limited Liability Company Agreement of
Coyotes Hockey, LLC

BUSDOCS/1578645

SIGNATURE PAGE TO
SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
OF
COYOTES HOCKEY, LLC

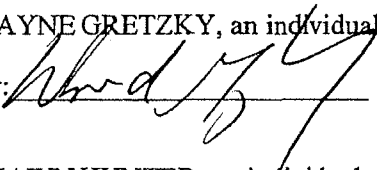
IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

Members:

COYOTES HOLDINGS, LLC, a Delaware limited liability company, as Member and Managing Member

By: _____
Name: Jeff A. Shumway
Title:

WAYNE GRETZKY, an individual

By:  _____

SHAWN HUNTER, an individual

By: _____

JIM WIKERT, an individual

By: _____

LAKE STREET LEASING CORP.

By: _____
Name:
Title:

Signature Page to Coyotes Hockey, LLC Second Amended and Restated Agreement

BUSDOCS/1578645

SIGNATURE PAGE TO
SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
OF
COYOTES HOCKEY, LLC

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

Members:

COYOTES HOLDINGS, LLC, a Delaware limited liability company, as Member and Managing Member

By: _____
Name: Jeff A. Shumway
Title: _____

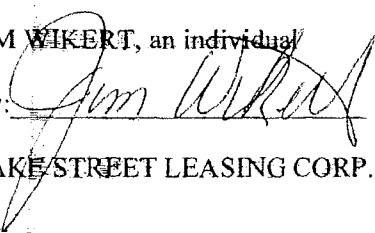
WAYNE GRETZKY, an individual

By: _____

SHAWN HUNTER, an individual

By: _____

JIM WIKERT, an individual

By:  _____

LAKE STREET LEASING CORP.

By: _____
Name: _____
Title: _____

JOHN A. BRESLOW, an individual

By: _____

JOHN A. BRESLOW ROLLOVER IRA

By: _____
Name: _____
Title: _____

Signature Page to Second Amended and Restated Limited Liability Company Agreement of
Coyotes Hockey, LLC

BUSDOCS/1578648

SIGNATURE PAGE TO
SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
OF
COYOTES HOCKEY, LLC

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

Members:

COYOTES HOLDINGS, LLC, a Delaware limited liability company, as Member and Managing Member

By: _____
Name: Jeff A. Shumway
Title:

WAYNE GRETZKY, an individual

By: _____

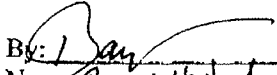
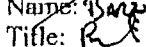
SHAWN HUNTER, an individual

By: _____

JIM WIKERT, an individual

By: _____

LAKE STREET LEASING CORP.

By:  _____
Name: Bruce Michael
Title: 

JOHN A. BRESLOW, an individual

By: _____

JOHN A. BRESLOW ROLLOVER IRA

By: _____
Name:
Title:

Signature Page to Second Amended and Restated Limited Liability Company Agreement of
Coyotes Hockey, LLC

BUSDOCS/1578645

JOHN A. BRESLOW, an individual

By:

John A. Breslow

JOHN A. BRESLOW ROLLOVER IRA

By:

John A. Breslow

Name:

Title:

BUSDOCS/1578645.

FIRST AMENDMENT
TO
SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
COYOTES HOCKEY, LLC,
a Delaware limited liability company

THIS FIRST AMENDMENT TO SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Amendment") is made as of April 23, 2009, by Coyotes Holdings, LLC, a Delaware limited liability company, in its capacity as the managing member (the "Managing Member") of Coyotes Hockey, LLC, a Delaware limited liability company (the "Company").

WHEREAS, pursuant to Section 6.1.23 of the Company's Second Amended and Restated Limited Liability Company Agreement, dated as of September 25, 2006 (the "Agreement"), the Managing Member has the full power and authority to amend the Agreement without the consent of any of the other Members (as defined in the Agreement) and on such terms and conditions as the Managing Member shall deem appropriate, provided such amendment does not adversely affect the Class "A" Members (as defined in the Agreement) or Class "B" Members (as defined in the Agreement) in any material respect.

NOW, THEREFORE, the Agreement is hereby amended as follows:

1. **Amendments.**

(a) Article 3 of the Agreement is hereby amended by adding the following new section:

Section 3.6. Bankruptcy of Member. A Member shall not cease to be a Member of the Company upon the occurrence of an event set forth in Section 18-304 of the Act.

(b) Section 6.1 of the Agreement is hereby amended by (i) deleting "without its consent" at the end of the second sentence of such section, and (ii) adding the following sentence as the penultimate sentence of such section:

In the event that Jerry Moyes ("Moyes") is at any time removed from his position as manager of Coyotes Holdings, LLC, or Coyotes Holdings, LLC is removed as Managing Member of the Company, then immediately upon such event, (i) the Managing Member's powers and authority under this Section 6.1 shall cease and all such powers and authority shall thereafter be exercised exclusively by Moyes to the full extent that such powers and authority could previously have been exercised by the Managing Member, and (ii) any vote, consent, or dissent required or permitted of the Managing Member hereunder shall thereafter be deemed to be a vote, consent, or dissent required or permitted of Moyes.

(c) Section 7.4 of the Agreement is hereby amended by (i) deleting "or additional" in the third and sixth lines of the first sentence thereof; (ii) deleting "with the concurrence of the

Managing Member (if one is then serving) and" in the fifth and sixth lines of the first sentence thereof; and (iii) replacing "Managing Members" in the seventh line of the first sentence thereof with "the Managing Member."

(d) Section 15.13 of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 15.13. Amendments. Except as set forth in Section 6.1.23, this Agreement may not be amended except in accordance with a writing executed by all of the parties hereto.

2. Effect of Amendment. Except as set forth expressly herein, all terms of the Agreement, as amended hereby, shall be and remain in full force and effect and shall constitute the legal, valid, binding, and enforceable limited liability company agreement of the Company.

[Signature Page Follows]

IN WITNESS WHEREOF, the Managing Member has duly executed this Amendment as of the day and year first above written.

MANAGING MEMBER:

Coyotes Holdings, LLC

By: 
Name: Jerry Moyes
Title: Manager

SIGNATURE PAGE TO
FIRST AMENDMENT TO
SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

Exhibit 5
(Holdings Operating Agreement)

Execution Version

**AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
OF
COYOTES HOLDINGS, LLC
A DELAWARE LIMITED LIABILITY COMPANY**

Dated September 25, 2006

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INTRODUCTION

The Articles of Organization of Coyotes Holdings, LLC, a Delaware limited liability company (the "Company") were filed with the Delaware Secretary of State on December 9, 2002. The Company's business shall be conducted under such name until such time as the Articles are amended in accordance with applicable law and this Agreement. The Company's registered office and registered agent shall be as stated in the Articles until such time as they are amended in accordance with applicable law and this Agreement. The parties hereto agree to the provisions hereof in order to define their rights, liabilities, restrictions and limitations with respect to the Company.

WHEREAS, the members of the Company previously entered into a Limited Liability Company Agreement, dated December 9, 2002 (as amended, the "Existing Agreement");

WHEREAS, the members of the Company are entering into this Amended and Restated Limited Liability Company Agreement in order to amend and restate, in its entirety, the Existing Agreement;

WHEREAS, effective as of the date hereof, Coyotes Holdings MemberCo, LLC, a Delaware limited liability company ("MemberCo") has acquired, for a purchase price equal to \$40,299,175.00, 24.86% of the membership interests (hereinafter, the "Ellman Interests") in the Company from Arizona Hockey Management, Inc. ("AHM"), Center Ice Holdings, LLC, 101 Holdings, LLC, E-Arena Holdings, LLC, and Arena Management Holdings, LLC (such purchase price paid in exchange for (i) such Ellman Interests and (ii) the agreement of (x) AHM to cancel approximately \$45,067,948.56 of indebtedness owed to AHM by Coyotes Hockey, LLC and (y) Ellman Holdings, Inc. to cancel approximately \$1,234,725 of indebtedness owed to Ellman Holdings, Inc. by Coyotes Hockey, LLC);

WHEREAS, effective as of the date hereof and pursuant hereto, MemberCo has become a member of the Company;

WHEREAS, effective as of the date hereof, \$85,000,000 of indebtedness owing from the Company to Jerry Moyes is being repaid and the balance of any indebtedness owing to Jerry Moyes, Vickie Moyes and/or the Jerry and Vickie Moyes Family Trust (the "Moyes Member") shall remain outstanding; and

WHEREAS, the parties hereto have agreed to enter into this Amended and Restated Limited Liability Company Agreement in order to set forth their mutual agreements and understandings.

NOW THEREFORE, in consideration of the foregoing premises and in consideration of the mutual promises and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that, effective as of the date hereof, the Existing Agreement shall be amended and restated as set forth herein.

ARTICLE I DEFINITIONS

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

“Act” shall mean the Delaware Limited Liability Company Act, DGCL Sections 18-101, *et seq.*, as amended from time to time.

“Additional Member” shall mean any Person who or which is admitted to the Company as an Additional Member pursuant to this Agreement.

“Adjusted Capital Account Deficit” shall mean with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Allocation Year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amount which such Member is deemed to be obligated to restore pursuant to the next to last sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

“Affiliate” of any Person shall mean a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person.

“Agreement” shall mean this Amended and Restated Limited Liability Company Agreement, as originally executed and as may be amended and restated from time to time.

“Allocation Year” shall mean (i) the period commencing on the date of this Agreement and ending on December 31, 2002, (ii) any subsequent twelve (12) month period commencing on January 1 and ending on December 31, or (iii) any portion of the period described in clauses (i) or (ii) for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss or deduction pursuant to Article VI hereof.

“Articles” shall mean the Articles of Organization of the Company, or such other documents as are filed with the Secretary of State under the Act, as amended from time to time.

“Assignee” shall mean a Person to whom the economic rights and benefits of a Member’s ownership interest have been transferred but where such Person has not been made a Substitute Member.

“Board” shall mean the Board of Managers as set forth in Section 4.1 hereof.

“Capital Account” shall mean, with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions:

Signature Page to Amended and Restated Limited Liability Company Agreement of Coyotes Holdings, LLC

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(i) To each Member's Capital Account there shall be credited (A) such Member's Capital Contributions, (B) such Member's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 6.5 or Section 6.6 hereof, and (C) the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note (or a Member related to the maker of the note within the meaning of Regulations Section 1.704-1 (b)(2)(ii)(c)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.7041 (b)(2)(iv)(d)(2);

(ii) To each Member's Capital Account there shall be debited (A) the amount of money and the Gross Asset Value of any property distributed to such Member pursuant to any provision of this Agreement, (B) such Member's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 6.5, Section 6.6 or Section 6.7 hereof, and (C) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company;

(iii) In the event Interests are Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the Transferred Interests; and

(iv) In determining the amount of any liability for purposes of subparagraphs (i) and (ii) above, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b) and Regulations Section 1.704-2, and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Board shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or any Members) are computed in order to comply with such Regulations, the Board may make such modification, provided that it is not likely to have a material effect on the amounts distributed to any Person pursuant to Section 6.12 hereof upon the dissolution of the Company. The Board also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b) and Regulations Section 1.704-2.

"Capital Contribution" shall mean, with respect to any Member, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Company with respect to the Interests in the Company held or purchased by such Member.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Company" shall mean Coyotes Holdings, LLC, a Delaware limited liability company.

"Company Minimum Gain" shall have the meaning given the term "partnership minimum gain" in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

"Depreciation" shall mean, for each Allocation Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Allocation Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Allocation Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Allocation Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Allocation Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Board.

"Gross Asset Value" means with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the value of such assets as set forth in the books and records of the Company;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account), as determined by the Board as of the following times: (A) immediately prior to the acquisition of an additional interest in the Company by any new or existing Member; (B) immediately prior to the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; and (C) immediately prior to the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), *provided* that an adjustment described in clauses (A) and (B) of this paragraph shall be made only if the Board reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company;

(iii) The Gross Asset Value of any item of Company assets distributed to any Member shall be adjusted to equal the gross fair market value (taking Code Section 7701(g) into account) of such asset on the date of distribution as determined by the Board; and

Signature Page to Amended and Restated Limited Liability Company Agreement of Coyotes Holdings, LLC

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(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1 (b)(2)(iv)(m) and subparagraph (vi) of the definition of “Profits” and “Losses” or Section 6.5(g) hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (iv) to the extent that an adjustment pursuant to subparagraph (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraphs (i), (ii) or (iv), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses.

“Independent” shall mean that a Person is not presently an employee, officer, director, consultant, independent contractor, or owner of 5% or more of the equity interests of another referenced Person and has not held such positions for a period of at least three (3) months, preceding the date in question.

“Interests” shall mean the membership interests in the Company.

“Investors” shall mean Persons providing capital to the Company in exchange for Interests.

“Losses” shall have the meaning set forth in the definition of “Profits” and “Losses.”

“Manager” shall mean any representative elected or appointed to the Board pursuant to Section 4.1.

“Member” shall mean each current Member and Persons becoming Members hereunder, including Additional Members and Substitute Members, but shall not include Assignees unless they become Substitute Members, nor shall it include Members who have assigned all of their economic interest in their Interest(s).

“Member Majority Vote” shall mean, if used herein, an affirmative vote by Members holding at least a majority of all outstanding Interests of those classes with voting rights.

“Member Nonrecourse Debt” has the same meaning as the term “Partner nonrecourse debt” in Section 1.704-2(b)(4) of the Regulations.

“Member Nonrecourse Debt Minimum Gain” means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

Signature Page to Amended and Restated Limited Liability Company Agreement of Coyotes Holdings, LLC

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"Member Nonrecourse Deductions" has the same meaning as the term "Partner nonrecourse deductions" in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

"Moves Member" shall have the meaning described in the recitals.

"Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

"Nonrecourse Liability" has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

"Officer(s)" shall mean those officers of the Company designated hereafter and appointed by the Board.

"Person" shall mean any individual or any general partnership, limited partnership, limited liability partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association, and any other entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where applicable.

"Profits" and "Losses" mean, for each Allocation Year, an amount equal to the Company's taxable income or loss for such Allocation Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(iv) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of,

Signature Page to Amended and Restated Limited Liability Company Agreement of Coyotes Holdings, LLC

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notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value.

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Allocation Year, computed in accordance with the definition of Depreciation;

(vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704-(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and

(vii) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 6.5, Section 6.6 and Section 6.7 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 6.5 and 6.6 hereof shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (vi) above.

"Regulations" shall mean the income tax regulations, including temporary regulations, promulgated under the Code, as such regulations are amended from time to time.

"Regulatory Allocations" has the meaning set forth in Section 6.6 hereof.

"Substitute Member" shall mean any Person who or which is admitted to the Company as a Substitute Member as provided hereafter.

"Tax Matters Member" has the meaning set forth in Section 6.17(c) hereof.

"Transfer(s)" shall mean (i) when used as a verb, to give, gift, sell, exchange, assign, redeem, transfer, pledge, hypothecate, encumber, bequeath, devise or otherwise dispose of, and (ii) when used as a noun, the nouns corresponding to such verbs, in either case voluntarily or involuntarily, by operation of law or otherwise.

If a corporation or other business entity is the Member, then a Transfer of ownership interest in such entity or any reorganization of such entity which results in the Person(s) who own the controlling interest in the entity no longer owning a controlling interest, shall be a "Transfer" under this Agreement. If a trust is the Member, then a change in the terms of the trust or circumstances either of which results in (i) the Person(s) who are the primary beneficiary(ies) of the trust no longer being the primary beneficiary(ies) or (ii) the Person(s) who is the trustee(s) of the trust no longer being the sole trustee(s), then such change shall be a "Transfer" under this Agreement.

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"Year" shall mean the Company's fiscal year for income tax purposes as determined pursuant to Section 706 of the Code.

ARTICLE II OFFICES

Section 2.1 Principal Office. The principal office for the transaction of the business of the Company is hereby located at 2710 E. Old Tower Road, Phoenix, AZ 85034, or such other location as determined by the Board from time to time.

Section 2.2 Other Offices. Branch or subordinate offices of the Company may at any time be established by the Board at any place or places where the Company is qualified to do business.

Section 2.3 Registered Office and Agent. The Board may change the location of the Company's registered office and/or its registered agent as designated in the Articles to any other place in the State of Delaware or any other Person. Upon making such a change, a certificate certifying the change shall be executed, acknowledged and filed with the Secretary of State.

Section 2.4 Company Purposes. The purposes of the Company are to own membership interests in Coyotes Hockey, LLC and to and to engage in any and all other activities related or incidental to the foregoing, in which a Delaware limited liability company may lawfully engage.

ARTICLE III CAPITAL STRUCTURE

Section 3.1 Interests. Each Member's Interests of the Company shall be entitled to the rights and preferences as provided in this Agreement.

ARTICLE IV MANAGEMENT AND OFFICERS

Section 4.1 Management. Except as otherwise provided in this Agreement, the business and affairs of the Company shall be managed by a Board of Managers consisting of such number of person(s) as may be designated from time to time by Member Majority Vote. The members of the Board shall be appointed from time to time by the Moyes Member. Initially, there shall be two (2) Managers, consisting of Jerry Moyes and Jeff Shumway. The Board shall direct, manage and control the business of the Company to the best of its ability and, except as otherwise provided in this Agreement, shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things which the Board deems to be reasonably required in light of the Company's business and objectives. The Company shall, as the Managing Member of the Team and as the sole Member of Arena Management Group, LLC, control and direct the management of these entities.

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Section 4.2 Tenure and Qualifications of Managers. Each Manager shall be appointed from time to time by the Moyes Member and shall hold office, subject to the other provisions of this Agreement, until death, resignation or removal by the Moyes Member. Managers need not be residents of any particular state or Members of the Company. A Manager may not be a Person which is an entity.

Section 4.3 Vacancies. If any Manager's position on the Board becomes vacant for any reason, the Moyes Member shall have the right to elect or appoint a replacement.

Section 4.4 Resignation and Removal. A Manager may resign his or her position at any time by giving written notice to the Board. Such resignation shall take effect upon its receipt by the Board or such later time as specified in the notice. A Manager may be removed, with or without cause, by the Moyes Member.

Section 4.5 Certain Powers of the Board. Except as reserved to the Members by law or Section 5.3 hereof, without limiting the generality of the previous sections of this Agreement, the Board, acting by majority vote of those Managers voting on a matter, shall have the power and authority, on behalf of the Company:

(a) To purchase, hold, improve, lease, acquire, own, use, and otherwise deal with real and/or tangible and/or intangible personal properties from any Person as the Board may determine, in the name of the Company, or as a nominee;

(b) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of real and/or tangible and/or intangible personal properties to any Person as the Board may determine;

(c) To borrow money for the Company from banks, other lending institutions, the Members, Affiliates of the Members, and other Persons on such terms as the Board deems appropriate, and to assume or refinance existing indebtedness; and in connection therewith, issue evidence of indebtedness to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums;

(d) To purchase directors and officers, liability, and other insurance to protect the Company, and its Members' property and business;

(e) To invest any Company funds (by way of example and not by limitation) in time deposits, short-term governmental obligations, commercial paper or other investments;

(f) To open bank accounts in the name of the Company, and to determine the signatories thereon;

(g) To execute, negotiate and deliver, on behalf of the Company, all instruments and documents, including, without limitation, contracts, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, deeds, bills of sale or other documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, leases,

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partnership agreements, and any other instruments or documents necessary or appropriate, to the business of the Company;

(h) To employ accountants, legal counsel, managing agents, or others to perform services for the Company and to compensate them from Company funds;

(i) To establish and grant powers to such committees and sub-committees as the Board shall deem appropriate;

(j) To enter into other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Board may approve; and

(k) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business, including but not limited to establishment of funds or reserves, prepay, recast, increase, modify, extend or otherwise amend existing debt, commitments, contracts or other obligations in whole or in part.

Section 4.6 Chairman. The Board shall elect one or more Chairman to preside at the meetings of the Board and the Members. The Chairman or Co-Chairman shall perform such other duties as may be assigned to him or them by this Agreement or the Board. Initially, the Chairman shall be Jerry Moyes.

Section 4.7 Limitation on Authority. Only the Board and agents or employees of the Company authorized by the Board or this Agreement shall have the authority to bind the Company. Only the decisions and actions of an agent or employee on behalf of the Company within the scope of the agent's or employee's authority shall bind the Company. Unless authorized to do so by this Agreement or the Board, no Member who is not a Manager shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. Each Member shall indemnify the Company for any costs or damages incurred by the Company as a result of the unauthorized action of such Member.

Section 4.8 Action by the Board. Except as otherwise specifically provided herein or by the Act, all actions and decisions of the Board shall require a majority vote of those Managers voting on a matter. A majority of the Managers then holding office shall constitute a quorum and shall be present in order for the Board to take any action. Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting, without notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by all the Managers. Such consent will have the same force and effect as a vote of the Managers at a meeting of the Board and may be stated as such in any document filed with the Secretary of State of the State of Delaware or in any certificate or other document delivered to any person or entity. The Managers may participate in and hold meetings of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in any such meeting will constitute presence in person at such meeting, except where a person participates in such meeting for the express purpose of objecting to the transaction of any business on the ground that such meeting is not lawfully called or convened. Regular meetings of the Board may be held without further notice at such time and place as approved by the Board from time to time and communicated to all of the Managers.

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Special meetings of the Board may be called by the Chief Executive Officer(s) (acting together, if more than one), or a majority of the Managers then holding office. Special meetings shall be held at the time and place specified in the notice, which notice shall be sent to each Manager, and which notice also shall specify the purpose(s) of the meeting. Such notice may be given by personal delivery (including by any nationally recognized delivery service with confirmation of receipt), facsimile or e-mail if receipt is confirmed, or U.S. mail, and notice by U.S. mail shall be deemed received on the third business day after the date postmarked. Notice must be given at least 48 hours prior to the time of the special meeting; provided that any Manager may waive the notice requirement.

Section 4.9 Affiliate Transactions. Transactions with Managers, Members and Affiliates of Managers and Members are specifically allowed under this Agreement. Each Manager and Member shall disclose any and all direct or indirect affiliation with or any interest in any Person with which the Company proposes to do business or enter into any financial transactions. Such business and Affiliate transactions shall be subject to a majority vote of the Managers.

Section 4.10 No Exclusive Duty to Company. No Manager shall be required to manage the Company as his or her sole and exclusive function. Each Manager shall devote reasonable time and effort to management duties, if any.

Section 4.11 Other Business Ventures of Managers and Members. Any conflict of interest arising out of the other business activities of any Manager or Member or dispute involving a corporate opportunity shall be resolved pursuant to the Delaware General Corporation Law as if the Company were a Delaware corporation; provided, however, that any Members or Manager may invest in or participate in any real estate development or investment without offering any opportunity to the Company or other Members to participate in such development or investment.

Section 4.12 Indemnity and Exculpation. The Company shall indemnify and hold harmless each Manager and any Officers from and against any and all claims or liabilities of any nature whatsoever arising out of or resulting from any act or omission in connection with the Company, including, without limitation, reasonable costs and expenses of litigation and appeal (including reasonable fees and expenses of attorneys engaged by a Manager and any Officers in defense of such act or omission), but these Persons shall not be entitled to be indemnified or held harmless from claims or liabilities due to, or arising from, their gross negligence, fraud, deceit, willful misconduct, or breach of this Agreement. No Manager shall be liable to the Company or to any Member for any loss sustained by the Company or any Member (or successor thereto), except to the extent, if any, that the loss or damage shall have been the result of gross negligence, fraud, deceit, willful misconduct, or breach of this Agreement.

Section 4.13 Salaries. The Board may establish customary and reasonable compensation for Managers for their services as such, and may authorize the reimbursement of expenses, including expenses incurred to attend meetings of the Board; provided, however, that nothing herein contained shall preclude any Manager from receiving compensation for services to the Company in any other capacity. Compensation of Officers shall be established by a

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majority vote of the Board or pursuant to written employment agreements approved by a majority vote of the Board.

Section 4.14 Election, Resignation and Removal of Officers. The Board shall elect a Chief Executive Officer, which shall initially be Jeff Shumway. The Board also may designate any other Officers of the Company, including, without limitation, any or all of the following: President, Chief Financial Officer, Chief Operating Officer, Secretary, Treasurer and one or more vice presidents, assistant secretaries, or assistant treasurers. The Officers shall serve at the pleasure of the Board (unless otherwise provided in a written employment agreement). Any number of offices may be held by the same Person. Any Officer may resign at any time by giving written notice to the Board. The resignation of any Officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice (but not before the notice is mailed, delivered, or sent by facsimile transmission); and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. All or any lesser number of Officers may be removed at any time, with or without cause, by a majority vote of the Board (unless otherwise provided in a written employment agreement). The duties of such Officers shall be as follows (unless otherwise provided in a written employment agreement):

(a) Chief Executive Officer. Subject to the direction and under the supervision of the Board, the Chief Executive Officer shall generally direct the policy and management of the Company and shall have general charge of the business, affairs and property of the Company and control over its Officers, agents, and employees; and shall do and perform such other duties and may exercise such other powers as from time to time may be assigned by this Agreement or the Board. All material decisions (i.e., those that may have a materially adverse or positive effect on the business, affairs, and/or property of the Company) must be made by action of the Chief Executive Officer authorizing that all documents and instruments relating thereto shall require the signature of the Chief Executive Officer, if more than one then holds office.

(b) President. The President shall perform such duties as are customary for such office subject to the direction of the Board and the Chief Executive Officer.

(c) Chief Financial Officer. The Chief Financial Officer shall perform such duties as are customary for such office subject to the direction of the Board and the Chief Executive Officer.

(d) Chief Operating Officer. The Chief Operating Officer shall perform such duties as are customary for such office subject to the direction of the Board and the Chief Executive Officer.

(e) Secretary. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board may order, of all meetings of the Board and Members. The Secretary shall keep the seal of the Company and shall have the authority to affix the seal to any instrument requiring such a seal, and, when so affixed, may attest the seal by his or her signature. The Secretary shall have the general duties, powers, and responsibilities of a secretary of a corporation incorporated in the State of Delaware and such other duties, powers, and responsibilities as may be

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prescribed by the Board, the Chief Executive Officer, or this Agreement. The Secretary may seek assistance for these duties from the Company's attorneys.

(f) Treasurer. The Treasurer shall keep and maintain or cause to be kept and maintained, accounts of the properties and business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, and capital, to the extent agreed by the Members. The Treasurer shall deposit all monies and other valuables in the name and to the credit of the Company with such depositories as may be designated by the Board. He or she shall disburse the funds of the Company as may be ordered by the Board, shall render to the Board upon request an account of all of the transactions as Treasurer and of the financial condition of the Company, and shall have such other powers and perform such other duties as may be prescribed by the Board, the Chief Executive Officer, or this Agreement. He or she shall be bonded, if required by the Board.

(g) The Assistant Secretary and Assistant Treasurer. The Assistant Secretary and Assistant Treasurer (or in the event there is more than one Assistant Secretary or Assistant Treasurer, in the order of their seniority, designation or election) shall, in the absence of or disability of the Secretary or Treasurer, respectively, perform the duties and exercise the powers of the Secretary or Treasurer and shall perform such other duties as may be prescribed by the Board, the Chief Executive Officer, or this Agreement.

Section 4.15 Business Expenses of Managers and Members. Each Manager and Member shall be accountable to the Company for substantiating expenses incurred by him or her that are eligible to be reimbursed by the Company. Such expenses must be either actually substantiated to the Company or must be deemed substantiated pursuant to the Internal Revenue Service per diem arrangements. The Manager or Member shall include in the expense request for reimbursement the time, place, date, business purpose and names of other individuals involved, as well as a brief description of the specific business being transacted or discussed. In the event that any reimbursement from the Company, whether paid before or after the expense is incurred, cannot be substantiated and documented by the Manager or Member, the unsubstantiated amounts (except IRS approved per diem arrangements) must be returned by the Manager or Member to the Company.

ARTICLE V MEETINGS AND COMPANY RECORDS

Section 5.1 Annual Meeting. The Company shall hold an annual meeting of the Members holding Interests with voting rights on such day in March as is selected by the Board in each year, at 10:00 am local time, or at such other time as shall be determined by the Board, for the purpose of electing the Managers for the upcoming year and the transaction of such business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

Section 5.2 Special Meetings. Special meetings of the Members holding Interests with voting rights, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Board or by any Member or Members holding at least ten percent (10%) of the

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outstanding Interests entitled to vote. Business transacted at a special meeting of Members shall be confined to the purpose or purposes stated in the notice of the meeting.

Section 5.3 Action by Members; Limited Voting Rights. All Member votes shall be taken in a manner allowing each Member one vote for each Interest with voting rights owned by such Member.

Section 5.4 Place of Meetings. The Board may designate any place in the United States as the place of meeting for any meeting of the Members. If no designation is made, the place of the meeting shall be the Company's principal place of business.

Section 5.5 Duly-Called Meetings. If all of the Members holding Interests with voting rights shall meet at any time and place, and consent to the holding of a meeting at such time and place, such meeting shall be a duly-called meeting without call or notice, and at such meeting lawful action may be taken. Otherwise, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be given to each Member holding Interests with voting rights not less than ten (10) nor more than sixty (60) days before the date of the meeting by or at the direction of the Person calling the meeting.

Section 5.6 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting of Members is delivered or mailed or the date on which the resolution declaring the distribution or related to such other purpose is adopted, as the case may be, will be the record date for such determination of Members.

Section 5.7 Quorum. The presence in person, or proxy, or by telephone conference, of Members holding at least a majority of the outstanding Interests with voting rights shall constitute a quorum. In the absence of a quorum at any meeting of Members, a majority of the Interests so represented may adjourn the meeting from time to time for a period not to exceed ninety (90) days without further notice. However, if the adjournment is for more than ninety (90) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed.

Section 5.8 Proxies. At all meetings of Members, a Member may vote the Interests held by such Member in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Company before or at the time of the meeting and retained with the Company's records. No proxy shall be valid after three (3) years from the date of its execution, unless otherwise provided in the proxy.

Section 5.9 Action by Members Without a Meeting. On any matter that is to be voted on by Members, the Members entitled to vote may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing setting forth the action so taken, is signed by all the Members of the Company.

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Section 5.10 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

Section 5.11 Maintenance of Company Books. The Company shall maintain and preserve for seven (7) years all accounts, books, and other relevant Company documents.

Section 5.12 Inspection of Company Books. The Company shall provide Members and their agents and attorneys access to the books and records of the Company. The Company shall provide former Members and their agents and attorneys such access to such books and records pertaining to the period during which they were Members.

ARTICLE VI CAPITAL CONTRIBUTIONS, ALLOCATIONS AND DISTRIBUTIONS

Section 6.1 Members. The Members, their addresses, their initial Capital Contributions and the number of Interests each owns (which Interests shall be issued upon the execution of this Agreement) are set forth on Exhibit A attached hereto.

Section 6.2 Capital Accounts.

(a) A separate Capital Account will be maintained for each Member.

(b) Except as provided in Exhibit A, the manner in which Capital Accounts are to be maintained pursuant to this Section is intended to comply with the requirements of Code Section 704(b) and the Regulations promulgated thereunder.

Section 6.3 Allocations of Losses. After giving effect to the special allocations set forth in Sections 6.5 and 6.6, and subject to Section 6.7, Losses of the Company for each Allocation Year shall be allocated to all of the Members in proportion to their Interests.

Section 6.4 Allocations of Profits. After giving effect to the special allocations set forth in Sections 6.5 and 6.6, Profits of the Company for each fiscal year shall be allocated to all of the Members in proportion to their Interests.

Section 6.5 Special Allocations. The following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Article VI, if there is a net decrease in Company Minimum Gain during any Allocation Year, each Member shall be specially allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-20(2) of the Regulations. This Section

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6.5(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Article VI, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Allocation Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 6.5(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible, provided that an allocation pursuant to this Section 6.5(c) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article VI have been tentatively made as if this Section 6.5(c) were not in the Agreement.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Allocation Year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 6.5(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article VI have been made as if Section 6.5(c) and this Section 6.5(d) were not in the Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any Allocation Year shall be specially allocated to the Members in proportion to their respective Interests.

(f) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Allocation Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such

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Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.7041(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(h) Allocations Relating to Taxable Issuance of Company Units. Any income, gain, loss or deduction realized as a direct or indirect result of the issuance of Interests by the Company to a Member (the "Issuance Items") shall be allocated among the Members so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Member shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.

Section 6.6 Curative Allocations. The allocations set forth in Sections 6.5(a), 6.5(b), 6.5(c), 6.5(d), 6.5(e), 6.5(f), 6.5(g) and 6.7 (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 6.6. Therefore, notwithstanding any other provision of this Article VI (other than the Regulatory Allocations), the Board shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Sections 6.3, 6.4 and 6.5(h).

Section 6.7 Loss Limitation. Losses allocated pursuant to Section 6.3 hereof shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Allocation Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 6.3 hereof, the limitation set forth in this Section 6.7 shall be applied on a Member by Member basis and Losses not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's Capital Accounts so as to allocate the maximum permissible Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Regulations.

Section 6.8 Other Allocation Rules.

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(a) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Board using any permissible method under Code Section 706 and the Regulations thereunder.

(b) The Members are aware of the income tax consequences of the allocations made by this Article VI and hereby agree to be bound by the provisions of this Article VI in reporting their shares of Company income and loss for income tax purposes.

(c) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), the Member's interests in Company profits are in proportion to their Interests.

Section 6.9 Tax Allocations: Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of Gross Asset Value) using the "traditional method."

In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder using the "traditional method".

Any elections or other decisions relating to such allocations shall be made by the Board in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 6.9 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

Section 6.10 [Intentionally Omitted].

Section 6.11 Amount Withheld. All amounts withheld pursuant to the Code or any provision of any state, local or foreign tax with respect to any payment, distribution or allocation to the Company or the Members shall be treated as amounts paid or distributed, as the case may be, to the Members with respect to which such amount was withheld pursuant to this Section 6.11 for all purposes under this Agreement. The Company is authorized to withhold from payments and distributions, or with respect to allocations to the Members, and to pay over to any federal, state and local government or any foreign government, any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law or any foreign law, and shall allocate any such amounts to the Members with respect to which such amount was withheld.

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Section 6.12 Liquidating Distributions. In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1 (b)(2)(ii)(g), distributions shall be made pursuant to this Section 6.12 to the Members who have positive Capital Accounts (in accordance with positive Capital Account balances) in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Member has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all Allocation Years, including the Allocation Year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever. In the discretion of the Board, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Section 6.12 may be:

(a) Distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Board, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to Section 6.12; or

(b) Withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable.

Section 6.13 Allocations During Period of Liquidation. During the period commencing on the first day of the Year during which a dissolution occurs and ending on the date on which all of the assets of the Company have been distributed to the Members pursuant to Section 6.12, the Members shall continue to share Profits, Losses, gain, loss and other items of Company income, gain, loss or deduction in the manner provided in this Article VI.

Section 6.14 Character of Liquidating Distributions. All payments made in liquidation of the interest of a Member in the Company shall be made in exchange for the interest of such Member in property pursuant to Section 736(b)(1) of the Code, including the interest of such Member in Company goodwill.

Section 6.15 Limitations on Distributions.

(a) The Company shall make no distributions to the Members except (i) as provided in this Article VI, or (ii) as agreed to by all of the Members.

(b) A Member may not receive a distribution from the Company to the extent that, after giving effect to the distribution, all liabilities of the Company, other than liability to Members on account of their Capital Contributions, would exceed the fair value of the Company's assets.

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Section 6.16 Accounting Method. The books and records of account of the Company shall be maintained in accordance with the GAAP (except records with respect to the Member's Capital Accounts which shall be prepared in accordance with this Agreement).

Section 6.17 Additional Tax Matters.

(a) Tax Returns. The Company shall prepare and timely file all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's Year.

(b) Tax Elections. The Board may, by majority vote, without any further consent of the Members being required (except as specifically required herein), make any and all elections for federal, state, local and foreign tax purposes including, without limitation, any election, if permitted by applicable law, to adjust the basis of property pursuant to Code Sections 754, 734(b) and 743(b), or comparable provisions of state, local or foreign law, in connection with Transfers of Interests and Company distributions; and to the extent provided in Code Sections 6221 through 6231 and similar provisions of federal, state local, or foreign law, represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company or the Members in their capacities as Members, and file any tax returns and execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and the Members, provided however, neither the Board nor the tax matters member shall have the power to enter into any extension of the period of limitations for making assessments on behalf of a Member, or any settlement agreement that binds another Member, without such Member's written consent.

(c) Tax Matters Member. The Board shall designate a Tax Matters Member who shall be specifically authorized to act as such under the Code and in any similar capacity under state or local law. At any time the Board can remove the Tax Matters Member, appoint a new one, or fill any vacancy by a proper meeting.

(d) Tax Status. Each party hereto acknowledges that it is the Members' intention that the Company will be classified as a partnership for Federal, state and local income tax purposes and subject to all provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; and the filing of Federal and state income tax returns shall not be construed to extend the purposes or expand the obligations or liabilities of the Company nor shall it be construed to create a partnership (other than for tax purposes) or other agency or other relationship between the Members.

ARTICLE VII
RESTRICTIONS ON INTERESTS; ISSUANCE OF ADDITIONAL INTERESTS

Section 7.1 [Intentionally Omitted].

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Section 7.2 [Intentionally Omitted].

Section 7.3 Additional Capital Contribution Is Not Required. No additional Capital Contribution beyond that set forth in Exhibit A shall be required of any Member.

Section 7.4 Additional Interests and Members. The Board may issue additional Interests after June 15, 2003. Prior to being admitted, each Additional Member shall sign a copy of this Agreement agreeing to be bound by their provisions.

Section 7.5 Substitute Members. No one to whom any Interests are Transferred, can become a Substitute Member unless the Person to whom such Interests are Transferred has signed a copy of this Agreement agreeing to be bound by their provisions. A Substitute Member has the rights and powers, and is subject to the restrictions, obligations and liabilities, of a Member under this Agreement and the Act.

Section 7.6 Assignees. An Assignee shall have no right to vote or participate in the management of the business and affairs of the Company or to become a Member or Substitute Member, and shall only be entitled to receive the share of profits or other distributions and the return of contributions to which the transferor Member would otherwise be entitled. An Assignee is not entitled to access to information concerning Company transactions, or to inspect or copy any of the Company's books and other records. Assignees shall not have any of the rights of a Member under this Agreement and the Act.

ARTICLE VIII [RESERVED]

ARTICLE IX DISSOLUTION AND TERMINATION

Section 9.1 Dissolution.

(a) The Company shall be dissolved upon the occurrence of any of the following events:

- (i) at the time specified in the Company's Articles;
- (ii) by the unanimous written agreement of all Members; or
- (iii) upon the entry of a decree of judicial dissolution as specified in the Act.

(b) As soon as possible following the occurrence of any of the events specified in this Section 9.1 effecting the dissolution of the Company, the Company shall execute Articles of Dissolution in such form as shall be prescribed by the Secretary of State, file same with the Secretary of State's office, and after the filing, mail notice of such to each creditor of the Company. Upon the filing by the Secretary of State of Articles of Dissolution, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business.

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Section 9.2 Winding Up, Liquidation and Distribution.

(a) Upon the filing of the Articles of Dissolution, the Board shall proceed to wind up and liquidate the Company as follows:

- (i) proceed to collect its assets;
- (ii) convey and dispose of such of its assets as are not to be distributed in kind to its Members;
- (iii) if the Board has determined that any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by the Board; and
- (iv) do all other acts required to liquidate the Company's business and affairs.

(b) The remaining assets shall be distributed as provided in Section 6.12.

Section 9.3 Return of Contribution Non-recourse to Other Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of his or her Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company, including those obligations set forth in the Agreement (and after the distributions specified in Section 6.12) is insufficient to return the cash or other property contribution of one or more Members, such Member or Members shall have no recourse against any other Member.

**ARTICLE X
MISCELLANEOUS PROVISIONS**

Section 10.1 Amendment. The vote of the Moyes Member shall be necessary in order to amend this Agreement.

Section 10.2 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and deemed to have been sufficiently given or served for all purposes if (a) sent by facsimile transmission to the party's facsimile number as it appears on the records of the Company (such transmission shall be evidenced by a confirmation report showing the date of transmission), (b) delivered personally to the party to whom the same is directed, or (c) mailed by certified U.S. mail (return receipt requested), postage and charges prepaid, addressed to the party's address (as it appears on the records of the Company). Any Member may change his or her address or facsimile number for notice by giving notice in writing, stating his or her new address or facsimile number for notices, to the Company and to the other Members of the Company. Except as otherwise provided herein, any such notice delivered by mail shall be deemed to be given three (3) business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid, except that any notice or other communication mailed to the Company which is not received by the Company within three (3)

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business days after the date of its mailing or transmission shall be deemed to have been given as of the date actually received by the Company.

Section 10.3 Governing Law. This Agreement, and the substantive application and interpretation hereof, shall be governed exclusively by the law of the state of Delaware.

Section 10.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and shall not be amended, altered or modified in any manner whatsoever, except as provided herein by a written instrument. This Agreement supersedes all prior agreements between the parties with respect to the subject matter hereof and all such prior agreements shall be void and of no further force or effect as of the date hereof.

Section 10.5 Execution of Additional Instruments, Further Assurances. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations. Each party hereto shall cooperate and shall take such further action and shall execute and deliver such further documents as may be reasonably requested by any other party in order to carry out the provisions and purposes of this Agreement.

Section 10.6 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa.

Section 10.7 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

Section 10.8 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Section 10.9 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Section 10.10 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Upon such determination that any provision of this Agreement is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

Section 10.11 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the

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parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

Section 10.12 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

Section 10.13 No Partition. Each Member irrevocably waives during the term of the Company the right, if any, such Member may have, if any, to maintain any action for partition with respect to any real property acquired by the Company.

Section 10.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Section 10.15 Specific Performance. Each party to this Agreement agrees that the Members would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, except as otherwise provided in the Act, it is agreed that, in addition to any other remedy to which the nonbreaching Members may be entitled, at law or in equity, the nonbreaching Members shall be entitled to injunctive relief to prevent breaches of the provisions of this Agreement and specifically to enforce the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction thereof.

Section 10.16 Arbitration. Except as provided in this Section 10.16, any dispute, controversy, or claim arising out of or relating to this Agreement or a breach hereof shall be finally resolved by arbitration in accordance with the then-current rules of the American Arbitration Association. The arbitral panel shall apply such rules or procedure as it thinks appropriate in the circumstances; provided, however, that the parties hereto shall be entitled to representation by counsel, to appear and present written and oral evidence and argument and to cross-examine witnesses presented by the other parties. The decision of the arbitral panel shall be final and binding upon the parties hereto. The provisions of this Section 10.16 shall survive and bind the parties hereto, notwithstanding any termination of this Agreement, whether by way of the exercise of rights of termination hereunder, passage of time or otherwise. The award of the arbitral panel may be entered and enforced as a judgment in any court of competent jurisdiction.

Section 10.17 Reimbursement of Expenses. All attorney fees, accounting fees, travel expenses, and other direct third party expenses incurred by the Members in connection with the formation of the Company and the negotiation and documentation of this Agreement and any other agreement or document contemplated by this Agreement or otherwise running to the benefit of the Company or its Members shall be deemed an expense of the Company, and the Company shall promptly reimburse the Members for any such expenses they have incurred.

****Signature Page Follows****

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**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT
MAY BE ENFORCED BY THE PARTIES HERETO.**

IN WITNESS WHEREOF, the parties have duly executed this Limited Liability
Company Agreement as of the date first written above.

BOARD OF MANAGERS

By: _____

Jerry Moyes

By: _____

Jeff A. Shumway

MEMBERS:

**JERRY AND VICKIE MOYES FAMILY
TRUST**

By: _____

Jerry Moyes, Trustee

By: _____

Vickie Moyes, Trustee

COYOTES HOLDINGS MEMBERCO, LLC

By: JERRY MOYES,
its Manager

By: _____

Jerry Moyes

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Exhibit A

Member	Address	Initial Capital Contribution	Interests
Jerry and Vickie Moyes Family Trust	2710 E. Old Tower Road Phoenix, AZ 85034	As set forth on the books and records of the Company	75.14% of the Interests
Coyotes Holdings MemberCo, LLC	2710 E. Old Tower Road Phoenix, AZ 85034	As set forth on the books and records of the Company	24.86% of the Interests

Exhibit 6
(Hockey Proxy)

COYOTES HOCKEY, LLC
IRREVOCABLE PROXY
Coyotes Holdings, LLC

This irrevocable proxy, which is coupled with an interest, is granted by the undersigned to the Commissioner of the National Hockey League (the "NHL") in respect of its 91.79% ownership interest in Coyotes Hockey, LLC, a Delaware limited liability company (the "Club"), which is the holder of the Phoenix Coyotes NHL franchise, to provide for the continued management, operation, ownership and financing of the Club and its affiliates in order, among other things, to preserve and protect the interests of the NHL and its member clubs, including the Club, and the reputation and integrity of the NHL and professional hockey.

The undersigned hereby irrevocably appoints, with immediate effect, the Commissioner of the NHL (whoever he or she is now or from time to time hereafter may be) (the "Commissioner"), as its true and lawful attorney and proxy in respect of all of the undersigned's interest and rights in the Club, including without limitation a 91.79% ownership interest in, and all rights as managing member of, the Club (collectively, referred to herein as the "Coyotes Interests"; the term "Coyotes Interests" shall be deemed to include, without limitation, all of the limited liability company interests, shares, membership interests or units issued by the Club or any successor that, in the future, may be registered in the name of the undersigned, whether voting or non-voting), with all powers the undersigned possesses, and with full power of substitution and resubstitution, to vote or express consent or dissent in the sole discretion of such proxy in respect of all of the Coyotes Interests to the extent they are entitled to vote or express consent or dissent (whether by operation of law or otherwise) in each case for any and all purposes and upon any and all subjects, matters and issues (collectively, the "Voting Rights"), including, without limitation, the following:

(a) the removal and appointment or election of directors, managers, managing members, general partners, officers and/or other agents of the Club and/or any of its subsidiaries;

(b) the voluntary or involuntary bankruptcy, dissolution, liquidation, termination or reorganization of the Club and/or any of its subsidiaries, or the appointment of any conservator of, or trustee or similar official for the Club and/or any of its subsidiaries, or any substantial part of any of its assets (including, in the event any of the foregoing is commenced or initiated involuntarily, consenting to such);

(c) the negotiation, compromise, refinancing and/or readjustment of credit, indebtedness or other arrangements with lenders and other providers of financing and/or credit to the Club and/or any of its subsidiaries, and including, without limitation, any such matters relating to the subsidiaries of the Club in which the Club may participate, whether as guarantor, surety or otherwise;

(d) the sale, transfer, recapitalization, restructuring, dilution, cancellation, or other disposition of any of the equity interests of the undersigned in the Club and/or any of its subsidiaries, or the issuance of any new class of equity interests by the Club and/or any of its subsidiaries, in each case in return for such consideration as the Commissioner (or any other proxy substituted or resubstituted therefor) may in his sole discretion determine;

(e) the sale of all or substantially all of the assets of the Club and/or any of its subsidiaries, any sale, consolidation, or merger of the Club and/or any of its subsidiaries, or the purchase, sale, transfer, lien, pledge, hypothecation or other disposition of any assets of the Club and/or any of its subsidiaries, in each case in return for such consideration as the Commissioner (or any other proxy substituted or resubstituted therefor) may in his sole discretion determine;

(f) all of the voting, consent, dissent, approval and any other rights otherwise arising under any limited liability company agreement, operating agreement, contribution agreement, registration rights agreement, security holders agreement, management services agreement, partnership agreement, certificate of limited partnership, certificate or articles of incorporation, bylaws or other similar documents or otherwise arising by law; and

(g) any and all other issues relating to the management and operation of the Club and/or any of its subsidiaries.

This proxy is irrevocable (notwithstanding any provisions of the Second Amended and Restated Limited Liability Company Agreement of Coyotes Hockey, LLC or any other organic document of the Club to the contrary) and coupled with an interest, and, to the extent permitted by law, shall survive beyond any time period limitation that may exist, whether under the Delaware Limited Liability Company Act or otherwise. The voting, consent or dissent rights granted by this irrevocable proxy may be exercised by the proxy at any time and from time to time at any meeting or in writing or in any other form or forum permitted by law.

The undersigned acknowledges and agrees that the transfer of any interest in the Club shall at all times remain subject to the prior written consent of the NHL, which consent may be granted or withheld by the NHL in its sole discretion.

The undersigned, on its own behalf and on behalf of its past, present, and future attorneys, servants, representatives, insurers, employees affiliates, partners, predecessors, principals, heirs, executors, administrators, trustees, beneficiaries, agents, successors, and assigns (all such persons and entities are hereinafter collectively referred to as the "Releasing Parties"), hereby irrevocably releases and forever discharges the Commissioner, any other proxy substituted or resubstituted for the Commissioner, the NHL (including without limitation each member club of the NHL including future member clubs of the NHL, but not including the Club and its successors and assigns as holders of the Phoenix Coyotes franchise) and each of their past, present, and future attorneys, servants, representatives, insurers, employees, affiliates, members, partners, predecessors, principals, heirs, executors, administrators, trustees, beneficiaries, agents, successors, and assigns (collectively, "Affiliated NHL Parties") from any and all claims, demands, obligations, suits, damages, levies, executions, judgments, debts, charges, actions, or causes of action, at law or in equity, whether arising by statute, common law, or otherwise, both direct and indirect, of whatever kind or nature, whether known or unknown ("Claims"), arising out of, in connection with, or in any way relating to any conduct, act, omission, transaction or occurrence taken (or omitted to be taken) or occurring at any time under, pursuant or otherwise in relation to the powers granted by this irrevocable proxy, together with all Claims arising as a result thereof (other than acts, omissions, transactions or occurrences constituting willful misconduct). The Releasing Parties individually, jointly and severally, covenant and agree not to bring any action, proceeding, suit, or claim, or to execute, attach, levy,

distrain or pursue any other legal process or take any steps in furtherance of the same against any or all of the Affiliated NHL Parties or their properties in respect of the matters released hereunder.

This irrevocable proxy revokes any other proxy granted by the undersigned at any time with respect to the Coyotes Interests. The undersigned acknowledges and agrees that immediately upon the execution by the undersigned of this irrevocable proxy, the undersigned shall have no right or ability to exercise any Voting Rights.

Notwithstanding anything herein to the contrary, all agreements, contracts and accords between the undersigned and the Club and/or any of the Affiliated NHL Parties (including without limitation (i) that certain Consent Agreement, dated as of September 27, 2006, by and among the NHL, the Club, the undersigned, and certain other parties thereto, and (ii) that certain Guaranty, dated as of September 27, 2006, by the undersigned and certain other parties in favor of the NHL) remain valid and in full force and effect unless expressly modified by this irrevocable proxy.

Notwithstanding anything contained herein or in any other document to the contrary, the NHL shall be under no obligation to fund the operations of the Club or any of its subsidiaries or other affiliates at any time, but rather any decision by the NHL to fund the operations of the Club or any of its subsidiaries or other affiliates shall be at the sole and absolute discretion of the NHL.

The undersigned represents and warrants that, in granting this irrevocable proxy, it has proceeded voluntarily and with the advice of attorneys of its own choosing, that its managers have read the terms of this irrevocable proxy and reviewed such terms with their attorneys, that the terms of this irrevocable proxy have been fully and completely read and explained to its managers by their attorneys, and that such terms are fully understood and voluntarily accepted by it and its managers, with no duress or coercion of any kind.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned hereby executes and delivers this irrevocable proxy as of the ____ day of November, 2008.

COYOTES HOLDINGS, LLC

By: 
Name: Jerry Moyes
Title: Manager

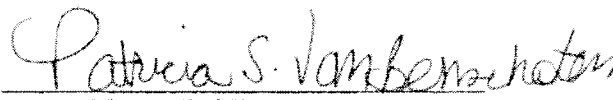
By: _____
Name: Jeff Shumway
Title: Manager

Arizona)
Maricopa) ss
)

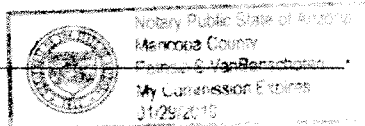
On this 14th day of November, 2008, before me, a Notary Public within and for said County, personally appeared Jerry Moyes, to me known (or proved to me on the basis of satisfactory evidence), who, being by me duly sworn did say that he is the person signatory to the foregoing instrument, and that said instrument is the free act and deed of said person.

In witness whereof I hereunto set my hand and official seal.

(Notarial Seal)


Notary Public

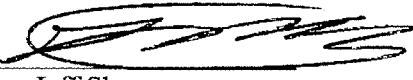
My commission expires: _____



IN WITNESS WHEREOF, the undersigned hereby executes and delivers this irrevocable proxy as of the 14th day of November, 2008.

COYOTES HOLDINGS, LLC

By: _____
Name: Jerry Moyes
Title: Manager

By: 
Name: Jeff Shumway
Title: Manager

_____) ss
_____)

On this ____ day of November, 2008, before me, a Notary Public within and for said County, personally appeared Jerry Moyes, to me known (or proved to me on the basis of satisfactory evidence), who, being by me duly sworn did say that he is the person signatory to the foregoing instrument, and that said instrument is the free act and deed of said person.

In witness whereof I hereunto set my hand and official seal.

(Notarial Seal)

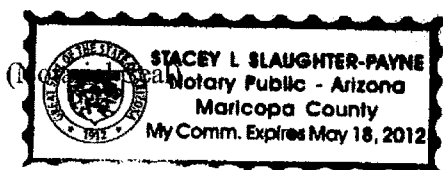
Notary Public

My commission expires: _____.

_____))
_____) ss
_____))

On this ____ day of November, 2008, before me, a Notary Public within and for said County, personally appeared Jeff Shumway, to me known (or proved to me on the basis of satisfactory evidence), who, being by me duly sworn did say that he is the person signatory to the foregoing instrument, and that said instrument is the free act and deed of said person.

In witness whereof I hereunto set my hand and official seal.



SL Payne

Notary Public

My commission expires: May 18, 2012.