

1 C. Taylor Ashworth, 010143  
Alan A. Meda, 009213  
2 STINSON MORRISON HECKER LLP  
1850 North Central Avenue, Suite 2100  
3 Phoenix, Arizona 85004  
Telephone: (602) 279-1600  
4 Facsimile: (602) 240-6925  
[tashworth@stinson.com](mailto:tashworth@stinson.com)  
5 [ameda@stinson.com](mailto:ameda@stinson.com)

6 J. Gregory Milmoie (*pro hac vice*)  
Shepard Goldfein (*pro hac vice*)  
7 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
4 Times Square  
8 New York, New York 10036  
Telephone: (212) 735-3000  
9 Facsimile: (212) 735-2000  
[gregory.milmoie@skadden.com](mailto:gregory.milmoie@skadden.com)  
10 [shepard.goldfein@skadden.com](mailto:shepard.goldfein@skadden.com)

11 Anthony W. Clark (*pro hac vice*)  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
12 One Rodney Square  
Wilmington, Delaware 19899  
13 Telephone: (302) 651.3000  
Facsimile: (302) 651.3001  
14 [anthony.clark@skadden.com](mailto:anthony.clark@skadden.com)

15 Attorneys for the National Hockey League

16 **UNITED STATES BANKRUPTCY COURT**

17 **FOR THE DISTRICT OF ARIZONA**

18  
19 In re ) Case No. 2:09-bk-09488-RTBP  
20 DEWEY RANCH HOCKEY, LLC, ) (Jointly Administered)  
21 COYOTES HOLDINGS, LLC, ) Chapter 11  
22 COYOTES HOCKEY, LLC, and ) **Declaration of William L. Daly**  
23 ARENA MANAGEMENT GROUP, LLC, ) Date: May 19, 2009  
24 Debtors. ) Time: 1:30 p.m.  
25 ) Location: U.S. Bankruptcy Court  
230 N. First Ave, Courtroom 703  
Phoenix, AZ 85003

26 This filing applies to:

- 27  All Debtors  
28  Specified Debtors

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF WILLIAM L. DALY**

I, WILLIAM L. DALY, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the Deputy Commissioner of the National Hockey League ("NHL" or "League"), a position I have held since 2005. I have been employed continuously by the NHL since 1997, when I was hired as the League's senior ranking legal officer. I submit this declaration in support of the National Hockey League's Motion for Determination (I) of Authority to Manage the Business and Affairs of the Debtors, and (II) that William Daly is the Representative of the Estates [Docket No. 47] and the Limited Objection of The National Hockey League to Motion of the Debtors for Entry of an Order (A) Authorizing Conduct of an Auction of Coyotes Hockey, LLC's Assets; (B) Establishing Procedures to be Employed in Connection with the Sale Including Approval of Termination Fee; and (C) Approving Form of Order and Manner of Notice of Conditional Cure Notice and Solicitation Notice, filed simultaneously herewith. The facts stated herein are based on my own personal knowledge.

**THE NHL JOINT VENTURE**

**The Structure and Organization of the National Hockey League**

2. The NHL is an unincorporated association, organized as a joint venture to operate a League consisting of thirty member clubs ("Member Clubs"), including the Phoenix Coyotes (the "Coyotes"). Each Member Club operates a professional hockey team in a contractually specified local territory North America. The NHL franchises are located in a diverse group of cities throughout the United States and Canada. The NHL League Office is located in New York City, but the League also has offices in Toronto and Montreal, Canada.

3. All the NHL Member Clubs, including the Coyotes, are signatories to the Constitution of the NHL, and "have duly executed [the] Constitution, signifying their acceptance and ratification thereof." (A copy of the NHL Constitution is attached hereto as Exhibit A.) The NHL Constitution provides that each NHL Member Club "accepts and agrees to abide by the foregoing Constitution and each and every alteration, amendment and repeal thereof duly made." In addition, the NHL Constitution declares that the "Member Clubs agree to conform to and be

1 bound by the By-Laws." Accordingly, the right of each NHL Member Club to regulate its own  
2 affairs is expressly subject to the provisions of the NHL Constitution and By-Laws as well as the  
3 properly enacted Resolutions of the Board of Governors.

4 4. The NHL Member Clubs jointly create a product called NHL Hockey. No single  
5 team can produce this product, and the Member Clubs have no economic significance except as  
6 members of the League. The NHL seeks to promote attendance at and fan interest in professional  
7 hockey games, consumer and commercial interest in the intellectual property of the League and its  
8 Member Clubs, and to create and market professional hockey entertainment events in competition  
9 with other sports leagues and with other producers and marketers of sports and entertainment  
10 products.

11 5. The NHL regular season is composed of eighty-two games per team and is a  
12 structured schedule of athletic competitions in which each NHL Member Club competes on the ice  
13 to establish that it is the best team among the thirty Member Clubs. Sixteen of the thirty Member  
14 Clubs qualify for the postseason Playoffs that conclude with the Stanley Cup Final, a best-of-seven  
15 game series that determines the League Championship. To increase the attractiveness of its  
16 entertainment product, the Member Clubs are divided into two Conferences (the Eastern and the  
17 Western) and six Divisions (the Northeast, Atlantic, Southeast, Central, Northwest and Pacific),  
18 which are based primarily on geography and historical rivalries. These Conferences and Divisions  
19 create additional "title" races and seek to promote and perpetuate long-standing rivalries. The  
20 rivalries among the Member Clubs, culminating in the NHL Playoffs and Stanley Cup Final series,  
21 foster public interest in and the commercial appeal of professional hockey, the NHL and its  
22 Member Clubs, as well as the intellectual property of the League and its Member Clubs. For  
23 example, the Coyotes play (and have continuously played since an expansion-related realignment  
24 preceding the 1998-99 season) in the Pacific Division of the Western Conference, along with the  
25 Dallas Stars, Los Angeles Kings, San Jose Sharks and Anaheim Ducks. The Coyotes play a total  
26 of 24 games (six against each team) against their intra-division rivals and an additional 40 games  
27 (four against each of 10 other teams) with their other Western Conference rivals during the NHL  
28 regular season.

1 **The National Hockey League Rules and Procedures for Considering Proposed Transfers of**  
2 **Franchise Ownership and Transfers of Franchise Location**

---

3 6. Under the NHL Constitution, the affairs of the NHL are governed by the NHL  
4 Board of Governors, which is comprised of one representative from each of the thirty Member  
5 Clubs. The Board of Governors is charged with upholding and enforcing the NHL Constitution,  
6 By-Laws and other NHL rules and procedures.

7 7. The NHL Commissioner serves as the Chief Executive Officer of the League.  
8 (Exhibit A, Art. 6.1.) He is expressly charged with protecting the integrity of the game of  
9 professional hockey and preserving public confidence in the League. He has the responsibility for  
10 the general supervision and direction of all business and affairs of the League, and the NHL  
11 Constitution grants the Commissioner all powers as may be necessary or appropriate to fulfill his  
12 responsibilities. (Exhibit A, Art 6.3(a).) The NHL Constitution grants the Commissioner the  
13 authority to interpret the provisions of the Constitution, By-Laws, and League resolutions and rules,  
14 and their application and enforcement. The Commissioner's determinations with respect to such  
15 matters are final and binding and not subject to review. (Exhibit A, Art. 6.3(d).)

16 8. The fundamental essence of the NHL venture is who the members are and where the  
17 teams play. Both aspects have an integral and direct correlation to the overall business success of  
18 the League as a whole. Accordingly, in overseeing the affairs of the NHL and its Member Clubs,  
19 the Board of Governors has a compelling and legitimate interest in both who joins the NHL venture  
20 (i.e., who produces NHL Hockey) and where each franchise operates (i.e., where the product is  
21 sold). Each NHL game requires collective action and a coordinated series of interlocking  
22 agreements between all members of the joint venture. While the NHL teams compete vigorously  
23 on the ice, the Member Clubs necessarily work together and depend on one another to govern and  
24 conduct the business and affairs of the League.

25 9. The NHL Board of Governors therefore has a critical responsibility in assuring that  
26 any new owner of an NHL franchise has the requisite background, character, integrity and skill  
27 necessary to operate an NHL franchise successfully and in accordance with the NHL Constitution,  
28 By-Laws, rules and procedures, as well as the financial wherewithal both to purchase the team and

1 to continuously fund its ongoing operations. Similarly, the NHL Board of Governors has a critical  
2 responsibility in assuring that any franchise location to which a Member Club is assigned has,  
3 among other things, the requisite population and demographics, suitable arena facilities and a  
4 sufficient corporate base and support to sustain an NHL franchise both now and over time. Indeed,  
5 each of the other major professional sports leagues (the National Football League, National  
6 Basketball Association and Major League Baseball) has similar rules regulating the transfer of  
7 franchise ownership and the location of its member franchises and similarly delegates to its  
8 governing body of owners the power to make those decisions.

9 **Transfers of Franchise Ownership**

10 10. To protect their legitimate interests in who becomes a partner in the NHL joint  
11 venture, the Member Clubs have adopted several fundamental rules and procedures relating to  
12 transfers of franchise ownership. Article 3.5 of the NHL Constitution sets forth the basic rules  
13 relating to ownership transfers. Under Article 3.5 an application for ownership transfer must be  
14 submitted in writing to the Commissioner. Upon receipt of such an application, the Commissioner  
15 is charged with investigating the proposed transfer of ownership as and to the extent he deems  
16 appropriate before then submitting his recommendation and pertinent information to the Board of  
17 Governors. Ownership transfers require the consent of three-fourths of the Board. Under Article  
18 3.6 of the NHL Constitution, the vote for approval of an ownership transfer may be taken at any  
19 annual or special meeting of the Board, provided that each Member Club receives 10 days written  
20 notice. (See Exhibit A, Arts. 3.5, 3.6.)

21 11. NHL By-Law 35 sets forth various considerations to guide the Board of Governors  
22 in their evaluation of prospective ownership transfers. Consent of the Board may be made subject  
23 to, among other things, execution and delivery of a consent agreement, security agreements and  
24 related instruments – execution of which is a matter of routine League practice in the context of  
25 ownership transfers. (A copy of NHL By-Law 35 is attached hereto as Exhibit B.)

26 12. Moreover, the League owns certain intellectual property rights the use of which is  
27 fundamental to participating as an NHL team, such as the NHL Shield and the names, logos,  
28 symbols, and other indicia of the League, "including without limitation, the Conference and

1 Division names and/or logos, League slogans and logos relating thereto, and League award, trophy  
2 and program names (including STANLEY CUP and all logos therefor and depictions thereof."  
3 (See July 1, 1996 License Agreement between NHL and NHL Enterprises, L.P., as amended on  
4 July 1, 2006, a copy of which is attached hereto as Exhibit C, §§ 1(b), 5, 6.) A franchise that has  
5 not been granted the right to use these essential names (e.g., the Western Conference) or  
6 representations (e.g., the NHL Shield) could not exist or operate as an "NHL hockey team" or,  
7 practically speaking, play as part of the League in its regular season, Playoffs or Stanley Cup Final.  
8 These rights belong to the League, are necessary to the membership of every franchise, and can  
9 only be granted to a franchise – or prospective new owner – with League approval.

10 **Transfers of Franchise Location**

11 13. Under Article 4 of the NHL Constitution, each NHL Member Club is granted the  
12 right to operate an NHL franchise only in a particular geographic location in the United States or  
13 Canada, known as its "home territory." The Constitution expressly provides that, except as  
14 delineated by the Constitution (or properly enacted Resolutions of the Board of Governors), the  
15 League controls the exhibition of all NHL games. (Exhibit A, Art. 4.)

16 14. The NHL Constitution states that one of the purposes of the League is to "perpetuate  
17 hockey as one of the national games of the United States and Canada." (Exhibit A, Art. 2.1(a).)  
18 Accordingly, through its contractually provided review and approval process, the Board of  
19 Governors seeks to ensure that Member Clubs are located in a broad and diverse group of  
20 geographic areas. In the event that a Member Club would like to relocate its home territory to  
21 another location, NHL By-Law 36 sets forth the rules and procedures governing a prospective  
22 franchise relocation as well as the various criteria that the Board of Governors shall consider in its  
23 evaluation of any such proposal. Under the By-Laws, and as a matter of the NHL's established  
24 practice since at least the early 1990s, only a majority of the Board of Governors present and  
25 voting is required to approve a proposed franchise relocation. (A copy of NHL By-Law 36 is  
26 attached hereto as Exhibit D.) Thus, no single Member Club has "veto" power over a proposed  
27 franchise relocation, including any proposed relocation of an NHL franchise to Southern Ontario.

28

1 **Any Franchise Opportunity in Southern Ontario Belongs to the NHL**

2 15. Under the Constitution and By-Laws, a Member Club has exclusive control of the  
3 playing of hockey games within its home territory. (See Exhibit A, Art. 4.3.) However, each  
4 Member Club has no rights whatsoever to locate its team or play hockey outside of its home  
5 territory (except as specifically provided for in the Constitution), and any potential expansion  
6 opportunity – here, in Southern Ontario – is the property of the League itself. (See Exhibit A, Art.  
7 4; Exhibit D at 36.6.) This League-wide right has been recognized by the U.S. courts<sup>1</sup> and, more  
8 recently, by the Canadian Competition Bureau (see Exhibit I). This authority recognizes that the  
9 value of a potential NHL franchise in any city or region derives from the history and popularity of  
10 the NHL's entertainment product, the good will developed by the League over time, as well as the  
11 particular characteristics and demographics of the geographic territory itself. The NHL has  
12 developed a structure of geographically diverse teams, traditions, rivalries, famous players (such as  
13 the Coyotes current head coach, Wayne Gretzky), and fan and media interest – all of which have  
14 created and/or enhanced the value of any expansion or relocation opportunity.

15 16. Accordingly, under the NHL Constitution and By-Laws, if the Board of Governors  
16 were to decide to place an expansion franchise in Southern Ontario, the accumulated value of the  
17 opportunity as established by the League and its Members over the ninety-plus year history of the  
18 League would be realized by charging the new franchise owner an expansion fee that would be  
19 collectively shared among the Member Clubs as compensation for the exercise of this opportunity.  
20 Likewise, if the Board of Governors were to decide to relocate an existing franchise in accordance  
21 with appropriate League rules and procedures, including to Southern Ontario, the relocating team  
22 would have to pay a relocation fee (to be shared among the Member Clubs) to compensate the  
23 League and its Members for the value and good will accumulated in that region (see Exhibit D at  
24 36.6) and/or an indemnification fee to reflect the good will developed by neighboring members in  
25

26  
27 <sup>1</sup> See, e.g., L.A. Mem'l Coliseum Comm'n v. NFL, 791 F.2d 1356 (9th Cir. 1986)  
28 ("Raiders II"); NBA v. SDC Basketball Club, Inc., 815 F.2d 562 (9th Cir. 1987); St. Louis  
Convention & Visitors Comm'n v. NFL, 154 F.3d 851 (8th Cir. 1998).

1 the new location. These expansion and relocation fees, too, have been upheld in the U.S. courts  
2 and by the Canadian Competition Bureau. (See Raiders II, 791 F.2d 1356; Exhibit I.)

3 **THE PHOENIX COYOTES FRANCHISE AND THE 2006 CONSENT AGREEMENT**

4 **Moyes' Purchase of the Coyotes**

5 17. The Coyotes were founded as the Winnipeg Jets of the World Hockey Association  
6 in 1972, joining the NHL in 1979. In 1996, the franchise was sold and relocated to Phoenix in  
7 accordance with the rules and procedures for ownership transfer and relocation under NHL By-  
8 Laws 35 and 36. The team was later renamed the Coyotes.

9 18. The Coyotes team has played its home games continuously in the Phoenix  
10 metropolitan area up to and including the 2008-09 season. In 2003, the team opened and began  
11 play at the Glendale Arena in Glendale, Arizona, now known as the Jobing.com Arena. The  
12 Coyotes continue to play at the Jobing.com Arena, and the current long-term lease at the facility  
13 does not expire until at least 2033.

14 19. In 2006, and in accordance with the rules and procedures for ownership transfer  
15 under NHL By-Law 35, the Board of Governors approved Jerry C. Moyes' purchase of Coyotes  
16 Hockey, LLC (the "Club"), the entity that runs the Coyotes team, and owns the Club's lease for the  
17 Jobing.com Arena. At that time, Coyotes Holdings, LLC became the Managing Member of the  
18 Club and Arena Management Group, LLC ("Arena Management," which would run the arena). I  
19 will refer to Mr. Moyes and these entities collectively as the "Moyes Entities."

20 **The September 27, 2006 Consent Agreement and Its Key Provisions**

21 20. An important document that reinforces the various rights and obligations of the  
22 NHL Constitution and often creates additional rights and obligations by way of separate contract is  
23 the consent agreement that each owner signs when he/she/it purchases a franchise or subsequently  
24 alters its ownership structure. When the Moyes Entities purchased the Coyotes in 2006, they  
25 signed such a consent agreement. Among other things, the consent agreement confirms the owner's  
26 agreement to be bound by the NHL's Constitution and By-Laws, to fund the team (subject to  
27 ceding control to the League if it fails to do so), to operate the team in its current location, and to  
28



1 abide by the League's rules and procedures, including those rules and procedures governing  
2 ownership transfers and relocation. I detail some of the provisions below.

3 **Provisions Binding the Moyes Entities to the NHL Constitution and By-Laws**

4 21. The Coyotes' consent agreement, dated September 27, 2006 (the "Consent  
5 Agreement," a copy of which is attached hereto as Exhibit E), like consent agreements for other  
6 Member Clubs, makes clear that the Moyes Entities were at all times bound to follow the NHL's  
7 Constitution and By-Laws as well as current and future rules, regulations and procedures of the  
8 League. (Exhibit E, ¶3(a)(i).)

9 22. Moreover, like other Member Clubs, the Moyes Entities also agreed not to challenge,  
10 in any forum, any aspect of the NHL's Constitution and By-Laws or related rules and procedures.  
11 (Id.)

12 **Obligations of the Moyes Entities to Maintain Adequate Working Capital and**  
13 **Pay Operating Expenses; NHL Proxy for Refusal to Fund the Club**

14 23. As an NHL owner, the Moyes Entities were required under their Consent  
15 Agreement to maintain certain levels of working capital and to pay all operating expenses of the  
16 Club. Paragraph 7 of the Consent Agreement provides:

17 7. **Working Capital, Guaranties and Capital Contributions.**

18 (a) The Club covenants and agrees that at all times it shall pay in  
19 the ordinary course and in a timely fashion all of its Operating  
20 Expenses (as defined below in paragraph (c)) and shall maintain Net  
Working Capital (as defined below in paragraph (b)) solely for the  
use in the operations of the Franchise in an amount equal to not less  
than \$10 million. . . .

21 . . .

22 (d) (i) The Principal Investment Parties jointly and severally  
23 covenant and agree with the NHL, and do hereby guarantee to the  
24 NHL, to provide to the Club from time to time such amounts as from  
25 time to time may be necessary for the Club to: (A) maintain a  
minimum of \$10 million of Net Working Capital, and (B) otherwise  
pay all Operating Expenses in the ordinary course and in a timely  
fashion . . . .

26 (Exhibit E, ¶7(a), (d)(i).)

27 24. Under the Consent Agreement, the Moyes Entities also granted a proxy to the NHL  
28 Commissioner exercisable upon a "Triggering Event" – "any breach by any Investment Party of its,  
his or her covenants, representations or warranties set forth in this Consent Agreement." (See

1 Exhibit E, ¶7(f)(i), (iii)(A).) Exercise of this proxy would vest the NHL Commissioner with all of  
2 the Moyes Entities' "interests" in both the Club and Arena Management:

3 7. Working Capital, Guaranties and Capital Contributions.

4 (f) (i) [The Moyes Entities] hereby irrevocably appoint[ ], with  
5 immediate effect, the NHL Commissioner . . . , as [their] true and  
6 lawful attorney and proxy in respect of:

7 . . .  
8 (3) all of such Club Party Investor's interest in the Club and  
9 Arena Management, including, without limitation, 100% of such  
10 Club Party Investor's: (x) limited liability company interests in the  
11 Club and (y) limited liability company interests in Arena  
12 Management (collectively, referred to herein as the "Club Party  
13 Interests"; the term "Club Party Interests" shall be deemed to include,  
14 without limitation, all of the limited liability company interests,  
15 membership interests or units issued by the Club, Arena Management  
16 or any successor to any of the foregoing that, in the future, may be  
17 registered in the name of any Club Party Investor, whether voting or  
18 non-voting).

(Exhibit E, ¶7(f)(i) (emphasis added).)

13 25. Critically for purposes here, after the Moyes Entities had breached the 2006 Consent  
14 Agreement, and the NHL Commissioner had duly exercised the proxy rights granted to him under  
15 the Consent Agreement, only the NHL Commissioner could seek bankruptcy protection for the  
16 Club and Arena Management. (See Exhibit E, ¶7(f)(i)(3)(B).)

17 **The Moyes Entities' Obligation Not to Change the Coyotes' Operating Agreement**  
18 **Without NHL Approval**

19 26. Another important provision of the NHL Consent Agreement as it relates to this  
20 matter prohibits the Moyes Entities from amending their various ownership and operating  
21 agreements without first notifying the NHL and receiving League approval:

22 6. Ownership, Control, Change in Documents.

23 (c) (iii) [Moyes] shall not, nor shall [he] cause or permit, without the  
24 prior written approval of the NHL:

25 . . .  
26 (E) rescind, revoke, cancel, terminate, amend, supplement, restate  
27 or otherwise modify (collectively, "Change") the certificate of  
28 formation, certificate of limited partnership, limited liability  
company agreement, partnership agreement, trust agreement or other  
constitutive or organizational document of the Club or any other  
Investment Party (the "Organizational Documents").

(Exhibit E, ¶6(c)(iii) (emphasis added).)

1 The Moyes Entities also are required to notify the NHL of any proposed changes at least ten days  
2 in advance. (Exhibit E, ¶6(e)(iii).)

3 27. It was not until the debtors filing of the Debtors' Statement of Position Regarding:  
4 (I) Managing Members' Authority To Commence These Cases And To Execute An Asset Purchase  
5 Agreement On Behalf Of The Debtors; And (II) The National Hockey League's Violation Of The  
6 Automatic Stay By Attempting To Exercise Control Over The Debtors And Their Estates Through  
7 Voting Proxies on May 7, 2009 that the NHL learned that the Moyes Entities had attempted to  
8 amend the Club's operating agreement to avoid the effects of the proxies granted to the NHL.  
9 These amendments (described in more detail below) are clear violations, and in complete disregard,  
10 of the NHL Constitution and By-Laws and the Moyes Entities' obligations under the Consent  
11 Agreement.

12 **Specific Provisions Regarding Rules and Procedures on Transfer of Ownership and**  
13 **Franchise Relocation**

14 28. Various provisions in the Moyes Entities' Consent Agreement confirm that Moyes  
15 may not transfer or relocate the Coyotes without the approval of the NHL Board of Governors:

16 6. Ownership, Control, Change in Documents.

17 (c) (i) The ownership of the Franchise, any proposed transfer of the  
18 location of the Franchise and any proposed Transfer of any of the  
19 assets of, or any direct or indirect ownership or other interest in, any  
20 Investment Parties, including, without limitation, the Club, are  
subject to and conditioned upon the NHL Constitution and  
Agreements, including the NHL's prior written consent, which  
consent the NHL may withhold in its sole discretion.

21 (Exhibit E, ¶6(c)(i).)

22 29. Moreover, under the Consent Agreement, Moyes agreed to "operate the Franchise  
23 and to play the Franchise's schedule of home games in the territory of the Franchise as provided for  
24 in the NHL Constitution and Agreements," (Exhibit E, ¶4(b)), and to keep the Coyotes in Phoenix  
25 for seven years, subject only to his ability to seek and obtain a waiver from the League. Nor, during  
26 that seven-year period, was Moyes even permitted to discuss or negotiate a possible relocation with  
27 a third-party absent NHL approval:

28 6. Location and Territory of Franchise.

1 (c) . . . for a period of at least seven (7) calendar years from the  
2 date hereof, [Moyes] will not: (i) move or transfer, request to move  
3 or transfer, or attempt to move or transfer, the Franchise to a new  
4 Home Territory, (ii) engage or participate in discussion or  
5 negotiations with a third party relating to moving or transferring the  
6 Franchise to a new Home Territory, or (iii) sell or propose to sell any  
7 ownership or equity interest in the Franchise to the public, whether  
8 by way of a public offering, private placement or similar vehicle.

9 (Exhibit E, ¶4(c).)

10 **THE NHL HAS BEEN IN CONTROL OF THE COYOTES SINCE**  
11 **NOVEMBER 2008 WHEN MOYES STOPPED FUNDING THE TEAM**

12 **Moyes' Initial Request for Financial Assistance**

13 30. In or around August of 2008, the NHL was informed that Moyes was anticipating  
14 having difficulty continuing to fund the operating expenses of the team during the 2008-09 season  
15 and that he was seeking financial assistance from the League. On August 28, 2008, the League  
16 agreed to advance up to \$6 million of the Club's anticipated share of national broadcast revenues  
17 and revenue sharing funds due to be distributed in October 2008. At this time, the League did not  
18 deem Moyes' request as a Triggering Event under the Consent Agreement, although we  
19 undoubtedly were quite concerned about Moyes' continued ability to meet his funding obligations  
20 for the Club.

21 **The October 14, 2008 Triggering Event**

22 31. On October 14, 2008, at a meeting in Glendale, Arizona, attended by two League  
23 representatives (David Zimmerman and Daniel Ages), among others, Moyes informed the parties  
24 present that he could no longer fund the Club as required under the Consent Agreement. Moyes  
25 told the parties, including the NHL, that he was "broke" and he was "done" funding the team. At  
26 that point, under the Consent Agreement, a Triggering Event had occurred, and the NHL  
27 Commissioner was entitled to exercise the proxy that the Moyes Entities had granted him and  
28 thereafter exercise control over all of Moyes' interests in the Club and Arena Management.

32. Subsequently, at an all-hands meeting in the NHL's New York offices on November  
3, 2008, Moyes confirmed to me and Commissioner Bettman that he was no longer willing or able  
to fund the Club.

1 **The November 14, 2008 Proxies**

2 33. Thereafter, for two distinct reasons, the NHL Commissioner and Moyes signed new  
3 unconditional proxies, under which the NHL Commissioner assumed control of all of Moyes'  
4 interests in the Club and Arena Management. First, these proxies would make it clear that the  
5 NHL was immediately assuming control over all interests and rights in the Club and Arena  
6 Management held by Moyes; second, the proxies would protect the stability and value of the Club  
7 and the League as a whole, avoid the cessation of Club operations in the midst of the 2008-09  
8 regular season and avoid the chaos that would have ensued therefrom, including game forfeitures,  
9 breaches of player and other contracts, vendor disruptions, loss of credibility among our fans  
10 (especially season ticket holders in Phoenix and elsewhere) and the like.

11 34. Accordingly, on November 14, 2008, each of the Moyes Entities entered into  
12 separate unconditional proxies turning over to the NHL Commissioner control of all interests and  
13 rights, including as "Managing Member," of the Club and Arena Management, thus immediately  
14 and irrevocably transferring control of the Club and Arena Management to the NHL:

15 The undersigned hereby irrevocably appoints, with immediate  
16 effect, the Commissioner of the NHL . . . , as its true and lawful  
17 attorney and proxy in respect of all of the undersigned's interest and  
18 rights in the Club, including without limitation a 91.79% ownership  
19 interest in, and all rights as managing member of, the Club  
(collectively, referred to herein as the "Coyotes Interests").

18 (Copies of the November 14, 2008 Proxies are attached hereto as Exhibit F.)

19  
20 35. Moreover, the proxies made clear that Commissioner Bettman thereafter was  
21 completely responsible for control of the ownership interest in and all rights to manage the Club  
22 and Arena Management including, without limitation, the removal and appointment of Club  
23 executives, decisions regarding the delegation of day-to-day job responsibilities to Club personnel,  
24 loan and financing decisions, any changes to the Club's equity structure, the sale of any Club assets,  
25 voting and consent rights under the Franchise operating agreement and other agreements, and most  
26 notably here:

27 (b) "the voluntary or involuntary bankruptcy, dissolution,  
28 liquidation, termination or reorganization of the Club and/or any of  
its subsidiaries . . . ."

1 (Exhibit F, § (b).)

2 36. Subsequently, on November 21, 2008, as part of assuming control of the Club, the  
3 NHL began to advance funds for the purpose of supporting Club operations through the balance of  
4 the 2008-09 season in order to avoid the calamitous impact that a mid-season discontinuation or  
5 cessation of operations would have on the League's accumulated good will, reputation, competitive  
6 integrity, and contractual and other transactions with its fans and other constituents.

7 37. I understand that Moyes was fully aware that he was giving up and ceding to the  
8 Commissioner control of the equity and operations, including as Managing Member, of the Club  
9 and Arena Management. Moyes, however, was permitted by the Commissioner to maintain his  
10 officership titles in order to avoid public embarrassment, as well as to assist in finding potential  
11 purchasers for the Club, and to help execute some of the Club's day-to-day operations; at all times,  
12 any significant decisions had to be approved by Commissioner Bettman who, under the November  
13 14 proxies, was indisputably the Managing Member of the Club and Arena Management. As of  
14 November, 2008, Moyes no longer had control of any ownership interest or management rights  
15 related to the Club or Arena Management, and without any doubt was no longer the Managing  
16 Member of the Club or Arena Management.

17 **The NHL Has Functioned as Managing Member of the Club and Arena Management Since**  
18 **November 2008**

19 **Day-to-Day Operations**

20 38. At my direction, NHL Senior Executive Vice President, Chief Financial Officer,  
21 Craig Harnett, NHL Executive Vice President, General Counsel, David Zimmerman, and NHL  
22 Executive Vice President, Finance, Joseph DeSousa have effectively made all ownership and  
23 management decisions for the Club since November 2008. Harnett, Zimmerman and DeSousa  
24 have conducted weekly conference calls with representatives from the Club covering a variety of  
25 issues including the payment of bills and insurance coverage, monitoring the results of business  
26 operations, conducting negotiations with third parties for and on behalf of the Club, and developing  
27 plans to cut costs and reduce staff. These are not decisions or actions the NHL would be making or  
28 taking as a mere creditor of the Club. Similarly, Zimmerman negotiated with representatives from

1 the City of Glendale and other third parties, for and on behalf of the Club, for financial assistance  
2 and/or accommodations for the franchise.

3 **The NHL Exercised Long-Term Strategic Control over the Club and Financed Its**  
4 **Day-to-Day Operations**

5 39. Under the proxies, Commissioner Bettman directed the franchise to accept certain  
6 advances against future revenue sharing and other League distributions during the period from  
7 November 2008 to February 2009, and subsequently to accept loans of additional funds from the  
8 NHL beginning in February 2009. (See February 23, 2009 Authorization Letter from Gary B.  
9 Bettman to Coyotes Hockey, LLC, a copy of which is attached hereto as Exhibit G (Commissioner  
10 Bettman, "pursuant to his authority under the Proxies, [had] authorize[d] each of the Club and  
11 Coyotes Holdings to consummate" the loan on behalf of the Club).)

12 40. Commissioner Bettman also has exercised his proxy authority to remove the  
13 Coyotes' senior executive who had been running the Club. On January 23, 2009, Jeff Shumway  
14 was let go as Chairman and Chief Executive Officer of the Club and Governor for the Coyotes "in  
15 accordance with and as authorized by the NHL Commissioner pursuant to his authority under the  
16 Proxies." (See January 30, 2009 e-mail from David Zimmerman to William J. Strait Re: Phoenix  
17 Coyotes, a copy of which is attached hereto as Exhibit H.) Moyes was given Shumway's titles, but,  
18 under the November proxies, the Commissioner continued to function as the Managing Member of  
19 the Club and Arena Management.

20 41. On or about May 1, 2009, Commissioner Bettman and I spoke with Earl Scudder –  
21 Moyes' representative – and outlined a potential offer for the purchase of the Club and Arena  
22 Management from Jerry Reinsdorf; one that also contemplated significant modifications to the  
23 arena lease from the City of Glendale. At that time, Scudder told the NHL that neither he nor  
24 Moyes had any better offer. Scudder encouraged the Commissioner to pursue the potential  
25 Reinsdorf deal as the best available alternative for the Club. Commissioner Bettman and I then  
26 flew to Phoenix on May 5 to present Moyes with a letter of intent from Mr. Reinsdorf. Just prior to  
27 the meeting, Scudder called to inform us that the Club had filed for bankruptcy and had entered  
28 into an Asset Purchase Agreement with Jim Balsillie, which Agreement was expressly conditioned  
on the team's relocation to Southern Ontario, which was to be effectuated without League consent.

1 Both during that call and later in the afternoon, we reminded Scudder and Moyes that, under the  
2 November 14 proxies, Moyes had no authority to put the Club into bankruptcy or to negotiate the  
3 Asset Purchase Agreement; we also informed him that, under the proxies, we were stripping him of  
4 all titles and involvement in Club operations. In light of the bankruptcy filing, we did not tender  
5 the letter of intent to Mr. Moyes.

6 **JIM BALSILLIE'S PRIOR INTEREST IN**  
7 **PURCHASING AND RELOCATING AN NHL FRANCHISE**

8 42. Subsequent to the League taking control of the franchise in November 2008, neither  
9 Moyes nor his representative ever told me or anyone else at the NHL that Moyes was in active  
10 discussions and/or negotiations with Jim Balsillie concerning the potential sale and relocation of  
11 the Coyotes. Perhaps this was because Balsillie had already established a record of unwillingness  
12 to comply with the NHL's Constitution and By-Laws, including the rules and procedures governing  
13 ownership transfers and potential relocations. Apparently, Balsillie does not want to face the  
14 scrutiny that comes with the NHL Board of Governors' standard review and approval process.

15 43. Balsillie has shown interest in purchasing an NHL franchise several times in the  
16 past three years. His most significant attempts involved the proposed acquisitions of the Pittsburgh  
17 Penguins and the Nashville Predators.

18 **The Pittsburgh Penguins**

19 44. During the 2005-06 time period, the Pittsburgh Penguins ("Penguins") were  
20 experiencing difficulties in their local market and were exploring options for a new arena as well as  
21 a potential sale of the team to new owners. In October 2006, Balsillie signed a letter of intent to  
22 buy the team from the Lemieux Group LP, the team's current owner. Around the same time,  
23 Balsillie's holding corporation, Golden Horseshoe Sports and Entertainment Inc., entered into an  
24 exclusive agreement to negotiate a lease option for the Copps Coliseum in Hamilton, Ontario,  
25 Canada. This led to widespread speculation that Balsillie planned to purchase the Penguins, and  
26 attempt to relocate them from Pittsburgh to Hamilton.

27 45. Pursuant to NHL By-Law 35, Balsillie submitted an application for transfer of  
28 ownership of the Penguins' franchise. The Commissioner investigated the proposed transfer of the  
Penguins and advised Balsillie that he would recommend to the NHL Executive Committee and,



1 subsequently, to the Board of Governors approval of the proposed ownership transfer if Balsillie  
2 would, among other things, agree in the consent agreement to certain conditions, including a  
3 standard non-relocation covenant to keep the team in Pittsburgh for seven years. Balsillie verbally  
4 agreed to this condition, and it, along with other terms, was memorialized in a draft consent  
5 agreement.

6 46. At the December 2006 Board of Governors Meeting, the Board voted to approve the  
7 proposed transfer of ownership of the Penguins to Balsillie subject to execution of the appropriate  
8 documents, including the consent agreement. Following Board approval, however, when Balsillie  
9 was faced with executing the consent agreement and memorializing the agreements to which he  
10 had verbally committed both to the Commissioner and the Executive Committee, he refused to sign  
11 or otherwise reduce his oral commitments to writing. Balsillie subsequently abandoned the  
12 proposed ownership transfer of the Penguins from the Lemieux Group LP.

13 **The Nashville Predators**

14 47. Less than a year later, in May 2007, Balsillie entered into a non-binding term sheet  
15 to buy the Nashville Predators ("Predators") from then-owner Craig L. Leipold. Shortly thereafter,  
16 Balsillie inquired whether the NHL would conditionally approve the future relocation of the  
17 Predators franchise to Southern Ontario in the event an "escape provision" in the Nashville lease  
18 was triggered. The League responded that any such relocation determination would be premature  
19 and expressed concern that premature discussion of a potential relocation would undermine efforts  
20 to sell tickets and maintain and build fan and sponsor support in Nashville. In response, Balsillie  
21 represented to the League that if he were approved as owner he would in good faith attempt to  
22 make the team successful in Nashville and would not apply for relocation unless and until such  
23 time as those efforts had proved unavailing.

24 48. Thereafter, however, and without appropriate notice to the League or its members,  
25 Balsillie publicly announced his desire to move the Predators to Hamilton and began soliciting  
26 refundable deposits for season tickets in Hamilton. Similar to the circumstances here, Balsillie's  
27 actions constituted a significant attempt to destabilize the franchise's existing business in Nashville.

28

1           49.     In June 2007, Balsillie submitted an application for transfer of ownership of the  
2 Predators franchise pursuant to NHL By-Law 35. The application, however, was incomplete, and  
3 the Board of Governors was unable to consider the possible ownership transfer at its June 20, 2007  
4 meeting. Subsequently, on June 22, 2007, Leipold informed the League that he had been unable to  
5 finalize an agreement with Balsillie, and requested that the League take no further action with  
6 respect to the application for ownership transfer.

7 **The Canadian Competition Bureau's Investigation and Approval of the NHL's Franchise**  
8 **Ownership Transfer and Relocation Rules and Procedures**

9           50.     On June 14, 2007, the Canadian Bureau of Competition opened an investigation into  
10 the NHL's rules and procedures for franchise ownership transfer and relocation. The investigation  
11 focused on Balsillie's failed attempts to acquire both the Penguins and the Predators.

12           51.     The NHL fully cooperated with this investigation, and on March 31, 2008, the  
13 Competition Bureau closed its investigation and announced its findings. The Bureau concluded  
14 that the NHL's rules and procedures with respect to franchise ownership transfer and relocation  
15 "serve legitimate interests, such as preserving rivalries between teams, attracting a broader  
16 audience, providing new franchises with an opportunity to succeed and encouraging investment in  
17 sports facilities and related infrastructure by local municipalities." Furthermore, the Bureau found  
18 that the NHL and its Member Clubs had not engaged in any anticompetitive conduct with respect  
19 to Balsillie's attempted acquisition and relocation of the Predators, and that the "NHL's policies and  
20 procedures regarding the process that would be applicable to any future attempts to relocate NHL  
21 franchises to Southern Ontario" are not anticompetitive. Moreover, the Bureau found that the  
22 standard seven-year non-relocation covenant of the Consent Agreement was not anticompetitive  
23 and that, under its By-Laws and, in practice since the early 1990s, the NHL has required only a  
24 majority vote of the Member Clubs to approve a relocation without allowing any single team veto  
25 based on exclusive territorial rights. (A copy of the Canadian Bureau of Competition's  
26 Backgrounder that summarizes the Bureau's main findings is attached hereto as Exhibit I.) To be  
27 clear, it remains the policy of the NHL that a proposed team relocation to Southern Ontario would  
28 be subject to a majority vote of the NHL Board of Governors and no individual team, wherever  
located, would have any veto right over any majority vote in favor of relocation.

1 **BALSILLIE'S UNDISCLOSED PLAN TO BUY AND**  
2 **RELOCATE THE COYOTES WITHOUT LEAGUE APPROVAL**

3 **Balsillie's and Moyes' Improper Secret Negotiations and Preliminary Agreement**

4 52. These proceedings have revealed that Balsillie and Moyes have been secretly  
5 negotiating a transaction since at least April 17, 2009, if not before. Such discussions and  
6 negotiations are not permitted under the Consent Agreement (see Exhibit E, ¶4(c)); more  
7 importantly, Moyes was apparently attempting to sell assets he no longer controlled and a franchise  
8 location (Southern Ontario) that was not his to sell.

9 **Moyes' Improper April 23, 2009 Amendment of the Coyotes' Operating Agreement**

10 53. Moyes' futile attempt to remedy his obvious lack of authority to file for Club  
11 bankruptcy or to sell the Club, presumably at Balsillie's direction, was to have Coyotes Holdings  
12 improperly amend the Club's governance document. As a result of filings made by the debtors in  
13 these proceedings, I was surprised to learn that Moyes purported to "amend" the Club's operating  
14 agreement without notice to or approval of the NHL, which was in direct violation of his  
15 obligations under the Constitution, By-Laws and Consent Agreement. (See Exhibit E, ¶6(c)(iii)(E).)  
16 But I was even more disturbed to learn that Moyes through Coyotes Holdings – which had already  
17 been removed as Managing Member of the Club as of the November 14, 2008 proxies – had  
18 attempted to secretly and unilaterally reinstate himself as Managing Member of the Club. The  
19 document blithely provides that:

20 In the event that Jerry Moyes ("Moyes") is at any time  
21 removed from his position as manager of Coyotes  
22 Holdings, LLC, or Coyotes Holdings, LLC is removed  
23 as Managing Member of the Company, then  
24 immediately upon such event, (i) the Managing  
25 Member's powers and authority under this Section 6.1  
26 shall cease and all such powers and authority shall  
27 thereafter be exercised exclusively by Moyes to the  
28 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.

(Exhibit J at 1.)

1 Jerry Moyes alone endorsed this purported amendment to the Club's operating agreement (a copy  
2 of which is attached hereto as Exhibit J), in patent violation of the 2006 Consent Agreement.

3 54. We at the NHL knew nothing about this purported amendment before the  
4 bankruptcy filing. This retroactive designation by Moyes of himself as Managing Member not  
5 only violates the Consent Agreement, it is precluded by the November 14, 2008 proxies that  
6 immediately and irrevocably gave Commissioner Bettman all of the rights of the Managing  
7 Member of the Club and was therefore void ab initio.

8 **Moyes' Asset Purchase Agreement with Balsillie**

9 55. I was equally surprised to learn – as a result of the filings in this Court – that by  
10 April 2009 (and no doubt much earlier) Moyes and Balsillie had secretly agreed in principle that  
11 Balsillie would attempt to purchase and relocate the Coyotes without League approval. It is now  
12 clear to me that this agreement, at bottom, was nothing more than a scheme to misuse this Court  
13 and sidestep the NHL's transfer of ownership and relocation processes, as well as the League's  
14 fundamental right to choose its own members and to decide where they should be located. The  
15 Asset Purchase Agreement was conditional on essentially voiding the long-term lease with the City  
16 of Glendale and selling the team free and clear of the League consent required under the NHL  
17 Constitution and By-Laws. In other words, the entire arrangement was predicated on Moyes  
18 selling League territorial rights that he did not own to an individual unwilling to subject himself to  
19 the Board of Governors' standard review and approval process. Again, as detailed above, after  
20 November 14, 2008, only the Commissioner had the authority to sell the Club – following the NHL  
21 rules and procedures for ownership transfer – and Moyes could do nothing in that regard without  
22 the Commissioner's approval. Thus, from the NHL's perspective, the Asset Purchase Agreement is  
23 a dead letter – Moyes had no authority to sell the Club. And, under the Constitution and By-Laws,  
24 he certainly had no right whatsoever to seek to sell a franchise opportunity in Southern Ontario,  
25 which is owned by the League as a whole.

26  
27  
28

**1 UNDER NHL RULES AND PROCEDURES,  
2 AN OWNERSHIP TRANSFER APPLICATION AND CONSIDERATION  
3 BY THE BOARD COULD NOT BE ACCOMPLISHED FOR AT LEAST 30-60 DAYS**

4 56. The NHL Board of Governors has adopted Procedural Guidelines implementing the  
5 provisions of Article 3.5 and By-Law 35. The purposes of the guidelines include assuring that the  
6 Board does not need to act on an application unless and until the application and accompanying  
7 data are complete and ready for consideration, providing the League and its counsel sufficient time  
8 to investigate the proposed transaction and new ownership and report to the Board of Governors,  
9 and providing Member Clubs with guidance as to the timing for consummating a transaction.

10 57. In order to aid Member Clubs in obtaining approval of ownership transfers, the  
11 NHL Constitution also contains an exhibit ("Exhibit O") that further details the procedures relating  
12 to ownership transfers, including the specific forms that must be executed and included in any  
13 application for a transfer of ownership interest. The procedures make clear that it is the obligation  
14 of the transferring owner to ensure that the Commissioner timely receives all information and  
15 documents. (A copy of Exhibit O to the NHL Constitution is attached hereto as Exhibit K.)

16 58. Furthermore, in October 2008, the League adopted additional Ownership Transfer  
17 Procedures with respect to the preliminary qualification of prospective owners. These procedures  
18 are specifically intended to involve the League early on in any negotiation process in order to  
19 assess potential new owners so as to expedite a subsequent review process. These procedures were  
20 sent to Earl Scudder, Moyes' attorney and advisor, to guide Moyes in his efforts to identify  
21 potential buyers of the Club. (A copy of these Ownership Transfer Procedures – Preliminary  
22 Qualification Procedures is attached hereto as Exhibit L.)

23 59. Although the NHL procedures, particularly those for preliminary qualification, are  
24 intended to expedite the assessment and approval process, the process nonetheless typically takes  
25 no less than 45 days from the time the League receives a fully completed application until the  
26 proposed ownership transfer is brought to the Board for its consideration and vote.  
27 Notwithstanding his discussions with Balsillie, dating back at least to April 17, as well as the  
28 execution of the Asset Purchase Agreement on May 5, before the filing of the Bankruptcy Petition,  
Moyes had never informed the League of these discussions. To the contrary, in the week before

1 Moyes filed for bankruptcy, Scudder expressly denied to me and Commissioner Bettman that he  
2 had any agreement to sell the Club. Further, neither, Moyes nor Balsillie has made a request for or  
3 submitted the necessary application and documentation to commence the ownership transfer  
4 approval process before the Board of Governors.

5 **UNDER NHL RULES AND PROCEDURES, A RELOCATION**  
6 **APPLICATION AND CONSIDERATION WOULD TAKE SEVERAL MONTHS**

7 60. Each Member Club has a substantial and legitimate interest in the location of each  
8 other Member Club because, among other things, the location of the franchises necessarily impacts  
9 the value and revenue generating capabilities of the League as a whole, as well as those of each  
10 Member Club. The various locations of the NHL franchises also impact national and local  
11 television arrangements (and rights fees earned by all Member Clubs) as well as tickets sold (based  
12 on team rivalries).

13 61. In evaluating a relocation, the Board of Governors considers, among other factors,  
14 the ability of the existing home territory to support the team, the extent to which the fans have  
15 historically supported the Member Club in its present location, the extent to which the proposed  
16 transfer would affect any contract or agreement in effect between the Member Club and any public  
17 or private party, the extent to which League consent to the proposed transfer might expose the  
18 League to liability (including for interference with contractual relations due, among other things, to  
19 existing lease obligations), the ability of the proposed new location to support a Member Club, the  
20 ability of the applicant to operate the team successfully in the proposed new location, whether there  
21 will be a suitable new arena available in which the Member Club can play its home games in the  
22 proposed new location, the extent to which the relocation is likely to damage the image of the  
23 League, and the extent to which the relocation would adversely affect rivalries that have been  
24 established between the Member Club in its present location and other Member Clubs. Further, in  
25 order to assess all of these relevant factors, the League typically engages one or more outside  
26 consultants and experts in areas such as fan demographics, marketing potential, suitability of  
27 proposed playing and practice facilities, etc.

28 62. In terms of timing, the consideration and approval process relating to a proposed  
franchise relocation takes at least three to four months. A complete application must be submitted

1 to the League addressing the variety of relevant factors addressed in By-Law 36 which then must  
2 be studied and verified by the League, generally with the assistance of outside professionals, and a  
3 report and recommendation is prepared internally by the League for review and consideration by  
4 the Executive Committee, and then the full Board of Governors. At each stage, there typically are  
5 additional questions, further information requested and further analysis required and performed.  
6 Finally, a significant issue for many potential franchise relocations, which would also be true here,  
7 is whether and how the League can or should realign its teams in the event the proposed relocation  
8 is approved by the Board. Given the significant distance between Phoenix and Southern Ontario,  
9 the League would have to completely rework not only the Coyotes' schedule, but also the  
10 individual team schedules for every Member Club in the League. In addition, it may be necessary  
11 to modify the existing Conference and Division alignments, which would also effectively disrupt  
12 and disorient the League's current scheduling matrix. In the meantime, teams are already selling  
13 season tickets for next season to fans who expect the existing rivalries and Division and  
14 Conference alignments to remain in place. This, of course, is why the By-Laws specifically require  
15 that all relocation applications must be made by January 1 of the year preceding the season in  
16 which the team proposes to begin play in its new location.

17         63. Neither the NHL playing schedule nor its broadcast schedules are constructed  
18 overnight. The NHL's scheduling process for the upcoming season begins early in the preceding  
19 season, and any proposed franchise relocation that is first raised for consideration in mid-May  
20 would substantially and negatively impact the League's ability to produce an efficient and effective  
21 schedule, and would further adversely affect the ticket sales of each opponent scheduled to play the  
22 proposed relocating team.

23         64. Scheduling the NHL regular season requires months of planning and coordination  
24 with the various Member Clubs in each Conference and Division. Many Member Clubs share  
25 arenas with NBA basketball teams and those arenas also host other events such as concerts,  
26 circuses, trade shows, conventions and the like. The Member Clubs submit a list of proposed home  
27 dates that must take into account all of these other events. Further, in order to promote rivalries  
28 through home-and-home scheduling (i.e., back-to-back games played one each at each team's home

1 arena) and manage travel schedules and costs effectively within Conferences and Divisions, as well  
2 as for interconference games, the playing schedule requires much discussion between Member  
3 Club personnel and the League office. Indeed, the Coyotes' schedule (in Glendale) has virtually  
4 been finalized for the 2009-10 regular season and the League's overall schedule is more than 55%  
5 complete; the effects of an untimely relocation of the Coyotes in July or August would be highly  
6 disruptive not only to the Club's business constituents (for example, sponsors, advertisers and  
7 broadcasters) as well as the team's fans, but also to the business constituents and fans of each of the  
8 29 other Member Clubs in the League. Given all of these considerations, any relocation  
9 application filed today would, by necessity, not be capable of approval to effectuate a relocation for  
10 the 2009-10 season. The earliest such relocation could be effectuated would be the 2010-11 season.

11 65. In sum,

12 (i) The NHL has long held, since at least November 2008, valid proxies that  
13 unambiguously gave Commissioner Bettman control over the Club and Arena Management and  
14 deprived Moyes of any right to file for bankruptcy on behalf of the Club and Arena Management or  
15 enter into the Asset Purchase Agreement with Balsillie;

16 (ii) In any event, Moyes and Balsillie have made no application to the NHL for a  
17 transfer of ownership such that the NHL could process the application under the timetable  
18 proposed by the debtors (although the NHL can act on an application, if one is promptly made, on  
19 an expedited basis (if important to the new owner) and certainly, prior to the 2009-10 season, so  
20 long as the team intends to play in Glendale for that season); and

21 (iii) Relocation of the Coyotes for the 2009-10 season is already impossible, and any  
22 relocation application for the Coyotes made by the owner of the team and approved by the NHL  
23 Board of Governors could only become effective beginning in the 2010-11 season.

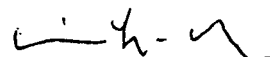
24 I declare under penalty of perjury that the foregoing is true and correct.

25 Executed on May 13, 2009.

26

27

28

  
\_\_\_\_\_  
William L. Daly



## Exhibit A

**CONSTITUTION**  
**OF THE**  
**NATIONAL HOCKEY LEAGUE**  
(An Unincorporated Association Not For Profit)

**ARTICLE I**

**NAME**

- 1.1. The name of this association shall be "National Hockey League," hereinafter called the "League."

**ARTICLE II**

**PURPOSES AND OBJECTS**

- 2.1. The purposes and objects for which the League is organized are:

- (a) To perpetuate hockey as one of the national games of the United States and Canada.
- (b) The promotion of the common interests of the members of the League, each member being an owner of a professional hockey club located in the United States or Canada.
- (c) The promulgation of rules governing the conduct of play of hockey games between the Member Clubs in the League, the relationships between players and Member Clubs, between Member Clubs and the League and between the Member Clubs and other hockey clubs, to the end that the public may be assured of a high standard of skill and fair play, integrity and good sportsmanship.
- (d) The arbitration and settlement of disputes between the Member Clubs and between Member Clubs and players.
- (e) The education of the public, through advertising, radio and other media, to the end that professional hockey, as played according to the standards of the League, may gain popular support and acceptance as a wholesome entertainment.
- (f) The development of youth in mind and body and the teaching of fair play and good sportsmanship through the media of hockey.

- 2.2. The League shall be operated not for profit.

# **CONSTITUTION**

## **ARTICLE III**

### **MEMBERSHIP**

*3.1. Membership.* Membership in the League shall be limited to members herein designated, and such new members as may be hereafter duly elected. The Member Clubs of the League are:

1. Mighty Ducks Hockey Club, Inc.
2. Atlanta Hockey Club, Inc.
3. Boston Professional Hockey Association, Inc.
4. Niagara Frontier Hockey, L.P.
5. Calgary Flames Limited Partnership
6. Hurricanes Hockey Limited Partnership
7. Chicago Blackhawks Hockey Team, Inc.
8. Colorado Avalanche LLC
9. COLHOC Limited Partnership
10. Dallas Stars, L.P.
11. Detroit Red Wings, Inc.
12. Edmonton Investors Group Limited Partnership
13. Florida Panthers Hockey Club, Ltd.
14. The Los Angeles Kings Hockey Club, L.P.
15. Minnesota Wild Hockey Club, LP
16. Club de Hockey Canadien, Inc.
17. New Jersey Devils LLC
18. Nashville Hockey Club Limited Partnership
19. New York Islanders Hockey Club, L.P.
20. Madison Square Garden, L.P.
21. Ottawa Senators Hockey Club Corporation
22. Comcast Spectacor, L.P.
23. Coyotes Hockey, LLC
24. Lemieux Group L.P.
25. St. Louis Blues Hockey Club, L.P.
26. San Jose Sharks, L.P.
27. Center Ice, L.L.C.
28. Maple Leaf Sports & Entertainment, Ltd.
29. Orca Bay Hockey Limited Partnership
30. Lincoln Hockey LLC

each holding a franchise from the League for the operation of a hockey club respectively in the cities and bearing the designations hereinafter noted.

- |    |                     |                       |
|----|---------------------|-----------------------|
| 1. | "Atlanta Thrashers" | Atlanta, Georgia      |
| 2. | "Boston Bruins"     | Boston, Massachusetts |
| 3. | "Buffalo Sabres"    | Buffalo, New York     |

## CONSTITUTION

4.	"Calgary Flames"	Calgary, Canada
5.	"Carolina Hurricanes"	Raleigh-Durham, North Carolina
6.	"Chicago Blackhawks"	Chicago, Illinois
7.	"Colorado Avalanche"	Denver, Colorado
8.	"Columbus Blue Jackets"	Columbus, Ohio
9.	"Dallas Stars"	Dallas, Texas
10.	"Detroit Red Wings"	Detroit, Michigan
11.	"Edmonton Oilers"	Edmonton, Canada
12.	"Florida Panthers"	Broward County, Florida
13.	"Los Angeles Kings"	Los Angeles, California
14.	"Mighty Ducks of Anaheim"	Anaheim, California
15.	"Minnesota Wild"	St. Paul, Minnesota
16.	"Montreal Canadiens"	Montreal, Canada
17.	"Nashville Predators"	Nashville, Tennessee
18.	"New Jersey Devils"	East Rutherford, New Jersey
19.	"New York Islanders"	Long Island, New York
20.	"New York Rangers"	New York, New York
21.	"Ottawa Senators"	Ottawa, Canada
22.	"Philadelphia Flyers"	Philadelphia, Pennsylvania
23.	"Phoenix Coyotes"	Phoenix, Arizona
24.	"Pittsburgh Penguins"	Pittsburgh, Pennsylvania
25.	"St. Louis Blues"	St. Louis, Missouri
26.	"San Jose Sharks"	San Jose, California
27.	"Tampa Bay Lightning"	Tampa, Florida
28.	"Toronto Maple Leafs"	Toronto, Canada
29.	"Vancouver Canucks"	Vancouver, Canada
30.	"Washington Capitals"	Washington, D.C.

The Member Clubs agree that each will maintain and operate a hockey team of the highest possible playing caliber for the purpose of engaging annually in a regular schedule of championship and playoff games with teams of the other Member Clubs. Such annual regular schedule of games shall produce for each Member Club a minimum of forty games in the home rinks of the other Member Clubs.

*3.2. Eligibility.* Any person, firm, association or corporation that meets the criteria for membership set from time to time by the Board of Governors may be eligible for membership.

*3.3. Admission of New Members.* Each applicant for membership shall make a written application to the League on the official Application Form approved by the Board of Governors. Such form shall designate the information and documents required to be submitted and the payments required to be made by the applicant. The form shall also include a statement that, upon and in consideration of election to membership, the applicant will subscribe to and agree to be bound by the Constitution and all amendments thereof, and all By-Laws, Resolutions, Agreements and Rules of the League. Upon receipt of any application for membership, the Commissioner shall conduct such investigation as he deems appropriate. Upon completion of the investigation, the Commissioner shall submit the application to the members for approval, together with his recommendations thereon and all such information that the Commissioner deems pertinent. A favorable vote of three-fourths of the members of the League

## *CONSTITUTION*

shall be required for election to membership. The Board of Governors by majority vote shall determine from time to time the amount that shall be paid for a membership in the National Hockey League, but no application for membership shall be considered unless the application be in writing on the official Application Form, and be accompanied by a deposit check payable to the League in such amount as determined by the Board of Governors, and such proof as the Governors may require as to the organization, financing, playing facilities, and personnel of the applicant. In addition to the amount fixed by the Board of Governors of the League as the price to be paid for a new franchise in the League, such new member shall pay, on demand, such further sum as may be determined by the Board of Governors as represented by each member's interest in the assets, surplus, if any, and reserve accounts of the League.

*3.4. Certificate of Membership.* Each member in good standing shall be entitled to a Certificate of Membership signed by the Commissioner and Secretary of the League, certifying that the member is a member of the League and holds a franchise from the League to operate a professional hockey club in the designated city. Such Certificate of Membership shall be non-assignable and non-transferable, except as provided in section 3.5.

*3.5. Transfer of Membership or Ownership Interest in a Member Club.* No membership or ownership interest in a Member Club may be sold, assigned or otherwise transferred except (a) with the consent of three-fourths of the members of the League, and (b) upon the condition that the transferee will at all times be bound by and comply with the terms, provisions and conditions of this Constitution, and (c) upon the further condition that the transferee shall assume or guarantee all debts, liabilities and obligations of the transferor member existing at the date of transfer. Application for the sale, transfer or assignment of a membership or ownership interest must be made in writing to the Commissioner. Upon receipt of such application, the Commissioner shall conduct such investigation as he deems appropriate. Upon completion of the investigation, the Commissioner shall submit the application to the members for approval, together with his recommendations thereon and all such information that the Commissioner deems pertinent. Transfer of membership or ownership interest in a Member Club shall not release the transferor from any debt, liability or obligation to the League existing at the date of transfer. Upon transfer of membership or ownership interest in a Member Club any and all interest of the transferor in and to any and all funds, property, rights and interests in the League shall cease.

"Ownership interest" in a Member Club as used above shall include any stock, partnership (general or limited) or other proprietary holding in any corporation, company, association, partnership, or other organization which holds, directly or indirectly, the franchise of Member Club. The approval required for transfer of an ownership interest in a Member Club (as distinguished from transfer of membership) shall be waived for all publicly held companies owning such interest prior to June 24, 1981. Such approval requirement shall also be waived for any transfer of a non-controlling ownership interest of any member whose stock is listed on the American, New York, Toronto or other public stock exchange. If the proposed sale, assignment or transfer involves an interest of five percent (5%) or less, the Commissioner shall have the authority to approve the transaction without submitting it to the Board of Governors. If the proposed sale, assignment or transfer involves an interest of between five percent (5%) and ten percent (10%), it may be approved by the Executive Committee without submitting it to the full Board of Governors.

All legal fees and costs incurred by the League in effecting a transfer of member or ownership interest shall be assessed against the Member Club whose membership or ownership interest is being transferred, and, unless agreed to the contrary by the parties, shall be the obligation of the transferee.

## **CONSTITUTION**

**3.6. *Vote on Admission or Transfer.*** The vote for election of new members or for transfer of a membership may be taken at any annual or special meeting of the Board of Governors, provided ten days previous written notice thereof has been given to each member of the League, or by a mail ballot of the members delivered to the Commissioner.

### **3.7. *Voluntary Withdrawal.***

- (a) Any member of the League may withdraw from membership either
  - (i) by assigning its membership upon the terms and conditions of Section 3.5, or
  - (ii) by, no earlier than July 1 and no later than November 1, tendering its written resignation with the resignation to be effective on the following June 30, or such earlier date as the League may at any time elect in writing, to the Commissioner and on the effective date of the resignation surrendering its Certificate of Membership, making full payment of any and all dues or other debts owing to the League, or to any other member and, at the option of the League, assigning to the League or its nominee all player contracts of the resigning member and/or the lease of its playing arena, if, and to the extent, the lease is assignable, and waiving in writing any claim to any and all funds, property, rights and interests of the League.
- (b) Upon tender of a resignation from the League in accordance with Section 3.7(a)(ii), the League may at any time prior to June 1 exercise the option provided by Section 3.7(a)(i), and thereupon the League is authorized and empowered
  - (i) to sell, to a purchaser acceptable to the League as a member for the territory of the withdrawing member, the lease of the playing arena and/or the Club, including the contracts of all players then under League or minor league contract, together with all other hockey personal properties for the operation of the Club and any minor league club; or
  - (ii) to purchase for its own account the assets described in subdivision (i) above; or
  - (iii) in the event that no such sale pursuant to subdivision (i) is feasible and the League concludes not to purchase for its own account pursuant to subdivision (ii), to liquidate by sale the separate assets of the Club.

Such sale, purchase, or liquidation shall be conducted in such manner and for such reasonable amount as may be decided by the League. Any liquidation of player contracts shall be conducted by a dispersal draft under such procedures as the League may adopt by a three-quarter vote. Each member who is now or hereafter admitted to membership hereby expressly agrees that if it withdraws from the League in accordance with Section 3.7(a)(ii), it will assist in carrying out these provisions and will execute and deliver any and all instruments of conveyance, transfer, lease, bill of sale, assignment and other

## *CONSTITUTION*

documents necessary or convenient therefor. In the event of any failure, refusal or inability of any member to do so, any court of competent jurisdiction may, in any appropriate proceeding, enter any orders, judgments or decrees necessary to enforce and carry out the provisions hereof. Upon consummation of such purchase, sale, or liquidation, the League, through its Commissioner, shall deduct from the proceeds thereof (a) all expenses incurred in connection with said purchase, sale or liquidation, and (b) any debts owed by the withdrawing member to any other member or to the League.

The balance of said proceeds shall be paid to the member whose assets have thus been purchased, sold, or liquidated, upon the execution and delivery by such member to the Commissioner of the League, the League, and each of the other members of the League, of a full receipt and release of any and all claims or liabilities. In the event the League grants a new membership for the same city in connection with the sale permitted by Section 3.7(b)(i), the "proceeds" shall include the amount received by the League for the new franchise. In the event the League does not exercise its option by June 1 as provided under this Section, the resigning member may dispose of its assets, which would not include the resigned franchise, as it sees fit.

*3.8. Capital Contribution of Transferee.* A new member acquiring its membership by transfer from another member shall succeed to the interest of the transferor in and to the funds, property, rights and interests of the League.

*3.9. Involuntary Termination.*

- (a) The membership of a member shall terminate automatically upon the occurrence of any of the following events:
  - (i) The making of an assignment for the benefit of its creditors, or the filing of a voluntary petition in bankruptcy, or if a receiver or trustee in bankruptcy is appointed for the properties and assets of the member, or if reorganization or arrangement proceedings in bankruptcy are instituted by the member.
  - (ii) Disbandment of its team during the League season.
- (b) The membership of a member may be suspended or terminated, or other corrective action taken, by three-fourths of the members of the League, as defined in Section 3.10, upon any one of the following grounds:
  - (i) Violation of this Constitution or the By-Laws or Rules of the League unless shown to the satisfaction of the League to be inadvertent.
  - (ii) Failure to pay any dues or other indebtedness owing to the League within fifteen (15) days following the sending of written notice by the Treasurer of default in such payment.

## *CONSTITUTION*

- (iii) Failure or refusal to fulfill its contractual obligations, in such a way as to affect adversely the League, including, but not by way of limitation upon the generality of the foregoing, the payment of player salaries when due.
- (iv) The wagering or countenancing of wagering by its officers or employees on any hockey game and/or games.
- (v) The permitting of open betting or pool setting upon any premises owned, leased or otherwise controlled by the member on any hockey game and/or games.
- (vi) Offering, agreeing, conspiring or attempting to lose or manipulate the score of any game participated in by the team of the member, or failure to suspend immediately any officer or any player or other employee of the member who shall be proved guilty of offering, agreeing, conspiring or attempting to lose or manipulate the score of any such game or of being interested in any pool or wager on any hockey game or games, or failure to report to the Commissioner any information pertaining to a possible violation of this subsection.
- (vii) Failure to remain a member of the League as at present or from time to time constituted, except in the case of an approved transfer of its membership as provided in Section 3.5 hereof, or through voluntary withdrawal as provided in Section 3.7 hereof.
- (viii) Failure to present its team at the time or place provided by the schedule to play any League game, playoff game or championship game, unless caused by strikes, unavoidable accident in travel or by some other cause for which such member is not responsible, including, but not limited to, acts of God.
- (ix) Failure to comply with any proper order or instruction of the Board of Governors.
- (x) Attempting to transfer its club and franchise in contravention of Section 4.2.

*3.10. Termination Procedure.* The membership of a member may be suspended or terminated, or other corrective action taken, for any of the grounds set forth in Section 3.9(b) by the following procedure:

- (a) Any member of the League or the Commissioner may prefer charges that a member has violated a provision or provisions of Section 3.9(b). Said charges shall be made in writing in reasonable detail and shall be filed with the Commissioner who shall cause a copy thereof to be served by mail or teletype or telegram upon the member against whom such charges have been made. The Commissioner shall also cause a copy thereof to be served upon all other members by mail or teletype or telegram and fix a reasonable time, depending on the gravity of the charge and the urgency of the need for decision, and place for a hearing thereon before a special meeting of the League called for such a purpose. The member charged shall be promptly notified of the time and place of



## *CONSTITUTION*

hearing. Said hearing may be continued from time to time at such place or places as the members may determine.

- (b) At such hearing, the Chairman of the Board of Governors shall preside, unless he shall be an officer of the complaining member or of the member charged, in which event the presiding officer shall be elected by the members attending the meeting. In case of a tie in the vote for presiding officer, the Commissioner shall cast the deciding vote.
- (c) At such hearing, the member charged shall have the full right to appear in person and by counsel. Full opportunity shall be given to the League, the member preferring charges and the member charged for the presentation of evidence bearing thereon. Strict rules of evidence as practiced in the courts shall not apply.
- (d) After duly considering all the evidence, the meeting shall vote upon each charge separately as to whether it has been sustained. The affirmative vote of three-fourths of the members of the League present and voting shall be required to sustain any charge.
- (e) If upon such vote any charge is sustained, the meeting shall vote with respect to each sustained charge as to what corrective action shall be taken with respect to the member charged, bearing in mind the gravity of the charge, any extenuating circumstances, and the best interest of hockey and the League. The action may include:
  - (i) suspension or termination of the membership of such member,
  - (ii) the imposition of an award, which may be made payable in whole or in part to the League and/or to any other member or members as compensation for damages sustained by reason of any violation found to have been committed by the member charged, and
  - (iii) any other direction, order or relief which may be appropriate in the circumstances. The affirmative vote of three-fourths of the members present and voting shall be required for the imposition of any corrective action, including termination.
- (f) In accordance with Section 5.11, calculation of three-fourths of the members for the purposes of this Section shall be based on the membership present and voting, including the member charged.
- (g) The decision of the League, made in accordance with the foregoing procedure, shall be final and binding upon all members.
- (h) Pending commencement or completion of hearing and decision in any proceeding pursuant to Section 3.10, in situations of utmost gravity affecting the operation of the League, the Commissioner, upon a preliminary conclusion on his part on the facts available to him from any and all sources, including the member charged, that the

## CONSTITUTION

charges filed are in whole or part meritorious and are likely to be sustained, and upon approval by a three-fourths vote of the members present and voting at a special meeting of the League called for such purpose, may appoint a committee to oversee or operate the Club of the member charged until completion of the proceedings provided herein. In the event that a violation of Section 3.9(b)(viii) or 3.9(b)(x) is charged, the Commissioner may so act without approval of the membership. The member charged shall cooperate in this interim arrangement and shall be responsible for any expenses incurred by the League during this interim period. The member charged may request the Commissioner to expedite the hearing to resolve the charges against it in view of the interim arrangement authorized by the Commissioner and the League.

- (i) For the purposes of this Section and of Sections 3.9, 3.11 and 3.12, if any League officer authorized or directed to take any action shall be unavailable or incapacitated, then such action may or shall be taken by the League officer who is available, not incapacitated, and not an officer or employee of a Member Club which has preferred charges or had charges preferred against it under Section 3.10(a), in the following order of priority: the Chairman, Vice Chairman, Vice Presidents in order of seniority, and Secretary.

*3.11. Effect of Termination.* Upon any termination of membership under Section 3.9, the member affected shall thereupon at once surrender all its rights and privileges as a member of the League, and, at the option of the League exercised no later than ten days after the date of termination, deliver to the Commissioner of the League, for the League, the possession and control of the lease of its playing arena, if and to the extent the lease is assignable. At the option of the League exercised no later than ten days after the date of termination, the terminated member shall surrender possession and control of its club, including the contracts of all of its players then under League or minor league contract, together with all of its other hockey personal properties for operation of the Club and any minor league club. Upon exercise of the latter option, the Commissioner of the League shall on behalf of the League appoint a committee to operate such properties and club for so long as the Board of Governors determines it advisable to do so, and for that period continue the playing of games, collection of all income and receipts and pay therefrom all expenses in connection therewith, and if such income and receipts do not prove sufficient, pay the balance of such expenses out of the funds of the League. The terminated club shall keep intact its assets, including but not limited to any lease and player contracts, for the ten-day period during which any option under this Section may be exercised, so as not to defeat in whole or in part the option rights accorded the League. Any option exercised by the League under this Section shall be by a three-fourths vote of the members present and voting.

*3.12. Disposition Following Termination of Membership.* Upon any termination of membership under Section 3.9, the League is hereby authorized and empowered (a) to sell, to a purchaser acceptable to the League as a member for the territory of the terminated member, the lease of the playing arena and/or the Club, including the contracts of all players then under League or minor league contract, together with all other hockey personal properties for operation of the Club and any minor league club; or (b) to purchase for its own account the assets described in subsection (a); or (c) in the event that no such sale, pursuant to subsection (a) is feasible, and the League concludes not to purchase for its own account pursuant to subsection (b), to liquidate by sale the separate assets of the Club. Such sale, purchase, or liquidation shall be conducted in such manner and for such reasonable amount as may be decided by the League. Any liquidation of player contracts shall be conducted by a dispersal draft under such procedures as the League may adopt by a three-quarter vote. Each member who is now or hereafter admitted to membership hereby expressly agrees that if its membership should be terminated in accordance with

## *CONSTITUTION*

Section 3.9, it will assist in carrying out these provisions and will execute and deliver any and all instruments of conveyance, transfer, lease, bill of sale, assignment and other documents necessary or convenient therefor. In the event of any failure, refusal or inability of any member to do so, any court of competent jurisdiction may, in any appropriate proceeding, enter any orders, judgments or decrees necessary to enforce and carry out the provisions hereof. Upon consummation of such purchase, sale, or liquidation, the League, through its Commissioner, shall deduct from the proceeds thereof:

- (a) any and all moneys which may have been expended by the League in the overseeing and operation of such properties pursuant to Section 3.10(h) and 3.11 in excess of any income derived by the League from such operation,
- (b) all expenses incurred in connection with said purchase, sale, or liquidation, and
- (c) any debts owed by the retiring member to any other member or to the League.

The balance of said proceeds, together with the money on hand, if any, derived from such income and receipts, shall be paid to the member whose assets have thus been purchased, sold, or liquidated, upon the execution and delivery by such member to the Commissioner of the League, the League, and each of the other members of the League, of a full receipt and release of any and all claims or liabilities. In the event the League grants a new membership for the same city in connection with the sale permitted by Section 3.12(a), the "proceeds" shall include the amount received by the League for the new franchise. In the event the League does not exercise its option under Section 3.11, the terminated member may dispose of its assets, which would not include the terminated franchise, as it sees fit.

*3.13. Agreement of Terminated Member Not To Oppose.* Each member of the League, whether now a member or hereafter becoming a member, agrees with each and every other member of the League that it will not resist or attempt to prevent by court proceedings of any kind or character, or otherwise, its termination of membership in the League in accordance with the provisions of Sections 3.9, 3.10, 3.11 and 3.12.

*3.14. Dissolution.* The League may be dissolved at any time by the unanimous consent of all members of the League. Upon dissolution the assets of the League shall be distributed to a successor league as designated by the members, or, failing that, to a charity which shall include, but not be limited to, an exempt organization as described in Section 501(c)(3) of the United States Internal Revenue Code or any similar provision of the Canadian Income Tax Act.

# CONSTITUTION

## ARTICLE IV

### TERRITORIAL RIGHTS

4.1. *Definitions.* For the purposes of this Article:

- (a) "Home club" means the member at whose arena a game is played.
- (b) "Visiting club" means a member whose team is playing at the arena of another member.
- (c) "Home territory," with respect to any member, means: Each Member Club shall have exclusive territorial rights in the city in which it is located and within fifty miles of that city's corporate limits.
- (d) "News" includes reports, descriptions and accounts of hockey games.
- (e) "Broadcasts" and "broadcasting" mean and include publication or dissemination by radio, telegraph, telephone or television.

4.2. *Territorial Rights of League.* The League shall have exclusive control of the playing of hockey games by Member Clubs in the home territory of each member, subject to the rights hereinafter granted to members. The members shall have the right to and agree to operate professional hockey clubs and play the League schedule in their respective cities or boroughs as indicated opposite their signatures hereto. No member shall transfer its club and franchise to a different city or borough. No additional cities or boroughs shall be added to the League circuit without the consent of three-fourths of all the members of the League. Any admission of new members with franchises to operate in any additional cities or boroughs shall be subject to the provisions of Section 4.3.

4.3. *Territorial Rights of Members.* Each member shall have exclusive control of the playing of hockey games within its home territory including, but not being limited to, the playing in such home territory of hockey games by any teams owned or controlled by such member or by other members of the League. Subject only to the exclusive rights of other members with respect to their respective home territories as hereinabove set forth, nothing herein contained shall be construed to limit the right of any Member Club to acquire any interest in any hockey team, whether professional or amateur in any league which recognizes and honors the territorial rights, contracts and reserve lists of the National Hockey League, except as limited by Section 8.1(a) of this Constitution. No other member of the League shall be permitted to play games (except regularly scheduled League games with the home club) in the home territory of a member without the latter member's consent. No franchise shall be granted for a home territory within the home territory of a member, without the written consent of such member.

4.4. *Property Rights of Home Club.* Each member hereby irrevocably conveys, grants and assigns forever all the right, title and interest which it has or may have in and to each hockey game played by its team as a visiting club and in the news of said game (including without limitation of the foregoing, the right to collect, disseminate and sell and to license others to collect, disseminate and sell the news of said game, whether by radio, telephone, television, telegraph or other means), to the member in whose home territory said game is played.

## ***CONSTITUTION***

*[NOTE: See APPENDIX (APP-12) for PRESIDENT'S RULING RE BROADCAST RIGHTS OF MEMBER CLUBS.]*

# **CONSTITUTION**

## **ARTICLE V**

### **GOVERNORS AND LEAGUE MEETINGS**

5.1. The National Hockey League shall be governed by a Board of Governors which shall establish the policies of the League, and uphold the Constitution and By-Laws as provided herein.

5.2. Each Member Club shall appoint an individual as a Governor of the League, and a First Alternate Governor, and a Second Alternate Governor. Such appointment shall be by resolution of the Directors of the Member Club and a certified copy thereof in a form prepared by the Commissioner of the NHL shall be filed with the Commissioner at any time and shall be effective upon filing.

5.3. At all meetings of the League, representation of each Member Club shall be by its Governor or Alternate Governor, as the case may be, who shall, by reason of his appointment, be vested with the full power and authority to represent his club and to bind it by his vote.

5.4. The Annual Meeting of the League shall be held during June at a date and place to be fixed by the Commissioner.

5.5. The Semi-Annual Meeting of the League shall be held during December at a date and place to be fixed by the Commissioner.

5.6. Special meetings of the League may be called by the Commissioner or Chairman of the Board of Governors at any time or shall be called by either of them whenever requested by three Member Clubs.

5.7. In the case of special meetings, the notice shall state the purpose thereof. In the case of an Annual Meeting, the notice shall set forth any proposed amendment to this Constitution to be presented to the Annual Meeting, or any proposal to consider application for membership.

5.8. Notice of meetings shall be given to each Member Club by mail at least ten (10) days before a meeting, or by telegram or teletype at least seven (7) days before a meeting.

5.9. A representation of a majority of Member Clubs shall constitute a quorum for the opening of any meeting of the League. When such a meeting is validly opened by the attendance of a quorum, business may be transacted thereat by the representation of any number of Member Clubs (including less than a quorum) until said meeting is officially adjourned.

5.10. The Commissioner shall formulate the agendas and notices of and preside at all meetings of the League. In the absence of the Commissioner, the President, and in his absence, the Chairman of the Governors (or in his absence the Vice Chairman of the Governors) shall preside at such meetings. In the absence of all of the Commissioner, the President, the Chairman of the Governors and the Vice Chairman of the Governors at any such meeting, the Governors present shall appoint from among themselves a Chairman to preside.

5.11. Once a matter has been placed on the agenda the vote required by any provision of this Constitution shall be applied to the vote of those present and voting only. Any club which does not vote shall not be counted in

## **CONSTITUTION**

determining the requisite number required to carry any proposition properly brought before the Board. Such vote shall be binding upon all Member Clubs, whether represented by the vote or not.

5.12. Any action or resolution which may be taken or adopted in a regular meeting may be taken or adopted by instrument in writing signed by all members of the League.

5.13. Except for amendments to the Constitution or matters requiring a unanimous vote, any emergency act or resolution which may be taken or adopted in a meeting convened under this Article may be taken or adopted in a telephone meeting of the Board at which all Member Clubs' Governors or Alternate Governors shall be connected simultaneously by a telephone conference circuit, which may be held upon the call of the Commissioner or Chairman of the Board. Such call shall be cancelled if, at least four (4) hours before the time fixed for the meeting, a majority of the members notify the Commissioner or Chairman of the Board that they object to holding the meeting.

5.14. *No Internal Proxies.* No member shall name another member, or the representative of another member or any official of the League to represent it as Governor or Alternate Governor, or act by its proxy at a meeting.

5.15. *Executive Session.* Upon a majority vote of the members there present or if announced by the Commissioner in the notice, the meeting shall be convened in executive session. At any such executive session, only the Governors or their Alternates and the Commissioner and such other League officers as are designated by the Commissioner, together with such other persons as the Chairman of the Board of Governors or the Commissioner may invite, shall be present. [See "Extraordinary Executive Session," Resolutions, page 2]

### 5.16. *Manner of Acting*

- (a) *Formal Action by Members.* Except where a greater vote is required herein, the action of the majority of the members present and voting at a meeting, at which a quorum was present when it was convened, shall constitute the action of the members.
- (b) *Informal Action by Members.* No action of the members shall be valid unless taken at a meeting at which a quorum is present when convened, except that any action of the members may be taken without a meeting by telex, facsimile, electronic mail, or other appropriate means selected at the Commissioner's discretion, on three (3) business days' notice (excluding the date of transmission), and that any action taken in such fashion shall require the affirmative vote of three-fourths of the Member Clubs except where the action would require the consent of three-fourths or more of the Member Clubs were it taken at a formal meeting, in which case unanimous consent of the Member Clubs shall be required.

5.17. *Rules of Order.* The parliamentary procedure at meetings shall be governed by Robert's Rules of Order, except as otherwise provided in this Constitution.

# CONSTITUTION

## ARTICLE VI

### COMMISSIONER

6.1. *Office of Commissioner, Election and Term of Office.* The League shall employ a Commissioner selected by the Board of Governors. The Commissioner shall serve as the Chief Executive Officer of the League and shall be charged with protecting the integrity of the game of professional hockey and preserving public confidence in the League. The Board of Governors shall determine the term of office and compensation of the Commissioner. The Commissioner shall be elected by a majority of the Governors present and voting at a League meeting at which a quorum was present when it was convened.

6.2. *Qualifications.* The Commissioner shall be a person of unquestioned integrity and shall have no financial interest, direct or indirect, in any professional sport. The Governors shall determine the other qualifications for the office of Commissioner.

6.3. *Power and Duties.*

- (a) *General.* Subject to the authority of the Board of Governors provided for in the Constitution and By-Laws and other governing documents of the League, the Commissioner shall have the responsibility for the general supervision and direction of all business and affairs of the League and shall have all such other powers as may be necessary or appropriate to fulfill his responsibilities. The Commissioner shall be responsible for the coordination and general supervision of policy matters that relate to property rights of the Member Clubs or that are other than in the normal course of operations of the League. The Commissioner's powers and duties shall include, but shall not be limited to, the powers specified in the Constitution and By-Laws and other governing documents, the powers exercised by, and duties assigned to, the League President prior to 1993, and all such other powers and duties as may be granted or assigned to the Commissioner by the Board of Governors. The Commissioner shall serve as the principal public spokesman for the League.
- (b) *Dispute Resolution.* The Commissioner shall have full and exclusive jurisdiction and authority to arbitrate and resolve:
  - (1) any dispute that involves two or more Member Clubs of the League or two or more holders of an ownership interest in a Member Club of the League;
  - (2) any dispute between or among players, coaches, or other employees of any Member Club or Clubs of the League (unless such dispute is unrelated to and outside the course and scope of the employment of the disputants);
  - (3) any dispute between any player or other employee designated by the Member Club and any Member Club or Clubs;
  - (4) any dispute between a player and any official of the League; and



## **CONSTITUTION**

- (j) any dispute involving a Member Club or Clubs, or any players or employees of the League or any Member Club or Clubs, or any combination thereof, that in the opinion of the Commissioner is detrimental to the best interests of the League or professional hockey or involves or affects League policy.

In any case involving the deprivation of a Member Club's material property rights (other than rights to or interest in a player or other employee), an aggrieved Member Club may appeal the Commissioner's determination to the Board of Governors. The decision of the Commissioner shall be upheld unless three-fourths of the Governors shall vote to reverse it.

Except in such circumstances, the authority of the Commissioner to arbitrate disputes pursuant to this provision shall be binding to the same extent as if the parties had entered into a formal arbitration agreement and the decision of the Commissioner shall be final and binding on all parties and shall not be subject to any review. The Commissioner may elect not to arbitrate a dispute in any circumstances that he determines appropriate.

- (c) *Committees.* The Commissioner from time to time may establish committees with such powers and duties as the Commissioner determines. The Commissioner shall appoint the members of each such committee and fix their terms of office. The Commissioner shall serve as an *ex officio* member of all League committees and may serve as chairman of any committee in his discretion. The Commissioner may at any time dissolve any committee.

Notwithstanding the preceding paragraph, the Commissioner shall name an Executive Committee, consisting of between eight and twelve members of the Board of Governors, including the Chairman of the Governors. The Executive Committee shall confer, either formally or informally, in advance of each meeting of the Board of Governors and at such other times as the Commissioner may designate. In addition, the Commissioner shall name up to six members of the Executive Committee to serve as a Finance/Audit Committee.

Nothing in this section is intended to abrogate the powers of the Board of Governors.

- (d) *Interpretation of League Rules.* The Commissioner shall have the authority to interpret, and from time to time establish policies and procedures regarding, the provisions of the Constitution, the By-Laws, and League rules and resolutions, and their application and enforcement. Any determination made by the Commissioner with respect to any such matter shall be final and binding and shall not be subject to any review.
- (e) *Appointment of Staff.* The Commissioner may, subject to the previously-approved budget, appoint such other officers or assistants as he, in his sole discretion, determines necessary or appropriate, and shall determine the duties, compensation, and term of office of such officers or assistants. He may recommend to the Board of Governors persons to fill the positions of President, Treasurer, and Secretary. In connection with

## *CONSTITUTION*

their services to the League, officers and other employees of the League shall be entitled to indemnification to the same extent as if the League were a corporation incorporated in the state of New York.

- (f) *Financial Matters.* The Commissioner may, subject to the previously-approved budget, incur on behalf of the League any expense that he determines, in his sole discretion, necessary or appropriate to conduct the business and affairs of the League, including, but not limited to, the leasing of office space and the hiring of employees, legal counsel and other professional assistance. The Commissioner may also establish and maintain bank accounts and credit facilities on behalf of the League and approve the payment of all proper charges. The Commissioner may withhold revenues due to a Member Club (including revenues collected by the League as agent for that Member Club) that has failed to discharge its financial obligations to the League or to another Member Club.
- (g) *Contracting Authority.* The Commissioner may arrange for and negotiate on behalf of the League contracts with other persons, firms, leagues, or associations; provided, however, that unless otherwise specifically authorized herein or in the By-Laws or by resolution, no contract involving a material commitment, including but not limited to collective bargaining agreements, television contracts and expenditures not in the budget which are individually in excess of \$100,000 or in the aggregate in excess of \$500,000 per year, unless such expenditures are approved by the Finance Committee, by the League or its Members shall be binding unless approved by the Board of Governors. No employment contract of a League office employee with a duration of more than two years will be effective without approval of the Board of Governors.
- (h) *Scheduling.* In each year, the Commissioner shall prepare and forward to the Member Clubs a proposed schedule of games for the upcoming season. Governors may forward comments on the proposed schedule to the Commissioner within ten days of its receipt. The Commissioner shall consider such comments and shall then issue the final schedule. Such schedule shall constitute the official League schedule and shall not require any consent or approval by the Member Clubs. In preparing the schedule, the Commissioner may require Member Clubs to furnish any information necessary to the preparation of the schedule. In addition, he shall solicit advice from the Clubs concerning special circumstances and shall take such circumstances into account to the extent he deems appropriate and in the best interests of the League. The Commissioner may change the date, time or playing site of any scheduled games if he determines that such a change would be in the best interest of the League or the teams involved.
- (i) *Officials.* The Commissioner shall be responsible for selecting and approving all game officials for all League games.
- (j) *Disciplinary Powers.*
  - (l) Whenever the Commissioner shall determine, based upon such information and reports as he may deem sufficient, that any person connected with the League or

## **CONSTITUTION**

a Member Club has either violated the Constitution, the By-Laws, or any other governing rule or regulation of the League, or has been or is guilty of conduct (whether during or outside the playing season) detrimental to the League or the game of hockey, he shall have full and complete authority to discipline such person in any or all of the following respects:

- (a) by expelling or suspending the person for a definite or indefinite period;
  - (b) by cancelling any contract or agreement that the person has with the League or with any Member Club;
  - (c) by imposing a fine on the person not exceeding One Million dollars (\$1,000,000) or such greater amount as may be prescribed by any League rule or By-Law; or
  - (d) if the conduct in question affects the competitive aspects of the game, by awarding or transferring players and/or draft choices and/or depriving the offending Member Club of draft choices.
- (2) For purposes of this Section (j), the word "person" shall include a Member Club and any officer, stockholder or partner of a Member Club, or anyone else holding an interest in any Member Club, and any player, coach, or other employee, officer, or director of the League or of any Member Club.
- (3) In all cases involving player discipline and/or the integrity of the game of hockey and public confidence in the League, the Commissioner's determinations under this Section (j), shall be final and not subject to any review. In all other cases, the Commissioner's determinations under this Section (j), shall similarly be final, except that where the infraction would result in (a) expulsion from the League or a suspension of more than two years, or (b) imposition of a penalty provided for in subsection 1(d), of this Section (j), an aggrieved party may appeal the Commissioner's determination to the full Board of Governors. The procedures set forth in Section 32.2 of the By-Laws shall govern any such appeal, but the Commissioner's determination may only be reversed by a vote of three-fourths of the Governors.

**6.4. Indemnification.** The Commissioner shall not be liable or accountable in damages or otherwise to the League or any Member Club for any loss or damage incurred by reason of any act or omission performed or omitted by the Commissioner in good faith either on behalf of the League or in furtherance of its interests, provided the Commissioner was not guilty of fraud or bad faith with respect to such act or omission.

If, as a result of or in connection with service to the League, the Commissioner becomes involved in any manner, or is threatened with involvement in any manner, in any threatened, pending or completed claim, action, suit or proceeding (collectively, a "Proceeding"), whether civil, criminal or investigative, the League shall

## ***CONSTITUTION***

indemnify and hold harmless the Commissioner against all expenses (including reasonable attorneys fees) incurred by him, and all judgments, fines and settlement amounts payable by him, in connection with the Proceeding. The right to indemnification shall include the right to receive payment, prior to final disposition of the Proceeding, of any attorneys fees and other expenses incurred in connection with the Proceeding. The Commissioner shall not be entitled to indemnification, however, with respect to (a) any Proceeding arising from his own wilful acts or omissions that are fraudulent or in bad faith, as determined by a final and nonappealable judgment, decision or order of a court of competent jurisdiction, or (b) the amount of any settlement entered into without the approval of the Board of Governors.

# CONSTITUTION

## ARTICLE VII

### OFFICERS

7.1. The officers of the League shall be a Chairman of the Governors, a Vice Chairman of the Governors, a Commissioner, a President, a Treasurer, a Secretary and such other officers as may from time to time be appointed by the Governors or the Commissioner in accordance with Article VI. The Chairman of the Governors and Vice Chairman of the Governors shall be appointed from among the Governors (except that the President may also be appointed Chairman of the Governors even though not a Governor) for two-year terms at the Annual Meeting of the League in 1966 and each second year thereafter, provided that no Governor shall be eligible for any such office unless (a) he was a Governor or Alternate Governor on June 14, 1966, or (b) he shall have been a Governor or Alternate Governor for at least the five years preceding his appointment. The President and Treasurer shall be appointed annually at the Annual Meeting of the League, provided that at the Annual Meeting in 1977 or any subsequent year the President may be appointed for a term of not to exceed five years. The officers of Chairman of the Governors and President may be held by the same person. If the President is not the Chairman of the Governors, he may also be Treasurer.

7.2. (a) The officers shall receive such salaries as the Governors or the Commissioner in accordance with Article VI may determine and shall be reimbursed for all proper expenses actually incurred by them in the service of the League. The League may exact from the officers satisfactory guarantees for the faithful performance of their duties.

(b) In the event of the absence or incapacity of the Chairman of the Governors, the Vice Chairman of the Governors shall perform the duties of the Chairman.

7.3. The Secretary shall keep accurate minutes of all meetings of the League.

7.4. The Treasurer shall have the care and custody of the financial records and papers of the League. He shall prepare and furnish such reports as may be called for by the Governors and, generally, shall do and perform all duties imposed upon him by the Governors.

He shall be the Treasurer of the League and the Custodian of all League funds, receive all monies and other valuable effects and deposit them in the name and to the credit of the League in such depositories as may be designated by the Governors.

He shall present to the governors whenever required an account of all his transactions and of the financial condition of the League.

He shall collect from all members of the League such amounts as may be determined from time to time by the Board of Governors as the members' contributions to the League to defray the expenses and liabilities incurred by the League.

At the expiration of his term of office he shall account for and return to the League all moneys, books, papers and property received by him by virtue of his office.

## ***CONSTITUTION***

7.5. Any officer of the League may be removed from office at any time by a two-thirds majority of the Member Clubs present and voting at a meeting of the League, provided that the notice calling such meeting shall include mention of the intention to take such action.

# **CONSTITUTION**

## **ARTICLE VIII**

### **CONCERNING CONFLICTING INTERESTS AND TRANSFERS OF INTEREST**

#### ***8.1. Conflicting Interests and Loans.***

- (a)** No member shall exercise control, directly or indirectly, over the hockey franchise issued to any other member of the League.
- (b)** No member shall, directly or indirectly, loan money to or become surety or guarantor for a player of any other member of the League.
- (c)** No member, player, coach or manager shall, directly or indirectly, loan money to or become surety or guarantor for any umpire, referee, linesman or similar official employed by the League.
- (d)** No employee, umpire, referee, linesman, president, secretary or treasurer of the League shall, directly or indirectly, own stock or have a financial interest in any member or loan money to or become surety or guarantor for any such member, nor shall any such member or stockholder or officer or director thereof, loan money to or become surety or guarantor for any such person, unless all facts of the transaction shall first be fully disclosed to the other members of the League and be approved by them.

# **CONSTITUTION**

## **ARTICLE IX**

### **DUES AND ASSESSMENTS**

9.1. The Board of Governors at each Annual Meeting shall determine and fix an amount that each member shall pay as annual dues to the League and determine the amount of any assessments that may be necessary for each member to pay in order to defray the expenses and liabilities of the League. However, all dues and assessments shall be uniform in amount or percentage and each member shall at all times retain all income received from its "home games" and no assessment shall be made against any member for the purpose of fostering, promoting or aiding another member without the unanimous approval of all members of the League present and voting.

## **ARTICLE X**

### **BY-LAWS**

10.1. The Member Clubs agree to conform to and be bound by the By-Laws which shall be adopted to conform to the provisions of this Constitution by a two-thirds majority of the Member Clubs present and voting and as said By-Laws may from time to time be added to, amended, repealed or replaced.

10.2. Any of the said By-Laws may be added to, amended, repealed or replaced by a two-thirds majority of the Member Clubs present and voting at a meeting of the League, but no change, except when adopted by unanimous vote of all Member Clubs shall be valid unless the notice calling the meeting contains mention of the general nature of the proposed change.



# **CONSTITUTION**

## **ARTICLE XI**

### **MISCELLANEOUS**

*11.1. League Rules.* The League shall adopt a set of rules and regulations to be known as the "League Rules," relating to the determination of the League championship, the conduct and scheduling of hockey games, player contracts, the reservation, recruiting and drafting of players, the selling, assigning and trading of player contracts, and like matters. League Rules shall be adopted by the affirmative vote of a two-thirds majority of the members of the League provided always that no such "League Rule" or amendment thereto shall have the effect of depriving any Member Club of any vested property right in the services of players or in its home territory except by unanimous consent of all members of the League, except that any League Rule or other resolution, dealing with expansion of the League only, may have the effect of depriving any Member Club of any vested property right in the services of players if approved by the affirmative vote of three-fourths of the members of the League present and voting. The Commissioner shall be authorized to propose for adoption by the League such Rules as he may deem advisable.

*11.2. Notices.* Any notices required by this Constitution shall be deemed duly given when mailed or telegraphed in the usual manner, postage or telegraph charges prepaid, addressed to the person for whom such notice is intended, at his last address as shown on the League records, or when a notice in writing is delivered in person.

*11.3. Waiver of Notice.* Any notice herein provided for may be waived by the party entitled to such notice and such waiver may be made either before, at or after the meeting or event in question.

*11.4. Receipts.* No part of the receipts of the League shall inure to the benefit of any private member or individual.

*11.5.* In the event of any conflict between any provision of this Constitution and any provision of the By-Laws or Rules adopted as hereinabove provided, the provisions of this Constitution shall in all cases control.

# **CONSTITUTION**

## **ARTICLE XII**

### **AMENDMENTS**

*12.1. Unanimous Consent.* Any provision of this Constitution may be amended at any meeting by unanimous consent of all members of the League present and voting. Article III, Article IV, Article IX and this Article XII shall not be amended or altered except by unanimous consent of all members of the League present and voting. Any amendment of Article III, Article IV, Article IX or this Article XII shall be evidenced by an instrument in writing signed by all members of the League.

*12.2. Three-fourths Consent.* Any provision of this Constitution, except Articles III, IV, IX and this Article XII, may be amended by a vote of three-fourths of all the members of the League present and voting at any special meeting held for the purpose of such amendment or at any Annual Meeting, provided notice of the proposed amendment has been given to each member at least ten (10) days prior to such Annual Meeting or other special meeting.

Each of the undersigned members of the National Hockey League, in consideration of the promises and agreements similarly made by each of the other members, hereby (on behalf of the undersigned and its assigns) accepts and agrees to abide by the foregoing Constitution and each and every alteration, amendment and repeal thereof duly made so long as the undersigned or its assigns are members of the League.

The foregoing Constitution is adopted in complete substitution for any constitution previously adopted for the National Hockey League and all amendments thereof and any such previous constitution is hereby cancelled and annulled together with all By-Laws and Rules adopted pursuant thereto.

# CONSTITUTION

## ARTICLE XIII

### CONFLICTS OF INTEREST - OWNERSHIP

*13.1. Purposes.* This Article 13 prohibits the acquisition (or holding) of certain direct or indirect ownership interests in, or management rights with respect to, Member Clubs, by Persons having ownership interests in, or management rights with respect to, one or more other Member Clubs. The League and the Commissioner, as the case may be, shall continue to have all of the rights and powers, and all current and prospective Member Clubs and Owners shall have all of the obligations, set forth in the other provisions of the Constitution, By-Laws, rules, resolutions and agreements of the League. Without limiting the generality of the preceding sentence, the League shall continue to have the right to disapprove any proposed transfer of a direct or indirect ownership interest in a Member Club, even if the proposed transaction would otherwise comply with the provisions of this Article 13.

*13.2. Definitions.* For purposes of this Article 13 the following capitalized terms shall have the following meanings:

"Attributed Persons" shall mean any Person (i) having or controlling a direct or indirect ownership interest in another specified Person of 10% or more (other than a Person who acquired such interest through the purchase of publicly traded shares without the consent, assistance or approval of the issuer thereof), (ii) any Director of a specified Person or any of its Related Parties (including, in the case of a Controlling Owner, its Club), or (iii) the parents, spouse, children or other lineal descendants of any individual described in clauses (i) or (ii).

"Controlling Owner" means, with respect to any Member Club or its franchise, any Person (whether or not an Owner) that:

- (i) has actual or effective control of the Member Club or its franchise, whether by contract, operation of law or otherwise;
- (ii) has any management or operational rights with respect to the Member Club or its franchise, excluding, for this purpose, any management or operational rights that such Person may have solely with respect to any Diversified Owner of that Member Club that do not provide such Person with material management or operational rights with respect to the Member Club or its franchise; or
- (iii) has an aggregate direct or indirect Ownership Interest of 30% or more in a Member Club or its franchise, even if such Person has no management or voting rights of any kind with respect to the Member Club or its franchise.

"Director" shall mean any individual having the rights or powers customarily associated with (i) a director of a corporation, a manager of a limited liability company, the general partner (or governing body) of a general or limited partnership, the trustee of a trust, or the governing body of any other entity included in the definition of Person, or (ii) an executive officer of any of the foregoing.

"Diversified Owner" shall mean any Owner of a Member Club that has direct or indirect ownership interests in businesses or assets other than the Member Club such that the book value of the assets of the

## *CONSTITUTION*

Member Club (or, if applicable, such Owner's Ownership Interest in the Member Club) and gross revenues of the Member Club (if and to the extent reflected in whole or in part in such Owner's financial statements), represent 5% or less of the book value of the assets and gross revenues, respectively, of the Owner in its most recent fiscal year.

"*Member Club*" shall mean a Club which is a member of the National Hockey League.

"*Multiple Owner*" shall mean any Person having a Non-Controlling Ownership Interest in two or more Member Clubs, other than pursuant to the Public Company Exception.

"*Non-Controlling Owner*" shall mean any Owner that is not a Controlling Owner.

"*Non-Controlling Ownership Interest*" shall mean an Ownership Interest that would not cause the record or beneficial holder thereof to be a Controlling Owner.

"*Owner*" shall mean each Person (including both the trustees and any beneficiaries of any trust) that directly or indirectly (including through one or more intermediate Persons) owns of record or beneficially an Ownership Interest in, or has effective control over, a Member Club or its franchise.

"*Ownership Interest*" shall have the meaning set forth in Section 3.5 of the Constitution for the term "Ownership interest".

"*Person*" shall mean any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company or other legal entity or organization.

"*Public Company Exception*" shall mean the record or beneficial ownership by an Owner of an Ownership Interest of less than 5% in a Member Club of which it is not otherwise a Controlling Owner or Non-Controlling Owner through ownership by such Owner of an interest in any Person that has a class of securities traded on any generally recognized securities exchange in the United States or Canada.

"*Related Party*" shall mean any Person over which a specified Person has or can exercise effective control, or that controls or is under common control with the specified Person.

### *13.3. Restrictions on Controlling Owner*

- (a) Subject to Article 13.6 below, a Controlling Owner may not at any time:
  - (i) acquire or hold an Ownership Interest in another Member Club or its franchise, other than pursuant to the Public Company Exception;
  - (ii) serve, or permit any of its Attributed Persons to serve, as a Director of any other Member Club or any other Controlling Owner unless, in the case of a Controlling Owner that is a Diversified Owner, the Commissioner has given his prior written approval; or

## **CONSTITUTION**

- (iii) enter into any business transaction with any Member Club (other than the Member Club of which it is the Controlling Owner) without the prior written approval of the Commissioner.
- (b) If the Commissioner disapproves any proposed transaction submitted pursuant to Article 13.3(a)(iii), the applicable Controlling Owner may appeal such disapproval to the Board of Governors, which may approve the proposed transaction by three-fourths vote.

### *13.4. Restrictions on Non-Controlling Owners*

- (a) A Non-Controlling Owner may have Non-Controlling Ownership Interests in up to three Member Clubs or franchises, provided that only one of such Non-Controlling Ownership Interests may equal or exceed 10%. Ownership Interests acquired pursuant to the Public Company Exception shall not be considered for purposes of determining compliance with the preceding sentence.
- (b) A Non-Controlling Owner may not have or attempt to exercise any voting or management rights with respect to a Member Club or its franchise, other than the right to vote on a sale of all or substantially all of the Member Club's assets, a merger, consolidation or liquidation of the Member Club, or any other matter determined to be extraordinary by the Commissioner.
- (c) A Non-Controlling Owner shall not serve, and shall not permit any of its Attributed Persons to serve, as a Director of any Member Club or any Controlling Owner (except, with the Commissioner's prior written approval, as a Director of any Diversified Owner that is not itself a Member Club).

*13.5. Grandfathering.* The provisions of Sections 13.3 and 13.4 shall not disallow any arrangements approved in accordance with the Constitution, By-Laws, rules and agreements of the League prior to adoption of this Article 13, but such arrangements shall be taken into account in determining whether any other transactions comply with this Article 13.

*13.6. Divestiture upon occurrence of a Subsequent Event.* Subject to Article 13.5, if at any time an Owner is in violation of this Article 13 because of an event or other occurrence that it could not prevent, the Owner must (i) promptly notify the Commissioner, (ii) come into compliance with the provisions of this Article 13 within a reasonable period established by the Commissioner (not to exceed 180 days, subject to such extensions as may be necessary to comply with regulatory requirements), and (iii) enter into such interim arrangements for holding and/or voting the Ownership Interest or other right causing the violation as the Commissioner shall determine.

### *13.7. Conduct Regulations*

The following provisions shall apply to any Multiple Owner:

- (a) No Multiple Owner whose Ownership Interests have previously been approved by the League shall enter into negotiations to increase any of its existing Ownership Interests or,

## **CONSTITUTION**

subject to the Public Company Exception, acquire any Ownership Interest in another Member Club, without giving a prior written notice of its intentions to the Commissioner.

- (b) In addition to complying with the loan prohibitions set forth in Article 8.1 of the Constitution, a Multiple Owner shall not make direct or indirect loans (whether secured or unsecured) to any of the Member Clubs in which it owns a Non-Controlling Interest (or any players on those clubs), except for loans to other Owners of such Member Clubs that relate exclusively to non-hockey businesses, are disclosed in a prior written notice to the Commissioner and are determined by the Commissioner prior to consummation of the loan not to provide any party to the transaction with increased control or influence over the hockey operations of any Member Club or the ownership interest in a Member Club of any Owner. A Multiple Owner may, however, seek the Commissioner's permission to make loans to a Member Club in which it is an Owner if such loans are, for tax or other reasons, being made pro rata by all Owners of that Club in lieu of further equity contributions. For purposes of this Article 13.7(b), all guaranty, suretyship and similar transactions shall be treated as loans.
- (c) A Member Club having a Non-Controlling Owner that is a Multiple Owner may not communicate with that Non-Controlling Owner on player-related or League-related matters, other than periodic reports of overall profit and loss performance and business strategy.
- (d) A Multiple Owner must give prior written notice to the Commissioner of any transaction with any Member Club (including a Member Club in which it has a Non-Controlling Ownership Interest) that provides (or could reasonably be determined to provide) the Multiple Owner with material rights with respect to the Member Club, including, but not limited to, the right to receive payments based, directly or indirectly, in whole or in part, on the financial or competitive performance of such Member Club or that would provide the Multiple Owner with the direct or indirect ability to affect or influence the management or operations of the Member Club. Such transactions will be subject to League approval by three-fourths vote if the Commissioner determines that approval is appropriate.

## **CONSTITUTION**

### **13.8. Related Parties**

Each Owner and Member Club shall cause each of its Related Parties to comply with the provisions of this Article 13 and any act or omission of any such Related Party shall be considered to have been taken by such Owner or Member Club, as the case may be.

### **13.9. Other Interpretive Guidelines**

- (a) **Puts/Calls/Options.** For purposes of this Article 13, all contingent, convertible or similar rights, such as puts, calls, options and convertible debt instruments, shall be deemed to have been exercised at the time granted. Both the grant and the exercise of such rights shall continue to require the prior approval of the League under Article 3.5 of the Constitution.
- (b) **Discretion.** For purposes of this Article 13, the Commissioner shall have the final, binding and non-appealable authority to determine the nature, percentage interest and/or book value of an ownership interest, and the significance of any management or operational right.
- (c) **5%/10% Transfer.** To the extent League approval is sought for any proposed transfer of an Ownership Interest that can be approved by the Commissioner (because it is less than 5%) or the Executive Committee (because it is less than 10%) under Article 3.5 of the Constitution, the Commissioner or the Executive Committee also shall have the authority to approve any potential conflict of interest arising from the proposed transfer, provided the proposed transaction otherwise satisfies the requirements of this Article 13.
- (d) **Public Company Interests of 5% or More.** Any public company interest of 5% or more is subject to being (but will not necessarily be) classified as "controlling" by the Commissioner.

### **13.10. Penalties**

Any party that violates this Article 13 will be subject to any and all penalties that may be assessed by the League or the Commissioner for breach of the Constitution, By-Laws or rules of the League, including the penalties set forth in Sections 3.9(b) and 6.3(j) of the NHL Constitution.

## CONSTITUTION

The undersigned have duly executed this Constitution, signifying their acceptance and ratification thereof:

<i>Mighty Ducks Hockey Club, Inc.</i>	<i>(Anaheim)</i>
<i>Atlanta Hockey Club, Inc.</i>	<i>(Atlanta)</i>
<i>Boston Professional Hockey Association, Inc.</i>	<i>(Boston)</i>
<i>Florida Panthers Hockey Club, Ltd.</i>	<i>(Broward County)</i>
<i>Niagara Frontier Hockey, L.P.</i>	<i>(Buffalo)</i>
<i>Calgary Flames Limited Partnership</i>	<i>(Calgary)</i>
<i>Chicago Blackhawks Hockey Team, Inc.</i>	<i>(Chicago)</i>
<i>COLHOC Limited Partnership</i>	<i>(Columbus)</i>
<i>Dallas Stars, L.P.</i>	<i>(Dallas)</i>
<i>Colorado Avalanche LLC</i>	<i>(Denver)</i>
<i>Detroit Red Wings, Inc.</i>	<i>(Detroit)</i>
<i>Edmonton Investors Group Limited Partnership</i>	<i>(Edmonton)</i>
<i>The Los Angeles Kings Hockey Club, L.P.</i>	<i>(Los Angeles)</i>
<i>Minnesota Wild Hockey Club, LP</i>	<i>(Minnesota)</i>
<i>Club de Hockey Canadien, Inc.</i>	<i>(Montreal)</i>
<i>Nashville Predators</i>	<i>(Nashville)</i>
<i>New Jersey Devils LLC</i>	<i>(New Jersey)</i>
<i>New York Islanders Hockey Club, L.P.</i>	<i>(New York "Islanders")</i>
<i>Madison Square Garden, L.P.</i>	<i>(New York "Rangers")</i>
<i>Ottawa Senators Hockey Club Corporation</i>	<i>(Ottawa)</i>
<i>Comcast Spectacor, L.P.</i>	<i>(Philadelphia)</i>
<i>Coyotes Hockey, LLC</i>	<i>(Phoenix)</i>
<i>Lenieux Group L.P.</i>	<i>(Pittsburgh)</i>
<i>Hurricanes Hockey Limited Partnership</i>	<i>(Raleigh-Durham)</i>
<i>St. Louis Blues Hockey Club, L.P.</i>	<i>(St. Louis)</i>
<i>San Jose Sharks, L.P.</i>	<i>(San Jose)</i>
<i>Center Ice, L.L.C.</i>	<i>(Tampa)</i>
<i>Maple Leaf Sports &amp; Entertainment, Ltd.</i>	<i>(Toronto)</i>
<i>Orca Bay Hockey Limited Partnership</i>	<i>(Vancouver)</i>
<i>Lincoln Hockey LLC</i>	<i>(Washington)</i>



## Exhibit B

## **BY-LAWS**

### **SECTION 35**

#### **TRANSFER OF MEMBERSHIP OR OWNERSHIP INTEREST IN FRANCHISE**

35.1. In determining whether to consent to the sale, assignment or transfer of a membership or of an ownership interest in a Member Club pursuant to Section 3.5 of the Constitution, each Member Club shall be guided by the following considerations:

- (a) Whether the persons who would be holders of an ownership interest in the Member Club and the entity or entities which would hold the franchise, player contracts and/or other assets of the Member Club in question after the proposed sale, assignment or transfer, are able and willing to commit sufficient financial resources to provide for the financial stability of the franchise.
- (b) Whether the persons who would be holders of an ownership interest in the Member Club are of good character and integrity.

35.2. Any such consent by the Member Clubs may be made subject to appropriate conditions, including but not limited to some or all of the following:

- (a) Provisions to assure that all liens and security interests to which assets of the franchise or Member Club are or will be subject are subordinate to the NHL Constitution (including, but not limited to, Articles 3.5 and 3.9 thereof) and that the NHL Constitution has priority with respect thereto.
- (b) Provisions with respect to those debts, liabilities and obligations of the transferor member which are to be assumed, guaranteed or otherwise provided for by the transferee (including, for example, notes or other obligations payable to the League, payable to one or more Member Clubs, player contracts or deferred compensation agreements with players or other personnel) and specifying the manner in which such obligations will be assumed, guaranteed, paid or otherwise provided for.
- (c) Provisions with respect to the corporate, partnership or organizational structure, or with respect to instruments designating the controlling persons and the persons who are authorized to bind the Member Club in transactions involving the League and assuring the maintenance of such control relationship.
- (d) Provisions with respect to assuring the establishment, maintenance and funding of working capital, specifying the amount of such working capital and defining the same, and providing guarantees or security for such provisions with respect to working capital.

## ***BY-LAWS***

- (e) Provisions for the pre-payment of League dues and assessments or security for the same.
- (f) Provisions specifying agreements to which the NHL or its Member Clubs are a party which are to be assumed and performed by the transferee.
- (g) Provisions for the purpose of limiting or precluding commingling of or application of funds of the Member Club for the benefit of any other operation.
- (h) Execution and delivery of a consent agreement, security agreements and related instruments containing some or all of the above or other provisions, signed by the entity acquiring the franchise and one or more of the principal owners of the Member Club.

35.3. Any proposed sale, assignment or transfer of a membership or of an ownership interest in a Member Club which would also involve the transfer of the Club or franchise to a different city or borough shall also be subject to the provisions of Section 4.2 of the Constitution and to the provisions of By-Law Section 36.

*[NOTE: See also "Guidelines for Processing Applications for Transfer of Membership or Ownership Interest," Resolutions, page 5 and "Ownership Transfer Procedures," Appendix II, Exhibit O.]*

## Exhibit C

**LICENSE AGREEMENT**  
(United States)

THIS LICENSE AGREEMENT ("Agreement"), effective as of July 1, 1996, is by and between the NATIONAL HOCKEY LEAGUE, a joint venture organized as an unincorporated not-for-profit association ("League"), and NHL ENTERPRISES, L.P., a Delaware limited partnership ("Enterprises").

WHEREAS, League is the owner of the League Symbols (as hereinafter defined); and

WHEREAS, Enterprises desires to obtain and League desires to grant, a license to use the League Symbols in connection with the manufacture, distribution, promotion, advertising and sale of products and services in the Territory (as hereinafter defined); and

WHEREAS, Enterprises is the licensee and sublicensor of the Team Symbols (as hereinafter defined) and Player Promotional Rights (as hereinafter defined) in the Territory;

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter set forth, the parties agree as follows:

1. **Definitions**. For purposes of this Agreement, the following terms shall have the meanings indicated below:

(a) "**League Constitution and Agreements**" shall mean (i) the League Constitution, (ii) the League By-Laws, (iii) such other League rules, regulations, resolutions and policies, (iv) all agreements (including, without limitation,

collective bargaining agreements), consent decrees and settlement agreements between or among League and its Member Clubs (as hereinafter defined) and/or their leaders or League and any other persons in furtherance of League business or interests or as otherwise authorized, directly or indirectly, by League's Board of Governors, the League Constitution or By-Laws or the League Commissioner and (v) the League Commissioner's interpretation of any of the foregoing.

(b) "League Symbols" shall mean the names, initials, slogans, emblems, insignia, logos, symbols, signs, colors, uniform designs including color patterns, and other indicia of League (including, without limitation, any indicia used by League during its history), and all trademarks, service marks, trade names, trade dress, copyrights, collective marks and other proprietary rights pertaining thereto, including, without limitation, the conference and division names and/or logos, League slogans and logos relating thereto, and League award, trophy and program names (including STANLEY CUP and all logos therefor and depictions thereof).

(c) "Member Club Agreement" shall mean the License Agreement dated as of the date hereof between Enterprises and the Member Clubs.

(d) "Member Clubs" shall mean the member clubs which are from time to time members of the National Hockey League.

(e) "Player Promotional Rights" shall mean the right, pursuant to various forms of standard player contracts currently authorized by League and the National Hockey League Players' Association, as they may be amended from time to time, to the participation by and cooperation of every player in any and all reasonable advertising, sales promotion and public relations efforts which serve to promote the Member Clubs, League, League-related events and professional hockey generally, including, without limitation: (i) appearances at photographic sessions; (ii) public appearances; (iii) use of the player's name, likeness, any nicknames and relevant material concerning the player and/or his performance; and (iv) television and/or radio interview or taping sessions.

(f) "Team Symbols" shall mean the names, initials, slogans, emblems, insignia, logos, symbols, signs, colors, uniform designs including color patterns and player numbers, team events and other indicia of any Member Club (including, without limitation, any indicia used by any Member Club during its history), such as team mascots or symbols that may come to be associated with such teams, and the city or regional identification (by name, landmark or other recognized symbol) of each of the Member Clubs in conjunction with their colors and an appropriate hockey reference, and all trademarks, service marks, trade names, copyrights and other proprietary rights pertaining thereto.

(g) "Territory" shall mean the United States and each and every jurisdiction therein.

2. Grant of License.

(a) **By League.** Subject to the terms and conditions herein, League hereby grants to Enterprises and Enterprises hereby accepts, the nonexclusive right and license to use, and to sublicense others to use, the League Symbols together with any trade dress associated therewith on or in connection with the manufacture, distribution, marketing or sale of products or services in the Territory.

(b) **By Enterprises.** Enterprises hereby grants to League and League hereby accepts, the nonexclusive right and license to use the Team Symbols and the Player Promotional Rights in the Territory in connection with, and to the extent necessary for, League's tax exempt purposes. This right shall be subject to all of the limitations and quality control provisions in favor of the Member Clubs' ownership of their Team Symbols contained in the Member Club Agreement.

3. Payments.

(a) **Royalties.** (i) Enterprises shall pay to League royalties for the license described in paragraph 2(a) of this Agreement in an amount equal to (x) all revenues derived by Enterprises from its exploitation of the license described in paragraph 2(a) hereof, net of any commissions payable, less (y) the sum of (A) all payments made by



Enterprises to third party contractors (but not Enterprises' employees) in connection with Enterprises' exploitation or protection of the license described in paragraph 2(a) hereof, plus (B) all other costs incurred by Enterprises in connection with Enterprises' exploitation or protection of the license described in paragraph 2(a) hereof multiplied by 1.07. The amount of the royalties payable to League shall be determined on a modified cash basis. The League recognizes that 90% of the aggregate amount of revenues earned, commissions paid, payments made to third party contractors, and all other costs incurred by Enterprises in connection with Enterprises' exploitation or protection of the rights granted to Enterprises pursuant to this Agreement and the Member Club Agreement are attributable to the rights granted under the Member Club Agreement.

(ii) Enterprises and League agree that 50% of the royalties payable to League pursuant to paragraph 3(a)(i) are attributable to the use by Enterprises of League's logos.

(b) **Time of Payment/Audit.** Royalties shall be due and payable annually on October 31st of each year based upon Enterprises' receipts and expenditures for the fiscal year ending on the immediately preceding June 30th. Enterprises shall keep accurate, full and complete books and accounts showing its assets and liabilities, receipts and expenditures, operations, transactions, and financial condition.

Enterprises' financial statements shall be accurate in all material respects and shall present fairly the financial position and results of the operations of Enterprises. Enterprises shall prepare or cause to be prepared and submitted to League as soon as practical after the end of each fiscal year of Enterprises, a balance sheet, profit and loss statement, and statement of changes in cash flows accompanied by an audit opinion of independent certified public accountants of recognized standing satisfactory to League.

4. Warranties and Covenants of Enterprises.

(a) **Standards.** Enterprises may license the rights granted above to use the League Symbols to third parties, provided:

(i) Any such license shall be granted pursuant to an ongoing, professionally administered licensing program of the League Symbols for promotional use or use in collateral merchandise or services;

(ii) The foremost objective of such program shall be to reflect favor and good will upon League;

(iii) The nature of licensed products and levels of quality standards imposed for them will be consistent with those for merchandise previously licensed by Enterprises (and its predecessors) and its licensing agent, and with those generally applicable to products heretofore licensed in other prestigious sports merchandise licensing programs;

(iv) Enterprises will employ at least one experienced, full-time quality assurance executive to administer the quality control program;

(v) Enterprises will make available to League opportunities to purchase all items of licensed merchandise for any purpose, and will as often as feasible distribute licensee lists and/or catalogs to League;

(vi) Enterprises will report periodically to League at a meeting of the Board of Governors of League, and will at least annually show the League representative samples of licensed products which utilize the League Symbols and which have been newly approved since the last such showing; and

(vii) If League complains to Enterprises about the depiction of the League Symbols on any licensed merchandise, or if League complains about the quality of any licensed merchandise and said complaint is reasonable under the guidelines set forth above, then Enterprises will take corrective measures as soon as such steps reasonably can be taken.

**(b) Enterprises Promotional Activities.**

Enterprises hereby agrees to exercise its best efforts to publicize and promote the goodwill and renown of League within the Territory. Enterprises at its own expense shall, subject to prior approval by League as to content and form, undertake appropriate promotional efforts to increase the number of

sublicensees and increase the revenues generated by sublicensees. These promotional efforts shall include appropriate participation at trade shows, mailings to retailers, and such meaningful activities that in Enterprises' judgment shall generate increased licensing revenues. Enterprises shall keep League reasonably informed regarding the status of licensing and promotional activities of Enterprises. League shall be given reasonable consultation rights with respect to any licensing or promotional activity at League's request.

**(c) Change or Modifications of League Symbols.**

League expressly reserves the right from time to time to modify or change the League Symbols. The League Symbols, as so modified or changed, shall for all purposes be deemed to be the League Symbols referred to in this Agreement. Any and all such modifications or changes in the said League Symbols developed or adopted by League shall be the sole and absolute property of League, and League shall have the exclusive right to register in the Territory such modified or changed marks as trademarks and/or service marks. Enterprises may propose changes to the League Symbols for adoption and approval by League.

**(d) Assignment/Sublicensing.** Except as set forth in this paragraph 4(d), Enterprises shall not sell, assign, transfer or alienate its rights, privileges or obligations in

or under this Agreement without the prior written consent of League. Enterprises may sublicense its rights and privileges under this Agreement without the prior written consent of League, provided that any such sublicense shall be subject to, and any such sublicensee shall be bound by, the terms and provisions of this Agreement, and provided further that Enterprises may grant a sublicense of the League Symbols to a Member Club only pursuant to a sublicense which grants the Member Club a nonexclusive license to use the League Symbols provided that such use shall be subject to the prior written approval of League.

(e) **Compliance with Law.** Enterprises shall not sell or offer any products or services which do not comply in all respects with applicable federal, state, and local laws and regulations pertaining to the manufacture, distribution and provision, as the case may be, of such products and services.

5. **Ownership of the League Symbols.** Enterprises acknowledges and agrees that the League Symbols and the goodwill associated therewith are the sole and exclusive property of League and that all use of the League Symbols by Enterprises and its sublicensees shall inure to the benefit of and be on behalf of League. Enterprises acknowledges and agrees that nothing in this Agreement shall give Enterprises any right, title, or interest in and to the League Symbols

other than the right to use the League Symbols in accordance with this Agreement, it being understood that this provision shall not be deemed to prevent actions by Enterprises pursuant to paragraph 7 of this Agreement. Enterprises will not at any time do, or knowingly permit to be done, any acts or things which would in any way challenge or impair the rights of League in and to the League Symbols or which would or could affect the validity of the League Symbols. Enterprises agrees to execute all documents reasonably required by League to obtain, maintain, and renew registrations of the League Symbols and to record this Agreement with appropriate government authorities.

6. Proprietary Interest of League. Enterprises acknowledges and agrees that the League Symbols are the sole and exclusive property of League and that, upon the expiration or termination of this Agreement, Enterprises shall have no further right to use the League Symbols; provided, however, that any and all products manufactured or packaged in accordance with this Agreement prior to the expiration of the Agreement which bear the League Symbols may be sold by Enterprises or its sublicensees for a period of three (3) months following the expiration date. Neither Enterprises nor its sublicensees shall have such right to continue to sell products bearing the League Symbols if League terminates this Agreement due to a breach of this Agreement by Enterprises.

The restrictions in this paragraph 6 shall survive the expiration or termination of this Agreement.

7. Registration. Enterprises shall cause the League Symbols to be registered in the name of League as trademarks, service marks, copyrights or other intellectual property in such jurisdictions within the Territory as Enterprises determines appropriate and shall maintain all such registrations in such manner as Enterprises determines appropriate and prudent. The costs of such registration shall be the responsibility of Enterprises. League hereby covenants and confirms that it will take such further reasonable action and execute such documents or agreements which may reasonably be required by Enterprises in discharging its responsibility under this Agreement to register, maintain or renew any trademark or copyright registration.

8. Infringement. (a) If any suit, action or proceeding is brought against League or Enterprises arising out of the use of any of the League Symbols, the party against whom such suit, action or proceeding is brought shall notify the other party forthwith. All involved parties shall cooperate in the defense of any such action, suit or proceeding. League, or Enterprises at the direction of League, shall arrange and control the defense of any such action, suit or proceeding at League' sole cost.

(b) Enterprises shall notify League of any material infringement or imitation of the League Symbols which may come to its attention. League shall notify Enterprises of any material infringement or imitation of the League Symbols which may come to its attention. League shall have the right to determine whether or not any action shall be taken with respect to any infringement or imitation of League Symbols and the nature of any such action and Enterprises shall pursue such action at League's direction and sole cost. Specifically, at the instruction of League, Enterprises may institute legal proceedings either in its own name, and/or in the name of League, for infringement of trademarks, trade names, copyrights and other intellectual property rights directly or indirectly owned by League which are part of or related to the League Symbols in any appropriate court or administrative body having jurisdiction to hear any such infringement action.

9. Term. This Agreement shall continue in full force until June 30, 2006 or, if earlier, until terminated as herein provided. This Agreement shall be terminated: (i) upon the written approval of both of the parties hereto or (ii) in the event of the bankruptcy or judicial or administrative declaration of insolvency of Enterprises.



10. Miscellaneous.

(a) **Entire Agreement/Amendment.** This Agreement represents the entire agreement between League and Enterprises with respect to licenses to use the League Symbols, Team Symbols, and Player Promotional Rights and supersedes all existing contracts or agreements previously executed between said parties, their predecessors, successors or assigns. This Agreement may be modified and amended only in a writing executed by a duly authorized representative of each party hereto.

(b) **Parties' Relationship.** Nothing herein contained shall be construed to place the parties in the relationship of partners or joint venturers, and no party shall have any right or power to obligate or bind another party in any manner whatsoever except as authorized in this Agreement or as otherwise specifically authorized in writing.

(c) **Severability.** Invalidation of any provision of this Agreement, whether by adjudication or otherwise, shall not affect the validity of any other provision of this Agreement and all such other provisions shall remain in full force and effect.

(d) **Notices.** All notices, consents, requests, instruments, approvals and other communications provided for herein shall be validly given, made or served effective on the date of dispatch thereof, if in writing and delivered

personally or sent by registered or certified mail, postage prepaid, return receipt requested, or by overnight courier service, as follows:

If to Enterprises: NHL Enterprises, L.P.  
c/o NHL Enterprises, Inc.  
1251 Avenue of the Americas  
New York, New York 10020  
Attention: Senior Vice President and  
General Counsel

If to League: National Hockey League  
1251 Avenue of the Americas  
New York, New York 10020  
Attention: Senior Vice President and  
General Counsel

or to such other persons or to such other addresses as the parties hereto shall designate from time to time by like notice.

(e) **Titles.** The headings and titles herein are for the convenience of the parties and shall not influence the construction of this Agreement.

(f) **Successors and Assigns.** This Agreement shall be binding upon the successors and permitted assigns of the parties.

(g) **Waiver.** League may in writing waive any default without waiving any other default and the failure of League to exercise any right, power or remedy upon default shall not be taken as a waiver thereof.


(h) **League Constitution and Agreements.** The parties hereto hereby recognize all League rules, regulations, resolutions and policies heretofore adopted which relate to the subject matter of this agreement, and acknowledge and agree that notwithstanding any term or provision of this Agreement to the contrary, the terms and provisions of this Agreement are subject to (i) the League Constitution and Agreements as in effect on the date hereof, and (ii) such League Constitution and Agreements as may be adopted or amended after the date hereof with the consent of not less than three-fourths (3/4) of the Member Clubs.

(i) **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of New York.

(j) **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, and all of which shall together constitute one and the same agreement.

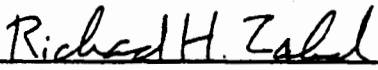
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers effective as of the date first above written.

NATIONAL HOCKEY LEAGUE

By:   
Name: JEFFREY PASH  
Title: SENIOR VICE PRESIDENT  
+ GENERAL COUNSEL

NHL ENTERPRISES, L.P.

By: NHL Enterprises, Inc.,  
its general partner

By:   
Name:  
Title:

**LICENSE AGREEMENT**  
**(United States)**  
**AMENDMENT NO. 1**


**THIS AMENDMENT** dated as of July 1, 2006 by and between the **NATIONAL HOCKEY LEAGUE**, a joint venture organized as an unincorporated not-for-profit association, and **NHL ENTERPRISES, L.P.**, a Delaware limited partnership with its principal place of business at 1251 Avenue of the Americas, New York, New York 10020, which amends the License Agreement dated as of December 16, 1996 and effective as of July 1, 1996 by and between the National Hockey League and NHL Enterprises, L.P. (the "Original Agreement") in accordance with the terms of the Original Agreement, as follows:

1. The first sentence of paragraph 9 of the Original Agreement is amended to read in its entirety as follows: "This Agreement shall continue in force until June 30, 2016 or, if earlier, until terminated as herein provided."

2. Except as expressly modified by paragraph 1 of this Amendment (or as may be required to conform the Original Agreement with such modification), the Original Agreement shall remain in full force and effect.

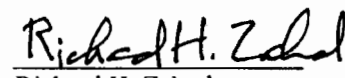
**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first above written.

**NATIONAL HOCKEY LEAGUE**

By:   
David Zimmerman  
Executive Vice President and General Counsel

**NHL ENTERPRISES, L.P.**

By: NHL Enterprises, Inc.,  
its general partner

By:   
Richard H. Zahnd  
Executive Vice President and General Counsel

## Exhibit D

# **BY-LAWS**

## **SECTION 36**

### **TRANSFER OF FRANCHISE LOCATION**

#### **36.1. Application**

- (a) Any Member Club seeking consent to a transfer of its franchise and club to a different city or borough in accordance with Section 4.2 of the Constitution, shall file a written application for such consent with the Commissioner of the League.
- (b) Such application shall be filed no later than January 1 of the year prior to the year in which it is proposed the Club will commence its first season in the new location, unless a majority of the Member Clubs consents to a later filing date.
- (c) The application shall include a statement as to why the applicant seeks such transfer. It shall also include a statement of reasons why the applicant believes consent to the proposed transfer should be given and shall be accompanied by such documentation as the applicant deems appropriate, in light of the provisions of this By-Law Section 36 and Section 4.2 of the Constitution.

#### **36.2. Investigation**

- (a) The Commissioner shall assign to one or more Committees of the League responsibility for investigating the merits of the proposed transfer and of the application for consent.
- (b) Each such Committee shall conduct such investigation as it deems appropriate under the circumstances and shall be guided by the considerations set forth in this By-Law section.
- (c) As part of its investigation, any such Committee may, through any of its members or any officer of the League, request the applicant to submit any documentation or information which it deems pertinent to any such applicable considerations. The applicant shall promptly submit all such requested documentation or information to the Committee, or, if it is unable to do so, shall promptly submit a written statement explaining why it is unable to do so.
- (d) Each such Committee shall, prior to the vote by the Member Clubs on the transfer application, present a verbal and/or written report on the results of its investigation to the Board of Governors.

## **BY-LAWS**

### **36.3. Presentation**

- (a) Prior to the vote on the transfer application, the applicant shall be afforded an opportunity to make a presentation in support of its application at a meeting of the Board of Governors.
- (b) If the proposed transfer of location also involves a sale, assignment or transfer of a membership or ownership interest in a Member Club, representatives of the proposed new owners shall also be afforded an opportunity to make a presentation in support of the application at a meeting of the Board of Governors.
- (c) At any such meeting, the Governors shall be afforded an opportunity to ask questions of the representatives of the applicant and of any proposed new owners concerning any aspects of the transactions for which consent of the Member Clubs is being sought.

### **36.4. Vote**

- (a) Following such presentation(s) to the Board, there shall be a vote of the members as to whether to consent to the proposed transfer of location, in accordance with the provisions of Section 4.2 of the Constitution and this By-Law Section 36, and, if applicable, as to whether to consent to any proposed sale, assignment or transfer of a membership or ownership interest in a Member Club, in accordance with the provisions of Section 3.5 of the Constitution and By-Law Section 35.
- (b) Any such vote shall be by closed ballot if a majority of the members are in favor of conducting the vote by closed ballot but shall otherwise be by voice vote or open ballot.
- (c) A proposed transfer of location receiving the affirmative votes of a majority of the Member Clubs present and voting shall be deemed to have been consented to by the League in the event that the prohibition on transfers recited in Section 4.2 of the Constitution is determined by counsel to the League specially retained for this purpose, based on all relevant factors, to be unlawful with respect to that proposed transfer.

36.5. In determining whether to consent to the transfer of a Member Club's franchise to a different city or borough pursuant to Section 4.2 of the Constitution, each Member Club shall be guided by the following considerations:



## ***BY-LAWS***

- (a) Whether the Club in question is financially viable in its present location and, if not, whether there is a reasonable prospect, based on any of the considerations set forth in subsections (b) through (j) below, or for any other reason, that it could become financially viable there, either under its present ownership or under new ownership.
- (b) The extent to which the fans have historically supported the Club in its present location.
- (c) The extent to which the Club has historically operated profitably or at a loss in its present location.
- (d) Whether the present owner of the Club has made a good faith effort to find prospective purchasers who are prepared to continue operating the Club in its present location and/or has engaged in good faith negotiations with such prospective purchasers.
- (e) Whether there is any prospective purchaser of the Club and franchise who is prepared to continue operating the Club in its present location and, if so, whether any such prospective purchaser is willing and able, if necessary, to sustain losses during at least the initial years of its operation there.
- (f) The extent to which the Club might be operated in its present location in a more prudent, efficient, and/or cost-effective manner than it has been in the past.
- (g) The extent to which there is a reasonable prospect that significant additional revenues may become available to the Club within a reasonable time in its present location, either from the sale of media rights or from other sources.
- (h) The extent to which local government authorities in the present location are prepared to reduce the operating costs of the Club, either by granting tax relief or otherwise.
- (i) The extent to which the operating costs of the Club in its present location might be reduced through the willingness of the applicable arena authority to reduce the rent charged to the Club or otherwise to reduce the Club's costs or increase its revenues, and/or through the willingness of other suppliers to reduce their charges for goods or services provided to the Club.
- (j) The adequacy of the arena in which the Club plays its home games and the willingness of the applicable arena authority to remedy any deficiencies in the arena.

## ***BY-LAWS***

- (k) Whether there will be a suitable arena available in which the Club can play its home games in the proposed new location.
- (l) The extent to which it appears likely, based on the population, demographics, and interest in hockey in the area of the proposed new location, or based on any other relevant facts, that support for a franchise there will be sufficient to make the franchise financially viable in the proposed new location on a continuing basis.
- (m) The extent to which the owners of the Club are willing and able, if necessary, to sustain losses during at least the initial years of its operation in the proposed new location.
- (n) The extent to which consent to the proposed transfer is likely to damage the image of the League as a major sports league, be a disincentive to participation in the League, or otherwise to have an adverse effect on the League's ability to market and promote the League hockey in the United States and/or Canada.
- (o) The extent to which the proposed transfer would adversely affect traditional rivalries that have been established between the Club in its present location and other Member Clubs.
- (p) The extent to which consent to the proposed transfer would result in the absence of a League franchise in a major market.
- (q) The extent to which it appears likely that, if the proposed transfer is approved, the Club would draw more or fewer fans when playing as the visiting team in the home arenas of other Member Clubs.
- (r) The extent to which the proposed transfer would present particular disadvantages for the operation of the League, such as travel or scheduling difficulties or a need for divisional realignment.
- (s) The extent to which the Club has, directly or indirectly, received public financial support in its present location by virtue of any publicly financed arena, special tax treatment, or any other form of public financial support.
- (t) The extent to which the proposed transfer, if approved, would affect any contract or agreement in effect between the Club and any public or private party.
- (u) The extent to which League consent to the proposed transfer might expose the League to liability to any third party for breach of contract, interference with contractual relations, or for any other cause.

## ***BY-LAWS***

- (v) The extent to which the ownership or management of the Club has contributed to any circumstance which might otherwise demonstrate a need to transfer the Club to a new location.
- (w) The extent to which the Club has engaged in good faith negotiations with representatives of the community in which it is presently located concerning terms and conditions under which the Club would continue to operate in that location.
- (x) Any other considerations relevant to whether it would be in the best interest of the League to consent to the proposed transfer.

36.6. Any such consent by the Member Clubs may be made subject to reasonable and appropriate conditions, including payment to the League of a transfer fee to reflect the goodwill developed by the League in the new location, and/or payment of an indemnification fee (or fees) to reflect the goodwill developed by a neighboring member (or members) in the new location.

36.7. Any proposed transfer of a franchise to a different city or borough which would also involve the sale, assignment or transfer of a membership or of ownership interest in a Member Club shall also be subject to the provisions of Section 3.5 of the Constitution and By-Law Section 35.