

# LEASE SUMMARY

## BASICS

**TEAM:** Phoenix Coyotes

**Team Owner:** The Phoenix Coyotes franchise filed for Chapter 11 bankruptcy and is owned and run by the NHL.

[Team Website](#)

**FACILITY:** Jobing.com Arena

[Facility Website](#)

**Year Built:** 2003

**Ownership:**

**TYPE OF FINANCING:** \$180 million came from the city, which will be repaid through property and sales taxes generated by the arena and its adjacent retail complex. \$30 million came from general obligation bonds for public improvements approved by voters in 1999 and was paid with property taxes generated citywide. \$150 million came from excise tax funding that will be repaid through the revenue from the arena. The team committed to pay approximately \$40 million for cost overruns.

**TITLE OF AGREEMENT:** Arena Management, Use and Lease Agreement

**TERM OF AGREEMENT:** Initial term of thirty (30) years, with a first renewal term of two (2) years, a second renewal term of five (5) years, and a third renewal term of five (5) years. – Sect. 3.2, pg. 24–25

## PAYMENT/EXPENSES

**GAME PAYMENTS:** Game Payments, a per game operating expense for the term of the lease, is available at B-1 of the lease.

**DISTRIBUTIONS:** “The Arena Manager shall cause the monies in the Operating Account . . . to be applied in the following order of priority, and at the following times:

- (a) First, to the payment of Operating Expenses as and when they become due and payable[;]
- (b) Second, to the payment of monies to the Operating Reserve Account until the Operating Reserve Account is ‘fully-funded’ as described in Section 7.5, payable within forty-five (45) days after the end of each Fiscal Quarter (other than the last Fiscal Quarter of the Agreement Term);
- (c) Third, to the extent there are, as of the last day of each Fiscal Quarter, any monies remaining in the Operating Account after all of the payments described in clauses (a) and (b) . . . then such remaining monies shall be distributed in the manner set forth in Section 7.3.

Within forty-five (45) days after the end of each Fiscal Quarter (starting with the first Fiscal Quarter after the Operations Start Date), the Arena Manager shall cause the monies

to be distributed pursuant to Section 7.2(c) for such Fiscal Quarter to be distributed in the following order:

(a) First, to the City in an amount equal to the aggregate unpaid Guaranteed Amount (if any) due and payable by the Team to the City under the Team Guaranty as of the end of the Fiscal Quarter for which the distribution is being made;

(b) Second, in the following order:

(i) to the Retail/Residential Developer, the Entertainment Developer and/or the Arena Sub-Manager (as applicable) in an amount equal to the aggregate amount of advances (plus interest, if the party who made the advance was not, on the date of the advance, an Affiliate of the Team) made by the Retail/Residential Developer, the Entertainment Developer and/or the Arena Sub-Manager (as applicable) pursuant to Section 7.4 in and prior to such Fiscal Quarter, less any reimbursements of such advances previously made by the Arena Manager to the Retail/Residential Developer, the Entertainment Developer and/or the Arena Sub-Manager (as applicable) pursuant to this Section 7.3.1(b);

(ii) to the Arena Manager in an amount equal to the aggregate amount of advances (plus interest, if the Arena Manager was not, on the date of the advance, an Affiliate of the Team) made by the Arena Manager pursuant to Section 7.4 in and prior to such Fiscal Quarter, less any reimbursements of such advances previously received by the Arena Manager pursuant to this Section 7.3.1 (b); and

(iii) to the Team in an amount equal to the aggregate amount of advances made by the Team pursuant to Section 7.4 in and prior to such Fiscal Quarter, less any reimbursements of such advances previously made by the Arena Manager to the Team pursuant to this Section 7.3.1(b);

(c) Third,

(i) the amount that is the lesser of (x) the Outstanding City Carry-forward Amount, or (y) the amount calculated by multiplying the total amount available for distribution under this Section 7.3.1(c) by the City Carry-forward Distribution Percentage, shall be distributed to the City; and

(ii) the amount that is the lesser of (x) the Outstanding Team Carry-forward Amount, or (y) the amount calculated by multiplying the total amount available for distribution under this Section 7.3.1(c) by the Team Carry-forward Distribution Percentage, shall be distributed to the Team; and

(d) Fourth,

(i) the amount (the ‘**Actual City Distribution**’) that is the lesser of (x) the sum of the City's Share of City/Team Excess Cash Flow and the City Excess Cash Flow for such Fiscal Quarter, or (y) the amount calculated by multiplying the total amount available for distribution under this Section 7.3.1(d) by the City Current Distribution Percentage, shall be distributed to the City; and

(ii) the amount (the ‘**Actual Team Distribution**’) that is the lesser of (x) the sum of the Team's Share of City/Team Excess Cash Flow and the Team Excess Cash Flow for such Fiscal Quarter, or (y) the amount calculated by multiplying the total amount available for distribution under this Section 7.3.1(d) by the Team Current Distribution Percentage, shall be distributed to the Team.” – Art. 7, pg. 55–57

#### **INSURANCE:**

Arena Manager Insurance: “The Arena Manager shall, as an Operating Expense and during the Agreement Term, obtain and cause to be maintained in full force and effect, the insurance and bond coverages described in Exhibit ‘D’ attached hereto.” – Sect. 10.1, pg. 74

City Insurance: “The City shall, at the City's expense and during the Agreement Term, obtain and cause to be maintained in full force and effect, the insurance coverages and/or self-insurance arrangements described in Exhibit ‘E’ attached hereto.” – Sect. 10.2, pg. 74

Team Insurance: “The Team shall, at the Team's expense and during the Agreement Term, obtain and cause to be maintained in full force and effect, the insurance coverages described in Exhibit ‘F’ attached hereto.” – Sect. 10.3, pg. 74

#### **CAPITAL IMPROVEMENTS**

“The Arena Manager shall have the right to make Additions and Capital Repairs included in the applicable Annual Budget or permitted by Section 5.2 if: (a) necessary to comply with governmental requirements; (b) necessary or appropriate for the safe operation of the Arena or its maintenance or repair; (c) required by any License, Concessions Agreement, Suite License Agreement or Premium Seat Agreement; or (d) in the Arena Manager's reasonable opinion, such Additions and Capital Repairs will improve the Arena, increase Operating Revenues and/or reduce Operating Expenses. Upon installation, any Additions and Capital Repairs shall become a part of the Arena and the property of the City, subject to the Team’s rights under this Agreement.

The Arena Manager may use monies available in the Renewal and Replacement Account to pay for Additions and Capital Repairs. The Arena Manager may use monies from any other Arena Account to pay for Additions and Capital Repairs in the event of an Emergency requiring Additions and Capital Repairs.” — Section 6.1, pg. 53

“[T]he Team shall not, without the City's prior consent, make Additions and Capital Repairs to any portion of the Arena. . . . [T]he Team shall provide the City and the Arena Manager with notice of, and construction plans and specifications for, the proposed Additions and Capital Repairs. . . . The Team shall have the right, without the prior consent of the City, to make (i) nonstructural alterations, installations, decorations, additions and improvements to the areas of

the Arena in which Concessions are or are to be located; and (ii) nonstructural alterations, installations, decorations, additions and improvements to the Exclusive Team Spaces.” – Sect. 6.3.2, pg. 55

**EMERGENCY AND REPAIRS:** “[T]he City shall have no right to make Additions and Capital Repairs or other repairs to the Arena unless (i) an Emergency exists and the Arena Manager has not made the repairs necessary to alleviate such Emergency, or (ii) the Arena Manager has failed, after twenty (20) days' notice by the City to the Arena Manager . . . to commence and thereafter diligently pursue repairs required by this Agreement.” – Sect. 6.2.1, pg. 53

### USE

“In addition to the rights granted by the City to the Team in the other provisions of this Agreement, the City hereby irrevocably grants to the Team, from and after the Operations Start Date to and including the Agreement Termination Date, the exclusive right to use and occupy the Hockey Event Spaces during all Hockey Events for Hockey Event Permitted Uses, in accordance with and subject to the terms and conditions set forth in this Agreement. The Team shall have the exclusive right to use the Hockey Event Spaces for Hockey Event Permitted Uses for a reasonable time before, during and for a reasonable time after the Hockey Event. ‘**Hockey Event Permitted Uses**’ include the following:

- (a) Hockey Events;
- (b) The use by the media for watching, broadcasting and reporting on Hockey Events and other Team activities; and
- (c) The sale and distribution of Hockey Tickets.

[T]he Arena Manager shall retain possession and control of all portions of the Hockey Event Spaces. In exercising its control over the Hockey Event Spaces, the Arena Manager (i) shall not interfere in any material respect with Hockey Event Permitted Uses; and (ii) shall not allow any Person to enter the Hockey Event Spaces during any Hockey Event without a Hockey Ticket.” – Sect. 9.1, pg. 68–69

### ESCAPE CLAUSES

**DEFAULT:** “Each of the following shall be deemed to be a Team Use Covenant Default:

- (a) except as permitted by the provisions of this Agreement, the Team plays or takes any action to play any Home Game at any location other than the Arena Facility during the Agreement Term (as may be extended pursuant to Section 3.2);
- (b) except as permitted by the provisions of this Agreement, the Team enters into any contract or agreement which purports to obligate the Team to play any Home Game at any location other than the Arena Facility during the Agreement Term (as may be extended pursuant to Section 3.2);
- (c) except as permitted by the provisions of this Agreement, the Team notifies the NHL of the Team's intent, or requests the NHL's permission, to play any Home Game at any

location other than the Arena Facility during the Agreement Term (as may be extended pursuant to Section 3.2); or

(d) except as permitted by the provisions of this Agreement, the Team takes any action that constitutes an anticipatory breach of this Section 9.5.” – Sect. 9.5, pg. 72

“Each of the following events shall constitute an ‘Event of Default’ by the Arena Manager:

(a) If the Arena Manager fails, within a reasonable time under the circumstances (including any time required for a reasonable investigation), after the Arena Manager receives notice or otherwise acquires knowledge that any employee, officer, director, independent contractor or agent of the Arena Manager has misappropriated monies or engaged in other fraudulent or illegal activity, to suspend or discharge such employee, officer, director, independent contractor or agent;

(b) If the Arena Manager fails to make any payment or distribution to be made by the Arena Manager . . . and such failure is not cured within thirty (30) days after the Arena Manager's receipt of notice of such failure from any other party hereto;

(c) If any representation or warranty made by the Arena Manager in this Agreement at any time proves to have been incorrect in any material respect as of the time made, and if the Arena Manager fails to cause such representation or warranty to become correct within thirty (30) days after the Arena Manager's receipt of notice; or

(d) If the Arena Manager materially breaches any covenant or provision of this Agreement . . . and such breach is not cured within thirty (30) days after the Arena Manager's receipt from any other party hereto of notice of such breach.” – Sect. 14.1.1. pg. 87–88

Each of the following events shall constitute an "Event of Default" by the Team or City:

(a) Failure to pay when due any amount payable, and such failure is not cured within thirty (30) days after receipt of notice of such failure from any other party hereto;

(b) If any representation or warranty made in this Agreement at any time proves to have been incorrect in any material respect as of the time made, and if failure to cause such representation or warranty to become correct within thirty (30) days after receipt of notice;

(c) Becoming insolvent; or admitting in writing inability to pay debts as they mature; or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of a receiver or trustee for it or for a substantial part of its property or business; or

(d) Materially breach of any covenant or provision of this Agreement . . . and such breach is not cured within thirty (30) days after receipt from any other party hereto of notice of such breach. – Sect. 14.1.2–14.1.3, pg. 88-89

**TERMINATION:**

“[T]his Agreement shall terminate without further action by any party hereto in the event that (i) the Arena Development Agreement is terminated pursuant to Section 8.3, Section 8.4 or Article 9 of the Arena Development Agreement; or (ii) notwithstanding the application of any Force Majeure, the Operations Start Date has not occurred on or before October 1, 2006.” – Sect. 3.1, pg. 24

**RETENTION**

**Non-Relocation Agreement:** Team Use: “Team shall play all Home Games at the Arena Facility and shall not play any Home Games at any other location, from and after the Home Game Obligation Effective Date and continuing until . . . the last day of the 30th Full Hockey Season after the Home Game Obligation Effective Date.” – Sect. 9.5, pg. 71