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BUILDING A BASKETBALL ARENA ON TRIBAL LAND: A COLLABORATIVE APPROACH FOR AMERICAN INDIAN TRIBES AND THE NATIONAL BASKETBALL ASSOCIATION

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INTRODUCTION

During the 2020 Coronavirus Pandemic, more professional athletes began using their platforms to voice concern and raise awareness about social justice issues.¹ Many professional athletes come from diverse racial and ethnic backgrounds. Through these athletes' voices, the concerns for the oppressed, underserved, and impoverished communities are heard and the missed socio-economic opportunities to further develop these communities are highlighted.² Arena renovations are

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¹ See Max Millington, *The Complete Timeline of Athletes Speaking Out Against Racial Injustice Since the Death of George Floyd*, COURIER (Sept. 8, 2020, 1:15 PM), <https://couriernewsroom.com/2020/09/08/timeline-of-athletes-protesting-racial-injustice-george-floyd/>.

² *Id.*

increasing, new arenas and stadiums are being developed, and teams are relocating.³ This Article will explore how building an arena on tribal land could be used to facilitate the athletes' concerns for the oppressed, underserved, and impoverished communities. The Article examines the opportunities for collaboration with American Indian Tribes to develop arenas on tribal land and provides a general guideline for how a National Basketball Association ("NBA") team could build an arena.

I. HISTORICAL OVERVIEW: ATHLETE ACTIVISM, SELF-IDENTIFICATION AND FRANCHISE RELOCATION

A. ATHLETE ACTIVISM FOR SOCIAL JUSTICE IN SPORT

Social justice activism in sport is not a new phenomenon. The most memorable global social justice advocacy moment happened during the 1968 Mexico City Summer Olympic Games when Tommie Smith and Dr. John Carlos⁴ raised their fists.⁵ Not only did Smith and Carlos raise their fists to protest racism, but they removed their shoes to bring awareness to those in impoverished countries and communities around the United States without basic needs.⁶ Smith's and Carlos's courage laid the foundation for athletes to speak up and find themselves at the social justice forefront, particularly over the last decade. In 2012, following Trayvon Martin's death, LeBron James and Dwayne Wade posted a team photo with the players in hoodies looking at the ground, accompanied by the hashtag,

³ *List of Major League's Franchise Relocations*, USA TODAY (Jan. 27, 2017, 2:53 AM), <https://www.usatoday.com/story/sports/nfl/2017/01/27/list-of-major-sports-leagues-franchise-relocations/97125258/>; see also Mike Sunnucks, *Could Salt River Site Be in the Mix for a New Suns Arena, New D-Backs Ballpark?*, PHOENIX. BUS. J. (Sept. 23, 2015), <http://www.bizjournals.com/phoenix/blog/business/2015/09/could-salt-river-sites-be-in-the-mix-for-a-new.html>.

⁴ The author was honored to meet and speak with Dr. John Carlos personally.

⁵ *Dr. John W. Carlos*, John Carlos 1968, <https://www.john-carlos1968.com/home-about> (last visited Mar. 22, 2021).

⁶ *Id.*

#WeAreTrayvonMartin.⁷ Similarly, in response to Eric Garner's death in 2014, NBA athletes wore black shirts with writing that said, "I CAN'T BREATHE."⁸ More importantly, these shirts marked the first time the NBA indirectly supported its athletes by issuing a statement saying it would not fine athletes for wearing nonleague issued apparel.⁹

Later in 2016, National Football League ("NFL") player Colin Kaepernick peacefully protested during the national anthem by sitting and then famously kneeling before NFL games.¹⁰ Most recently, a global rise in athlete protests has occurred in response to George Floyd's death.¹¹ English soccer player Jadon Sancho displayed his undershirt which read, "Justice for George Floyd." NBA, Women's National Basketball Association ("WNBA"), and Major League Soccer (MLS) athletes stood in solidarity with each other and refused to play.¹² Social justice, now more than ever, is at the forefront.

American Indians and the injustices American Indian tribes face are always at the forefront of social justice activism, including the most recent protests against the Dakota Access Pipeline.¹³ Aaron Rodgers, a non-American Indian quarterback for the Green Bay Packers, has publicly called on the White House

⁷ *Heat Don Hoodies After Teen's Death*, ESPN (Mar. 23, 2012), https://www.espn.com/nba/truehoop/miamiheat/story/_/id/7728618/miami-heat-don-hoodies-response-death-teen-trayvon-martin.

⁸ *Report: NBA Won't Fine Players for Wearing 'I Can't Breathe' T-shirts*, SPORTS ILLUSTRATED (Dec. 9, 2014), <https://www.si.com/nba/2014/12/09/nba-i-cant-breathe-tshirts#:~:text=The%20NBA%20will%20not%20fine,July%2C%20reports%20ESPN's%20Jeremy%20Schaap>.

⁹ *Id.*

¹⁰ Cork Gaines, *NFL Anthem Protests Began During a Meaningless Preseason Game Nobody Noticed and Are Now Everywhere*, INSIDER (Sept. 25, 2017, 6:25 AM), <https://www.businessinsider.com/why-nfl-players-protest-anthem-colin-kaepernick-2017-9>.

¹¹ Millington, *supra* note 1.

¹² See Millington, *supra* note 1; see also Ellen Cranley, *Athletes Speaking Out over George Floyd's Death Has Created a Movement of Reckoning for Politics in Sport*, INSIDER (June 10, 2020, 1:02 PM), <https://www.insider.com/athletes-speaking-out-has-created-reckoning-moment-for-leagues-2020-6>.

¹³ See Dave Kolpack, *Corps Want Delay on Hearing to Shut Down Dakota Access Line*, ABC NEWS (Feb. 8, 2021, 10:24 PM), <https://abcnews.go.com/US/wireStory/corps-delay-hearing-shut-dakota-access-line-75768712>.

to terminate the Dakota Access Pipeline.¹⁴ Additionally, Kyrie Irving continually protests the Dakota Access Pipeline,¹⁵ and consistently supports his heritage, promotes his tribe, and provides food and personal protection equipment (e.g., masks) to those on the Standing Rock Sioux reservation.¹⁶

B. ATHLETE RACIAL AND ETHNIC SELF-IDENTIFICATION

American Indian athletes are beginning to speak out and self-identify to create awareness.¹⁷ For example, Kyrie Irving, an athlete outspoken about George Floyd's death and systemic racism,¹⁸ is Sioux.¹⁹ As an American Indian athlete, he has dedicated both time and money to his tribe.²⁰ Additionally, Nike created an initiative dedicated to Native American Heritage called N7, founded in 2009.²¹ The initiative's goal is to promote sport and its associated benefits through providing access to Nike products directly to Native American tribes to support health and disease prevention.²² Many professionals, like Irving, come from nonwhite, diverse backgrounds.²³

The Institute for Diversity and Ethics in Sport (TIDES) conducts an annual survey that provides data about diversity in five United States professional sports leagues, the NCAA, and

¹⁴ *Id.*

¹⁵ Brian Windhorst, *Kyrie Irving Finds New Name and New Family on North Dakota Reservation*, ESPN (Aug. 23, 2018), https://www.espn.com/nba/story/_/id/24444427/kyrie-irving-embraces-native-american-heritage-sioux-naming-ceremony-nba.

¹⁶ Net Income, *Kyrie Irving Donates Food, Masks to His Late Mother's North Dakota Reservation*, SBNATION (May 8, 2020, 9:49 PM), <https://www.netsdaily.com/2020/5/8/21252768/kyrie-irving-donates-food-masks-to-his-late-mothers-north-dakota-reservation>.

¹⁷ See Windhorst, *supra* note 15.

¹⁸ Dan Feldman, *Stephen Jackson: Kyrie Irving Has Been Calling Me Crying Since George Floyd's Death*, NBC SPORTS (June 16, 2020, 5:11 PM), <https://nba.nbcsports.com/2020/06/16/stephen-jackson-kyrie-irving-has-been-calling-me-crying-since-george-floyds-death/>

¹⁹ Windhorst, *supra* note 15.

²⁰ Net Income, *supra* note 16.

²¹ *N7 Community Giving*, NIKE, <https://n7fund.nike.com/about/> (last visited Mar. 22, 2021).

²² *Id.*

²³ White is used as reference to European decent of Caucasian American.

other sport entities.²⁴ In 2019, the five professional sport leagues' and NCAA's athlete nonwhite racial and ethnic make-up among athletes was as follows:

Major League Baseball (MLB): 39.8%²⁵
 NFL: 69.4%²⁶
 NBA: 83/1%²⁷
 WNBA: 82.7%²⁸
 MLS: 60.1%²⁹
 NCAA: 34.4%³⁰

These statistics show over one-half of athletes in four out of five professional sports leagues identify as a nonwhite race or

²⁴ The National Hockey League does not have a TIDES report card. Aaron Beard, *Study: College Sports Still Trail Pros In Diversity Hiring*, ASSOCIATED PRESS (Feb. 24, 2021), <https://apnews.com/article/race-and-ethnicity-college-sports-7dba38e1314589801cf738df8820f7a2>.

²⁵ Richard Lapchick et al., *The 2020 Racial and Gender Report Card: Major League Baseball*, INST. FOR DIVERSITY & ETHICS IN SPORT, https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/a4ad0c_b6693f8943394f2785328f1a992249a1.pdf (last visited Mar. 22, 2021).

²⁶ Richard Lapchick et al., *The 2020 Racial and Gender Report Card: National Football League*, INST. FOR DIVERSITY & ETHICS IN SPORT, https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/326b62_b84c731ad8dc4e62ba330772b283c9e3.pdf.

²⁷ Richard Lapchick et al., *The 2020 Racial and Gender Report Card: National Basketball Association*, INST. FOR DIVERSITY & ETHICS IN SPORT, https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/7d86e5_9ed7a1185cc8499196117ce9a2c0d050.pdf.

²⁸ Richard Lapchick et al., *The 2020 Racial and Gender Report Card: Women's National Basketball Association*, INST. FOR DIVERSITY & ETHICS IN SPORT https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/7d86e5_78609389efa7471292ce8844703a310f.pdf

²⁹ Richard Lapchick et al., *The 2020 Racial and Gender Report Card: Major League Soccer*, INST. FOR DIVERSITY & ETHICS IN SPORT https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/326b62_b206eccbe5a7467da6b05fcbddda16ea.pdf

³⁰ Richard Lapchick, *The 2019 Racial and Gender Report Card: College Sports*, INST. FOR DIVERSITY & ETHICS IN SPORTS, https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/7d86e5_d69e3801bb8146f2b08f6e619bcdcf22.pdf (last visited Mar. 22, 2021).

ethnic background. As a marketing tool, teams may consider relocating or expanding to target a more diverse fan base, reflecting the athletes' diversity.

C. PROFESSIONAL SPORTS TEAMS AND RELOCATION

More professional sports teams are relocating, and no league has been exempt from these changes. Within the past twenty years, the following relocations occurred: one MLB team; five NBA teams;³¹ five WNBA teams;³² and three NFL teams.³³ Before this twenty-year period, three National Hockey League (NHL) teams relocated as well.³⁴

Among the various sports teams, Indian Tribes have rightfully seized opportunities to expand tribes' enterprises into sport beyond Indian Casinos.³⁵ Tribes are now partnering with various businesses, including sports teams, through advertising, corporate partnerships, facility naming rights, and sometimes the sports facility itself.³⁶ For example, the Talking Stick Resort purchased naming rights to the Phoenix Suns' and Mercury's arena.³⁷ This purchase came after U.S. Airways' merged with American

³¹ *List of Major League's Franchise Relocations*, *supra* note 3. See also <https://www.usatoday.com/story/sports/nfl/2017/01/27/list-of-major-sports-leagues-franchise-relocations/97125258/>

³² *List of Major League's Franchise Relocations*, *supra* note 3. Two teams were relocated multiple times which are the five relocated teams. The Detroit Shock relocated to Tulsa and became the Tulsa Shock. The Tulsa Shock then relocated to Dallas, now known as the Dallas Wings. The Utah Starzz relocated to San Antonio became the San Antonio Silver Stars. This was later changed to the San Antonio Stars. The Stars were then relocated to Las Vegas and are now the Las Vegas Aces. See Albert Lee, *What Are the Benefits Of WNBA Expansion and Which Cities Could Get a Team?*, SBNATION (May 22, 2018, 3:00 PM), <https://www.swishappeal.com/wnba/2018/5/22/17378274/2018-wnba-expansion-benefits-cities-bay-area-houston-nashville-sacramento-toronto>.

³³ *List of Major League's Franchise Relocations*, *supra* note 3.

³⁴ *Id.*

³⁵ See Sunnucks, *supra* note 3.

³⁶ *Id.*

³⁷ Russ Wiles, *US Airways Center's New Name: Talking Stick Resort Arena*, ARIZ. REPUBLIC (Dec. 2, 2014, 2:18 PM), <http://www.azcentral.com/story/money/business/2014/12/02/us-airways-center-new-name-talking-stick-resort-arena/19793535/>.

Airlines and decided not to renew their existing naming rights partnership.³⁸ However, the Phoenix teams may be considering relocating the Talking Stick Resort to Scottsdale, Arizona.³⁹ An NBA team relocation would include building a basketball arena on tribal land, which has never been done.⁴⁰ Currently, Talking Stick is home to the Salt River Fields Spring Training Facilities.⁴¹ These facilities occupy a large portion of the Salt River Pima Maricopa Indian Community land.⁴²

A long-standing issue is what rights tribes possess on Tribal Land.⁴³ Factors to determine rights include whether the tribe is federally recognized, whether the tribe has exclusive ownership rights to the land, or whether the tribe has rights to build on the land.⁴⁴ Building on tribal land can be done.⁴⁵ This Article will discuss the tribal land rights' historical development. It will then discuss best practices, such as agreements with sports entities, using an American Indian Nation's name, and current economic developments on tribal land. Further, this Article will explore the best practice models' applications and implications when building a professional sports arena on tribal land as it relates to relocating current NBA teams. Lastly, this Article will conclude with suggestions about how a team would relocate successfully and other options for NBA teams using arenas on tribal land.

³⁸ *Id.*

³⁹ Sunnucks, *supra* note 3.

⁴⁰ *Id.*; Zach Spedden, *Arena Pitched Near Scottsdale Pavilions*, ARENA DIG. (Oct. 27, 2016), <https://arenadigest.com/2016/10/27/arena-pitched-near-scottsdale-pavilions/>. This does not include arenas previously in existence before the team began practice, play games, or host events.

⁴¹ Sunnucks, *supra* note 3.

⁴² *Id.*

⁴³ Matthew L.M. Fletcher, *A Short History of Indian Law in the Supreme Court*, AM. B. ASS'N (Oct. 1, 2014), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol--40--no--1--tribal-sovereignty/short_history_of_indian_law/.

⁴⁴ ROBERT T. COULTER, *NATIVE LAND LAW* (WEST ed., 2015).

⁴⁵ *Id.*

II. DEVELOPING TRIBAL LAND

A. NATIVE LAND LAW'S HISTORICAL DEVELOPMENT

Two interest types are commonly delivered to tribes and individual American Indians of the tribes.⁴⁶ One interest is the “Indian title” which “recognizes the American Indians as the ‘rightful occupants of the soil, with legal as well as just claim;’” and another interest is “fee title,” most recognizable by the discovery doctrine.⁴⁷ The “aboriginal title,” or “Indian title,” is given to land that American Indians occupy to retain until the American Indians’ and tribes’ aboriginal title interest has been terminated.⁴⁸ The discovery doctrine is credited with preventing alternate European settlers from claiming the right to purchase American Indian land.⁴⁹ The discovery doctrine, also known as the “right of preemption,” vested a settler’s or finder’s “rights” to purchase or occupy the land inhabited by American Indians against “all others.”⁵⁰ However, complications with this doctrine are known to arise when American Indians inhabited the land simultaneously to a fee simple title by a non-American Indian settlor.⁵¹ The only method to acquire native land acquired unencumbered after a discovery doctrine controversy was by a sovereign act.⁵²

Recent state supreme courts’ decisions vary from the discovery doctrine’s common law precedent.⁵³ Montana created a rule applicable to all navigable waterways, providing the United States government owns title to all navigable waterways.⁵⁴ In an attempt to create a sovereign act which overthrows the discovery doctrine, Montana’s rule includes waterways traditionally owned by American Indian nations.⁵⁵ Despite the doctrine’s precedent,

⁴⁶ *Id.*

⁴⁷ *Id.* § 2:11 (quoting *Johnson v. McIntosh*, 21 U.S. 543, 574 (1823)).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* § 2:12.

⁵⁵ *Id.*

“the [c]ourt never explained how the United States acquired title to the [navigable waterways] from the [American Indian] Nation.”⁵⁶ Justice Cardozo best stated the United States government’s illogical aboriginal title possession is, “[s]poilation . . . not management.”⁵⁷

American Indians are required to prove aboriginal title. The criteria to prove aboriginal title are like adverse possession: (1) “actual;” (2) “exclusive;” (3) “continuous occupancy;” and (4) “for a long time.”⁵⁸ American Indian nations also have occupancy rights through trust where:

“by an executive order public lands are set aside, either as a new Indian reservation or an addition to an old one without further language indicating that the action is mere temporary expedient, such lands are thereafter properly known and designated as an ‘Indian Reservation’ and so long . . . as the order continues in force, the Indians have the right of occupancy and the United States has the title in fee.”⁵⁹

Additionally, the Indian Gaming Restoration Act (IGRA) covers placing land in trust.⁶⁰

How an American Indian nation holds title to land varies.⁶¹ For example, the United States has codified that the United States held trust title to American Indian lands that have “never been ceded or transferred in any manner to the United States.”⁶² To rectify the way the United States held trust title to the American Indian land, treaties were ratified to reserve land for American Indian nations.⁶³ However, courts customarily refer to American Indian land under governmental authority as *trust land*

⁵⁶ *Id.* (noting the United States gained title to the Big Horn Riverbed that the Crown Nation possessed aboriginal title to).

⁵⁷ *Id.* § 3.3 (quoting Shoshone Tribe of Indians of Wind River Reservation in Wyo. v. United States, 299 U.S. 476, 498 (1937)).

⁵⁸ *Id.* (quoting Sac and Fox Tribe of Indians of Okla. V. United States, 315 F.2d 896, 903 (1963)).

⁵⁹ *Id.* § 4.2 (citing Spaulding v. Chandler, 160 U.S. 394 (1896)).

⁶⁰ 25 U.S.C. § 2703(4) (2020).

⁶¹ ROBERT T. COULTER, NATIVE LAND LAW, § 4:1 (WEST ed., 2014).

⁶² *Id.*

⁶³ *Id.*

despite whether the land is actually held in trust by the United States.⁶⁴

The Indian Trade and Intercourse Act does not require the land to be held in trust to qualify for “protections against alienation” whereas IGRA does.⁶⁵ These two federal statutes give trust title to the American Indian nations, but fewer allotment acts exist. Allotment acts include the General Allotment Act and the Indian Reorganization Act (IRA).⁶⁶

The General Allotment Act passed in 1897, created a trust title for the United States to hold Native lands in trust for allotment.⁶⁷ The allotted Native land was then broken up into individual parcels of land. The “surplus” land that was not allotted was sold by the government.⁶⁸ The IRA, passed in 1934, rejected allotment policies and authorized the Secretary of the Interior to place American Indian lands in trust.⁶⁹ However, allotment acts that do not create trust title for the American Indian nations⁷⁰ are held in “restrictive fee,” which restricts the owner’s ability to “affect title.”⁷¹ These restrictions are premised on the notion the Federal Government has a “special obligation” to hold the title to the land, but the fee simple is held by the American Indian nations.⁷²

Some statutes ceded land to the Indian nations and sold the land held in trust; the funds from the sale were deposited into accounts for the Indian nations.⁷³ Unsold land remained in trust.⁷⁴ In some instances, authority is given to the government to “exercise its power as trustee over lands held in *fee simple*.”⁷⁵ For example, West’s treatise on native land suggests that, in *Cherokee Nation v. Hitcock*, the Supreme Court found the American Indian nation could not manage the trust land on the tribe’s behalf,

⁶⁴ *Id.*

⁶⁵ *Id.*; 25 U.S.C. § 2703.

⁶⁶ ROBERT T. COULTER, NATIVE LAND LAW, § 4:3 (WEST ed., 2014).

⁶⁷ *Id.*

⁶⁸ *Id.*.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* Restrictive fee refers to alienability that would affect title.

⁷² *Id.* § 4:4.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

holding, the government had the duty to step in.⁷⁶ Duties imposed by the courts to the United States government are similar to a trustee's duties and include: "protect[ing] . . . preserv[ing] . . . inform[ing] the beneficiary about the condition of the resources . . . act[ing] fairly, honestly, and with prudence."⁷⁷ The trust land duties may also include management, operation, capitalizing on profits, and transparency with property accounts held in trusts for the American Indian nation.⁷⁸ Circumstances where the government does not actually control the land held in trust, is closely akin to a constructive trust, where the government has an "equitable duty" to handle the Indian land for the American Indian nations' benefit.⁷⁹

Further, trust land is not taxable.⁸⁰ Therefore, trust land excludes the tribal government from taxing, leaving no local tax dollar funding to use toward building schools, roads, hospitals, and police forces.⁸¹ Trust land is also inalienable and cannot be used as collateral for a loan, including a small loan for a home on tribal land.⁸² Tribes are then forced to take advantage of laws that will create large capital for the tribe's benefit, most commonly, gas, tobacco, and gaming.⁸³ In today's economy, these opportunities extend to permits or licenses for tribal land usage and American Indian tribe naming rights.⁸⁴

B. ECONOMIC DEVELOPMENTS ON TRIBAL LAND

Tribes open themselves to business development opportunities to accelerate social impact on the community.⁸⁵

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* § 4:1.

⁷⁹ *Id.* § 4:20.

⁸⁰ *Id.* § 4:4.

⁸¹ *Oversight Hearing on Economic Development in Indian Country: Hearing Before the Subcomm. on Indian Affairs*, 109th Cong. 115–16, 115 (2006) <https://www.congress.gov/109/chrg/CHRG-109shrg27563/CHRG-109shrg27563.pdf> [hereinafter *Hearing*] (statement of Lance Morgan, CEO, Ho-Chunk, Inc.).

⁸² *Id.* (discussing the effect of trust land limiting the tribes' biggest resource for financial gain, land).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Lance Morgan, *The Accidental Tribal Economic Development Model and the Rise of Tribal Institutions*, Ariz. State

Tribal government's business operations ownership generally harms a tribe's development.⁸⁶ Lance Morgan, a professor and Ho-Chunk tribe member, states tribes are unintentionally creating tribal economies that replicate nontribal governments, similar to those used by the states and community economic development procedures.⁸⁷ Ho-Chunk Inc., a Winnebago tribe in Nebraska, exemplifies replicating community economic development. Ho-Chunk Inc. has won the Harvard Honoring Nations Award after the tribe created a tribal-owned and chartered holding company to stimulate a nongaming economy.⁸⁸ Ho-Chunk Inc. then assisted in developing a Tribal College and a community development corporation.⁸⁹ The community development corporation was created as a 501(c)(3), which created a limit on the oversight by the tribal government.⁹⁰

Each tribe has a different political and economic structure because of its location, tribal political and cultural beliefs, and the number of tribal members.⁹¹ According to Morgan, tribes that succeed in the gaming industry have a lesser need for economic development, and as a result, have greater monetary resources to create other successful business developments.⁹² Economic development among the tribes include grants, nonprofits, entrepreneurship, tribal corporate economic development, and business recruitment.⁹³ For example, the Ute tribe's economic

University, (March 2016); *see also* Memorandum of Understanding between the Ute Indian Tribe and the University of Utah, (March 3, 2020) <http://admin.utah.edu/ute-mou/> (discussing the importance of assisting the tribes' children to social achievements).

⁸⁶ Hearing *supra* note 81, at 115.

⁸⁷ Hearing, *supra* note 81, at 115.

⁸⁸ Nalini Bikkina, What the Tribal Peoples Displaced by Development in India Can Learn from the Resilience of the Winnebago Tribe in Nebraska, 34 J. OF DEVELOPING Soc'Y 351, 365 (2018).

⁸⁹ *Id.* at 364.

⁹⁰ *Id.*

⁹¹ SHAWN BORDEAUX, THE TRIBAL ECONOMIC DEVELOPMENT "A TOTAL APPROACH", <https://ots.gov/topics/consumers-and-communities/community-affairs/resource-directories/native-american-banking/bordeaux.pdf> (last visited Apr. 4, 2021). *See generally* Annette Alvarez, Native American Tribes and Economic Development, URBANLAND (Apr. 19, 2011), <https://urbanland.uli.org/development-business/native-american-tribes-and-economic-development/>.

⁹² BORDEAUX, *supra* note 91, at 5.

⁹³ *Id.* at 4—6.

developments include grocery stores, gas stations, bowling alleys, feedlots, technology companies, and water systems.⁹⁴ The main businesses stimulating the Ute tribe's economy are cattle raising, mining oil, and natural gas.⁹⁵

Tribal corporate economic developments vary and are commonly formed as single purpose or general entities, such as for selling tobacco and gas.⁹⁶ Another type of tribal corporate economic development is government contracting, where the tribe leverages its sovereign immunity to promote financial and employment gain.⁹⁷ Business recruitment is a tribal economic development commonly seen in sports. For example, the tribe may use its sovereign status to encourage a non-American Indian business to relocate a venue. The tribe can also promote the tribe's reservation business developments through business recruitment by attracting non-American Indians to invest in the reservation, like with casino gaming and resorts.⁹⁸

C. EXISTING JURISDICTION ON TRIBAL LAND

Preliminary issues that arise for a professional sports team to build on American Indian land include personal jurisdiction and subject matter jurisdiction over the players, team, and its affiliates. The United States Constitution provides federal courts jurisdiction over all cases and controversies arising under the Constitution, United States laws, or treaties.⁹⁹ This means federal courts would adjudicate matters arising under treaties made with American Indian tribes. However, few exceptions exist which would likely impact the jurisdictional concerns faced when building on tribal land and inviting non-American Indians onto the land. Federal law provides American Indian tribes are only subject to suit where Congress provides or the tribe's immunity has been waived.¹⁰⁰

⁹⁴ See *Economic Development*, UTE MOUNTAIN UTE TRIBE, <http://www.utemountainutetribes.com/economic%20development.html> (last visited Apr. 5, 2021).

⁹⁵ *Id.*

⁹⁶ BORDEAUX, *supra* note 91, at 2—4.

⁹⁷ *Id.*

⁹⁸ BORDEAUX, *supra* note 91, at 2—4.

⁹⁹ U.S. CONST. art. III § 2.

¹⁰⁰ *Kiowa Tribe of Okla. v. Mfg. Tech.*, 523 U.S. 749, 754 (1998) (citing *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g, P.C.*, 476 U.S. 877, 890 (1986); *Santa Clara Pueblo v.*

American Indian tribes, although identified in the Constitution,¹⁰¹ do not fall under Article III, Section 2 of the United States Constitution.¹⁰² In 1831, the Supreme Court noted American Indian tribes are not foreign states, but are more akin to sovereign states.¹⁰³ Over 100 years later, the Court recognized American Indian tribes are “separate sovereigns pre-existing, the Constitution.”¹⁰⁴ Tribes are not exempt from suit in United States courts by sovereign immunity but rather by federal common law immunity.¹⁰⁵ The Court acknowledged “[American] Indian tribes retain inherent sovereign power to exercise some forms of jurisdiction over non-[American] Indians in their reservations, even on non-[American] Indian fee land.”¹⁰⁶ In *Kiowa*, the Court upheld prior American Indian tribe immunity rulings and deferred to Congressional legislation, which provides specific suits that may be brought into non-American Indian courts.¹⁰⁷ In the same ruling, the Court upheld the American Indian tribe’s immunity because “Congress failed to abrogate [the immunity doctrine]” in efforts to promote American Indian tribes’ self-government and economic development efforts.¹⁰⁸

American Indian tribes are communities with independent political bodies, as a separate and distinct body, that “possess the power to regulate their internal relations over their citizens and their territories.”¹⁰⁹ The regulations by tribes to the American Indians, persons on the tribal land, and the land the tribes possess creates sovereignty no different than a state within the United States.¹¹⁰ Indian tribes have created governments like those within

Martinez, 436 U.S. 49, 58 (1978); and *United States v. U. S. Fid. & Guar. Co.*, 309 U.S. 506, 512 (1940).).

¹⁰¹ Joshua Jay Kanassatega, *The Discovery Immunity Exception in Indian Country—Promoting American Indian Sovereignty by Fostering the Rule of Law*, 31 WHITTIER L. REV. 199, 238 (2009).

¹⁰² *Id.*

¹⁰³ *Id.* at 239.

¹⁰⁴ *Santa Clara Pueblo*, 436 U.S. at 56.

¹⁰⁵ *Id.* at 58.

¹⁰⁶ *Montana v. United States*, 450 U.S. 544, 565 (1979).

¹⁰⁷ *Kiowa Tribe of Okla. v. Mfg. Tech.*, 523 U.S. 749, 751—52 (1998).

¹⁰⁸ *Id.* at 760.

¹⁰⁹ Joshua Jay Kanassatega, *The Case for “Expanding” the Abstention Doctrine to Account for the Laws and Policies of the American Indian Tribes*, 47 GONZ. L. REV. 589, 617 (2011).

¹¹⁰ *Id.* at 611.

the United States and have delegated certain authorities to persons associated with the tribal government.¹¹¹

Special Counsel to the Menominee Tribal Enterprises has suggested any person engaging in activity under an American Indian nation or tribe's authority then becomes subject to that Indian tribe's court process.¹¹² The tribe's court would have the power to exercise jurisdiction, and that tribe's law is applied.¹¹³ "When business deals are negotiated, Indians and non-Indians alike focus on dispute resolution issues, including in what jurisdiction, form, and under what law the parties should litigate disputes if they arise."¹¹⁴ Dispute resolution and jurisdictional issues are raised when building an arena on tribal land.

III. TRIBES AND SPORTS

A. CURRENT USAGE OF INDIAN TRIBES' NAME, LIKENESS, PROPERTY, AND LAND

Few sports entities have used or built on tribal land. The most common use for tribal land is by permit for those seeking to have a temporary use for individual sports.¹¹⁵ Additionally, many sports teams carry disapproval from American Indian nations and dismiss the negative connotations associated with American Indians as mascots.¹¹⁶ The debate surrounding politically correct mascots has brought attention to many mascots that historically have brought pride to their home teams.¹¹⁷ People still hotly dispute whether the land some arenas and stadiums are built on are originally American Indian lands taken unjustly by the United

¹¹¹ *Id.* at 612.

¹¹² See generally Joshua Jay Kanassatega, *The Case for "Expanding" the Abstention Doctrine to Account for the Laws and Policies of the American Indian Tribes*, 47 Gonz. L. Rev. 589 (2011).

¹¹³ *Id.* at 649.

¹¹⁴ *Id.* at 653.

¹¹⁵ See JAN ELISE STAMBRO ET AL., AN ANALYSIS OF A TRANSFER OF FEDERAL LANDS TO THE STATE OF UTAH 30 (Utah Bureau of Econ. & Bus. Research ed. 2014).

¹¹⁶ See Allison Torres Burtka, *Native American Mascots—Honoring Culture or Symbol of Disrespect?*, GLOB. SPORTS MATTER (Apr. 24, 2018), <https://globalsportmatters.com/culture/2018/04/24/native-american-mascots-honoring-culture-symbol-disrespect>.

¹¹⁷ *Id.*

States government.¹¹⁸ However, some sports teams and tribes have reached agreements to embrace the Indian Nations' name.¹¹⁹

B. AMERICAN INDIAN LAND PERMIT AND SPORT

American Indian tribes commonly license land sharing divides with state governments through usage permits for private entities that request access for individual sports.¹²⁰ Non-American Indian governments have the authority to manage lands sharing waterways with tribal land because various codified management acts exist.¹²¹ Examples of shared waterways include the Navajo Nation, Navajo Indian Reservation on the San Juan River's south side, Ute Indian Tribe, and the Uintah and Ouray Indian Reservation on the Green River's east side.¹²²

The Bureau of Land Management authorized Disabled Sports USA use public and private lands sharing waterways for physical activities adapted for disabled individuals.¹²³ The San Juan River, Westwater Canyon of the Colorado River, and Desolation and Gray Canyons of the Green River, are managed by the Bureau of Land Management, and share the San Juan River's south side and the Green River's east side with the American Indian nations.¹²⁴ Because of these shared waterways, Disabled Sports USA is required to obtain permits from each American Indian nation to camp and host activities on the tribal land.¹²⁵

C. NAME USAGE AND SPORT

¹¹⁸ *Id.*; see, e.g., *United States v. Super. Ct. in & for the Ctny. of Maricopa*, 144 Ariz. 265 (1985).

¹¹⁹ Jim Litke, *Teams Say Indian Names Show Respect, History Says Otherwise*, LAKE NEWS ONLINE (Dec. 17, 2020 3:17 PM), <https://www.lakenewsonline.com/story/sports/2020/12/17/history-indian-names-sports/3947474001/>.

¹²⁰ Memorandum of Understanding between U.S. Dept. of Interior Bureau of Land Management and Disabled Sports USA, BLM MOU UT 930 FY 2014-01 (2014).

¹²¹ *Id.* at 1.

¹²² *Id.* at 8.

¹²³ *Id.* at 1.

¹²⁴ *Id.* at 2.

¹²⁵ *Id.* at 8.

Non-American Indians also use tribes' names.¹²⁶ The University of Utah and the Ute Indian Tribe of the Uintah and Ouray Reservation entered into a memorandum of understanding ("MOU") for using the name "Ute."¹²⁷ The agreement states, among many other benefits, cultural awareness and tribal pride are valuable.¹²⁸ Utah is home to the Uintah and Ouray Reservation, the second-largest Indian Reservation at over 4.5 million acres, and named after the Ute tribe.¹²⁹

The University of Utah uses the Ute name for its athletic organizations.¹³⁰ In the agreement, the University incorporated a design chosen by the Ute tribe on team uniforms worn once a year to honor the tribe and its members' during Native American Heritage month.¹³¹ The agreement also provides the University will allow the Ute tribe to present its flags at a home game opening ceremony held by Ute tribe Honor Guards.¹³² Using the Ute name is a "source of pride to members of the Ute Indian Tribe" and helps bring notoriety to the tribe through a higher education institution.¹³³

Similarly, the Spokane Indians, a Northwest minor league team, collaborated with the Spokane Tribe of Indians.¹³⁴ In 2006 during a rebrand, the front office went directly to the Spokane Tribe of Indians for permission to use the name.¹³⁵ The collaboration continued beyond the team name and went on to developing a team logo approved by the Spokane Tribe of Indians,

¹²⁶ Memorandum of Understanding, *supra* note 85 (The agreement was updated and revised on March 3, 2020 to include more educational outreach programs for the Ute community and additional funds allocated to the Ute community).

¹²⁷ Memorandum of Understanding, *supra* note 85.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Rodney Harwood, *Spokane Indians Take Historic Step with Logo in Salish Language*, INDIAN COUNTRY TODAY MEDIA NETWORK (Dec. 27, 2013) (article on file with author); *See also* Paul Caputo, *Authenticity, Collaboration, Respect: The Story Behind the Spokane Indians*, SPORTSLOGOS.NET (July 19, 2020), <https://news.sportslogos.net/2020/07/19/authenticity-collaboration-respect-the-story-behind-the-spokane-indians/baseball>.

¹³⁵ *See* Harwood, *supra* note 134.

in an effort to show respect to the local tribe and avoid negative context associated with Indian imagery.¹³⁶ The partnership originally resulted in a team logo in the traditional Salish language, giving the Spokane Tribe of Indians a great pride.¹³⁷ Later, the partnership expanded to include signs at the arena written in traditional Salish language and an initiative to raise awareness to redband trout conservation efforts.¹³⁸

D. NAMING RIGHTS PARTNERSHIP

Tribes also enter into agreements with professional sports teams or arenas to provide the naming rights of the field, court, entryway, facility, and often premier signage.¹³⁹ Arenas, generally owned by the cities, are leased to sports teams or management companies which in turn are leased to sports teams owners or the sports entity.¹⁴⁰ Facility naming rights not associated with a management company are contractually acquired by the sports teams leasing the facility.¹⁴¹ Larger corporations commonly contract with the lessor team for these naming rights.¹⁴²

Arizona is a marketable state with many opportunities to partner with an Indian Tribe.¹⁴³ Specifically, the larger Phoenix, Arizona area has many tribes with flourishing casinos that wish to continue their brand's growth by supporting the teams their

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *About Gila River Arena*, GILA RIVER ARENA, <http://gilariverarena.com/arena/about/> (last visited Mar. 27, 2021).

¹⁴⁰ *Id.*

¹⁴¹ Craig Morgan, *Coyotes, Gila River Casinos Agree to Naming Rights Deal for Arena*, FOX SPORTS (Aug. 13, 2014, 3:14 PM), <http://www.foxsports.com/arizona/story/coyotes-gila-river-casinos-agree-to-naming-rights-deal-for-arena-081314>.

¹⁴² See Matthew E. Eisler et al., *Insight: Sports Sponsorship, Naming Rights—Takeaways for Getting a Name in Lights*, BLOOMBERG (Aug. 12, 2019, 1:01 AM), <https://news.bloomberglaw.com/us-law-week/insight-sports-sponsorship-naming-rights-takeaways-for-getting-a-name-in-lights>.

¹⁴³ Tommi Goodman, *In Limited Market, Phoenix Teams Turn to Native American Communities to Sponsor Arenas*, CRONKITE NEWS (Apr. 29, 2016), <http://cronkitenews.azpbs.org/2016/04/29/in-limited-market-phoenix-teams-turn-to-native-american-communities-to-sponsor-arenas>.

consumers support.¹⁴⁴ In 2000, the Salt River Pima-Maricopa Indian Community was the first Indian Tribe to enter into a marketing partnership with the Phoenix Suns.¹⁴⁵ This partnership was extended in 2005 when the Community purchased the naming rights to the lobby entrance of the arena, currently known as Casino Arizona Pavilion.¹⁴⁶ Subsequently, the Arizona Rattlers, an arena football team, partnered with the Ak-Chin Indian Community to name the Rattlers' field Ak-Chin Field.¹⁴⁷ The partnership included the tribe's seal on the field and premier placement of Ak-Chin advertising around the arena.¹⁴⁸ The Rattlers currently play in PHX arena, formerly Talking Stick Resort Arena.¹⁴⁹

The City of Glendale was the first city to enter into an agreement with a federally recognized tribe, the Gila River Indian Community, for naming rights and premier advertising signage indoors at a professional sports venue.¹⁵⁰ The Arizona Coyotes entered into an agreement with the Gila River Indian Community for the naming rights to the facility owned by Glendale and managed by Global Spectrum.¹⁵¹ Glendale leased the facility to the Arizona Coyotes for fifteen years and gave the team the right to terminate contracts, including naming rights, subject to Glendale City Council approval.¹⁵² Additionally, the Glendale City Council approved a name change for Jobing.com arena to be

¹⁴⁴ *Id.*

¹⁴⁵ *A Team of Their Own: Ak-Chin Inks Sponsorship Deal with Arizona Rattlers*, INDIAN COUNTRY TODAY (Mar. 28, 2013), <https://indiancountrytoday.com/archive/a-team-of-their-own-ak-chin-inks-sponsorship-deal-with-arizona-rattlers>.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Richard Obert, *Rattlers Return to Suns Arena for 2021 Indoor Football League Season, Release Schedule*, AZCENTRAL.COM (Nov. 17, 2020, 3:20 PM), <https://www.azcentral.com/story/sports/ifl/rattlers/2020/11/17/rattlers-return-suns-arena-2021-ifl-season-release-schedule/6330452002>.

¹⁵⁰ *Id.*

¹⁵¹ Goodman, *supra* note 143.

¹⁵² Mike Sunnucks, *Arizona Coyotes Sign Gila River Casinos to Arena Naming Rights Deal*, PHX. BUS. J. (Aug. 13, 2014), <http://www.bizjournals.com/phoenix/news/2014/08/13/arizona-coyotes-sign-gila-river-casinos-to-arena.html>.

renamed Gila River Arena.¹⁵³ This same agreement also provided for a long-time sponsorship agreement for advertising and marketing set to expire in 2023.¹⁵⁴

Similarly, the downtown Phoenix arena, which hosts the Phoenix Suns and Phoenix Mercury basketball teams, entered into a multiyear naming rights agreement changing the name from the US Airways Center to Talking Stick Resort Arena.¹⁵⁵ Professional teams outside Arizona have followed its example and entered into partnerships with other tribes. The Los Angeles Clippers partnered with the Agua Caliente Band of Cahuilla Indians as an official and exclusive casino partnership.¹⁵⁶ This partnership included exclusive broadcasting the Los Angeles Clippers games at the resort, as well as premier advertising signage in the Staples Center during the Clippers' home games.¹⁵⁷ This partnership expanded in 2017 to include a naming rights partnership with the Los Angeles Clippers' G-League affiliate team.¹⁵⁸ The Agua Caliente Clippers currently play in the Toyota Arena owned by the City of Ontario in California.¹⁵⁹

E. TEAM OWNERSHIP

In 2003, the Mohegan Tribe of Indians of Connecticut ("Mohegan Tribe") entered into a membership agreement with the WNBA to purchase the Connecticut Suns' team ownership

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Sue Doerfler, *US Airways Center Becomes Talking Stick Resort Arena on Oct. 7*, AZCENTRAL.COM (Sept. 17, 2015, 6:06 PM), <http://www.azcentral.com/story/money/business/2015/09/17/us-airways-arena-talking-stick-resort-arena/72366148>. The arena is currently named PHX Arena since the expiration of the Talking Stick Resort partnership. Obert, *supra* note 149.

¹⁵⁶ Marcus Fong, *L.A. Clippers Announce Agua Caliente Casino Resorts as Presenting Sponsor of 2015/16 Season*, NBA.COM (Nov. 19, 2015) <http://www.nba.com/clippers/la-clippers-announce-agua-caliente-casino-resorts-presenting-sponsor-2015-16-season>.

¹⁵⁷ *Id.*

¹⁵⁸ C. Mendez, *L.A. Clippers Bring NBA Development League Team to Ontario, CA*, NBA.COM (July 12, 2017), <https://agua-caliente.league.nba.com/news/l-a-clippers-bring-nba-development-league-team-to-ontario-ca>.

¹⁵⁹ *About Us*, TOYOTA ARENA, <https://www.toyota-arena.com/arena-info/about> (last visited Jan. 17, 2021).

rights.¹⁶⁰ First, the Mohegan Tribe created a Limited Liability Company to purchase the team. The company, Mohegan Basketball Club, LLC ("Basketball Club") a subsidiary of the Mohegan Tribal Gaming Authority ("Gaming Authority"), was formed according to the tribe's laws.¹⁶¹ The Gaming Authority is a tribal owned business.¹⁶² The Mohegan Tribe, the Basketball Club, and the Gaming Authority were all necessary signatories to the agreement.¹⁶³

The original agreement included the WNBA's standard membership requirements for ownership groups such as compliance with the collective bargaining agreement ("CBA"), league rules, prohibitions against sports gambling, rights to territory for advertising, community outreach programming, sponsorship restrictions, and broadcasting rights.¹⁶⁴ It includes approval for using the Mohegan Sun Arena, which is located on the tribe's land.¹⁶⁵ Some specific provisions relate exclusively to the Connecticut Sun. One provision is consenting to using the Sun name. Consent for the Connecticut Sun team's operations was acquired by the WNBA from the Phoenix Suns.¹⁶⁶ The Mohegan Tribe, Basketball Club, and the Gaming Authority were required to agree to specific limitations and waive some sovereignty as it relates to tribal matters.¹⁶⁷ The Mohegan Tribe is a signatory because the agreement required the tribe to not amend, update, pass, or enact legislation that would modify, nullify, or affect the agreement between the WNBA and the tribe's affiliates.¹⁶⁸ The agreement is governed and construed by New York law.¹⁶⁹

Additionally, the tribe's affiliates agreed to waive all rights to asserting sovereignty as it related to any claims asserted by the WNBA or against the WNBA in relation to the agreement or the League Rules.¹⁷⁰ Further, the agreement includes specific

¹⁶⁰ WNBA Membership Agreement (Jan. 28, 2003), <https://www.sec.gov/Archives/edgar/data/1005276/000092701603000332/dex101.htm>.

¹⁶¹ *Id.* at 1.

¹⁶² *Id.* at 29.

¹⁶³ *Id.* at 1.

¹⁶⁴ *Id.* at 9—10.

¹⁶⁵ *Id.* at 5.

¹⁶⁶ *Id.* at 14.

¹⁶⁷ *Id.* at 11—12.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 21.

¹⁷⁰ *Id.*

provisions referencing waiving rights to claims that may fall under the jurisdiction of the Mohegan Tribe Gaming Disputes Court or other tribal courts.¹⁷¹ The waiver to claims that fall under the jurisdiction of the Mohegan Tribe Gaming Disputes Court or other tribal courts includes waiving the right to exhaust remedies in tribal courts prior to filing in the U.S. court system.¹⁷² Additionally, if the WNBA chose to arbitrate, the tribe's affiliates are required to arbitrate in New York under the Commercial Rules of American Arbitration Association.¹⁷³ In return, the WNBA agrees no recourse exists against the tribe or its affiliates, except for the Basketball Club or Gaming Authority.¹⁷⁴

F. ARENAS AND FIELDS

Arizona has expanded its opportunities from partnerships with tribes to building fields on American Indian land.¹⁷⁵ Teams such as the Phoenix Rising FC and the Arizona Diamondbacks use fields built on tribal land. Teams' relationships with tribes represent opportunities to build their brands and strengthen ties with American Indian communities.

1. PHOENIX RISING FC FIELDS

The United Soccer League (USL) team, Phoenix Rising FC, privately financed a stadium on Salt River Pima-Maricopa Indian Community land in hopes to expand from the USL to the MLS.¹⁷⁶ This training facility and soccer stadium was built for the 2017 season¹⁷⁷ to host 6,200 individuals.¹⁷⁸ This field was built in

¹⁷¹ *Id.* at 22.

¹⁷² *Id.*

¹⁷³ *Id.* at 23.

¹⁷⁴ *Id.* at 22.

¹⁷⁵ *About Gila River Arena, supra* note 139.

¹⁷⁶ Alejandro Barahona, *Arizona United SC Reveals New Name and Logo Plus Stadium Plans for 2017 Season*, AZCENTRAL (Nov. 28, 2016, 7:02 PM), <https://www.azcentral.com/story/news/local/scottsdale/2016/11/28/arizona-united-sc-reveals-new-name-and-logo-plus-stadium-plans-2017-season/94569050>.

¹⁷⁷ *Id.*

¹⁷⁸ Mike Sunnucks, *Phoenix Rising Soccer Team Wants to Build New MLS Stadium on Salt River*, PHX. BUS. J. (Feb. 2, 2018, 8:54 AM),

collaboration with the Solanna Group,¹⁷⁹ an American Indian family-owned real estate investment firm.¹⁸⁰ In 2019, Phoenix Rising FC and the Salt River Pima–Maricopa Indian Community entered into a stadium naming rights deal.¹⁸¹ The former Phoenix Rising Sports Complex was renamed the Casino Arizona Field, after the sister property to Talking Stick Resort, the Casino Arizona.¹⁸² Phoenix Rising FC recently announced it is relocating to the Wild Horse Pass located in the Gila River Indian Community¹⁸³ that is being built by the Wild Horse Pass Development Authority, a Gila River Indian Community enterprise.¹⁸⁴ Governor Berke Bakay of Phoenix Rising expressed his deepest gratitude to the American Indian communities for the ability to provide a home for the teams initial success.¹⁸⁵ The field will increase seating capacity by 35% and make its debut in the 2021 season.¹⁸⁶

2. SALT RIVER FIELDS

Continuity and tradition play large roles in tribal decision-making. Like the Ute tribe's partnership with the University of Utah, the Salt River Pima–Maricopa Indian Community partnered

<https://www.bizjournals.com/phoenix/news/2018/02/02/phoenix-rising-soccer-team-wants-to-build-new-mls.html>.

¹⁷⁹ *About Gila River Arena*, *supra* note 139.

¹⁸⁰ *Multi-Billion-Dollar Akimel 7 Planned at Loops 101 and 202*, AZ BIG MEDIA (Jan. 4, 2020), <https://azbigmedia.com/real-estate/commercial-real-estate/multi-billion-dollar-akimel-7-planned-for-loops-101-and-202>.

¹⁸¹ Phoenix Rising Comm's, *Phoenix Rising FC Partners with Casino Arizona for Stadium Naming Rights*, PHX. RISING FC (Mar. 15, 2019, 2:45 PM), https://www.phxrisingfc.com/news_article/show/1004535.

¹⁸² *Id.*

¹⁸³ Phoenix Rising Comm's, *Phoenix Rising FC Moves Stadium and Professional Training Center to Wild Horse Pass*, PHX. RISING FC (Dec. 10, 2020, 11:25 AM), https://www.phxrisingfc.com/news_article/show/1136579.

¹⁸⁴ *Gila Community Likely Site for New Soccer Stadium*, AHWATUKEE FOOTHILLS NEWS (Dec. 17, 2020), https://www.ahwatukee.com/news/article_e3a937e8-3fcb-11eb-87f8-179b7e60cf5.html.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

with the Arizona Diamondbacks and the Colorado Rockies to build a spring training facility on tribal land.¹⁸⁷ The Salt River Pima tribe's President announced the tribe's excitement to support baseball's continuity and tradition and to bring "baseball home to our community."¹⁸⁸ The agreement will stand for twenty-five years.¹⁸⁹ The spring training stadium has an 11,000 seat capacity and is surrounded by twelve practice fields, accompanying clubhouses, training facilities, and team offices.¹⁹⁰

Specific architecture for the facilities and specialty grass for the fields were among the terms included in the agreement between the tribe and baseball teams.¹⁹¹ The Salt River Pima–Maricopa Community was required to pass an ordinance to establish the Salt River Fields enterprise.¹⁹² This ordinance exists to "develop[] and operat[e] the Community's spring training and Community recreational facility."¹⁹³ The ordinance also allowed Salt River Field to "enter into, make[] and perform [on] contracts" including the current agreements with the professional baseball teams.¹⁹⁴ However, some limitations in the ordinances required approval from the tribe's Community Council to lease the facility and for expenditures beyond the budget provided for the fiscal year.¹⁹⁵

The Arizona Diamondbacks lease Salt River Fields as their primary spring training facility from the Salt River Pima–

¹⁸⁷ Media Release Salt River Pima Maricopa Indian Community Announces Location for New Spring Training Site for Arizona Diamondbacks & Colorado Rockies (July 16, 2009) (on file with author). See also *Teams to Share Spring Site on Tribal Land*, ESPN (Jul. 16, 2009), <https://www.espn.com/mlb/news/story?id=4332013>.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* (explaining that HKS Architects, which previously designed the Cowboys Stadium (now AT&T Stadium) in Dallas and facilities for the Los Angeles Dodgers and Chicago White Sox, will design the complex.)

¹⁹² SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, CODE OF ORDINANCES § 1-322(c) (2012) (establishing Salt River Fields as a subordinate economic enterprise "in the business of developing and operating the Community's spring training and Community recreational facility.").

¹⁹³ *Id.*

¹⁹⁴ *Id.* § 1-322(e)(1).

¹⁹⁵ *Id.* § 1-322(e)(1)(a),(b).

Maricopa Indian Community. This agreement is like the leases held by the Arizona Coyotes and the Phoenix Suns. The Code of Ordinances for the Salt River Pima–Maricopa Community provides the tribal Community Court retains original jurisdiction over matters falling under subject matter jurisdiction.¹⁹⁶ Subject matter jurisdiction includes contract and tort matters. Because dispute resolutions are required in business deals among American Indians and non-American Indians alike,¹⁹⁷ special ordinances were passed to protect the tribe’s community, the professional sport teams, the athletes, and team staffs.¹⁹⁸ The ordinance below protects the Salt River Pima–Maricopa Indian Community from financial liability incurred by Salt River Fields.¹⁹⁹ The ordinance reads:

Under no circumstances shall the Community be responsible for any debt, liability, or obligation of Salt River Fields. Instead any debt, liability or obligation of Salt River Fields shall be paid and discharged exclusively by Salt River Fields and from assets or accounts held in the name of Salt River Fields, as provided in this article.²⁰⁰

A subsequent ordinance specifies Salt River Fields is a “subordinate economic organization of the Community,” and is entitled to the protective immunities including suit in the tribal, state, local taxation, and federal courts.²⁰¹ However, Salt River Fields may waive immunity under two specific sub-sections requiring a written waiver.²⁰²

¹⁹⁶ *Id.* § 4-1 (jurisdiction).

¹⁹⁷ Joshua Jay Kanassatega, *The Case for “Expanding” the Abstention Doctrine to Account for the Laws and Policies of the American Indian Tribes*, 47 Gonz. L. Rev. 589 (2011).

¹⁹⁸ SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, CODE OF ORDINANCES § 1-322(c) (2012).

¹⁹⁹ *Id.* § 1-322(d).

²⁰⁰ *Id.*

²⁰¹ *Id.* § 1-323(b) (capitalization and financial responsibility of Salt River Fields).

²⁰² *Id.* § 1-323(b)(1)–(2).

Another tribal ordinance prevents liability for any matters regarding the players, team, and league. This ordinance eliminates liability for injuries to a spectator that may occur during a game.²⁰³ The ordinance is intended to limit the team owners' civil liability, and "help contain costs" because baseball is "a wholesome and healthy family activity which should be encouraged."²⁰⁴ The ordinance provides notice that spectators attending the facility for baseball games should know about the injuries that could occur during a game.²⁰⁵ Further, the ordinance states entrance into the facility means spectators have agreed to the game's natural consequences, such as unintentional physical contact from in-game equipment, or items associated with normal in-game activity.²⁰⁶ These activities are "inherent risks" associated with baseball and have a broad scope. A spectator injuring another spectator or their property is the only exception to these "inherent risks."²⁰⁷

Lastly, the ordinance states individuals assume a baseball game's inherent risks:

[B]e a complete bar to suit and shall serve as a complete defense to a suit against an owner by a spectator for injuries resulting from the assumed risk . . . an owner shall not be liable for an injury to a spectator resulting from the inherent risks of attending a baseball activity.²⁰⁸

This defense's exception is an owner's intentional conduct to injure a spectator.²⁰⁹ The term 'owner' includes both the Salt River Pima-Maricopa Community and the legal entities that control the Arizona Diamondbacks and Colorado Rockies.²¹⁰ The term

²⁰³ *Id.* § 1-324(b) ("Spectators of baseball activities are presumed to have knowledge of and to assume the inherent risks of observing baseball activities.").

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.* § 1-324(e).

²⁰⁸ *Id.* § 1-324(c).

²⁰⁹ *Id.* This paper does not discuss the jurisdictional differences between criminal and civil liability for tortious or criminal acts).

²¹⁰ *Id.* § 1-324(f)(1)-(2).

‘owner’ also includes the owner’s affiliates, such as players, managers, and employees.²¹¹

3. *BRAND BUILDING FOR PHOENIX RISING FC AND THE ARIZONA DIAMONDBACKS*

Since relocating to Casino Arizona Field, Phoenix Rising FC acquired a consistent fan base and sold out the last three games prior to COVID-19 cancellations.²¹² Relocating to Wild Horse Pass will further improve the fan experience by including more than one entrance, paved parking, family sections, and possibly tailgating areas.²¹³ Although the new stadium is not as central to Phoenix as was Casino Arizona Field, Phoenix Rising Governor, Berke Bakay, believes this change is offset by the stadium’s updated infrastructure.²¹⁴ “It pained us to watch our fans try and get out of the stadium,” says Governor Bakay.²¹⁵ General Manager, Bobby Dulle, believes the research conducted for stadium improvements will cater to the fan base and create a stronger brand for Phoenix Rising FC.²¹⁶

Upon relocating the Diamondbacks and Rockies to Salt River Fields, the Phoenix Valley now has fifteen Major League Baseball teams in the Cactus League.²¹⁷ Spring training is a major attraction in Arizona. Before the Salt River Fields construction, the Cactus League brought in \$360 million in revenue for the state, with 1.57 million fans attending on average each spring.²¹⁸ The new spring training facility not only provides a tourist attraction, but also provides a local attraction for Arizona Diamondback fans

²¹¹ *Id.*

²¹² Phoenix Rising Comm’s, *supra* note 183.

²¹³ Jake Anderson, *Phoenix Rising’s Move to Wild Horse Pass is All About Fan Experience*, ARIZ. SPORTS (Dec. 11, 2020 12:10 PM), <https://arizonasports.com/story/2475670/phoenix-risings-move-to-wild-horse-pass-is-all-about-fan-experience>.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ See Rudy Rivas, *2015 Cactus League Spring Training: Salt River Fields (Dbacks and Rockies)*, ABC 15 (Feb. 24, 2015 12:38 PM), <https://www.abc15.com/sports/sports-blogs-local/2015-cactus-league-spring-training-salt-river-fields-dbacks-and-rockies>.

²¹⁸ *Spring Cactus League Attendance Up*, SPORTS NEWS (Mar. 30, 2011 8:29 PM), https://www.upi.com/Sports_News/2011/03/30/Spring-Cactus-League-attendance-up/69911301531365/.

and creates an opportunity for the team to build a stronger fan base. Derrick Hall, President and CEO of the Arizona Diamondbacks, noted, “[we] ultimately found this site to be superb. This will prove to be the finest and most fan-friendly complex in all of baseball, with the most accessible location that features the Valley’s most breathtaking views in existence.”²¹⁹ In addition, Colorado Rockies President, Keli McGregor, stated, “we know that this shared home will be one of the finest year-round training facilities in all of Major League Baseball and something that our organizations, fans, and the Community will be proud of for decades to come.”²²⁰

As noted, constructing a sports facility on tribal land is only one of many issues to consider in an economic development with an Indian nation. Economic development with American Indian nations is in high demand and not limited to casinos.²²¹ Permits and licenses to use a tribe’s land will continue to develop for outdoor activity consumers.²²² Licenses between American Indian and non-American Indian organizations represent partnerships. These partnerships strengthen relationships in communities with a high American Indian population, but are not located on tribal land.²²³ Naming rights partnerships are grounding the tribes’ status within the non-American Indian community and creating opportunities for a community once considered an underdog by non-American Indians.²²⁴ These partnerships are now evolving to build facilities that create further legal considerations such as dispute resolution clauses, jurisdiction of patrons, and jurisdiction of the team, tribe, and affiliates of each.²²⁵

IV. REQUIREMENTS TO BUILD AN ARENA FOR A NATIONAL BASKETBALL ASSOCIATION TEAM

²¹⁹ *Salt River Pima-Maricopa Indian Community Announces New Spring Training Site For Arizona Diamondbacks & Colorado Rockies*, MLB (July 16, 2009 12:28 PM), http://mlb.mlb.com/content/printer_friendly/ari/y2009/m07/d16/c5891404.jsp.

²²⁰ *Id.*

²²¹ *See generally* Hearing, *supra* note 81.

²²² MOU, *supra* note 120, at 8.

²²³ MOU, *supra* note 85; *see also* Hardwood, *supra* note 134.

²²⁴ About Gila River Arena, *supra* note 139.

²²⁵ Kanassatega, *supra* note 197.

Professional basketball team owners must follow the NBA Constitution and Bylaws to relocate to a new city or arena.²²⁶ According to the NBA's Constitution and Bylaws, a team may relocate as provided in Article 10, only as permitted by Article 7, and if applicable must meet requirements set out in Article 8, Article 9, or both.²²⁷

A. RELOCATION TO AN ALTERNATE ARENA

An NBA member team must file an application with the Commissioner to relocate to a different location within its existing territory or to an existing location outside its territory.²²⁸ An existing territory is the "seventy-five air mile distance of the corporate limits of the city of operation."²²⁹ Unless otherwise agreed, a team does not have the right to operate its team in another NBA team's territory.²³⁰ The application process for relocation must be made in writing, identify the proposed relocation territory, and be submitted with a \$50,000 variant fee in territory or a \$250,000 fee outside of territory.²³¹ These costs offset the NBA's relocation investigation; fees exceeding these amounts will be reimbursed by the Member team.²³² After investigating, a five-person Relocation Committee, appointed by the Commissioner, will make a binding decision approving or denying the relocation.²³³

The Relocation Committee considers nine factors:

1. Support from the "fans, telecasters, broadcasters, and sponsors" by evaluating the Member teams' "performance in the management and operation" in the current city.²³⁴

²²⁶ Nat'l Basketball Ass'n Const. and Bylaws, Const. art. 7 (2019).

²²⁷ *Id.* at art. 7—10.

²²⁸ *Id.* at art. 7(a).

²²⁹ *Id.* at art. 10(a).

²³⁰ *Id.* at art. 7(a).

²³¹ *Id.*

²³² *Id.*

²³³ *Id.* at art. 7(b).

²³⁴ *Id.* at art. 7(b)(i).

2. Current support the Member team facilitates for the NBA in the current city by evaluating the “existing and projected population, income levels, and age distribution; existing and projected markets for [network] transmission of [NBA] games; exiting and projected business environment;” the current occupied arena and arenas in the territory; and “the presence, history, and popularity” of professional sports and entertainment in the current city.²³⁵
3. Support from the suggested relocation city by evaluating the same criteria as above listed in 2.²³⁶
4. The Member team’s current and projected financial status and financial resources to support relocation.²³⁷
5. The Member team’s past performance in operation and management with the NBA.²³⁸
6. The relocation’s effect on the NBA and the ability for the NBA to promote and market basketball to a diverse demographic nationwide.²³⁹
7. The relocation’s effect on the NBA and the current or potential contractual obligations to network providers.²⁴⁰
8. Any disadvantages posed by relocating such as “adverse laws or regulations” and travel or schedule incompatibilities.²⁴¹
9. Teams’ interest in the NBA to transfer to the requested city.²⁴²

²³⁵ *Id.* at art. 7(b)(ii).

²³⁶ *Id.* at art. 7(b)(iii).

²³⁷ *Id.* at art. 7(b)(iv).

²³⁸ *Id.* at art. 7(b)(v).

²³⁹ *Id.* at art. 7(b)(vi).

²⁴⁰ *Id.* at art. 7(b)(vii).

²⁴¹ *Id.* at art. 7(b)(viii).

²⁴² *Id.* at art. 7(b)(ix).

After the Relocation Committee makes a recommendation, the Board of Governors approve or deny the relocation.²⁴³ The Board of Governors may condition the relocation, including financial conditions and indemnity to the NBA for such a relocation.²⁴⁴ Of these factors, only numbers seven, eight, and nine have legal implications to be considered in the move. These factors will be discussed in the analysis below.

B. RENOVATED ARENA VS. NEWLY CONSTRUCTED ARENA

For a team to consider relocating to an unconstructed arena or a constructed arena, the arena must meet the substantial compliance standards.²⁴⁵ The NBA Commissioner is entrusted with the power to establish “minimum standards” for the arena’s design to ensure the NBA has the ability to properly operate and produce for network televised games and the ability to regulate such in-game events.²⁴⁶ The Commissioner is also endowed with the power to regulate the policies and procedures to “ensur[e] compliance” and enforce these provisions.²⁴⁷ However, the Member team has the sole responsibility to ensure the arena complies with local, state, and federal statutes, regulations, and ordinances.²⁴⁸

A Member team may relocate to an unconstructed arena or an existing arena.²⁴⁹ Relocating to an unconstructed arena require that “all designs, plans, and specifications” must be submitted to the Commissioner and receive a written approval at least thirty days before a team begins construction *and* the arena substantially complies with “minimum arena standards.”²⁵⁰ To relocate to an existing arena that may or may not require substantial renovations, the member team must acquire written approval from the Commissioner stating the existing arena or the plans to modify and renovate the arena to substantially comply with the “minimum arena standards” thirty days before the

²⁴³ *Id.* at art. 7(d).

²⁴⁴ *Id.* at art. 7(e).

²⁴⁵ *Id.* at art. 8(a).

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.* at art. 8(b).

²⁵⁰ *Id.* at art. 8(b)(i)(A)(B) (*emphasis added*).

meeting with the Board of Governors to consider the pending application.²⁵¹ In both relocation scenarios, the Commissioner has the discretion to determine “*substantial compliance*” for the “NBA’s minimum arena standards.”²⁵²

C. POTENTIAL CITIES FOR RELOCATION

In 2004, economists from the University of San Francisco and Sports Economics conducted a study evaluating the viability of an NBA team expansion or relocation.²⁵³ The two models used to forecast the preferential cities were based on location and revenue potential formulas.²⁵⁴ The location formula was based on the market characteristics and revenue potential, whereas, the revenue potential formula was based on market characteristics and team characteristics.²⁵⁵ Market characteristics were factored based on city population, public’s income, competition with other sports franchises, public support for a publicly financed arena in that city (fanaticism), and corporate depth.²⁵⁶ Winning percentage, arena quality, and prices related to attending a game were used to make up the team characteristics.²⁵⁷

The study concluded Louisville, Kentucky; San Diego, California; Baltimore, Maryland; St. Louis, Missouri; and Norfolk, Virginia would be ideal cities for expansion or relocation.²⁵⁸ Rascher updated his research in 2015 and compared the viability results to the relocations made by the Charlotte Hornets to New Orleans²⁵⁹ and the Seattle Sonics to Oklahoma City.²⁶⁰ Rascher found the Hornets’ move to New Orleans was

²⁵¹ *Id.* at art. 8(b)(ii).

²⁵² *Id.* at (b)(iv) (*emphasis added*).

²⁵³ Daniel Rascher & Heather Rascher, NBA Expansion and Relocation: A Viability Study of Various Cities, 18 J. OF SPORTS MGMT. 274 (2004).

²⁵⁴ *Id.* at 274—75.

²⁵⁵ *Id.* at 277.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 274—75.

²⁵⁹ Daniel A. Rascher, *The Optimal Location for an NBA Franchise* 3 (Sept. 7, 2015) (unpublished article) (on file with author). The Charlotte Hornets relocated to New Orleans in 2002. Rascher provided viability predictions for the Charlotte Hornets (now New Orleans Pelicans) franchise based on 1998 to 2000 data.

²⁶⁰ *Id.*

consistent with the previous findings proving New Orleans was not an ideal market for relocation.²⁶¹ In 2010, the New Orleans Pelicans were purchased by the NBA because the team had financial hardships.²⁶² Rascher predicted the move to Oklahoma City would not yield high revenue.²⁶³ This updated study states Louisville, Kentucky and Austin, Texas are optimal cities for relocation.²⁶⁴ For this paper, other cities in the study located near tribal land²⁶⁵ were selected for comparison to cities with NBA teams.

D. TOPICS NOT ADDRESSED IN THIS ARTICLE

Many other issues give rise to building an arena on tribal land. However, this Article will not analyze how to create an expansion team or league for the arena. Likewise, this Article will not discuss sports gambling and implications related to sports betting. Lastly, arena funding will only be discussed regarding who will build the arena and how the team will use the arena. This Article will not discuss costs to build the arena and tax exemptions associated with such a project.

IV. APPLICATION OF BUILDING AN ARENA ON TRIBAL LAND

Many economic development opportunities exist between a professional sports team and an American Indian nation. For a professional basketball team to relocate to an arena on tribal land, a business recruitment²⁶⁶ to build a venue would likely be the best option. Building a venue would provide the sports team with some economic privileges associated with the tribe's status. Also, it removes the burden of hiring a management company for the

²⁶¹ *Id.*

²⁶² Ken Belson & Howard Beck, *Debt Escalating, Hornets Are Purchased by N.B.A.*, N.Y. TIMES (Dec. 6, 2010), <https://www.nytimes.com/2010/12/07/sports/basketball/07hornets.html>.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ Indian Lands of Federally Recognized Tribes of the United States (illustration), in BUREAU OF INDIAN AFFAIRS, <https://www.bia.gov/sites/bia.gov/files/assets/public/webteam/pdf/idc1-028635.pdf>, (last visited Dec. 22, 2020).

²⁶⁶ BORDEAUX, *supra* note 91.

facility, and promotes the tribe's economic and business development.²⁶⁷

A. IDENTIFYING A TRIBAL LAND LOCATION

The first step in building an arena on tribal land is to identify the states with large tribal populations and land. The Northwest, West Coast, and South West United States have the most federally recognized tribes.²⁶⁸ Next, identifying tribal land centrally located or near a major metropolitan city provides for a promising fan and attendee market. Using the Rascher study, this analysis proposes teams relocate tribal land near Tampa, Florida; Albuquerque, New Mexico; and Tucson, Arizona. These three cities are less than a thirty-minute drive from the tribal land. Additionally, Tampa is the temporary home to the Toronto Raptors during the COVID-19 pandemic.²⁶⁹

B. IDENTIFYING THE TEAM(S) TO RELOCATE²⁷⁰

Based on predictions from the attendance analysis, gate revenue analysis, and total revenue analysis,²⁷¹ both Albuquerque and Tucson are projected to do equally well, if not better than some cities that currently have teams. Albuquerque²⁷² and Tucson²⁷³ have a higher predicted attendance than the Milwaukee

²⁶⁷ *Id.*

²⁶⁸ Lands in the United States (illustration), in BUREAU OF INDIAN AFFAIRS, <https://www.bia.gov/sites/bia.gov/files/assets/public/pdf/idc013422.pdf>, (last visited Aug. 21, 2016).

²⁶⁹ *Toronto Raptors to Play Home Games in Tampa to Open NBA Season*, ESPN (Nov. 20, 2020), https://www.espn.com/nba/story/_/id/30354415/toronto-raptors-play-home-games-tampa-open-nba-season.

²⁷⁰ The identifications of these teams do not consider current leasing agreements with the arenas that currently house the NBA teams. For the exclusive purpose of the analysis of relocation to tribal land, the subsequent teams were identified and suggested as relocation teams.

²⁷¹ Rascher & Rascher, *supra* note 253 at 11—16. Rascher used three regression models for his predictions that removed, replaced, or adjusted variables for each model set of data.

²⁷² *Id.* at 13. Albuquerque's Attendance Analysis regression model estimates are 17,628; 17,881; and 15,100.

²⁷³ *Id.* Tucson's Attendance Analysis regression model estimates are 17,452; 17,591, and 14,849.

Bucks²⁷⁴ in all three regression models used in the study.²⁷⁵ In two regression models, Albuquerque and Tucson have a higher predicted attendance than eight other cities that currently have teams.²⁷⁶ The gate revenue analysis predictions are consistent with Albuquerque²⁷⁷ and Tucson²⁷⁸ having higher gate revenue generation than the Milwaukee Bucks²⁷⁹ in all three regression models.²⁸⁰ Referring to only two predicted regression models increases the Albuquerque and Tucson positioning above eleven other cities.²⁸¹ However, the total revenue analysis predictions brings some variant results in regard to the three regression models used. Albuquerque's²⁸² total revenue is predicted slightly below the Milwaukee Bucks²⁸³ in two regression models, but

²⁷⁴ *Id.* The Milwaukee Bucks' Attendance Analysis regressions model estimates are 16,084; 16,187, and 14,733.

²⁷⁵ *Id.* "Regression analysis is a way of mathematically sorting out which . . . variable[] does indeed have an impact." In a regression analysis, a researcher gathers data on the relevant variables, plots the data on a chart, and draws a line that bests fits the plotted data. Amy Gallo, *A Refresher on Regression Analysis*, HARV. BUS. REV. (Nov. 4, 2015), <https://hbr.org/2015/11/a-refresher-on-regression-analysis#>.

²⁷⁶ *Id.* The cities with teams that have a less predicted attendance in two regression models are the Philadelphia 76ers, New Orleans Pelicans, Minnesota Timberwolves, Phoenix Suns, Detroit Pistons, Sacramento Kings, Orlando Magic, and the Cleveland Cavaliers.

²⁷⁷ *Id.* at 15. Albuquerque's Gate Revenue regression model estimates are \$37,361,998; \$36,626,882; and \$18,225,821.

²⁷⁸ *Id.* Tucson's Gate Revenue regression model estimates are \$40,189,936; \$39,200,313; and \$21,244,749.

²⁷⁹ *Id.* The Milwaukee Bucks' Gate Revenue regression model estimates are \$30,702,889; \$30,098,994; and \$14,535,100.

²⁸⁰ *Id.*

²⁸¹ *Id.* The cities with teams that have a less predicted gate revenue in two regression models are the Philadelphia 76ers, New Orleans Pelicans, Minnesota Timberwolves, Detroit Pistons, Sacramento Kings, Orlando Magic, Cleveland Cavaliers, Washington Wizards, Indiana Pacers, Memphis Grizzlies, and Atlanta Hawks.

²⁸² *Id.* at 17. Albuquerque's Total Revenue Analysis regression model estimates are \$129,754,390; \$140,413,914; and \$113,240,542.

²⁸³ *Id.* The Milwaukee Bucks' Total Revenue Analysis regression model estimates are \$131,104,298; \$139,126,420; and \$114,954,275.

above in one.²⁸⁴ Tucson's²⁸⁵ total revenue is predicted below in only one regression model by a difference of \$212,403. Consistent with the previous predictions, both Albuquerque and Tucson have a higher total revenue analysis, in two regression models, than ten other cities with NBA teams.²⁸⁶

However, Tampa is not as high on the viability list; its viability factors are predicted to be under some cities with teams. For example, Tampa's²⁸⁷ predicted attendance for two regression models are close to the Philadelphia 76ers²⁸⁸ and the New Orleans Pelicans.²⁸⁹ The predicted gate revenue analysis for two of Tampa's²⁹⁰ totals were higher than the Atlanta Hawks²⁹¹ and two of Tampa's totals were close to the Detroit Pistons.²⁹² The total revenue analysis for Tampa²⁹³ was only higher than the New Orleans Pelicans²⁹⁴ for two regression's models.

C. FOUR STEPS TO BUILDING AN NBA ARENA ON TRIBAL LAND

²⁸⁴ *Id.*

²⁸⁵ *Id.* Tucson's Total Revenue Analysis regression model estimates are \$131,298,668; \$140,483,454; and \$114,741,82.

²⁸⁶ *Id.* The cities teams that have a less total revenue in analysis in two regression models are Philadelphia 76ers, New Orleans Pelicans, Minnesota Timberwolves, Detroit Pistons, Sacramento Kings, Orlando Magic, Washington Wizards, Indiana Pacers, Memphis Grizzlies, and Atlanta Hawks.

²⁸⁷ *Id.* at 13. Tampa's Attendance Analysis regression model estimates are 14,745; 15,309; and 11,502

²⁸⁸ *Id.* The Philadelphia 76ers' Attendance Analysis regression model estimates are 14,951; 14,990; and 15,110.

²⁸⁹ *Id.* The New Orleans Pelicans' Attendance Analysis regression model estimates are 15,181; 14,903; and 15,174.

²⁹⁰ *Id.* at 15. Tampa's Gate Revenue Analysis regression model estimates are \$19,629,449; \$19,979,285; and \$4,523,750.

²⁹¹ *Id.* The Atlanta Hawks Gate Revenue Analysis regression model estimates are \$17,515,002; \$16,969,945; and \$27,558,011.

²⁹² *Id.* The Detroit Pistons' Gate Revenue Analysis regression model estimates are \$19,832,975; \$19,861,711; and \$26,410,907.

²⁹³ *Id.* at 17. Tampa's Total Revenue Analysis regression model estimates are \$113,935,166; \$132,637,914; and \$105,421,737.

²⁹⁴ *Id.* The New Orleans Pelicans' Total Revenue Analysis regression model estimates are \$111,959,691; \$115,851,700; and \$129,301,171.

First, the tribe must decide if it will develop a team from an existing partnership or create a new partnership between a tribe and team. Second, the tribe must create a holding company similar to the previously discussed Ho-Chunk Inc., Mohegan Basketball Club, LLC and Salt River Fields.²⁹⁵ Third, the tribe must determine which jurisdiction applies to the team, and assess what ordinances needed to limit civil and financial liability.²⁹⁶ Fourth, the tribe and team will apply for relocation and collaborate to construct the arena in accordance with the “minimum standards” compliance requirement set forth by the NBA for team relocation.²⁹⁷ To demonstrate these steps’ application, the Seminole Tribe of Florida (“Seminole Tribe”) will be referenced as it relates to the Tampa Reservation.

First, the Seminole Tribe must decide if it will expand upon an existing partnership or create a new partnership with a team. It appears the Seminole Tribe does not have existing name usage, naming rights partnership, or corporate and sponsorship agreements with a professional team.²⁹⁸ The Seminole Tribe of Florida has five gaming facilities²⁹⁹ and two reservations that offer other tourism experiences.³⁰⁰ Through these facilities, the Seminole tribe may consider entering into a partnership with a team like the Los Angeles Clippers, where the tribe broadcasts the team’s content exclusively during game days and grants rights to use the tribe’s name for the G League.³⁰¹ This partnership type will serve as a strong foundation for the tribe to create a leveraged fan base for future partnerships.

²⁹⁵ BORDEAUX, *supra* note 91.

²⁹⁶ SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, CODE OF ORDINANCES § 4.1; *see also*, KAREN J. ATKINSON & KATHLEEN M. NILLES, TRIBAL BUSINESS STRUCTURES HANDBOOK I-4, III-1 to III-9 (2008) <https://www.hklaw.com/files/Uploads/Documents/Practices/IndianLaw/TribalBusinessStructureHandbook.pdf>.

²⁹⁷ *See* Nat’l Basketball Ass’n Const. and Bylaws, *supra* note 226, art. 8.

²⁹⁸ *See generally* SEMINOLE TRIBE OF FLA., <https://www.seminoletribe.com/stof> (last visited Jan. 28, 2021).

²⁹⁹ *Gaming Facilities*, SEMINOLE TRIBE OF FLA., <https://www.seminoletribe.com/stof/enterprises/gaming-facilities>, (last visited Jan. 28, 2021).

³⁰⁰ *Big Cypress Citrus*, SEMINOLE TRIBE OF FLA., <https://www.seminoletribe.com/stof/enterprises/big-cypress-reservation/big-cypress-citrus> (last visited Jan. 28, 2021).

³⁰¹ Fong, *supra* note 156.

Political issues closely surround economic development with American Indian nations.³⁰² If handled thoughtfully, this type of partnership will promote the tribal community's brand and the team's brand. The Seminole Tribe has created a brand representing "community and a valuable legacy of Florida's rich and diverse heritage and a national leader among American Indian tribes striving for self-reliance."³⁰³ This reputation can be exhibited by a sports team. Innovative collaboration between the team and tribe will stretch far beyond naming partnerships and limited baseball seasons, helping develop a connection between American Indian and non-American Indian commerce that will bring sustainable economic development to the tribal community.

As the Seminole Tribe is located in Florida – a state known for warm weather – the teams will attract patrons all year, from Spring training to basketball season.³⁰⁴ The teams could agree to recognize and honor the Seminole Tribe during Native American Heritage month in November, which would help connect the NBA team's fans to the tribe's overarching brand. This partnership will strengthen the bonds between the NBA team's fans, the Seminole Tribe, and proud Florida residents.

Second, the tribe must create and own a chartered holding company³⁰⁵ or a subordinate economic enterprise to stimulate a nongaming economy.³⁰⁶ The chartered holding company will be created through the tribe's laws and ordinances, in the same way the tribe usually prepares to build a casino, hotel, or resort.³⁰⁷ Because each tribe has a different economic or political structure, the tribe must consider how much oversight will be provided by the chief counsel, to prevent any critical harm to the tribe and

³⁰² See generally Annette Alvarez, *Native American Tribes and Economic Development*, URBANLAND (Apr. 19, 2011), <https://urbanland.uli.org/development-business/native-american-tribes-and-economic-development/>.

³⁰³ *The Future*, SEMINOLE TRIBE OF FLA., <https://www.seminoletribe.com/stof/history/the-future> (last visited Jan. 22, 2021).

³⁰⁴ Basketball season tends to run during the colder fall and early winter seasons, especially on the east coast.

³⁰⁵ See Shane Plumer, *Turning Game Dollars into Non-Gaming Revenue; Hedging for the Seventh Generation*, 34 MINN. J.L. & INEQ. 515, 530 (2016); See generally Atkinson & Nilles, *supra* note 296 at I-4, III-1 to III-9 (2008).

³⁰⁶ See Plumer, *supra* note 305, at 534.

³⁰⁷ *Id.* at 523.

prevent the government from owning the business.³⁰⁸ This economic enterprise will then provide a mechanism for the tribe to enter into an agreement with a professional basketball team to use an arena and bring business to the reservation.³⁰⁹

Although Indian gaming is a newer revenue source for many tribes, it has facilitated extreme economic growth.³¹⁰ As mentioned above, the Seminole Tribe of Florida has five gaming facilities³¹¹ and two reservations that offer other tourism experiences.³¹² Outlet malls on and near tribal land are on the rise, creating an entertainment hub similar to Salt River Fields, providing ample opportunity for additional economic development.³¹³ Because the Seminole Tribe has many economic enterprises in Florida, including the Hard Rock Hotel & Casino, the ordinances and structures to create a new chartered holding company or subordinate economic enterprise may already be in place.³¹⁴ Therefore, the Tribal Council would only have to create ordinances for arena construction.

An arena built and managed by the Seminole Tribe will generate revenue with a lease and will also create jobs for tribe members. This arrangement will also benefit the teams, who will be able to reduce their expenses. By managing the building, the tribe could reduce the team's outgoing expenses. Expenses for managing the building and the employees that work for the facility would be included as part of the leasing fee. Teams that own arenas generally have to hire staff to manage the arena, contract

³⁰⁸ *Id.* at 532—33.

³⁰⁹ *Id.* at 516—20; *see also* Tommi Goodman, *Cronkite News: Sports Teams Turn to Tribes for Naming Rights Deals*, INDIANZ (May 3, 2016), <https://www.indianz.com/News/2016/05/03/cronkite-news-sports-teams-tur.asp> (discussing similar relationships between Native American communities and professional sports teams in the Phoenix area.).

³¹⁰ James I. Schaap, *The Growth of the Native American Gaming Industry: What Has the Past Provided, and What Does the Future Hold?*, 34 AM. INDIAN Q. 365, 368—69 (2010).

³¹¹ *Gaming Facilities*, *supra* note 299.

³¹² *See Big Cypress Citrus*, *supra* note 300.

³¹³ Patric Hedlund, *Tejon Tribe Casino Confirmed*, MOUNTAIN ENTER., (July 4, 2014), <https://mountainenterprise.com/story/tejon-tribe-casino-confirmed-2/>.

³¹⁴ *Tampa Reservation*, SEMINOLE TRIBE OF FLA., <https://www.semtribe.com/stof/enterprises/tampa-reservation>, (last visited Jan. 28, 2021).

with a third-party management company to manage the arena, or contract a third-party concessionaire company. Here, the Seminole Tribe would hire staff for management, concessions, security, ushering services, retail operations, and ticketing staff for arena operations. However, the NBA's sponsorship agreements, like its agreement with Pepsi Co., could conflict with the Tribe's existing vendors the Hard Rock Hotel & Casino require franchisees to use.³¹⁵ Sponsorship conflicts will not negatively impact the revenue or employment opportunities generated by the arena.

Conversely, the NBA team may experience a decrease in revenue initially and possibly continuously overall. Spring training facilities in Arizona are revenue generating because many retirees frequent Arizona during spring.³¹⁶ Like Salt River Fields, where a casino is central to a city known for its shopping centers, yet only twenty miles from a city, building an arena in Arizona is a prime opportunity for consistent revenue generation. Here, it is slightly difficult to determine whether basketball game attendees on tribal land in areas such as Tucson, Albuquerque, or Tampa are like retirees attending Arizona's spring training. Additionally, it is difficult to determine if fans frequenting University of Arizona games in Tucson, New Mexico State games in Albuquerque, and Buccaneers games in Tampa Bay would attend a basketball game on the nearby tribal land. However, the Seminole Tribe's existing outlet stores and restaurants may help make the area around the arena an ideal environment for tourism.

Based on the Rascher studies (which are not specified to the tribal land demographic), teams would likely significantly increase the tribe's revenue. The team may be able to capitalize on this opportunity and enter into an agreement with the Seminole Tribe to exclusively broadcast the team's games in the five other

³¹⁵ Darren Rovell, *PepsiCo Partners with NBA, Has Deals with Four Major Sports Leagues*, ESPN (Apr. 13, 2015), https://www.espn.com/nba/story/_/id/12678602/nba-announces-partnership-deal-pepsico.

³¹⁶ See Michael Pollick, *In Contest for Retirees, Arizona Bets on Baseball*, HERALD-TRIBUNE (Mar. 15, 2009, 12:01 AM), <https://www.heraldtribune.com/news/20090315/in-contest-for-retirees-arizona-bets-on-baseball>; see also Thomas Barrabi, *MLB spring training an economic home run in Florida, Arizona*, FOX BUS. (Feb. 13, 2020), <https://www.foxbusiness.com/sports/mlb-spring-training-economic-impact-florida-arizona>.

gaming facilities, which may require the NBA's approval. These broadcasts would create a larger fan base for the team.

Third, the Tribe must assess the existing jurisdictional limitations that could restrict the team's ability to function as a non-Indian enterprise. Additionally, the Tribe must consider the ordinances and liability limitations necessary to protect the tribe and provide an incentive for a team to relocate. Conflicts of law exist because the tribes have their own court system and are not subject to state law.³¹⁷ Initially, the tribe and team must enter a Memorandum of Understanding ("MOU"). This agreement must delineate: (1) the tribe's separate subordinate economic enterprise from the Tribe; (2) ordinances will be created or are in existence which limit liabilities to the team, NBA, and tribe, and the tribe will not change any ordinance or tribal law that would affect the status of the agreement or team; (3) the relocation cost and who will cover it (the team, the tribe, or both); (4) fees related to the facility such as adjustments to the facility required by the league will be covered by the tribe; and (5) if the relocation is denied, which party will pay during the relocation investigation conducted by the NBA. However, if relocation is denied, the MOU could include an alternate plan to build a smaller facility to house the team's G League. An MOU ensures both parties will engage in fair business dealings during negotiations and building the arena.

Once the MOU is in place, the Seminole Tribe would create a separate subordinate economic enterprise from the tribe and the gaming facility on the Tampa reservation. The ordinances created or altered to ensure adequate safeguards are in place to limit any liabilities to the team, NBA, and Tribe.

The Tribe must then determine the limitations for financial liability to protect the tribe from debt, tort, or contract disputes.³¹⁸ Determining the limits to financial liability ensures if the facility acquires debt, if the facility breaches the contract with the team and does not provide services, or if any other financial liability arises based on the facilities' actions, the tribe's greater collective is protected from financial liability. Ordinances protecting the tribe, the team, the athletes, and owners are then

³¹⁷ Ryan Dreveskracht, *Doing Business in Indian Country: A Primer*, A.B.A. (Jan. 20, 2016), https://www.americanbar.org/groups/business_law/publications/blt/2016/01/05_dreveskracht/.

³¹⁸ See Atkinson & Nilles, *supra* note 296.

passed and limit liability occurring during a game.³¹⁹ However, the tribe and its affiliates may be required to waive all rights to assert sovereignty in these ordinances as it relates to claims asserted by the NBA or against the NBA pursuant to the League Rules.³²⁰ Conversely, if the Tribe passed ordinances like the laws in the states, the need to waive sovereignty in litigation for failure to comply with League Rules could become moot. The tribe may require conflicts be resolved in mediation, arbitration, or some other forum, rather than a federal court.³²¹ Mediation or arbitration may assist in repairing the relationship between the team and the tribe if a dispute occurs, as well as save litigation costs.

Many professional sports leagues and player's associations are collectively bargained, as are their jurisdictions. Jurisdictions predetermined by a CBA create conflicts because American Indian jurisdiction is not accounted for in a CBA. Likewise, jurisdictional conflicts subject athletes, teams, employees, and owners to different civil and criminal liabilities. The MOU entered into between the team and tribe must specify the tribe will comply with the CBA, league rules, prohibitions against sports gambling, rights to territory for advertising, outreach programming, sponsorship restrictions, and broadcasting rights.³²² Facility employees leased by the teams generally enter into employment agreements with specific contract provisions, subjecting the employee to a state's jurisdiction. However, if the tribe manages and employs the staff for the arena, ordinances would only include exemptions for the players, employees, and team owners.³²³

Ordinances limiting civil liabilities, such as inherent risks of the game or alcohol consumption limits on a reservation, should

³¹⁹ BORDEAUX, *supra* note 91, at 4. This is the method agreed to between the Salt River Pima Maricopa Community and the Arizona Diamondbacks. *See also* SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, CODE OF ORDINANCES § 1-324(b) (2012).

³²⁰ BORDEAUX, *supra* note 91. This is the method agreed to between the Mohegan Tribe and the WNBA. *See also* WNBA Membership Agreement, *supra* note 160, at 22.

³²¹ *See* WNBA MEMBERSHIP AGREEMENT (Jan. 28, 2003), <https://www.sec.gov/Archives/edgar/data/1005276/000092701603000332/dex101.htm>.

³²² *See* Atkinson & Nilles, *supra* note 296.

³²³ *See* WNBA Membership Agreement, *supra* note 321.

be passed.³²⁴ This protects the team and the team affiliates from liability during a game for conduct such as loose balls entering the crowd, players falling into attendees, or physical disputes between attendees. Additionally, alcohol consumption limits protect the tribe from attendees that may be temporarily impaired and unable to drive in a safe manner on the reservation and the outlying city. The Board of Governors may condition the relocation to indemnify the NBA from liability, which may be included in the ordinances or the agreement itself.³²⁵ Like Salt River Fields, ordinances relieving athletes, teams, and leagues from any liability incurred by a patron, are necessary to codify patrons engaged in tort or other violations will be subject to the tribe's law and jurisdiction.³²⁶ Providing the tribe with jurisdiction over a patron's conduct promotes the independence that exists on tribal land and honors the systems in place in the tribal courts.

Fourth, the tribe and team will apply for relocation and collaborate to construct the arena in accordance with the "minimum standards" compliance requirement set forth by the NBA for the team's relocation.³²⁷ To achieve this, the tribe must initially decide whether the business recruitment and negotiations with a team will occur before constructing the arena or after constructing the arena. To negotiate with a team prior to construction, both parties' best interests are to enter into agreements like those entered between Indian and non-Indian businesses, such as the Arizona Diamondbacks and the University of Utah with the tribes.³²⁸

Once the MOU is executed, the tribe must submit construction plans for the arena to the NBA accompanied with the formal written request from the relocating Member team thirty days prior to construction, subject to the Commissioner's

³²⁴ See Michael P. O'Connell, *Fundamentals of Contracting by and with Indian Tribes*, 3 AM. INDIAN L.J. 159, 159 (2014).

³²⁵ See Nat'l Basketball Ass'n Const. and Bylaws, *supra* note 226 at Const. art. 7; *id.* art. 8.

³²⁶ SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, CODE OF ORDINANCES § 1-324 (2012).

³²⁷ See Nat'l Basketball Ass'n Const. and Bylaws, *supra* note 226 at Const. art. 8.

³²⁸ See Memorandum of Understanding Between the Ute Indian Tribe and the University of Utah, *supra* note 85; Media Release, *supra* note 187.

approval.³²⁹ A tribal economic development, such as an arena for a professional basketball team, can be constructed before or after business recruitment. Here, the tribe's best interest would be to build the arena after business recruitment. Waiting ensures the team has agreed to become a tenant in the MOU, whether it be for practice, G League, or as the home arena.

After the Commissioner approves the construction, the tribe may commence building an arena that complies with the minimum standards design requirements. Alternatively, the tribe can construct an arena, then recruit the NBA team to lease the facility. This would only require the NBA team acquire written approval from the Commissioner stating the arena's modifications or renovations, if any, comply with the minimum standards thirty days before the NBA team meets with the Board of Governors to determine whether the team may relocate.³³⁰ A downside to a preconstructed arena is the team has limited input for the design and team's fanbase's specific needs. An arena constructed post-MOU is designed with collaboration and guidance from the NBA team. The tribe's and team's best interests would be to collaborate regarding the specifications for arena construction to ensure the team's and community's needs are met.

As with many other professional sports leagues, the NBA must approve a team's relocation.³³¹ The team must first consider whether relocating is in its existing territory.³³² The tribe that engages an NBA team for a business recruitment may consider subsidizing or covering proposed relocation's costs to offset any inconvenience to the team.³³³ It is ideal to choose a tribe (or for the tribe to make the decision) within a metropolitan city to support the NBA's nine factors to be considered in the relocation process.

³²⁹ Nat'l Basketball Ass'n Const. and Bylaws, *supra* note 226 at Const. art. 8.

³³⁰ Nat'l Basketball Ass'n Const. and Bylaws, *supra* note 226 at Const. art. 8.

³³¹ Nat'l Basketball Ass'n Const. and Bylaws, *supra* note 226 at Const. art. 7.

³³² Nat'l Basketball Ass'n Const. and Bylaws, *supra* note 226 at Const. art. 8.

³³³ See Atkinson & Nilles, *supra* note 296.

Here, the Tampa Reservation is less than eight miles from the Amalie Arena, temporary home to the Toronto Raptors.³³⁴ Additionally, Tampa is outside the seventy-five air mile territory³³⁵ of the Miami Heat and Orlando Magic, which ensures a territorial dispute will not occur.³³⁶ Tampa is outside the team's territory because no team exists within the seventy-five air mile Tampa territory. Relocation to Tampa would not qualify for the in-territory \$50,000 application fee. The relocation application fee for the NBA's relocation investigation to Tampa will be \$250,000.³³⁷ This fee may be split between the tribe and the team, or otherwise negotiated in the MOU.

The Relocation Committee will consider all nine factors listed in Article 7 of the NBA's Constitution and Bylaws. The two factors with legal implications which will be discussed in this analysis are:

1. The current or potential contractual obligations to network providers and the relocation's effect on these contractual obligations,³³⁸ and
2. The conflicting laws or regulations applicable on tribal land.³³⁹

The NBA has the exclusive right to broadcast on television and cable, NBA games, and requires the teams to

³³⁴ Compare Tampa Reservation, *supra* note 314, with Tim Reynolds, *We the South: Raptors Settling into Their Tampa Home*, NBA.COM (Dec. 22, 2020, 11:59 AM), <https://www.nba.com/news/we-the-south-raptors-settling-into-their-tampa-home> (showing the locations of the Tampa Reservation in relation to Amalie Arena.).

³³⁵ The mileage was calculated based on air mileage to the Tampa Reservation from the current arenas.

³³⁶ Nat'l Basketball Ass'n Const. and Bylaws, *supra* note 226 at Const. art. 10(a). Compare Tampa Reservation, *supra* note 314, with *Municipalities (map)*, MIAMI DADE CTY. (Sept. 6, 2012) <http://www.miamidade.gov/planning/library/maps/municipalities.pdf> (showing the locations of Tampa Reservation and Miami city limits, which are 199 miles apart.).

³³⁷ See Nat'l Basketball Ass'n Const. and Bylaws, *supra* note 226 at Const. art. 7.

³³⁸ See Nat'l Basketball Ass'n Const. and Bylaws, *supra* note 226 at Const. art. 7.

³³⁹ *Id.*

reserve the copyright to the NBA.³⁴⁰ Relocation may affect the current contractual obligations to network providers. For example, if the Minnesota Timberwolves were to consider relocation to Tampa, Fox Sports North has the exclusive right to broadcasting games in the area.³⁴¹ This agreement would be affected by the move and may cause an expense to the Timberwolves for early termination. Methods to offset the cost could include transferring to Fox Sports in the Tampa area, or potential network providers paying for early termination to acquire the exclusive rights to broadcast. Additionally, marketability for potential contract obligations to broadcast games would be considered. The current local NFL team, the Tampa Bay Buccaneers, may have a wider range of viewers and networks providing their content. Broadcasting the Tampa Buccaneers games could create some additional contention during negotiations with the network providers seeking to broadcast an NBA game. Ideally, the potential contractual agreement would ensure the opportunities for viewership would not be less than Minnesota. Minnesota only has one NBA team for the whole state, while Florida has two,³⁴² arguably creating more viewers. However, if the broadcasting agreement was in place with the Seminole tribe, then the viewership may be significantly greater throughout Florida. As a result of this larger viewership, the current and potential contractual obligations' revenue would be a non-issue.

Tribal land laws and jurisdiction are exclusive to the tribe where the land sits, based on how the land was distributed by the United States government. A tribe negotiating with a team to protect the NBA, the team, and its employees (inclusive of players), then reduces the risk of the tribe's laws being known as "adverse laws or regulations"³⁴³ as suggested in the last relocation factor. Therefore, if the negotiations between the tribe and team are properly executed as listed in the order above, the tribe's laws

³⁴⁰ See Nat'l Basketball Ass'n Const. and Bylaws, *supra* note 226 at Bylaws § 9.01(a).

³⁴¹ FOX Sports North PLUS Channel Information, FOX SPORTS (Dec. 11, 2020, 7:32 PM), <https://www.foxsports.com/north/story/fox-sports-north-plus-channel-information-011214>.

³⁴² *All Teams*, NBA.COM, <https://www.nba.com/teams> (last visited Mar. 15, 2021).

³⁴³ Nat'l Basketball Ass'n Const. and Bylaws, *supra* note 226 at Const. art. 7.

and regulations would not be adverse, and this factor would be a nonissue.

CONCLUSION

Building a basketball arena on tribal land is a viable project. Promoting tribal land development also promotes the home city's cultural identity. Based on the current usages of tribes' names' and land, many teams are broadening their fan base to become more diverse. To successfully implement building an arena on tribal land, an NBA team must decide if it will expand on an existing partnership or a new partnership. The tribe's location, dependent on the purpose for the facility to be developed, is critical to sustain a sports team's revenue. A team with an existing tribal partnership is the best option because this will create a stronger bond that differentiates both organizations' identities from competitors. However, using the above data and analysis, Tucson, Albuquerque, and Tampa do not have partnerships with NBA teams. A new partnership must be created to support fans in the relocation city.

Once the partnership is created, the tribe will create a chartered holding company. This company will be the arena's owner and fiscally responsible for constructing the arena. Once the holding company is entered, the jurisdictional limitation negotiations begin between the tribe and NBA team. The tribe may preserve its independence as it relates to anyone who comes onto the land other than for a business purpose related to the NBA team's scope of business. The NBA team and the tribe then enter an MOU with these agreed-upon terms. The MOU will serve as protection for both organizations to develop and build a strong partnership. This agreement will cover jurisdictional and civil liability limitations, facility construction, and fees associated with reaching the agreement.

These steps will lead into the fourth and final approval step, which is the NBA's nine factor test. Even though the business aspects of the team's relocation were not intimately discussed, from the regression models performed by Rascher,³⁴⁴ sufficient data exists to reasonably believe the nonlegal factors would be met. The revenue forecast models are slightly higher in Tucson and Albuquerque than other cities. The legal issues of

³⁴⁴ Rascher & Rascher, *supra* note 253.

contractual obligations to the network provider could easily be managed through a buy-out or transferring content to a sister network. Additionally, concerns with adverse laws would be resolved prior to the relocation review in the MOU for constructing the arena.

If the NBA team relocation is denied, the NBA team has agreed in the MOU to lease the facility for an alternate purpose such as a G League. This partnership type could incorporate the tribe's name and seal into the design and branding, similar to the Agua Caliente Clippers, Spokane Indians and Ute tribe.³⁴⁵ This creates a larger fan base for the team, even if it is outside the NBA team's immediate geographic location, by expanding the NBA team's market to G League fans. An alternative use for the arena is an expansion team for the NBA. Two tribes engaging in similar projects to build arenas for NBA expansion teams would create a larger demographic of fans and a healthy competitive rivalry between cities. Further research could include expansion teams for other professional sports building arenas and stadiums on tribal land. Building an arena on tribal land is viable.

³⁴⁵ C. Mendez, *supra* note 158; Caputo, *supra* note 134; Memorandum of Understanding Between the Ute Indian Tribe and the University of Utah, *supra* note 85.