

Acknowledgment and Agreement

Each of the undersigned agrees that the form of Lease Indemnity attached hereto is the agreed form of Lease Indemnity to be executed and delivered by the parties prior to the Lease Commencement Date.


All information shown bulleted or bolded and bracketed in the Lease Indemnity will be inserted as and when available and prior to execution of the Lease Indemnity, including the following:

1. Lease Indemnity
 - a. Date of Lease.

[Remainder of page intentionally blank]


Each of the undersigned agrees and confirms all of the above this 10th day of February, 2014.

THE CITY OF EDMONTON

Per: 
As represented by Simon
Farbrother City Manager

Approved by City Council
January 23, 2013
Item # 6.2

Legally Reviewed and
Approved as to Form:



Law Branch

Approved as to Content:



EDMONTON ARENA CORP.

Per: 

Brad Gilewich, Director

LEASE INDEMNITY AGREEMENT

This Agreement is dated this _____ day of _____, 20__.

BETWEEN:

THE CITY OF EDMONTON

(the "City")

- and -

REXALL SPORTS CORPORATION

("RSC")

In consideration of the City entering into a lease agreement regarding the Arena and the Corridor with Edmonton Arena Corporation ("EAC") dated the ___ day of _____, 201__ (the "Lease") and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

1.1 In this Agreement all capitalized words and terms not expressly defined herein shall have the same meaning ascribed to such words and terms in the Lease. In addition, as used in this Agreement, the following terms have the following meanings:

- (a) "Agreement" means this agreement, together with all schedules attached to this Agreement, as amended or replaced by the Parties from time to time;
- (b) "Enforcement Notice" is defined in Section 2.1;
- (c) "Interim Period" is defined in Section 5.1;
- (d) "New Lease" is defined in Section 2.2(b);
- (e) "NHL" means the National Hockey League;
- (f) "Rexall Place License" means the Amended and Restated License Agreement dated April 5, 2004 between Edmonton Northlands and Edmonton Investors Group Ltd. and Edmonton Investors Group Limited Partnership, which entities amalgamated with RSC in conjunction with RSC's acquisition of the National Hockey League franchise, the Edmonton Oilers.

2. COVENANTS

- 2.1 If there is a Default by EAC under the Lease and the Default is not cured by EAC within the applicable cure period specified in the Lease, if any, or such other period of time agreed to by EAC and the City, the City shall, prior to exercising any of its remedies as landlord under the Lease (including, without limitation, termination of the Lease), provide written notice to RSC that the City shall be enforcing its rights against RSC under this Agreement ("Enforcement Notice").
- 2.2 RSC hereby covenants and agrees that RSC shall, within 30 days of receipt of the Enforcement Notice, provide written notice to the City that it will either:
- (a) Assume the obligations of EAC under the Lease, in accordance with Section 3 below; or
 - (b) Enter into a new lease of the Arena ("New Lease") with the City, in accordance with Section 4 below;

and the choice between subsection (a) and (b) shall be in the sole and unfettered discretion of RSC. If RSC fails to deliver a written notice pursuant to this Section within the required period, RSC shall be deemed to have delivered written notice pursuant to subsection (a), above.

3. INTERIM OBLIGATIONS

- 3.1 During the period ("Interim Period") commencing on delivery of the Enforcement Notice and ending on (i) the date of delivery of a notice under Section 2.2(a) by RSC to the City or (ii) the actual date of execution by the Parties of the New Lease, as applicable, RSC covenants and agrees to:
- (a) make the due and punctual payment of all Rent due and payable under the Lease during the Interim Period by EAC to the City;
 - (b) effect prompt and complete performance of all terms, covenants and conditions contained in the Lease on the part of EAC to be kept, observed and performed during the Interim Period; and
 - (c) indemnify and save harmless the City from any loss, costs or damages arising out of any failure by EAC or RSC to pay the Rent or other amounts due under the Lease during the Interim Period or resulting from any failure by EAC or RSC to observe or perform any of the terms, covenants and conditions contained in the Lease during the Interim Period.

4. ASSUMPTION OF LEASE

- 4.1 If RSC provides written notice pursuant to Section 2.2(a) that it shall assume the obligations of EAC under the Lease, the Lease shall be deemed to have been assigned to RSC effective the date of delivery of the Enforcement Notice and EAC shall be released from all obligations under the Lease. Further, in such event, if the Default giving rise to the Enforcement Notice:

- (a) was pursuant to Section 19.1.1 of the Lease (a failure to pay Rent or other amount payable), RSC shall cure such Default within a period of 30 days following the delivery of written notice by RSC to the City under Section 2.2; or
- (b) was a breach of any other condition, covenant, agreement or obligation of EAC under the Lease, RSC shall cure such Default in such period of time as the Parties agree, acting reasonably (but for greater certainty, does not include the obligation to cure any insolvency or event related to the insolvency of EAC).

If RSC defaults in its obligation to cure the Default pursuant to this Section, the City may enforce any of its rights or remedies under the Lease against RSC arising from the Default.

5. NEW LEASE

- 5.1 If RSC provides written notice pursuant to Section 2.2(b) that it shall enter into the New Lease, the Parties shall negotiate, in good faith and acting reasonably, the New Lease, which shall include the terms set out in Schedule A (unless the Parties agree otherwise). If the Parties are unable to agree on all of the terms of the New Lease within a period of 30 days following delivery of the written notice under Section 2.2(b) (or such other period as the Parties may agree), then the dispute resolution provisions set out in Schedule B shall apply.
- 5.2 On execution of the New Lease, it shall be effective as of the date of delivery of the Enforcement Notice, the Lease shall be deemed to have been terminated and EAC shall be relieved of all obligations under the Lease as of that date. Further if, the Default giving rise to the Enforcement Notice was pursuant to Section 19.1.1 of the Lease (a failure to pay Rent or other amount payable), RSC shall cure such Default within a period of 30 days following the delivery of written notice by RSC to the City under Section 2.2.
- 5.3 Concurrent with the negotiation of the New Lease, if requested by RSC, the Parties shall negotiate, in good faith and acting reasonably, a license or other agreement pursuant to which the Western Hockey League franchise the Edmonton Oil Kings, currently owned by Edmonton Major Junior Hockey Corp. (an Affiliate of RSC), shall have the right to play in the Arena.

6. COMMENCEMENT AND TERMINATION

- 6.1 The rights and obligations of the Parties under this Agreement commence on the Commencement Date. This Agreement:
 - (a) may be terminated by written agreement of the Parties;
 - (b) shall terminate on the earliest of:
 - (i) the termination of the Master Agreement pursuant to Section 17.1 thereof;
 - (ii) the expiry of the 35 year term of Lease Agreement; and
 - (iii) the termination of the Lease Agreement pursuant to Article 18 thereof (destruction or damage).

- 6.2 Pursuant to Section 6(a)(ii) of the Location Agreement, RSC has agreed not to sell, assign or transfer the Edmonton Oilers unless the Person who is the purchaser, assignee or transferee of the Edmonton Oilers enters into an assignment of the Location Agreement with the City, under which the Person agrees to comply with or be bound by the terms of the Location Agreement. The Parties agree that when the Person who is the purchaser, assignee or transferee of the Edmonton Oilers enters into an assignment of this Agreement (or a separate agreement with the City under which the Person agrees to comply with or be bound by the terms of this Agreement), thereupon RSC shall be released from all obligations, duties, and liabilities under this Agreement.

7. GENERAL

- 7.1 In the event of a Default under the Lease by EAC, RSC waives any right to require the City to:
- (a) proceed against EAC or pursue any rights or remedies against EAC under the Lease or under Applicable Laws; or
 - (b) enforce or exhaust any security from EAC held by the City.
- 7.2 Any reference to delivery of a written notice under this Agreement shall include deemed delivery of such notice, if applicable.
- 7.3 The obligations of RSC under this Agreement shall not and shall not be deemed to have been waived, released, discharged, impaired or affected by reason of the release or discharge of EAC in any receivership, bankruptcy, winding-up or other creditors' proceedings or the rejection, disaffirmation or disclaimer of the Lease in any such proceeding.
- 7.4 The obligations of RSC under this Agreement shall not be released, discharged, mitigated, impaired or affected by:
- (a) any extension of time, indulgences or modifications which the City extends to or makes with EAC in respect of the performance of any of the obligations of EAC under the Lease;
 - (b) any waiver by or failure of the City to enforce any of the terms, covenants and conditions contained in the Lease;
 - (c) any assignment of the Lease by EAC or by any trustee, receiver or liquidator and any consent which the City gives to any such assignment or subletting; or
 - (d) any amendment to the Lease or any waiver by EAC of any of its rights under the Lease.
- 7.5 Notice in writing or other correspondence required or permitted to be given to either Party pursuant to this Agreement shall be sufficiently given when delivered to the following addresses (or to any other address or to the attention of any other person as may be designated in writing by a Party):

To the City:
 The City of Edmonton
 3rd Floor, City Hall
 1 Sir Winston Churchill Square
 Edmonton, Alberta T5J 2R7
 Attention: City Manager

To RSC:
 1702 Bell Tower
 10104 – 103 Ave
 Edmonton, Alberta T5J 0H8
 Attention: Brad Gilewich

Notice shall conclusively be deemed to have been given on the date of delivery.

- 7.6 Schedules A and B are incorporated into and form part of this Agreement.
- 7.7 Nothing in this Agreement restricts the City, its municipal council, its officers, servants or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a municipal government, as a municipal council and as the officers, servants and agents of a municipal government, subject to the compliance by the City of its obligations under this Agreement.
- 7.8 This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein.
- 7.9 RSC acknowledges that (i) the City is subject to the provisions of FOIP, (ii) the City may be requested to disclose any records relating to this Agreement and under the custody or control of the City, including, without limitation, the contents of this Agreement, and (iii) any such disclosure if required by FOIP will only be made in accordance with and to the extent required by the provisions of FOIP. For greater certainty, the foregoing shall not limit or restrict the rights of objection to disclosure that RSC has under FOIP.
- 7.10 The waiver of any covenant, condition or provision of this Agreement must be in writing. The failure of any Party at any time to require strict performance by the other Party of any covenant, condition or provision of this Agreement shall in no way affect such Party's right thereafter to enforce such covenant, condition or provision, nor shall the waiver by any Party of any breach of any covenant, condition or provision hereof be taken or held to be taken as a waiver of any future breach of any such covenant, condition or provision.
- 7.11 An amendment of any term of this Agreement, including the Schedules, must be in writing and signed by the Parties.
- 7.12 Each of the Parties shall from time to time execute and deliver all further documents and instruments and do all things and acts as the other Parties may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.
- 7.13 The insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of this Agreement. The reference to any legislation in this Agreement shall be deemed to include all amendments thereto and all

regulations thereunder and all statutes, including all amendments thereto and regulations thereunder, that may be substituted for that legislation.

- 7.14 Time is of the essence in this Agreement and no extension or variation of this Agreement operates as a waiver of this provision.
- 7.15 If any provision of this Agreement or its application to any Party or circumstance is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, it will be ineffective only to the extent of its illegality, invalidity or unenforceability without affecting the validity or the enforceability of the remaining provisions of this Agreement and without affecting its application to other parties or circumstances.
- 7.16 This Agreement may be executed by exchange of faxed or electronically transmitted signatures of the Parties. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 7.17 This Agreement shall not be modified, varied or amended except by the written agreement of the Parties.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF the Parties have executed this Agreement:

REXALL SPORTS CORP.

Per: _____
John D. Karvellas

CITY OF EDMONTON

Per: _____
As represented by Simon
Farbrother City Manager

Legally Reviewed and
Approved as to Form:

Approved by City Council
January 23, 2013
Item # 6.2

Law Branch

Approved as to Content:

SCHEDULE A

TERMS OF NEW LEASE

1. **Rent:** The rent payable under the New Lease shall be the Basic Rent remaining payable under the Lease, payable on the same terms of payment prescribed by the Lease.
2. **Term:** The term of the New Lease shall be equal to the length of the Term remaining under the Lease as of the date of the Enforcement Notice. Further, the provisions of Section 31.2 of the Lease Agreement (first right to negotiate renewal terms) shall be incorporated into the New Lease in respect of a renewal thereof.
3. **Community Rink:** The community rink located adjacent to the Arena will be made available as a practice rink to RSC and to EMJHC at a cost which shall be equivalent to normal adult rates for City-owned community ice rinks charged by the City and the City, RSC and its Affiliates shall work cooperatively on scheduling access to this community rink in accordance with booking guidelines and procedures agreed to by the Parties.
4. **Parking:** Fifty parking spots in the Arena shall be allocated to RSC as part of the leased premises under the New Lease, at no additional cost to RSC. The revenue from Arena parking for all hockey events held at the Arena pursuant to the New Lease shall be for the benefit of RSC. The revenue from Arena parking for all other events held at the Arena pursuant to the New Lease shall not be for the benefit of RSC. The allocation of the revenue from Arena parking that is unrelated to attendance at events at the Arena (such as day-time parking) will be determined by the Parties at the time of negotiation of the New Lease but shall take into consideration the allocation of operating costs of the Arena.
5. The remaining terms of the New Lease shall be consistent with the terms of the Rexall Place License (to the extent not in conflict with the terms set out in this Schedule A).

SCHEDULE B
DISPUTE RESOLUTION

The following dispute resolution procedures shall apply to all disputes relating to the negotiation of the terms of the New Lease ("Dispute") pursuant to this Agreement:

1. If the Parties have not agreed on all of the terms of New Lease by the time provided therefor in Section 4.1 of this Agreement, the Dispute shall be referred to the City Manager or his designee(s) and the President of EAC, or his or her designee(s), for resolution. They shall meet (if possible in face-to-face meetings) and shall, acting in good faith, attempt to resolve the Dispute within a period of 30 days following delivery of the written notice under Section 2.2(b) of this Agreement (or such other period as the Parties may agree).
2. If the Dispute is not resolved within the period specified in paragraph 1 of this Schedule, the matter shall be referred to arbitration. If the Parties cannot agree on a single arbitrator within the 10 days following the expiry of the period specified in paragraph 1 of this Schedule, then either Party shall forthwith nominate an arbitrator and notify the other Party in writing of such nomination and the other Party shall, within 10 days of receipt of such notice of nomination, nominate one arbitrator and the two arbitrators so nominated shall select a third arbitrator to act as chairman of the arbitration tribunal to act jointly with the previously named arbitrators. The Parties will act reasonably and in good faith to select arbitrators who are objective and who are suitably qualified by education or experience to deal with the matters in issue.
3. Any arbitration conducted pursuant to this Agreement shall take place in the City of Edmonton and except as modified by agreement of the Parties, the provisions of the *Arbitration Act (Alberta)* shall govern the arbitration process. The arbitrator or the arbitration panel, as the case may be, must render a decision on the matter in issue within 30 days of the appointment of the arbitrator or the arbitration panel or such other earlier or later date agreed to by the Parties.
4. The decision of the single arbitrator, or a majority of the arbitration panel, as the case may be, in respect of all matters of procedure and with respect to the matter in issue shall be final and binding on the Parties.
5. The costs of the arbitration shall be borne as between the Parties in the manner specified in the arbitrator's decision. In the absence of any direction by the arbitrator, each Party shall bear its own costs and the costs of the arbitrator(s) will be shared equally.

