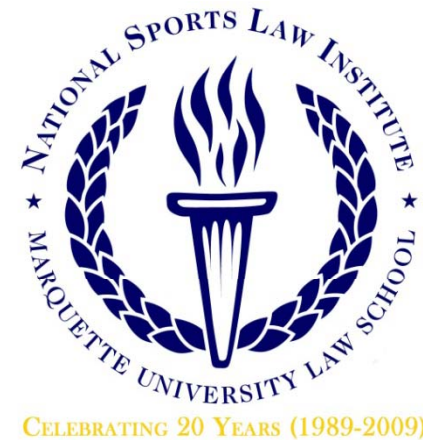


An Economic and Legal Analysis of the Professional Sports Facility Lease



Prof. Paul Anderson
Associate Director
National Sports Law Institute

Fall 2009: Prof. Martin Greenberg's
Sports Venues: From Election Day to Game Day Workshop

How the Deal Gets Done

- Use Milwaukee Brewers and Green Bay Packers Recent Facility Agreements as the Focus
 1. Background of each situation
 2. Focus on the overall issues involved with the deal and the lease
 3. Include analysis of overall industry when appropriate
- MAIN SOURCE: PAUL M. ANDERSON & WILLIAM S. MILLER, MAJOR LEAGUE LEASES: AN OVERVIEW OF MAJOR LEAGUE FACILITY LEASES AND HOW THEY ARE NEGOTIATED (2001) - Mequon, WI: Front Office Publications.



Milwaukee Brewers

- County Stadium
 - Built 1952 by County for \$7.7 M
 - To attract Boston Braves
 - Problems →
 - 1. lack of skyboxes other revenue sources
 - part of the reason the Packers stopped playing in Milwaukee
 - too few concession areas
 - 2. number of obstructed view seats
 - 3. industry shift to smaller capacity in late 80s and early 90s
- State of Wisconsin Legislative Reference Bureau (1996, January). Stadium finance: Government's role in the 1990s. Informational Bulletin 96-1.



Milwaukee Brewers New Stadium

- 1987 → GMC task force studies renovating County Stadium or building new ballpark
- 1988 → task force recommends new stadium to be completed in 1992
 - renovation = \$100 M (same as \$149 2001) while new stadium \$120 M
- 1990 → Brewers approve site for new stadium, construction moved to 1994
- 1994 →
 - Brewers say they need convertible roof and public assistance for new stadium
 - State Senate and Assembly vote to amend state constitution to allow new lottery games to finance sport facilities
 - Brewers commit \$60-90 M toward stadium





Economic Impact Report → Proposed Milwaukee Brewers Stadium

- Prepared for GMC **on behalf of Wisconsin Governor's Stadium Commission** (not for or by the team)
 - Prepared by CPA/JDs at Arthur Andersen in January 1995
-
- Impacts
 - Direct (economic)
 1. focus on direct not multiplier effects
 2. annual spending \$105.2 M
 3. 4-year construction related spending \$540.5 M
 4. state and local tax annual increases \$3.4 M
 - TOTAL = @ \$650 M (2009 \$920.5 M)
 - Indirect
 1. national image
 2. showcase for WI technology
 3. anchor redevelopment

Milwaukee Brewers New Stadium

- 1995 →
 - January → voters reject lottery to finance stadium
 - April → Governor, Milwaukee County Executive & Mayor announce MOU for 30 year lease and \$90 M commitment from team for new facility. Public financing includes one-tenth of one percent sales tax and 1% hotel tax for other \$160 M → expected completion 1999
 - State Assembly approves plan 52-47
 - October 6 → State Senate approves 16-15 (deciding senator Petak recalled June 4, 1996)
- 1996 → stadium tax takes effect and District Board approves financing and site plan (digging begins on October 21)
- 1999 → 3 workmen killed in Big Blue accident (damage estimate \$100 M)
- 2001 → completion of Miller Park



Miller Park

- Final Cost → \$392 M (\$100 M+ due to accident)
 - Brewers contributed \$90 M
 - \$72 M of infrastructure costs were split by the city, county and state.
 - A five-county stadium district was created to cover the remaining costs. A 0.1 of a cent sales-tax increase was levied in this stadium district to pay for Miller Park.





Green Bay Packers

- **Renovation of Lambeau Field**
 - Soon after won Super Bowl in 1997
projections by team and NFL showed that
without a refurbished stadium, and because
Green Bay is the smallest market in the NFL,
team would lose money starting in 2000
 - Could not compete with larger market teams

Green Bay Packers

- In September 2000, Brown County voters approved a 0.5 cent sales tax to help fund renovation of the stadium
 - The tax proceeds are being used to pay off \$160 M of the renovation costs. The tax was originally projected to run through 2018, but it could be completed by 2011.
 - At the time the Brown County voters approved the sales tax increase in 2000, 53 Wisconsin counties already had the 0.5 cent sales tax
- The Packers paid \$135 M towards the renovation.
 - The Packers got this money from a combination of an NFL loan, \$20 M in stock proceeds, and a one time user fee on season tickets.



Commitment to Deal

- After agreement to construct the facility



- Then must set agreement to lease the facility

The Deal

- Keep in mind virtually no team owns the facility
- They are the lessor → Community is the landlord
 - New Cowboys Stadium = City → \$325 M + NFL → \$150 M + Jerry Jones → more than \$500 M = TOTAL = \$1.1 billion (70% private)
 - **Still → City will own the facility**
- The terms that are included in a sports facility lease are important to both parties as they not only
 - (1) **secure their legal responsibilities and liabilities, they**
 - (2) **also provide for the revenue generation potential and retention methods necessary to protect and entice both parties into signing the agreement**
- Miller, W.S. (1998, October). Special report: Sports facility issues: Part two: Lease terms, legal issues surrounding sports facilities, & sports franchise ownership. *For The Record Online*, 1, <http://law.marquette.edu/cgi-bin/site.pl?2130&pageID=206>

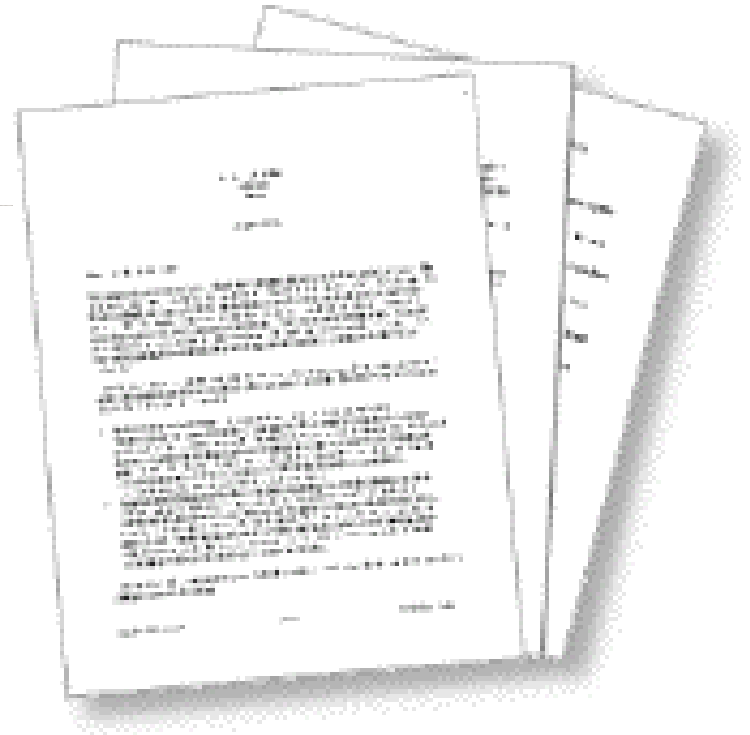


Deals

- Lambeau Field Lease Agreement, by and among Green Bay – Brown County Professional Football Stadium District, City of Green Bay, Wisconsin, and Green Bay Packers, Inc., dated as of January 1, 2001.
- Amended and Restated Miller Park Lease Agreement by and between Southeast Wisconsin Professional Baseball Park District and Milwaukee Brewers Baseball Club, Limited Partnership, dated as of June 30, 2004.

The Agreement

- Often First Letter Agreement or Memorandum of Understanding
- “Lease” – Generic Term
- Names
 - Lease / License / Sub-Lease / Management, Development, Use, Operating Agreement
 - All these together can become the lease agreement
- Length
 - Currently ➔ 50-100 pages per document



Brewers LEASE

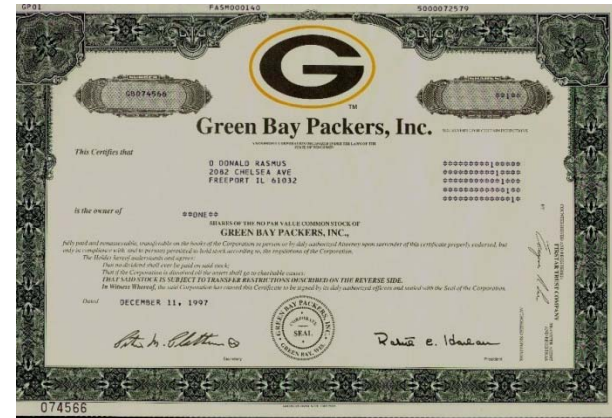
- (1) Started with 20 page lease in April of 1970
- (2) Memorandum of Understanding, 8/19/95 (11 pgs. + 16 pgs. of exhibits)
- (3) All the CURRENT LEASE
 - 1. Interim Lease Agreement, 12/31/96 (11 pgs. + 17 pgs. of exhibits)
 - 2. Construction Administration Agreement, 12/31/96 (28 pgs.)
 - 3. Shared Ownership Agreement, 12/31/96 (20 pgs.)
 - 4. Ground Lease, 10/21/96 (18 pgs. + 30 pgs. of exhibits)
 - 5. *Non-Relocation Agreement, 12/31/96 (7 pgs.)* → Amended and Restated, 1/1/04 (7 pgs.)
 - 6. *Lease Agreement, 12/31/96 (56 pgs. + 40 pgs. of exhibits)* → **Amended and Restated, 6/30/04 (53 pgs. + 50 pgs. of exhibits)**
- **TOTAL = 364 pages**

Relationship Before the Lease

- (1) Who Owns the facility?
 - Facility owner
 - Must warrant it is the owner of the facility
 - Establishes the extent of the facility owner's rights to use of facility or facility property during the agreement
- Examples
 - **Brewers**, Recital C, pg. 1, Art. 3, pg. 15
 - **Packers**, Recital C, pg. 1
 - Ownership of Lambeau Field Complex, pgs. 13 - 14

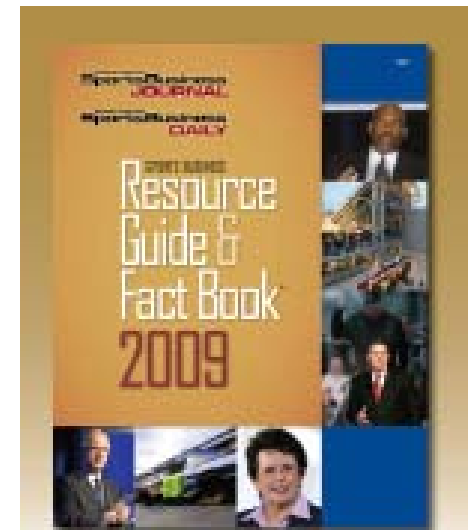
Relationship Before the Lease

- (2) Who Owns team?
 - Corporation / Single Owner / Partnership
 - Often hard to tell
- Examples
 - **Brewers**, Party Statement & Recital D, pg. 1 → LTD
 - **Packers**, Party Statement & Recital D, pg. 1 → CORP
 - Unique because publicly owned



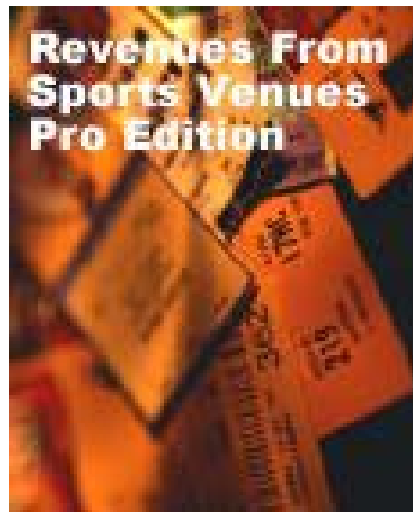
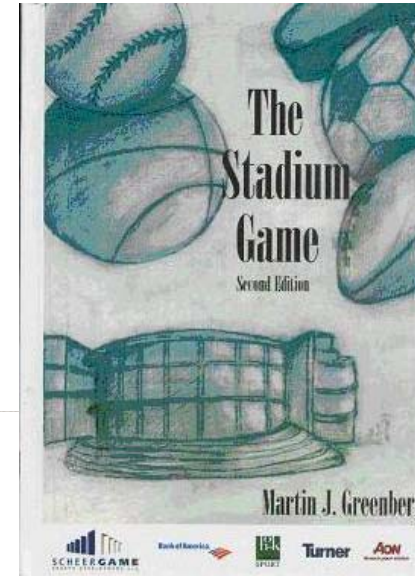
Relationship Before the Lease

- Determine ownership from
 - Websites
 - NSLI Sports Facility Reports → Facility Update Charts
 - <http://law.marquette.edu/jw/sfr>
 - Ballparks.com
 - <http://www.ballparks.com/>
 - Revenues from Sports Venues
 - <http://www.sportsvenues.com/>
- Street & Smith's → SPORTS BUSINESS RESOURCE GUIDE AND FACTBOOK 2009
- 2009 SPORTS MARKETPLACE DIRECTORY



Relationship Before the Lease

- Determine ownership from
 - THE STADIUM GAME: SECOND EDITION



- REVENUES FROM SPORTS VENUES PRO EDITION

Relationship Before the Lease

- (3) Public Entity/Authority
- Baseball Park District Legislation (Wis. Stat. § 229.64, et. seq. (2009))
 - Southeast Wisconsin Professional Baseball Park District
 - (1) The legislature determines that the provision of assistance by state agencies to a district under this subchapter, any appropriation of funds to a district under this subchapter and the moral obligation pledge under s. 229.74 (7) serve a statewide public purpose by assisting the development of a professional baseball park in the state for providing recreation, by encouraging economic development and tourism, by reducing unemployment and by bringing needed capital into the state for the benefit and welfare of people throughout the state. The legislature determines that the taxes that may be imposed by a district under subch. V of ch. 77 are special taxes that are generated apart from any direct annual tax on taxable property.
 - (2) The legislature determines that a district including a county with a population of more than 600,000 serves a public purpose in that county and all counties that are contiguous to that county by providing recreation, by encouraging economic development and tourism, by reducing unemployment and by bringing needed capital into the multicounty area for the benefit of people in the multicounty area.
- SAME FOR PACKERS
 - Football Stadium District Legislation (Wis. Stat. § 229.820, et. seq. (2009))
 - Green Bay/Brown County Professional Football Stadium District



Sports Referenda

- 1995-2000 → 19 communities with 26 referendums
 - 81% successful
 - often when initially unsuccessful went back and still approved financing
 - 20 who passed → approval range from 51-80-%
 - 6 who denied → from 40-46%
- UPDATE → 2000-2009 → 5 referenda / 3 passed = 60%



Mondello, M., & Anderson, P. (2004). Stadiums, arenas, and sports referendums: A comparative analysis of cities involved in the stadium game. *International Journal of Sport Management*, 5, 43-71

Overall Costs for new facilities

- Costs for new facilities have gone up but not as much in real dollars
 - AVERAGE COST | Stadiums \$400 M \ Arenas \$250 M
- Total Spent on New Facilities
 - 1950s: \$31.15 M
 - 1960s: \$166.32 M
 - 1970s: \$296.78 M
 - 1980s: \$197.76 M
 - 1990s: \$291.24 M
 - 2000s: \$413.86 M
- (recent increase due to Cowboys \$1.3 B, Yankees \$1.5 B, Mets \$860 M)
 - converted to 2009 dollars
- **New Stadiums coming in 2010**
 - New York Jets/Giants - New Meadowlands 1.4 B
 - Pittsburgh Penguins – Consol Energy Center \$321 M
 - Minnesota Twins – Target Field \$544 M

- Sources: Keating, R.I. (1999): NSLI, *Sports Facility Reports*.

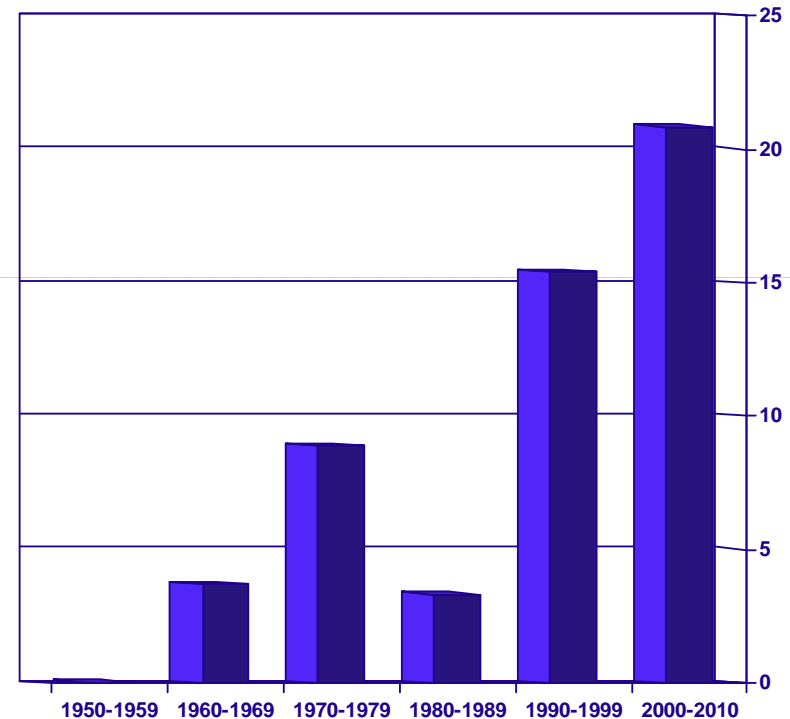
Legality of Funding

- Plans for public funding of sports facilities often face legal challenges
 - Libertarian Party v. State, 199 Wis.2d 790 (1996)
 - ✦ Political Part sued over Wisconsin Stadium Act providing for the formation of local baseball park districts and empowering those districts to build and maintain professional baseball park facilities
 - ✦ Legislature stated the act would "serve a statewide public purpose by assisting the development of a professional baseball park in the state for providing recreation, by encouraging economic development and tourism, by reducing unemployment and by bringing needed capital into the state for the benefit and welfare of people throughout the state."
 - ✦ Court → **While some private benefit will result, the project is sufficiently public in nature to withstand constitutional challenge.** Therefore, we conclude that the Stadium Act authorizes constitutionally permissible expenditures for a public purpose

Overall \$ Spent on New Facilities in 4 Major Professional Sports

- 1950-1959 = \$241.95 M
- 1960-1969 = \$3.7 B
- 1970-1979 = \$8.87 B
- 1980-1989 = \$3.32 B
- 1990-1999 = \$15.4 B
- 2000-2010 = \$20.85 B

- estimates converted to 2009 dollars



- Sources: Keating, R.J. (1999, April 5). Sports pork: The costly relationship between major league sports and government. Cato Institute: Policy Analysis No. 339; National Sports Law Institute, *Sports Facility Reports*; Siegfried, J, & Zimbalist, A. (2000, Summer). The economics of sports facilities and their communities. *Journal of Economic Perspectives*, 14(3), pp. 95-114.

History of new facilities

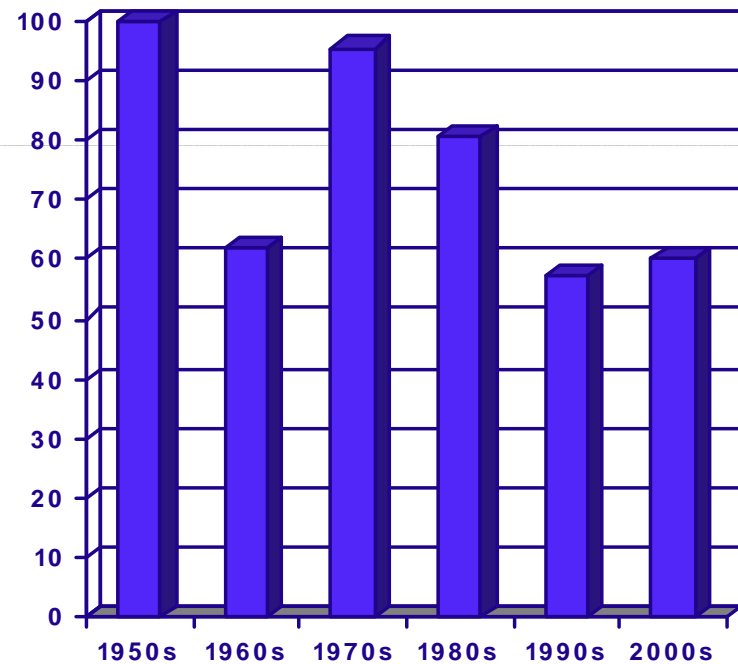
Time Period	New Facilities	Renovated Facilities	Total Number of Teams	% of Teams Affected
1950s	8	1	46	20%
1960s	25	4	51	57%
1970s	35	10	81	56%
1980s	21	7	91	31%
1990s	56	11	102	65%
2000s	39	10	122	40%

○85% of current teams are in new or renovated facilities since 1990

○Sources: Keating, R.J. (1999); NSLI, *Sports Facility Reports*.

Public Funding

- Percentage of facility costs contributed by public funds
 - 1950s = 100% → #1
 - 1960s = 61.8%
 - 1970s = 95.6% → #2
 - 1980s = 80.7% → #3
 - 1990s = 57.2%
 - 2000s = 60.2 %
- Total \$ amount may be increasing but percentage is not



Reality Today

- Every sports facility project is a public/private partnership
-
- Public Sector often pays most for the individual facility
 - Total Public input in NFL since 1990 = @\$4.46 Billion
 - **Private Sector (owner) always contributes**
 - Total Private Input in NFL since 1990 = @\$5.14 Billion
 - 2000s
 - NBA/NHL arena = 70% public / 30% private
 - NFL/MLB stadium = 55% public / 45% private

Funding in the Lease



- Public portion not often reflected in lease agreement
- Could be separate development agreement/ debt management agreement / statutory provision
- Difficult to tie team to public funding

Funding issue

- Bengals Lease Example
 - Recital A. By public vote on March 19, 1996, the citizens of Hamilton County passed a one-half percent increase in the Hamilton County general sales tax to *keep competitive and viable major league football and baseball teams in Cincinnati*, Ohio by, among other things, the construction of a new football stadium in Hamilton County.
- Performance lawsuit (2003)
 - \$458 m stadium (95% public funding)
 - 13 seasons never a winning record
 - Suit claiming team is not fulfilling its end of the bargain
 - Claim dismissed → City does not own team and "competitive" cannot be defined by a court



Funding

- Public / Private Partnership for Funding?
 - For the 4 major professional sports leagues facilities currently are around 60-70% public & 30-40% private funding
 - No facility is 100% privately funded
- Competing Interests Define the Relationship



Partnership

- Public / Private Partnership Funding Facility
- Examples
 - Brewers
 - Article 4, pgs. 15-16
 - Packers
 - Article IV, pgs. 16-18





Contract Basics in the Lease

- Parties
 - Facility Owner & Team/Corporate Entity
 - Potentially Owner and Manager
- Examples
 - **Packers**, Cover & Party Statement
 - Wis. Stat. § 229.81-833. Defines role of football stadium district
 - **Brewers**, Cover & Party Statement
 - Wis. Stat. § 229.57 – 79 . Defines role of baseball park district

Contract Basics in the Lease

- Recitals
 - Formal statements of fact that explain the basis for the lease agreement
 - (1) Economic Impact
- Examples
 - **Brewers**
 - Recital A, pg. 1: regarding economic impact
 - Packers
 - Recital A, pg. 1: regarding economic impact



Contract Basics in the Lease

- Recitals: (2) Team Name
- Angels Example
 - 1996 → Disney (California Angels) worked with city on \$100 M deal to renovate Stadium and keep team in Anaheim
 - ✦ Recital in Lease agreement → "Tenant will change the name of the team to include the name 'Anaheim' therein, such name to be effective no later than the commencement of the 1997 season"
 - 1997 → team became Anaheim Angels
 - 2003 → Moreno bought for \$184 M
 - 2005 → announced would change name to Los Angeles Angels of Anaheim
 - City sued claiming breach of contract



Contract Basics in the Lease

- City Suit
 - Breach of clause of lease
 - Angels moved to dismiss
 - Judge allowed it to go to trial
- Jury verdict → February 9, 2006
 - Moreno has the right to change the name (9-3 vote)





Contract Basics in the Lease

- Recitals: (3) Warranties/Covenants/Representations
 - Facility Owner
 - (1) pronouncement of authority to enter into the agreement and ownership of the facility itself,
 - (2) a covenant that there are no limitations on the ability of the owner to perform its obligations under the lease because the owner is not in violation of any laws, and
 - (3) a covenant that the agreement does not conflict with any other responsibilities of the owner under any other agreement.
 - Team
 - (1) a pronouncement that the team has the authority and power to enter into the agreement,
 - (2) a covenant that there are no limitations on the team's ability to perform its obligations under the agreement due to any litigation or violation of laws,
 - (3) a covenant that the team is in a financial position from which it can fulfill its obligations under the lease agreement, and
 - (4) a covenant that it is a member in good standing of the particular professional sports league and that it will play all of its home games in the facility contemplated in the lease agreement.

Contract Basics in the Lease

- Examples: Warranties/Covenants/Representations
 - **Brewers**
 - Team: Article 27, pgs. 49-50 (27.8)
 - District: Article 28, pgs. 50-51 (28.6)
 - **Packers**
 - Team: Article XXVII, pgs. 68-70
 - District and City: Article XXVIII, pgs. 70-73



Term



- Term (length of use relationship)
 - ISSUE: Does the initial term cover the term of the public financing issued for the project?
- Average length major leagues from 25-30 years (minor 5-10 years)

Term

- Basic – fixed
- Event dependent
 - Some will not have initial date because it is dependent on completion of the facility or other events can change term as well
 - Example – Atlanta Falcons July 1, 1990 License Agreement with the Geo. L. Smith II Georgia World Congress Center Authority
 - 3.5 ***License Expiration*** : 3.5.1 This Agreement shall expire upon the later of (a) June 30 of the License Year in which occurs the Maturity Date of the Revenue Bonds issued by the Authority, or (b) June 30 of the twentieth (20th) License Year. Notwithstanding item (a) . . .the License shall expire on June 30 of the thirtieth(30th) License Year regardless of whether the Maturity Date has occurred

Term

- Full term often includes Options & Extensions
 - Options to extend
 - (1) original lease still stands, (2) granted by facility owner, (3) extends original lease only (4) specific notice to enact
 - Examples
 - Brewers, Article 5, pg. 16
 - Packers, Article V, pgs. 21-22

Term



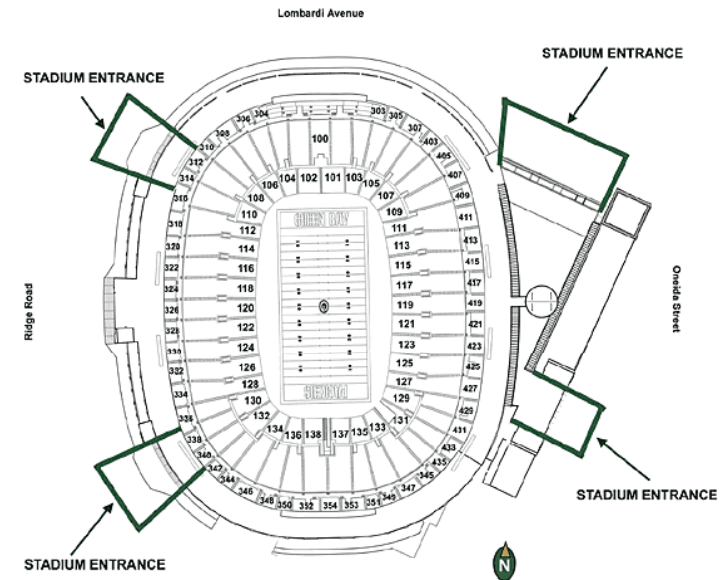
- Automatic / Dependent Options
- Termination Option
 - Team option to terminate under certain conditions during the original term of the agreement
 - New Jersey Devils lease option
 - **option to terminate the agreement** prior to the end of the term based on a specific material breach of the agreement by the Authority. This breach will occur (the "Option Event") if (a) a Professional Sports Franchise (an NBA, MLB, NFL or NHL team not including the NBA's New Jersey Nets or the NFL's New York Giants or New Jersey Jets) "shall solicit. . .the sale, rental, license or any form of distribution of any admission tickets or any other form of admission to any Professional Sports Franchise's regular season sports event to be played in the State of New Jersey; (b) this solicitation is done with the support of the Authority or the State of New Jersey; and (c) such Franchise "has received all of the necessary league approvals to either relocate to the State of New Jersey or play its regular season home games as an expansion team in the State of New Jersey. . ."

Use

- Use provisions
 - Manner in which parties can use the facility
 - Both permitted and prohibited

- Examples

- Brewers, Article 8, pgs. 18-21
- **Packers**, Article IX, pgs. 34-39
 - Team, City, District





Management

- Designates that party has the responsibility to undertake all functions necessary to manage the facility itself
 - May be covered in operations and management section or separate agreement
- Managers
 - Team as Manager
 - Third Party Manager
 - Designated by Team
 - Designated by Facility Owner
 - Lease is with Manager
- Examples
 - Packers, Art. X, pgs. 39-40
 - **Brewers**, Art. 9, pgs. 21-22

RENT

- Considerations
 - (1) Understand Relationship First
 - Who owns
 - Who pays for management & operations
 - Synchronize with other payments
 - (2) Define Period of Rent
 - When applies & when due
 - (3) May Change if Option or Extension
 - (4) Allow for amendment?



Rental Payments



- Types
 - No Rent
 - Minimal Rent (\$1)
 - Fixed Rent
 - Per Game/ Ticket/Attendance Dependant
 - Percentage Rent
 - Fixed Plus Percentage
 - Fixed or Percentage
 - Fixed With Deductions or Offsets
 - Rent Credits
- Merely is Part of Total Allocation of Payments
 - Examples
 - ✦ **Brewers**, Article 6, pg. 17 & Schedule 1
 - ✦ **Packers**, Article VI, pgs. 22-23

Application of Taxes

- Some teams specifically exempt within the lease
- Examples
 - Brewers, Article 7, pgs. 17-18
 - **Packers**, Article VIII, pgs. 31-33
 - Ticket tax



Revenue Streams

- Many Leases do not specifically define revenue streams

- Focus on Allocation and Payment

- Streams

- Tickets – often not large revenue stream
- Parking – large
- Premium Seating – can be lucrative
- Concessions, Novelties, Retail
 - ✦ Depends on league
- Media Revenues
 - ✦ To broadcast team events
 - ✦ Usually team owns but portion back to facility owner



Naming Rights

- Often not part of revenue sharing
- Packers, Section 3.7: Naming Rights, pgs. 15-16

- Advertising

- Opportunities to advertise in particular areas of facility

- Sponsorships

- Company paying for right to be associated with a particular event
- New points of access (seats, entrances, etc.)

- Seat Licenses

- Seat deposits
- Permanent seat licenses

Revenue Streams

- Useful information
 - Revenues from Sports Venues
 - <http://www.sportsvenues.com/info.htm>



- Forbes Magazine league valuations
 - By team →
http://www.forbes.com/lists/2009/30/football-values-09_Green-Bay-Packers_302814.html

- By league →
http://www.forbes.com/2009/09/02/nfl-pro-football-business-sportsmoney-football-values-09-nfl_land.html





Expenses

- Common considerations
 - (1) Identify all operating expenses
 - (2) Standard of care for operation of facility
 - (3) Allocation of payment for expenses
 - (4) External requirements
 - Minority hiring, unions, minimum wage, etc.
 - (5) Sharing of reports & manuals for efficient operation of facility

Expenses

- (6) Items
 - Equipment
 - Operational Expenses
 - Staffing / maintenance / security / medical services
 - Revenue Streams
 - Expense of maintaining revenue streams (Often forgotten)
 - Taxes
 - Often attempt to avoid but must prepare for assessments
- Examples
 - **Brewers**, Maintenance and Improvements: Article 14, pgs. 25-30
 - Packers, Maintenance: Article XIV, pgs. 45-52

Insurance

- Insurance
 - Transfer potential risks and expenses to third party
 - Very expensive for sport facility
- Examples
 - **Brewers**, Art. 22, pgs. 45-47
 - Packers, Art. XXII, pgs. 64-66



Indemnification

- Indemnification (in addition to insurance)
 - Protect one party by requiring other party to pay costs of damages 1st party incurs as a result of acts or omissions of the 2nd party
- Examples
 - Brewers, § 16.3, pg. 37
 - Packers, § 16.3, pgs. 54-55



Default

- Default provisions

- By team or owner (or both)

- Factors

- ✦ (1) Descriptions of the specific actions that will be considered acts of default by the parties to the lease;

- Failure to make certain payments,
 - Failure to uphold general warranties or covenants under the agreement,
 - Assignment of either party's interest in the agreement,
 - If either party goes insolvent or bankrupt,
 - Problems with the construction or condition of the facility.

- ✦ (2) Potential cure periods for such acts of default;

- ✦ (3) Remedies that each side will have to cure these acts of default;

- ✦ (4) Specific rights of termination or alternative dispute resolution



Default

- Examples
 - Brewers
 - Article 19: Team, pgs. 39-42
 - Article 20: District, pgs. 42-44
 - Packers
 - Article XIX: Team, pgs. 57-60
 - Article XX: District, pgs. 60-63

Remedial Measures

- Alternative Dispute Resolution
 - Arbitration (binding) → third party neutral hears and decides a dispute
 - Mediation
 - Negotiation
- Self Help
 - Parties own ability to cure a breach or default
- Specific Performance
 - One party can force the other to fulfill its obligations
- Examples
 - **Brewers**, Arbitration
 - ✦ 29.15, pg. 53-54
 - Packers, Arbitration
 - ✦ Section 19.5, pg. 60
 - ✦ Section 29.15, pg. 76



Force Majeure

- Circumstances beyond control and without the fault of the parties
 - Brewers, 29.9, pg. 53
 - Packers, Section 29.9, pg. 75
-



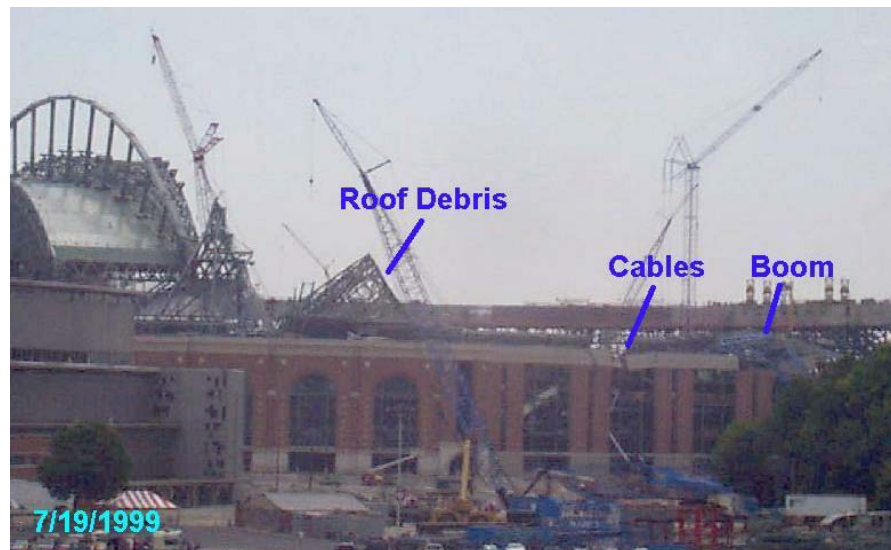
Force Majeure Situation

- New Orleans Saints and the Superdome
 - Article 15 – Force Majeure
 - “In the event that the Superdome or any portion thereof to be used by Club. . . is damaged or destroyed in whole or in part, Manager (Facility Management of Louisiana) agrees to commence the repair or reconstruction of the Superdome. . . promptly after such damage or destruction occurs”
 - Hurricane Katrina
 - \$134.6 M in repairs needed
 - FEMA paying 90%
 - \$51 M in improvements
 - NFL and Louisiana Stadium & Exposition District paying



Damage or Destruction

- Damage or Destruction Clauses (more common)
 - Examples
 - **Brewers**, Article 17, pgs. 37-38
 - \$100 M in damages with 1999 accident
 - Packers, Article XVII, pgs. 55-56



Experience of areas that lost teams

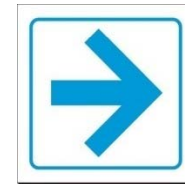
- St. Louis:

- Cardinals left in 1987 after city refused \$120 (\$138 M in 1990) toward new facility
 - → 1990 -- 3 years later voters approved \$280 M for new stadium for Rams (double what had refused for Cardinals)



- Cleveland:

- Cleveland refused to provide sufficient public funding to keep Browns (would renovate but not assist with new stadium – capped at \$125 M (\$129 M in 1999))
 - → they moved to Baltimore in 1997 where city paid \$220 M for their new stadium and became Ravens
 - → in 1999 Cleveland paid \$285 M for stadium for expansion franchise (more than double what it would have cost to keep old Browns)



Communities desire for teams

- Nashville Example

- Built \$145 M arena (approved 1994) for NHL before even awarded a team (became Predators in 1998)



- Built \$292 M stadium (approved 1996) to lure Houston Oilers to Nashville (1999)



- \$437 M committed before even had commitment from teams





Retention Methods

- Methods to avoid team movement
 - Examples of (1) Non-Relocation Agreements
 - **Brewers**, Article 12, pg. 24 & Non-Relocation Agreement
 - Packers, Section 13.4: Non-Relocation Agreement, pg. 43-44

Retention Methods

- (2) Liquidated Damages
 - Nashville Predators – if team defaults on the lease they could owe
 - Thirty Five Million and 00/100 Dollars (\$35,000,000.00), reduced by One Million and 00/1000 Dollars (\$1,000,000.00) per Operating Year beginning on July 1, 1999, and again on the first (1st) day of each July thereafter; provided that in no event shall the Liquidated Damages Amount be less than Ten Million and 00/100 Dollars (\$10,000,000.00); and provided further, that the foregoing amounts shall be adjusted based upon the CPI, with July 1, 1997 as the base year.
- (3) Combination
- ISSUE: Enforceability?

Condemnation



- Process by which governmental unit takes private property for public use – refers to taking of the facility in lease agreement
 - Focus on what happens after the taking
 - Termination
 - Restoration
 - Use of Alternate Facility
 - Dictated by local laws
- Examples
 - Brewers, Art. 18, pgs. 38-39
 - **Packers**, Art. XVII, pgs. 56-57

Relationship to Other Tenants



- Favored Nations Clause
 - Parity / More favorable conditions
 - ✦ Forces “comparable” terms
 - Lease Agreements for the Kansas City Royals and Chiefs who share the Jackson County Sports Complex (the Royals play at Kauffman Stadium and the Chiefs play at Arrowhead Stadium)
 - ✦ If during the term of this Lease. . .the Co-Tenant's lease (i) is changed, modified or amended or (ii) is terminated or expires without extension or renewal and a new lease for the leased premises. . .is executed, then Landlord agrees that all provisions or conditions contained therein, including, without limitation, those pertaining to rental or the tenant's duties, which either separately or in the aggregate *are more favorable* to the tenant than those contained in this Lease and the Co-Tenant's lease shall automatically become and constitute a part of this Lease overriding and modifying any inconsistent provisions contained herein



Relationship to Other Tenants

- Additional Teams
 - Allow/warrant for team/owner to bring in new teams
 - License Agreement between Broward County, Florida, the Florida Panthers Hockey Club, Ltd., and Arena Operating Company, Ltd.
 - Anticipates for the possibility that an NBA team may want to be a tenant in the National Car Rental Center. In such a case the clause calls for the parties to negotiate the License Agreement in such a way that allows for the future NBA team to use the Center as its home facility. However, the clause specifically states, "the lease or license for such NBA team need not be on the same economic terms as Team {Panthers} has under the License Agreement." Panthers retain all of their rights as primary tenant.

Facility Intellectual Property



- Expanding revenue stream
- Use of team and league Intellectual Property
 - Logos, symbols – usually covered by league property agreement
- Facility owner IP
 - Corporate logos and seals
 - Facility logo
 - Way for public entity to get revenue

Finding Leases

- Sports Law Research Resources website

- NSLI Research Holdings Page (<http://law.marquette.edu/cgi-bin/site.pl?2130&pageID=2467>) → Lease Agreements
- Listing of what have in print (CDS in NSLI office/ and NSLI library)
- <http://law.marquette.edu/jw/resources>

- BOOKS

- THE STADIUM GAME: SECOND EDITION (Greenberg, 2000) (Marquette University Press)
- MAJOR LEAGUE LEASES: AN OVERVIEW OF MAJOR LEAGUE FACILITY LEASES AND HOW THEY ARE NEGOTIATED (Anderson & Miller, 2001) (Front Office Publications)
- FINANCING AND LEASE SUMMARIES: MAJOR LEAGUE BASEBALL EDITION (Anderson, 2000) (Front Office Publications)

- DIRECT SOURCES

- State Yellow Book
- 2008 Government Phone Book



QUESTIONS ????

