

**LEASE AGREEMENT**

**BETWEEN:**

**THE CITY OF EDMONTON**  
(the "City")

- and -

**EDMONTON ARENA CORP.**  
("EAC")

Dated \_\_\_\_\_, 20\_\_.

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**LEASE**

THIS LEASE is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**BETWEEN:**

**THE CITY OF EDMONTON**  
(hereinafter referred to as the "City")

- and -

**EDMONTON ARENA CORP.**  
(hereinafter referred to as the "Tenant")

**WHEREAS:**

- A. The parties hereto are the parties to the Master Agreement (as herein defined) and have agreed that the City, as the owner of the Premises, will lease the Premises to the Tenant, and that the Tenant will lease the Premises from the City, all on the terms and conditions contained in this Lease;

**NOW THEREFORE** in consideration of the leasing of the Premises by the City to the Tenant and the payment of the Rent by the Tenant to the City pursuant to this Lease, the City and the Tenant agree as follows:

**1. DEFINITIONS**

- 1.1 In this Lease, unless there is something in the subject matter or context inconsistent therewith:
- 1.1.1 "Additional Rent" means all amounts of money (including without limitation, any Tenant Costs incurred by the City or sums payable by way of indemnity) payable by the Tenant to the City in accordance with the terms and conditions of this Lease, in addition to the Basic Rent;
- 1.1.2 "Affiliate" has the meaning set out in the Business Corporations Act (Alberta), R.S.A. 2000, c. B-9, as amended from time to time and includes Affiliates existing at the time of this Lease or incorporated thereafter. The term "Affiliate" also includes a joint venture or partnership in which the Tenant holds a majority interest, provided that the Tenant continues to be the sole point of contact and notice address for any such joint venture or partnership;
- 1.1.3 "Applicable Laws" means all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction, and all amendments thereto, at any time and from time to time in force;

- 1.1.4 "Arena" means the multipurpose sports and entertainment facility to be utilized, inter alia, as a professional hockey arena, with all associated food, beverage, retail and entertainment areas, associated public gathering and circulation areas, loading and parking areas, parking garage, ice plant, and loading facilities, all constructed or to be constructed on the Site, including the Corridor but excluding the LRT Link, the community rink located on the Site and the Wintergarden;
- 1.1.5 "Basic Rent" means the rent payable by the Tenant to the City on the Payment Dates, in the manner and at the times stated in Article 5 and in Schedule "D";
- 1.1.6 "Block K Arena Facilities" means the portion of the Corridor, the loading dock and the access lane to the underground parkade constructed and forming part of the Premises leased to the Tenant, as shown in Schedule "A" attached hereto;
- 1.1.7 "City Costs" means any and all Morguard Costs (other than costs of snow clearing and street cleaning on the Morguard Lands which are the responsibility of the Tenant) and the repair and replacement of the following major building components and any and all costs, expenses and charges related thereto:
- 1.1.7.1 Building structural components consisting of the roof (including roof membrane), foundation, structural portions of load bearing walls, structural sub-floors and building envelope structures which are required to support the vertical and horizontal load, complete replacement of glass entrances and storefront doors;
  - 1.1.7.2 Mechanical – all air conditioning, ventilating and refrigeration systems and the major equipment which directly services the Arena including boilers, furnaces, HVAC units, pumps, chillers and compressors together with associated piping, ductwork, insulation and controls;
  - 1.1.7.3 Electrical – all service, distribution and fire alarm systems and the major equipment which directly services the Arena consisting of switchgear, transformers, motor control centres, fire alarm systems, main distribution panel, secondary distribution panels in the Arena at completion of construction, and distribution wiring;
  - 1.1.7.4 Fire suppression system – change of service or replacement of the fire sprinkler system;
  - 1.1.7.5 Utilities – the change of service or replacement of all power, water, sanitary, sewer, gas or any other utility lines which directly provide service to the Arena;
  - 1.1.7.6 Escalators and elevators – change of service, Rehabilitation or replacement of all cabling, elevator cabs and equipment directly related to the use of elevators and / or escalators, and controls relating thereto;
  - 1.1.7.7 Major building architectural/structural upgrades and improvements that are required and/or mandated due to changes in legislation or City policies (e.g. Building Code, Accessibility);

1.1.7.8 Replacement of paved surfaces, concrete pavers, soil preparation, trees, and groundcover on life-cycle basis; and

1.1.7.9 Items specifically described in Schedule "B" that are specifically designated to be the responsibility of the City.

but excludes the Tenant Costs.

In the event of an express conflict between the terms of Schedule "B" and the provisions above, the terms of Schedule "B" will prevail, provided however that where Schedule "B" does not expressly refer to an item which is generally described above, that shall not constitute an express conflict.

1.1.8 "Change of Control" means, in the case of any corporation or partnership, the transfer or issue by sale, assignment, subscription, mortgage, charge, security interest, operation of law or otherwise, of any shares, voting rights or interest which would result in any change in the effective control of such corporation or partnership, unless such change occurs as a result of trading in the shares of a public corporation listed on a recognized stock exchange in Canada or the United States;

1.1.9 "City Manager" means the City's chief administrative officer or his designate;

1.1.10 "Commencement Date" means the date upon which the Tenant shall take possession of the Premises, which shall be ●;

1.1.11 "Corridor" means the enclosed public walkway connecting the LRT Link to the Wintergarden, as set out in the 100% DD Documentation (which are defined in the Master Agreement) and shown outlined in orange in Schedule "A" attached hereto; The Corridor includes the escalators, stairs and elevators located at the south end thereof which transports users from the mezzanine level down to the grade level;

1.1.12 "Default" means a default of the provisions of this Lease which has not been remedied or is not in the process of being remedied within the time strictures of the curative provisions;

1.1.13 "FFE" means the furniture, fixtures and equipment described in Schedule "C";

1.1.14 "Force Majeure" means, in relation to a Party, any cause beyond the reasonable control of that Party which prevents or delays that Party from fulfilling its obligations under this Lease and which, exercising reasonable diligence, that Party could not have either avoided or overcome, such as civil disturbances, acts of public enemies, vandalism, war, riots, sabotage, blockades, embargoes, lightning, earthquakes, fire, storms, hurricanes, floods, wash-outs, explosions and other acts of God, strikes, lockouts by third parties or other labour disturbances; but, for greater certainty, does not include inability to perform due to financial condition or lack of finances;

1.1.15 "Hazardous Substances" means any substance which is present in sufficient quantities to be hazardous to persons or property and includes, without limiting the generality of the foregoing:

- 1.1.15.1 radioactive materials;
- 1.1.15.2 explosives (excluding lawfully possessed fireworks and lawfully conducted exploding novelty acts);
- 1.1.15.3 any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by human or by any animal, mammal or fish;
- 1.1.15.4 any solid, liquid, gas or odour or combination of any of them that, if emitted into the air in sufficient quantities, would create or contribute to the creation of a condition of the air that:
  - 1.1.15.4.1 endangers the health, safety or welfare of persons or the health of animal life;
  - 1.1.15.4.2 interferes with normal enjoyment of life or property;
  - 1.1.15.4.3 causes damage to life or to property;
  - 1.1.15.4.4 consists of toxic substances; or
  - 1.1.15.4.5 consists of substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the City, the Tenant, or the Arena;
- 1.1.16 "LRT Link" means the public structure including any elevators, escalators and stairs required to move pedestrians from the LRT station to the Corridor, as set out in the 100% DD Documentation (defined in the Master Agreement) and located in the approximate area shown outlined in green on Schedule "A";
- 1.1.17 "Late Interest Rate" shall mean interest at the Toronto Dominion Bank's most current prime rate plus two (2%) percent;
- 1.1.18 "Lease" means this Lease and the Schedules to this Lease, all as amended, supplemented or replaced from time to time;
- 1.1.19 "Location Agreement" means the Location Agreement made between the City and Rexall Sports Corp., as contemplated by and defined in the Master Agreement, as amended, supplemented or replaced from time to time;
- 1.1.20 "Master Agreement" means the Master Agreement between the City and the Tenant related to the construction, design and development of the Arena and the Public Infrastructure, as amended, supplemented or replaced from time to time, and includes all the agreements which are contemplated thereby, as those may be amended, supplemented or replaced from time to time;

- 1.1.21 "Morguard Costs" means any and all operating and maintenance expenditures in relation to the Morguard Lands;
- 1.1.22 "Morguard Lands" means the lands to be acquired by the City as described in and contemplated by the Morguard Purchase Agreement;
- 1.1.23 "Morguard Purchase Agreement" means the agreement dated \_\_\_\_\_, 2013 made between the City (as purchaser) and Morguard NAR (Alberta) Holdings Limited (as vendor) wherein the City agreed to purchase certain lands (as described therein);
- 1.1.24 "Operation of the Facility" shall mean the management and operation of the Premises as a multipurpose sports and entertainment complex which shall include, without limitation, the licensing or sub-leasing of the Premises or portions thereof for hockey games, concerts and other sports or entertainment events, and for retail establishments, restaurants and other food, beverage or other service providers, for trade shows, conferences, conventions, private functions, and all other uses ancillary thereto, subject only to the limitations contained in this Lease;
- 1.1.25 "Parties" means the parties to this Lease and "Party" means either one of them;
- 1.1.26 "Payment Date" means the dates upon which the payments of Basic Rent shall occur, which shall be as described in Schedule "D";
- 1.1.27 "Person" means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government, or any department or agency thereof, and the heirs, executors, administrators or other legal representatives of any individual;
- 1.1.28 "Premises" means that portion of the Site shown highlighted in red on the attached Schedule "A", with all the improvements and fixtures located thereon, including, without limitation, the Arena, the FFE, the Block K Arena Facilities, and the Morguard Lands, together with all fixtures, chattels and systems forming part thereof constructed pursuant to and in accordance with the Master Agreement, as may be replaced, enhanced or added to from time to time over the Term in accordance with this Lease;
- 1.1.29 "Property Taxes" means all taxes, levies, rates, charges, duties and assessments, including school taxes, local improvement charges and any rates, assessments or charges which now are, or may be levied, rated, charged or assessed against the Premises or any portions thereof, or the Tenant's interest therein, by any lawful taxing authority, whether municipal, federal, provincial, school or otherwise during the Term;
- 1.1.30 "Public Infrastructure" means the Wintergarden, the LRT Link, and all sidewalks, streetscapes, and other public spaces surrounding the Arena and the LRT Link;
- 1.1.31 "Recent Arena Facilities" means the Consol Energy Centre in Pittsburgh, Pennsylvania, Nationwide Arena in Columbus, Ohio, Prudential Centre in Newark, New Jersey, and Excel Energy Centre in St. Paul, Minnesota;
- 1.1.32 "Rehabilitation" or "Rehab", when used to describe a requirement in respect of major capital expenditures for structural components or mechanical components, means to



overhaul, refurbish, or restore the component, as much as possible, to its original functional condition, operation or capacity;

1.1.33 "Rent" means the Basic Rent, and the Additional Rent payable pursuant to this Lease;

1.1.34 "Sales Taxes" means a sales tax, social service tax, value added tax, goods and services tax or any other similar tax, charge, duty or rate, imposed by any governmental authority, irrespective of whether the same is created or modified after the Commencement Date;

1.1.35 "Site" means the lands legally described as:

**[Insert new legal for Arena lands, including the Morguard Lands, the Corridor and, if applicable, the strata titles for the Block K Arena Facilities upon which loading dock and access lane to parkade are to be constructed at grade or the portion of Block K on which those facilities are located]**

upon which the Arena shall be constructed;

1.1.36 "Tax Agreement" means the agreement executed among the City and the Tenant and others as defined and contemplated by the Master Agreement and relating to the Tenant's payment of Property Taxes;

1.1.37 "Tenant Costs" means the operation, repair, replacement, or maintenance of the Premises whatsoever, including, without limitation, any items specifically described in Schedule "B" to be the responsibility of the Tenant, structural components (other than major building components), repairs, utility costs, electricity, gas, water, sewer, heating, air conditioning, custodial services, garbage and snow and ice removal, grounds maintenance, and security, all of those items described in Article 9 herein, and the following:

1.1.37.1 Water closets, lavatories, urinals, sinks, showers, drinking fountains/coolers;

1.1.37.2 Mechanical or electrical equipment which directly services only subleased, licensed or concession areas within the Arena;

1.1.37.3 The seating components in the bowl, club, suite and loge of the Arena;

1.1.37.4 Any Arena and Wintergarden enhancements, improvements or upgrades installed or constructed by the Tenant or any other party during the Term;

1.1.37.5 Any alterations, replacements or repairs made to enhance or improve the Arena during the Term (other than as described in section 1.1.7.7);

1.1.37.6 The FFE;

1.1.37.7 Any items that are required to be repaired or replaced due to the negligence of the Tenant, its agents, employees, contractors or invitees, or to the extent the repair or replacement is necessitated by the Tenant's breach or failure to repair or maintain an item as required by the terms hereof;

1.1.37.8 The costs of snow clearing and street cleaning on the Morguard Lands;

1.1.37.9 Fixtures or items installed at the request of and paid for by the Tenant (as authorized pursuant to section 6.1 of the Construction Administration Agreement made between the Parties hereto, or as authorized pursuant to this Lease); and

any and all costs, expenses and charges related thereto, but excluding the City Costs;

1.1.38 "Term" means a term of thirty-five (35) years, commencing on the Commencement Date, and includes any extension of the Term in accordance with Article 31 or otherwise;

1.1.39 "Transfer" means all or any of the following, whether by conveyance, written agreement or otherwise: (i) an assignment of this Lease or a sublease of all or substantially all of the Premises outside of the ordinary course of business of the Tenant; (ii) a Change of Control, and includes any transaction or occurrence whatsoever (including, but not limited to, expropriation, receivership proceedings, seizure by legal process and transfer by operation of law), which has changed or will change the identity of the Tenant herein; or (iii) a mortgage, charge or encumbrance of this Lease or the Premises;

1.1.40 "Wintergarden" means the public bridge structure spanning 104 Avenue and connecting to the Arena at the main concourse level, and shown outlined in yellow on Schedule A attached hereto. The Wintergarden includes the escalators and elevators located at the north end thereof which transports users from the mezzanine level up to the Wintergarden level; and

1.1.41 "Working Days" means days other than Saturdays, Sundays and statutory holidays in the Province of Alberta.

## **2. SCHEDULES**

2.1 The Schedules to this Lease are as follows:

Schedule "A" – Plans outlining the Premises, in red, the Corridor which forms part of the Premises in orange, the Block K Arena Facilities, in purple, and the LRT Link in green and the Wintergarden in yellow

Schedule "B" – Matrix of City Costs and Guidelines

Schedule "C" – FFE List

Schedule "D" – Payment Dates and Amounts

## **3. DEMISE**

3.1 Subject to the terms and conditions of this Lease, the City hereby leases the Premises to the Tenant for the Term.

- 3.2 The Tenant shall be solely entitled to any and all profits, payments, benefits, rents, fees and revenues howsoever arising from the Premises during the Term, including, without limitation, any and all payments, revenues, rights or benefits arising from or related to ticket sales, profit participations, fees, surcharges, royalties, concessions, rents, licence fees, sales of foods or beverages, naming, advertising, signage, television, media, broadcasting or sponsorship rights and parking revenues for all or any portion of the Premises or any portion or component thereof or activity therein, but excluding any surcharges levied under bylaw by the City, which surcharges shall be dealt with in the manner agreed between the Parties in a Ticket Surcharge Agreement to be made between the City and the Tenant.

**4. TERM**

- 4.1 The Lease shall be for the Term.

**5. RENT, TENANT COSTS, CITY COSTS, AND ADDRESS FOR PAYMENTS**

- 5.1 The Tenant shall pay the Basic Rent to the City, in semi-annual installments, payable on the Payment Dates.
- 5.2 The Tenant shall be solely responsible to bear all Tenant Costs.
- 5.3 The City shall be solely responsible to bear all City Costs.
- 5.4 The Tenant shall pay all sums owing or accruing to the City hereunder without deduction to the City at:

The City of Edmonton  
20th Floor, Century Place  
9803 - 102A Avenue  
Edmonton, Alberta T5J 3A3

Attention: Director of Leasing and Property Management

or such other place as the City shall advise the Tenant in writing.

- 5.5 The City shall pay all sums owing or accruing to the Tenant hereunder without deduction to the Tenant at the Tenant's address as stipulated in section 29.1 hereof.

**6. USE OF PREMISES**

- 6.1 The Tenant shall use the Premises for the purpose of the Operation of the Facility and will not use the Premises for any purpose which is contrary to Applicable Laws.
- 6.2 The Tenant acknowledges that as the Premises are owned by the City, the Operation of the Facility must be in accordance with Applicable Laws. Therefore, the Tenant expressly agrees not to use or permit the Premises to be used for any events, performances, exhibitions, entertainment or activities which are contrary to Applicable Laws. If at any time the City is concerned that the Operation of the Facility offends the moral standards of the community that prevail at that time, the Tenant shall, on receipt

of written notice from the City, meet with the City in such time frame as is appropriate in the circumstances to resolve the City's concerns. If the Tenant and the City are unable to resolve the City's concerns, either Party may provide to the other Party a written notice of dispute, summarizing the issue(s) in dispute. Within 10 days of provision of the notice (or such earlier or later period as the Parties agree on a case by case basis), the City Manager or his designee(s) and the Executive Vice-President of the Tenant, or his designee(s) shall meet (if possible in face-to-face meetings) and shall, acting in good faith, attempt to resolve the dispute, failing which either Party may give further notice that it wishes to proceed to a formal dispute resolution process and the provisions of Schedule "E" of the Master Agreement shall apply, with such changes to the time frames set out in Schedule "E" as are reasonable, given the circumstances in each case.

- 6.3 The City hereby grants the Tenant, its permitted assigns and successors in title, and their respective patrons, employees, workers, licensees, sub-tenants, invitees and other authorized users of the Premises, full, uninterrupted but non-exclusive access and egress to, across, from and over all Public Infrastructure and the lands upon which such Public Infrastructure is situate, including, without limitation, access to, from and over the Wintergarden and the LRT Link. The LRT Link shall remain accessible during such hours as are determined by municipal council from time to time and the City shall make all reasonable efforts to give notice to the Tenant of any proposed change to the hours of operation to be considered by municipal council at least 30 days written notice prior to the date municipal council is initially scheduled to consider such change. The City will also permit 24 hour, 7 day a week access to employees, contractors or other third parties authorized by the Tenant through the LRT Link to the employee access door to the Arena. Notwithstanding the foregoing, the City shall be entitled, on a temporary basis, to restrict access and egress to the Public Infrastructure and the lands upon which the Public Infrastructure is situate, in the case of an emergency, or as necessary for security purposes or for repairs and maintenance, but shall do so on a basis which minimizes the disruption to the Operation of the Facility, and only after prior consultation with the Tenant (unless the emergency or circumstances are such that prior consultation is not possible). The Parties agree the Tenant shall be entitled to install signage in the LRT Link, reflecting the name of the arena, the name of the team and its owners, as well as directional signage, all in locations and in designs mutually approved in advance by both Parties, acting reasonably.
- 6.4 The Tenant shall be solely responsible, at its sole cost, to provide reasonable security at the Premises for the preservation of order, crowd control, and protection of persons and property. Such security measures shall include reasonable steps to mitigate effects on adjacent neighborhoods and businesses, but the term "security" shall not include costs of public law enforcement or policing services.
- 6.5 The Tenant hereby grants to the City, its permitted assigns and successors in title, and their respective patrons, employees, workers, licensees, sub-tenants, invitees, and members of the general public, full, uninterrupted but non-exclusive access and egress to, across, from, and over the Corridor for the purposes of accessing the Public Infrastructure during the hours of operation that are applicable to the LRT Link and communicated to the Tenant from time to time. Notwithstanding anything to the

contrary in this Lease, the City and the Tenant agree that the permitted uses by the Tenant or its Affiliates of the Corridor shall not materially adversely affect pedestrian access through the Corridor to the Public Infrastructure during the specified hours of operation.

## 7. CONDITION OF PREMISES

- 7.1 The Tenant shall lease and take possession of the Premises on the understanding and agreement that:
- 7.1.1 there are no agreements, conditions, warranties or representations relating to the Premises, other than as stated in the Master Agreement or in this Lease; and
- 7.1.2 except as provided in this Article 7 or the Master Agreement, the City does not warrant:
- 7.1.2.1 the quality, condition or sufficiency of the Premises for any use or purpose;
- 7.1.2.2 the adequacy of any utility services on or in the Premises; or
- 7.1.2.3 the absence or presence of Hazardous Substances in, on or under the Premises.
- 7.2 Other than as set out in the Master Agreement or as identified in writing within 14 days of the Commencement Date, or latent defects not apparent on an investigation of the Premises, the Premises are taken by the Tenant on a strictly "as is, where is" basis and the Tenant shall lease and take possession of the Premises at its own risk, with all faults and imperfections whatsoever, including without limitation, the presence of all Hazardous Substances if any, in, on or under the Premises.
- 7.3 The Tenant shall satisfy itself as to the condition of the Premises and the fitness for its intended use. The City shall be under no obligation to the Tenant to stake the boundaries of the Premises.
- 7.4 The Tenant shall assume all environmental liabilities relating to the Premises which result from the operations of the Tenant at the Premises or which result from any articles brought on or improvements made to the Premises (other than those caused by the City or those for whom the City is responsible or which arise as a result of public use or access to the Public Infrastructure). The Tenant shall safely and lawfully handle, store and thereafter remove from the Premises or dispose of all Hazardous Substances which it is responsible for.
- 7.5 The Tenant shall indemnify and save the City harmless from any claims, liabilities and damages arising out of any environmental contamination or pollution as a result of the presence of Hazardous Substances on or under the Premises which have been brought upon the Premises or which result from the acts or omissions of the Tenant (or those for whom it is responsible at law) on the Premises, on Public Infrastructure, or on any adjacent property.
- 7.6 The City shall indemnify and save the Tenant harmless from any claims, liabilities and damages arising out of any environmental contamination or pollution as a result of the presence of Hazardous Substances on or under the Premises which have been brought

upon the Premises or which result from the acts or omissions of the City (or those for whom it is responsible at law) on the Premises, on Public Infrastructure, or on any adjacent property.

- 7.7 The Tenant acknowledges that, as of the Commencement Date, the Premises are, or may be subject to, registered instruments and encumbrances, and the Tenant agrees to lease the Premises, subject to the terms and conditions contained in those instruments and encumbrances including:

Utility Right of Way #942 124 052 by The City of Edmonton;

Utility Right of Way #972 383 685 by The City of Edmonton; and

A Restrictive Covenant registered by or on behalf of the tenant of the Baccarat Casino and pursuant to its existing lease;

Deferred Reserve Caveat #132 116 373

In respect of the Morguard Lands, the following instruments and encumbrances:

**[to be completed with particulars of encumbrances affecting Morguard Lands]**

Any instruments and encumbrances related to the subdivision that created the Site, the servicing of the Site or adjacent lands to the Site, or the development of the Site, provided such encumbrances are normally found registered against property of this nature and provided they do not materially adversely affect the use of or Operation of the Facility or are agreed to by the Tenant in the subdivision approval process.

## 8. ALTERATIONS TO THE PREMISES

- 8.1 Subject always to section 8.3, the Tenant shall make no major (being alterations having a cost in excess of \$1,000,000 for the first 15 years of the Term and \$1,500,000 during the last 20 years of the Term) or structural alterations to the Premises without first obtaining the written consent of the City Manager, which consent shall not be unreasonably withheld or delayed, other than completion of construction or other deficiencies or the erection of signage and other fixtures or upgrades as specifically contemplated herein. All major and structural alterations shall be made in accordance with Applicable Laws to the satisfaction of the City Manager, in accordance with any required consent provided by the City Manager pursuant to this section, acting reasonably.
- 8.2 Other than items expressly contemplated by the Master Agreement and the City Costs, the Tenant shall be responsible for the payment of all costs associated with improvements or alterations to the Premises which are requested by the Tenant following the Commencement Date as contemplated by section 8.1 hereof.
- 8.3 The Tenant shall be entitled at any time, and from time to time, to make upgrades, install systems and fixtures as required by Applicable Laws, by the National Hockey League or for the better Operation of the Facility, including without limitation, scoreboards and clocks, television or computerized screens, public announcement,

video, audio and other multi-media installations and shall be entitled to erect and affix signage, whether in print, poster, billboard, electronic, pylon or any other form, both on the interior and exterior of the Premises including rink board advertising, and subject to section 24.1 of this Lease, all such items shall be and remain the property of the Tenant notwithstanding their affixation to the Premises. Provided however, that if the proposed upgrade, signage or installation may affect the structural integrity of the Premises, then the Tenant shall, obtain the consent of the City, not to be unreasonably withheld or delayed, and shall obtain and provide to the City a certificate from a professional engineer licensed to practice in the Province of Alberta confirming that the structural integrity of the Premises shall not be compromised by the proposed upgrade. City consent shall not be required for changes, upgrades or installations of scoreboards or scoreclocks or public address systems or broadcasting equipment, but same shall be subject to section 24.1 of this Lease.

## 9. REPAIR AND MAINTENANCE

- 9.1 The Tenant agrees that the City, as landlord under this Lease, shall not be obliged to furnish any services or facilities to, or to make repairs, replacements, alterations or modifications in or to, the Premises, except as shall be otherwise expressly provided for in this Lease or the Master Agreement. The City has agreed to assume the responsibility for City Costs and the Tenant has agreed to assume the responsibility for Tenant Costs. The City and the Tenant acknowledge and agree that the maintenance cycle periods which are specified in years in Schedule "B" to this Lease are estimates only and shall not be deemed nor construed as an absolute obligation on either Party to repair, maintain or replace the listed components on those dates.
- 9.2 Except for City Costs and as shall be otherwise expressly provided for in this Lease, the Tenant shall, during the Term, at its expense, continuously, actively and diligently keep, operate, inspect and maintain in good order and condition and repair the Premises in accordance with commercially reasonable standards applicable to Recent Arena Facilities, and shall at all times, make any and all necessary repairs, maintenance, replacements, alterations, additions, changes, substitutions and improvements, ordinary or extra-ordinary, foreseen or unforeseen, to standards at least substantially equal in quality of material and workmanship to the original work and material on the Premises, keep the Premises fully useable for the purposes of the Operation of the Facility, reasonable wear and tear and damage by fire, lightning, tempest or other casualties, excepted. The Tenant agrees to provide the City with an annual compliance certificate confirming that it has complied with its maintenance obligations under this Lease.
- 9.3 The Tenant, on reasonable advance notice from the City, shall at all reasonable times and without interfering with the Operation of the Facility, and not more than 4 times per year, permit the City to enter upon the Premises or any part thereof for the purpose of ascertaining the condition or state of repair and maintenance thereof or of verifying that the provisions of this Lease are being complied with. Where an inspection reveals that repair or maintenance is necessary in order to comply with either the Tenant's obligations pursuant to this Lease, or the City's obligations pursuant to this Lease, either Party may give the other notice of the need for such repair or maintenance and each of the Parties hereby agree, in accordance with this Lease, or such other repair and

maintenance protocols or procedures as the Parties may agree, including, without limitation, the capital maintenance protocol agreed to between the Parties hereto, as amended, supplemented or replaced from time to time, to promptly commence or cause the repair or maintenance to be commenced within a reasonable time, and to diligently proceed to complete the same in a good and workmanlike manner. In default of the Tenant carrying out such repairs and maintenance within 30 days of receipt of notice to do so, the City may, directly or through its agents, servants, contractors, and subcontractors, enter upon those parts of the Premises required for the purpose of making the necessary repairs or maintenance. Any amount paid by the City in making such repairs or maintenance to the Premises or any part or parts thereof, together with all costs and expenses of the City in effecting such repairs and maintenance (other than in respect of City Costs), shall be reimbursed to the City by the Tenant on written demand and provision of supporting invoices. In default of the City carrying out such repairs and maintenance within 30 days of receipt of notice to do so, the Tenant may, directly or through its agents, servants, contractors, and subcontractors make the necessary repairs or maintenance. Any amounts incurred by the Tenant in making repairs and replacement of items included in City Costs, shall be reimbursed to the Tenant by the City upon written demand and provision of supporting invoices. Any monies not paid when due hereunder shall bear interest at the Late Interest Rate and shall be due on invoicing in accordance with the terms hereof.

#### **9.4 Areas Surrounding the Premises**

The Parties have agreed to the following specific responsibilities for areas surrounding the Premises:

- 9.4.1 the Tenant is responsible, at its cost, for clearing snow and sidewalk sweeping on 104 Avenue sidewalks adjacent to the Premises (in accordance with Applicable Laws and City policies for downtown snow clearing);
- 9.4.2 the City is responsible, at its cost, for clearing snow and sidewalk sweeping on all City-owned areas north of the Premises, the community rink located on the Site and the LRT Link (in accordance with Applicable Laws and City policies for downtown snow clearing);
- 9.4.3 the City is responsible for maintenance of all planters and plantings in any City-owned areas adjacent to the Premises.

#### **10. NET LEASE**

- 10.1 The Tenant acknowledges and agrees that, except as expressly stated in the Master Agreement or this Lease, including, without limitation, the City Costs which are payable by the City, it is intended that the leasing of the Premises by the City to the Tenant as contemplated in this Lease, shall be completely carefree to the City and that this Lease shall be interpreted as a net lease for the City whereby the City shall not be responsible during the Term for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the use, operation, maintenance, repair, management, or for any other matter or thing affecting the Premises, whether foreseen or unforeseen and whether or not within the contemplation of the City and the Tenant as at the Commencement Date, other than the City Costs which shall be payable by the City.



**11. NON-PERMITTED ENCUMBRANCES**

11.1 The Tenant shall be responsible for the payment and discharge of any writs of enforcement, builders' liens or other charges filed against the Site for which it, its agents, employees, suppliers and workmen are responsible. The City shall be responsible for the payment and discharge of any writs of enforcement, builders' liens or other charges filed against the Site for which it, its agents, employees, suppliers and workmen are responsible. By appropriate proceedings, the responsible Party shall contest any such writs of enforcement, builders' liens or other charges if the other Party so demands. Alternatively, the City may undertake such proceedings and may require the Tenant to pay monies into Court in an amount sufficient to discharge any lien or encumbrance for which the Tenant is responsible as aforesaid. Should the Tenant fail to pay or discharge any such writs of enforcement, builders' liens or other charges and legal proceedings have been taken to successfully validate such writs of enforcement, builders' liens or other charges, the City may pay and obtain a discharge of such writs of enforcement, builders' liens or other charges and require that the Tenant immediately pay to the City all sums paid by the City in securing the discharge. The amounts expended by the City in obtaining the discharge shall bear interest at the rate equal to the Late Interest Rate from the due date for payment thereof until the same is fully paid and satisfied and shall become due from the Tenant to the City as Rent payable pursuant to this Lease and shall be payable within thirty (30) days of invoice by the City. Should the City fail to pay or discharge any such writs of enforcement, builders' liens or other charges and legal proceedings have been taken to successfully validate such writs of enforcement, builders' liens or other charges, the Tenant may pay and obtain a discharge of such writs of enforcement, builders' liens or other charges and require that the City immediately pay to the Tenant all sums paid by the Tenant in securing the discharge. The amounts expended by the Tenant in obtaining the discharge shall bear interest at the rate equal to the Late Interest Rate from the due date for payment thereof until the same is fully paid and satisfied and shall become due from the City to the Tenant and shall be payable within thirty (30) days of invoice by the Tenant.

**12. PRORATING OF PAYMENTS AND LATE PAYMENTS**

12.1 Where an amount is payable by the Tenant or by the City in respect of a period of time where only part of the period of time falls within the Term the amount shall be prorated.

12.2 Any amount due by a Party to the other hereunder which is not paid when due shall bear interest at the Late Interest Rate from the date such payment is due to the date the payment is fully paid and satisfied.

**13. ASSIGNMENT AND SUBLETTING, INDEMNITY**

13.1 Except as permitted by this Lease, the Tenant shall not enter into, consent to, permit or otherwise provide for a Transfer by the Tenant, other than to an Affiliate, without first obtaining the written consent of the City, which consent may not be unreasonably or arbitrarily withheld or delayed and which consent may be subject to the satisfaction of conditions imposed by the City, acting reasonably. Notwithstanding the foregoing, it

shall not be unreasonable or arbitrary for the City to withhold its consent to a Transfer by the Tenant if:

- 13.1.1 the Tenant is in Default; or
- 13.1.2 the proposed transferee or any principal of the proposed transferee or any principal shareholder of the proposed transferee has a history of defaults under other commercial leases or does not have a satisfactory history of compliance with Applicable Laws.

Notwithstanding that the City's consent has been given to a Transfer by the Tenant, the Tenant shall remain liable under this Lease to the City for the full payment of Rent payable pursuant to this Lease and for the observance of the other terms and conditions of this Lease. In applying to the City for consent the Tenant shall provide the City with written particulars of all details relating to the proposed Transfer to enable the City to properly consider the application. Any Transfer requiring the consent of the City herein shall be in a form which is acceptable to the City, acting reasonably, and shall contain a covenant by the transferee, to observe and perform all of the terms and conditions of this Lease as are applicable to the portion of the Premises subject to such Transfer.

- 13.2 Upon the City's request, the Tenant shall deliver an officer's certificate of a senior officer of the Tenant confirming that no Change of Control has occurred.
- 13.3 Notwithstanding the limitations on Transfer prescribed by section 13.1, the Tenant shall be entitled, for and in the ordinary course of the Operation of the Facility and only for the Operation of the Facility in the ordinary course, to enter into licensing arrangements and sub-leases without the consent of the City provided that the Tenant shall require all such licensees and sub-tenants to comply with the applicable terms and conditions of this Lease and the Tenant shall continue to be responsible for the compliance and performance of the Tenant's obligations hereunder.

#### **14. TAXES AND UTILITIES**

- 14.1 The Tenant shall, during the Term, pay for all utilities and services, including, without limitation water, power, telephone, cable, fiber optic, satellite, internet, sewer, or gas charges which may be charged in respect of the Premises.
- 14.2 Subject always to the Tax Agreement, the Tenant shall, during the Term, pay or cause to be paid all business taxes and permit and license fees in respect of any business or activity on the Premises, or in respect of the possession, use or occupancy of the Premises by the Tenant or any other person, whether those business taxes or permit and license fees are charged by any municipal, federal, provincial, school, regional or other authority.
- 14.3 The Tenant shall, during the Term, pay Property Taxes levied or charged with respect to the Premises or any portions thereof in accordance with the Tax Agreement.
- 14.4 All Sales Taxes which may be charged, levied or assessed as a result of this Lease and the leasing of the Premises, shall be the responsibility of the Tenant and the Tenant shall on written demand by the City, pay to the City or if permitted by Applicable Law, to the

relevant taxation authority, the Sales Taxes. Failing the payment to the City, the Sales Taxes shall be deemed to be monies owing and collectable in a like manner as Additional Rent payable pursuant to this Lease.

## **15. INDEMNIFICATION**

15.1 The Tenant shall indemnify and save the City harmless from any and all liabilities, costs, damages, claims, suits, expenses or actions (in this section, called the "Costs") arising out of:

15.1.1 any breach, violation or non-performance of any term or condition of this Lease which is to be observed and performed by the Tenant which breach, violation or non-performance is the cause of such Costs;

15.1.2 any damage to any property whatsoever occasioned by the Tenant's use and occupation of the Premises;

15.1.3 any injury to any persons or the death of any person occurring at the Premises other than as described in sections 16.1.1 or 16.1.2; and

15.1.4 any injury to or death of any person or any damage to property with respect to the Premises and the operations of the Tenant on the Premises arising from the escape, discharge or release of any Hazardous Substances caused by the Tenant or those for whom it is responsible.

## **16. LOSSES OR DAMAGE AT THE PREMISES**

16.1 The City shall not be responsible for any injury to any person, or for any loss or damage to any property belonging to any Person while any such person or property is at the Premises, or arising from any injury, loss or damage caused by the negligence of the Tenant (or those for whom it is responsible at law) but shall be responsible for and shall indemnify and save harmless the Tenant from any and all liabilities, costs, damages, suits, claims, expenses or actions (in this section called the "Costs") arising out of:

16.1.1 Any breach, violation or non-performance of any term or condition of this Lease by the City which breach, violation or non-performance is the cause of such Costs; and

16.1.2 Any damage to property or injury or death to persons occurring at the Premises occasioned by the City's exercise of its rights to the Premises arising hereunder or pursuant to the Master Agreement if such damage, injury or death is caused by a negligent act or omission of the City (or for whom it is responsible at law) in its exercise of such rights.

## **17. INSURANCE**

The Tenant shall maintain in full force and effect the following insurance coverage at its cost:

17.1.1 General liability insurance in an amount of not less than Two million (\$2,000,000.00) dollars per occurrence for personal injury or property damage (or both). This policy shall be endorsed to include coverage for the following:

- 17.1.1.1 contractual liability (including this Lease);
  - 17.1.1.2 liability to named insureds arising from operations of independent contractors (as applicable);
  - 17.1.1.3 products and completed operations (as applicable);
  - 17.1.1.4 broad form property damage;
  - 17.1.1.5 non-owned automobiles;
  - 17.1.1.6 employees as additional insureds;
  - 17.1.1.7 cross liability;
  - 17.1.1.8 the City as additional insured;
  - 17.1.1.9 host liquor liability;
  - 17.1.1.10 employers' liability; and
  - 17.1.1.11 severability of interests.
- 17.1.2 "all risks" property insurance in respect of the Premises and the Tenant's leasehold improvements situated thereon and such other property in or forming part of the Premises for the full replacement cost thereof, with no co-insurance penalties, and shall include:
- 17.1.2.1 the City as an additional named insured;
  - 17.1.2.2 a "Breach of Conditions" clause (such that any act or breach of a condition of the policy shall not prevent recovery by an insured party who is innocent of such act or breach);
  - 17.1.2.3 a business interruption endorsement (such that if at any time during the Term or any renewals thereof, should the business carried on by the Tenant in consequence of this Lease be interrupted or interfered with by a peril insured under such policy, then the policy will pay the Tenant the amount of such loss resulting from a diminution of gross profits and/or increased cost of working occasioned by such interruption);
  - 17.1.2.4 "all risks" property insurance in respect of loss or damage to the Tenant's trade fixtures, furniture, inventory, stock in trade including merchandise or other contents of the Premises; and
  - 17.1.2.5 Plate glass insurance on all internal and external glass within or fronting the Premises;
- 17.1.3 comprehensive boiler and machinery insurance in respect of boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus installed in, relating

to or serving the Premises or any part thereof and operated by the Tenant or by others on behalf of the Tenant, on a repair and replacement basis;

- 17.1.4 Automobile liability insurance for owned automobiles with minimum policy limits of Two million (\$2,000,000) dollars per occurrence;
- 17.1.5 Umbrella liability insurance coverage in an amount equal to Eighteen million (\$18,000,000) dollars per occurrence; and
- 17.1.6 any such other insurance, including but not limited to increased amounts, as the City may, from time to time, reasonably require. If requested, a written explanation shall be provided to the Tenant for the additional insurance requirement.

The foregoing general and umbrella liability policies shall contain a waiver by the insurer of any right of claim or recovery by way of subrogation or otherwise against the City, and their respective employees, agents and servants.

- 17.2 The insurance coverage required by this Lease shall be endorsed to provide the City with thirty (30) day's prior written notice of cancellation or material change, and shall be in a form, and with such company or companies, acceptable to the City, acting reasonably. When used herein the term "material change" means any change in the extent of coverage as required by this Lease, deductible amounts, limits on coverage, or changes to loss payees or insured parties under the policies.
- 17.3 The policy limits stated in this Lease do not define or limit the Tenant's liability to indemnify and save the City harmless in the event of bodily injury, death or property damage. The City makes no representation as to the adequacy of the limits or scope of insurance coverage.
- 17.4 The Tenant shall provide the City with certificates of insurance for all the policies obtained by the Tenant in compliance with this Article 17. Such certificates shall be properly endorsed and in a form acceptable to the City. Evidence of renewal of coverage, subject to the terms and conditions of this Lease, shall be provided to the City prior to expiry. The Tenant shall provide certified copies of the insurance policies to the City upon request.
- 17.5 The Tenant acknowledges that a breach of any requirement under this Article 17, shall be considered a fundamental breach of this Lease, and the City may exercise any or all remedies available to it at law or pursuant to this Lease in the event of Default by the Tenant.

## 18. DESTRUCTION OR DAMAGE

- 18.1 The Parties acknowledge that the "all risk" insurance required to be maintained pursuant to section 17.1.2 above will cover stated risks and coverage for risks which are not stated will be excluded (each an "Excluded Risk"). In the event the Premises are damaged or destroyed by an Excluded Risk, the Parties agree to work cooperatively and act reasonably in attempting to determine a satisfactory process and funding for rebuilding or repairing the Premises. In the event the Parties do not reach such an agreement within 3 months (the "Negotiation Period") of the loss or damage, then the

Tenant may either issue a notice to the City terminating this Lease or issue a notice to the City extending the initial Negotiating Period for an additional period of up to 6 months. In the event the Parties have not come to an agreement within 9 months of the loss or damage, then either Party may issue a notice to the other terminating this Lease. Upon the issuance of a notice of termination, together with payment to the Landlord of an amount equal to the present value of the remaining Basic Rent payments due for the balance of the Term, this Lease shall terminate and the Parties shall have no further liability hereunder.

- 18.2 If the Premises, or any part thereof, shall at any time during the Term be damaged by a risk other than an Excluded Risk, then, unless the City and the Tenant otherwise agree, the City shall utilize the proceeds of the insurance and any Deficiency (as defined below), to repair or rebuild the Premises to substantially the same condition as prevailed immediately prior to the occurrence of such damage or destruction and the Tenant shall cause all insurance monies received by virtue of the insurance specified in Article 17 of this Lease to be immediately paid out in replacing or restoring the Premises. Notwithstanding anything to the contrary herein, the City shall not be obligated to expend more than the proceeds of insurance and any Deficiency (as defined below) to repair or rebuild the Premises as required by this Lease. The repairs and rebuilding shall be completed as expeditiously as possible with a view to minimizing the disruption in the Operation of the Facility. In the event the Tenant has not complied with its obligation to insure the Premises for its full replacement cost as required by section 17.1.2 herein (the "Required Insurance"), then the Tenant shall be required to pay an amount equal to the difference between the insurance proceeds received and the Required Insurance (such amount being herein referred to as the "Deficiency").
- 18.3 All proceeds of insurance received by the Tenant in the event of and as compensation for the total or partial destruction of the Premises, together with the amount of the Deficiency, shall be paid to a trustee named by the City and approved by the Tenant and held in a separate, interest-bearing account in trust to the benefit of the City and disbursed only for the purpose of rebuilding and replacing the damaged Premises in accordance with the provisions of this Lease. Failure by the Tenant to cause or authorize the disbursement of such trust funds in accordance with this Lease shall give the City the right to demand and the Tenant shall pay to the City, all proceeds contained in such trust account and the City shall then be responsible to apply such funds to rebuild and replace the damaged Premises and improvements in accordance with this Lease. All proceeds of business interruption insurance or in respect of losses to the Tenant's own property shall be paid directly to the Tenant.

## **19. EVENTS OF DEFAULT AND REMEDIES**

- 19.1 In the event of the happening of any one of the following events:
- 19.1.1 the Tenant shall have failed to pay an installment of Rent or any other amount payable hereunder when due, and such failure shall be continuing for a period of more than ten (10) days after the date following written notice that such installment or amount was overdue;

- 19.1.2 there shall be a Default of or with any condition, covenant, agreement or other obligation on the part of the Tenant to be kept, observed or performed hereunder (other than a condition, covenant, agreement or other obligation to pay Rent, or any other amount of money) and such Default shall be continuing for a period of more than thirty (30) days after written notice by the City to the Tenant specifying the Default and requiring that it be cured, provided that if the Default is such that it cannot reasonably be cured within thirty (30) days, and the Tenant is proceeding expeditiously to cure the Default, then such shall not constitute a Default hereunder while the Tenant is proceeding expeditiously to cure such default;
- 19.1.3 if any policy of insurance with respect to the Premises or any part thereof from time to time effected by the Tenant shall be cancelled or is about to be cancelled by the insurer by reason of a change in the use or occupation of the Premises by the Tenant or any one permitted by the Tenant to be upon the Premises and the Tenant after receipt of notice in writing from the City shall have failed to take such immediate steps in respect of such use or occupation as shall enable the City to reinstate or avoid cancellation or replacement (as the case may be) of such policy of insurance;
- 19.1.4 without the prior written consent of the City, the Premises be used other than in connection with the Operation of the Facility as contemplated herein;
- 19.1.5 without first obtaining the written consent of the City, the Tenant assigns, transfers, sublets, or parts with possession of the Premises or any part of the Premises other than in accordance with the terms hereof;
- 19.1.6 the balance of the Term shall at any time be seized in execution or attachment and such seizure remains outstanding for a period of more than sixty (60) days;
- 19.1.7 the Tenant shall make any assignment for the benefit of creditors or become bankrupt or insolvent or take the benefit of any statute for bankrupt or insolvent debtors or, if a corporation, shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence; or a trustee, receiver or receiver-manager or agent or other like person shall be appointed of any of the assets of the Tenant;
- 19.1.8 there is a breach of the terms and conditions of the Master Agreement which continues for a period of more than 30 days after the date written notice of such default is delivered to the Tenant provided that if the default is such that it cannot reasonably be cured within 30 days, and the Tenant is proceeding expeditiously to cure the default, then such shall not constitute a Default hereunder while the Tenant is proceeding expeditiously to cure such default; and
- 19.1.9 there is a breach of the terms and conditions of the Location Agreement which continues for a period of more than 30 days after the date written notice of such default is delivered to the Tenant provided that if the Default is such that it cannot reasonably be cured within 30 days, and the Tenant is proceeding expeditiously to cure the default, then such shall not constitute a Default hereunder while the Tenant is proceeding expeditiously to cure the default.

- 19.2 Upon the happening of any event described in section 19.1, the City shall have the following rights and remedies all of which are cumulative and not alternative and not to the exclusion of any other or additional rights and remedies in law or equity available to the City by statute or otherwise, or available pursuant to the Master Agreement:
- 19.2.1 the right to remedy or attempt to remedy any Default of the Tenant, and in so doing to make all payments due or alleged to be due by the Tenant to third parties and to enter upon the Premises to do any work or other things therein, and in such event all reasonable expenses of the City in remedying or attempting to remedy such Default together with interest thereon at the Late Interest Rate shall be payable by the Tenant to the City on demand;
  - 19.2.2 with respect to unpaid overdue Rent, or any other amount payable hereunder including any interest (which amount and interest shall be deemed included herein in the term "Rent") the right to collect interest (or compound interest in the case of interest in arrears) thereon at the Late Interest Rate as herein specified;
  - 19.2.3 the right to terminate this Lease forthwith by leaving upon the Premises or by affixing to an entrance door to the Premises, notice terminating the Lease and to immediately thereafter cease to furnish any services hereunder and enter onto the Premises or any part thereof in the name of the whole and the same to have again, re-possess and enjoy as of its former estate;
  - 19.2.4 the right to come onto the Premises as agent of the Tenant and as such agent to re-let them and to receive the Rent therefor and as the agent of the Tenant to take possession of any chattels, fixtures or other property thereon and, upon giving thirty (30) days' written notice to the Tenant, to store the same at the expense and risk of the Tenant or to sell or otherwise dispose of the same at public or private sale without further notice and to apply the proceeds thereof and any Rent derived from re-letting the Premises upon account of the Rent due and to become due under this Lease and the Tenant shall be liable to the City for the deficiency if any; and
  - 19.2.5 the right to sue for damages for breach of this Lease which rights shall not be extinguished upon any seizure or forfeiture of the Term or any distress levied upon the goods and property of the Tenant;

provided however, that the rights and remedies of the City set forth above shall be subject to the terms and conditions of the Lease Indemnity to be executed and delivered to the City by Rexall Sports Corp. and provided that Rexall Sports Corp. is complying with its obligations under the Lease Indemnity, the City shall not exercise any of its rights or remedies under this Lease.

- 19.3 Upon the giving by the City of a lawful notice in writing terminating this Lease, in accordance with the terms hereof, this Lease and the Term shall terminate and the Rent and any other payments for which the Tenant is liable under this Lease shall be computed, apportioned and paid in full to the date of such termination. Further, the Tenant expressly agrees, as further consideration for the leasing of the Premises to the Tenant, as follows: the Tenant shall be immediately liable to the City for the entire amount of the Basic Rent for the entire Term, discounted at an appropriate discount rate; and, the Tenant's liability in this section is not a penalty but an accurate reflection



of the City's liquidated damages, and does not limit the City's other remedies at law or pursuant to this Lease in any way whatsoever.

19.4 Upon termination of this Lease and the Term, the Tenant shall immediately deliver up possession of the Premises to the City, and the City may forthwith re-enter and take possession of them.

19.5 The Tenant shall pay to the City on demand all costs and expenses, including solicitor-client legal fees on a full indemnity basis incurred by the City in enforcing the provisions of this Article which shall be deemed to be Rent.

19.6 The City shall pay to the Tenant on demand all costs and expenses, including solicitor-client legal fees on a full indemnity basis incurred by the Tenant in enforcing the provisions of this Lease.

19.7 The City agrees to act reasonably in an attempt to mitigate any damages arising as a result of a Default by the Tenant under this Lease.

## **20. EXPROPRIATION**

20.1 Should some or all of the Premises be expropriated by any public or quasi-public authority such that they cannot be enjoyed by the Tenant for the purposes contemplated herein, at the option of the City or the Tenant, this Lease shall terminate as of the date of such expropriation, and both the City and the Tenant shall thereupon be released from any further liability pursuant to this Lease. Each Party shall be entitled to prove and recover their own damages from the expropriating authority.

## **21. QUIET ENJOYMENT**

21.1 So long as the Tenant complies with and performs its obligations under this Lease, it may peaceably and quietly enjoy the Premises in accordance with the terms hereof without hindrance, interruption or molestation by the City or any other Person claiming through or under the City.

## **22. CAVEATS**

22.1 The Tenant may register caveat(s) against the title to the Site with respect to the rights granted to the Tenant under this Lease provided that such caveats do not attach thereto a copy of this Lease.

## **23. SURRENDER OF PREMISES**

23.1 At the end of the Term the Tenant shall surrender and deliver up vacant possession of the Premises to the City, including all improvements and fixtures thereon (other than those which remain the property of the Tenant in accordance with the terms thereof):

23.1.1 in at least the condition in which the Tenant is required to repair and maintain the Premises;

23.1.2 free and clear of any: subleases, licenses, or other rights of possession or occupancy whether permitted by this Lease or otherwise; and

23.1.3 free and clear of any liens or encumbrances of any kind whatsoever (other than those referenced in section 7.7 hereof).

The Tenant shall, effective the end of the Term, terminate all third party agreements entered into by the Tenant for the Operation of the Facility, or the operation or management of the Premises, unless the City has expressly agreed in advance to assume such agreements after the expiry of the Term. Upon such surrender all right, title and interest of the Tenant in the Premises shall cease and shall vest in the City without any compensation payable by the City to the Tenant.

23.2 The obligations of the Parties under this Lease (including the obligation for the payment of Rent or any other money) shall survive the expiration of the Term (for whatever reason).

#### **24. REMOVAL OF TRADE OR TENANT'S MACHINERY OR FIXTURES**

24.1 Provided the Tenant is not in Default hereunder, the Tenant may remove from the Premises all items or articles in the nature of trade or Tenant's machinery or fixtures or items installed at the request of and paid for by the Tenant (as authorized pursuant to section 6.1 of the Construction Administration Agreement made between the Parties hereto or as authorized under this Lease), but shall in such removal do no damage to the Premises or shall make good any damage which may be occasioned by such removal at the expiration of the Term. Notwithstanding the foregoing, the Tenant expressly agrees that:

24.1.1 the score board in the Arena, whether upgraded or replaced by the Tenant during the Term or any renewals thereof; and

24.1.2 any and all items or articles that were affixed to the Premises as at the Commencement Date, (unless installed at the request of and paid for by the Tenant) or were paid for in whole or in part by the City during the Term or any renewals thereof;

are not nor shall be deemed to be the Tenant's machinery or fixtures, and the Tenant has no claim or right to remove those whatsoever.

#### **25. OVERHOLDING BY THE TENANT**

25.1 If the Tenant remains in possession of the Premises after the expiration of the Term without any further written agreement and without objection by the City, then the Tenant shall be deemed to be occupying the Premises as a tenant of the City from month to month upon the terms and conditions as stated in this Lease, except for the payment of Rent which during such period shall be an amount equivalent to a fair market rent.

**26. INABILITY OF THE CITY OR THE TENANT TO PERFORM COVENANTS**

- 26.1 Subject to section 26.2, whenever and to the extent that the City or the Tenant shall be unable to fulfill or shall be delayed or restricted in the fulfillment of any of their respective obligations hereunder in respect of the supply or provision of any service or utility or the doing of any work or the making of any repairs by reason of being unable to obtain the material, goods, equipment, service, utility or labour required to enable it to fulfill such obligation, or by reason of any statute, law or order in council, or any regulation or order or direction of any administration, controller or board, or any governmental department or officer or other authority (and the resulting actions or inactions of any administration, controller or board, or any governmental department or officer or other authority) or by reason of not being able to obtain any permission or authority required thereby, or by reason of Force Majeure, the City and the Tenant, as the case may be, shall be relieved from the fulfillment of such obligation during the period of such delay or restriction and the other of them shall not be entitled to compensation for any inconvenience, nuisance or discomfort. Provided that a lack of funds shall not be deemed sufficient reason for the failure by the City or the Tenant, as the case might be, to fulfill any of their respective obligations as contained in this Lease and the failure to obtain any permit or license because of any disability or the failure to satisfy any condition or requirement, and the state or condition of the Premises, including the presence of any Hazardous Substances (and the resulting actions or inactions of any administration, controller or board, or any governmental department or officer or other authority) shall not be an event of Force Majeure or afford any relief to the Tenant or the City as the case may be.
- 26.2 Notwithstanding the foregoing section 26.1, the maximum period of time by which any activity of the Parties under section 26.1 may be delayed is three (3) months.
- 26.3 The relief afforded any Party under this Article shall not be available to a Party which fails to use reasonable means to remedy any situation described in section 26.1 with all reasonable dispatch.

**27. OPERATION OF FACILITY**

- 27.1 Commencing on the Commencement Date and thereafter throughout the Term, the Tenant shall continuously, actively and diligently conduct the Operation of the Facility as required by this Lease.
- 27.2 Notwithstanding any other term or condition contained in this Lease, the Tenant acknowledges and agrees that the City has entered into this Lease on the basis of the Tenant's agreement to continuously, actively and diligently conduct the Operation of the Facility in the manner contemplated by this Lease, throughout the Term, and on the assurance given by the Tenant that the Tenant shall honour the spirit and intent of this Lease. Subject to section 27.3 of this Lease, the Tenant shall, having first obtained the City's consent, not to be unreasonably withheld or delayed, be entitled at any time and from time to time, to contract with third parties to operate, manage, repair or otherwise perform any or all of the Tenant's obligations under this Lease, provided however that in no case shall such contracting out be in substance a Transfer, and that the Tenant shall continue to be responsible to the City for the Operation of the Facility

and compliance with the terms and conditions of this Lease. The failure by the Tenant, or a third party retained by the Tenant, to Operate the Facility in the manner required by this Lease, shall be considered a substantial breach of this Lease, and in such event, the City may serve notice in writing upon the Tenant specifying the Default in operation and requiring it to rectify the Default, and, if the Tenant has failed to rectify the Default within the time specified in this Lease, the City may in addition to any other remedy available to it for breach of the particular term or condition, immediately terminate this Lease, and re-enter and take possession of the Premises as of its former estate and the City shall have available to it all legal rights and remedies including injunction, whether or not provided for in this Lease, both at law and in equity.

27.3 Notwithstanding the Tenant's right to contract with third parties to operate, manage, repair or otherwise have a third party perform the Tenant's obligations under this Lease, as granted under section 27.2 herein, the Tenant expressly agrees that it shall not contract with a third party for the Operation of the Facility as a whole without first obtaining the City's approval, which approval may not be arbitrarily or unreasonably withheld or delayed.

27.4 In order to provide the City with the comfort and assurance that the Tenant is complying with the terms and conditions on its part contained herein, including that the Premises shall be used for the purpose of the Operation of the Facility as contemplated herein, during reasonable business hours, the Tenant shall permit the City and its representatives and agents to have access to the Premises for inspection purposes at reasonable times and without disrupting the Operation of the Facility.

## 28. COMPLIANCE WITH LAWS

28.1 The Tenant shall use, occupy and carry on all activities on the Premises in compliance with all Applicable Laws and shall obey all lawful orders, directions and requests made by municipal and other public authorities to carry out repairs or effect changes to the Premises in order that those improvements comply with that legislation.

28.2 Without limiting the generality of the foregoing section, the Tenant shall at all times in connection with the Operation of the Facility and the performance of its obligations hereunder, observe all of the provisions of the Labour Relations Code, *Workers' Compensation Act*, Employment Standards Code, *Environmental Protection and Enhancement Act* and the *Occupational Health and Safety Act* (Alberta), as well as all rules and regulations pursuant thereto.

## 29. ADDRESSES FOR NOTICES

29.1 Notice in writing or other correspondence required or permitted to be given to either Party pursuant to this Lease shall be sufficiently given when transmitted electronically or by facsimile (addressed as if to be mailed in the manner hereafter provided) and transmitted to the following facsimile number(s), or when personally delivered or mailed by registered mail, postage prepaid, addressed:

to the City at:

The City of Edmonton  
3<sup>rd</sup> Floor, City Hall  
1 Sir Winston Churchill Square  
Edmonton, Alberta T5J 2R7  
Attention: City Manager  
Fax: (780) 496-8220

to the Tenant at:

Edmonton Arena Corp.  
1702 Bell Tower  
10104 – 103 Avenue  
Edmonton, AB T5J 0H8  
Attention: Brad Gilewich  
Facsimile: (780) 425-6160

or to any other address as may be designated in writing by the Tenant or the City. Notice given by registered mail, if posted in Alberta, shall conclusively be deemed to have been received on the fifth (5<sup>th</sup>) business day following the date on which such notice is mailed. In the event of a postal strike, notice may only be given by personal delivery or sent by fax.

### **30. GENERAL PROVISIONS**

- 30.1 Time is of the essence of this Lease and no extension or variation of this Lease operates as a waiver of this provision. Whenever in this Lease either the City or the Tenant is required to do something by a particular date, the time for the doing of the particular thing shall only be amended by written agreement of the City and the Tenant.
- 30.2 In any case where the City or the Tenant is required to exercise a discretion, provide a consent or make a decision pursuant to the terms of this Lease, the Parties agree, that unless expressly herein provided to the contrary, they will each act reasonably, promptly and in good faith in making any such decision, exercising such discretion or providing such consent.
- 30.3 This Lease is the entire agreement between the City and the Tenant with regard to the matters dealt with in it, and there are no understandings or agreements, representations, warranties, conditions or collateral terms, verbal or otherwise, existing between the City and the Tenant except for the Master Agreement or as expressly stated in this Lease.
- 30.4 The relationship of the Parties under this Lease is solely contractual. The Parties are not to be deemed or construed as being:
- 30.4.1 in partnership;
- 30.4.2 in a joint venture;

30.4.3 in a relationship of employment; or

30.4.4 principal and agent,

under this Lease, and any representation, claim or assertion to the contrary is hereby negated.

30.5 All contracts, whether of employment or otherwise, entered into by the Tenant with respect to this Lease shall be made by the Tenant on its own behalf and not as agent of the City and the City shall have no liability for such contracts.

30.6 Should any provision of this Lease be illegal or unenforceable for any reason whatsoever, it shall be considered separate and severable from the remaining provisions of this Lease, which shall remain in force and be binding as though such provision had not been included.

30.7 This Lease shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein.

30.8 All references shall be read with such changes in number and gender as may be appropriate according to whether the reference is to a male or female person, or a corporation.

30.9 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 Lease.

30.10 The reference to any legislation in this Lease 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.

30.11 The waiver of any covenant, condition or provision of this Lease 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 Lease 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.

30.12 The Tenant hereby acknowledges and agrees that the City, in entering into this Lease, is doing so in its capacity as an owner of real property and not in its capacity as a regulatory, statutory or approving body pursuant to any law of the Province of Alberta. Further, the Tenant acknowledges that this Lease and anything herein contained shall not be deemed to constitute an approval or permit by the City of any approvals or permits as may be required pursuant to the Municipal Government Act (Alberta), and any other legislation in force in the Province of Alberta. The Tenant further agrees with the City that nothing in this Lease limits or 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 officers, servants and agents of a municipal government, subject to the compliance by the City with its obligations under this Lease.

- 30.13 This Lease shall not be modified, varied or amended except by the written agreement of the City and the Tenant.
- 30.14 This Lease shall be binding upon the City and the Tenant and their respective successors, including successors in title, and assigns subject always to the provisions herein respecting Transfers.
- 30.15 If two (2) or more Persons are liable to the City under the terms and conditions in this Lease, their obligations shall be both joint and several. The City shall not be obligated to exhaust its remedies against either Person and may pursue one or both of them as and when the City may elect.

**31. RIGHTS OF FIRST NEGOTIATION/REFUSAL**

31.1 For the purpose of this Article 31:

31.1.1 "Lease" means the lease, sublease, licence or granting of any other right or entitlement to occupancy or possession of the Premises by the City;

31.1.2 "Sale" or "Sell" means the sale, transfer, or any other disposition of all of the City's interest in the Premises and in the Wintergarden; and

31.1.3 "Termination Notice" means:

31.1.3.1 in respect of a Sale, a Termination Notice – Sale; and

31.1.3.2 in respect of a Lease, a Termination Notice – Lease.

31.2 The City hereby grants the Tenant:

(i) the first right to negotiate with the City for three consecutive 10 year renewals of the Term hereof; and

(ii) the first right to negotiate with the City for the purchase of the Premises and the Wintergarden at the expiry of the Term hereof. For greater certainty, it is the Parties intent that the exercise of the first right to negotiate for the purchase and any Sale by the City (to any party, including the Tenant) must be in respect of both the Premises and the Wintergarden, to occur concurrently.

The City and the Tenant shall each act reasonably and in good faith in attempting to settle the terms of an agreement for the purchase of the Premises and the Wintergarden at any time following the expiration of the Term and for each lease renewal at least 3 years prior to the expiration of the then current Term hereof. The City agrees not to enter into or conduct any negotiations for the Sale at any time during the Term. The City further agrees not to enter into or conduct any negotiations for the Sale or Lease with any other party until negotiations with the Tenant under this section 31.2 have been finally concluded, provided that the City shall be entitled to negotiate with a third party for the Sale or Lease during the final year of the then current Term of the Lease but only if the City is conducting concurrent and good faith negotiations with

the Tenant as required hereby. Any agreement with a third party for the Sale or Lease shall remain subject to the rights of first refusal described in section 31.3.

Negotiations will be deemed to have been finally concluded upon the issuance of a written notice confirming the termination of negotiations in respect of either the Sale or Lease issued by either Party hereunder (a "Termination Notice – Sale" or "Termination Notice – Lease"), respectively. A Termination Notice in respect of the Sale or Lease may be issued by either Party to the other under this section 31.2 in respect of either a Lease or a Sale, if the Party issuing the notice is satisfied, acting reasonably, that negotiations under this section in respect of the Lease or Sale, as the case may be, have no reasonable likelihood of resolution. A Termination Notice must confirm that the issuing Party has acted reasonably and in good faith and has attempted to negotiate a renewal of the Term of this Lease or the Sale, as the case may be, with the other Party, but these negotiations have not, and have no reasonable likelihood of being concluded.

The recipient of a Termination Notice shall be entitled to challenge the issuance of a Termination Notice within 20 (twenty) Working Days of receipt thereof, and any such challenge shall be resolved by mediation. Each of the Parties agrees to act reasonably and cooperate in respect of all matters arising in connection with the mediation and in appointing a mutually agreeable mediator. If the Parties cannot agree on a mediator, then either Party can apply to a Court of competent jurisdiction to select a mediator. A mediation will be deemed completed only when the Parties agree that it has been completed or the mediator declares the mediation to be complete. A Termination Notice which has not been challenged will become effective on the expiration of the 20 Working Days above referenced and upon becoming effective, the City shall thereafter be entitled to commence negotiations with third parties in respect of the Sale (in the case of a Termination Notice – Sale) or lease of the Premises (in the case of a Termination Notice – Lease), as the case may be, but subject always to the rights of first refusal described in section 31.3 hereof. For clarity, the rights of negotiation herein granted are separate and distinct rights and the City shall only be entitled to negotiate with a third party for a lease of the Premises after a Termination Notice – Lease has been properly issued and the 20 Working Days has expired with no challenge, or if a challenge has been issued, until completion of the mediation process herein contemplated and is only entitled to negotiate with a third party for a Sale after the expiry of the then current Term and after a Termination Notice – Sale has been properly issued and the 20 Working Days has expired with no challenge or if a challenge has been issued, until completion of the mediation process herein contemplated.

31.3 The City hereby grants the Tenant:

(i) the right of first refusal to lease the Premises; and

(ii) rights of first refusal to purchase the Premises and the Wintergarden. For greater certainty, it is the Parties intent that the exercise of the right of first refusal to purchase the Premises and the Wintergarden and any Sale by the City (to any party, including the Tenant) must be in respect of both the Premises and the Wintergarden, to occur concurrently. The parties acknowledge and agree that any Sale of the Premises would require that the Premises be subdivided out of the Site and any purchase agreement would contain a true condition precedent respecting such subdivision which requires



that the party who has the responsibility to obtain such subdivision must utilize reasonable commercial efforts to obtain such subdivision approval prior to the closing date of any Sale. In the event the City is the applicant, its obligations in this regard will be in its capacity as a contracting party and not as a regulatory, statutory or approving body.

The term of the rights of first refusal granted hereunder shall continue for one year following the expiry of the then current Term of this Lease. If, at any time, the City receives a bona fide third party offer for cash consideration in respect of a Lease or a Sale which the City would like to accept (the "Offer"), the City shall first make a written offer to lease the Premises or to Sell to the Tenant on the terms set out in the Offer, which offer shall specify that the offer is made pursuant to this section 31.3, and shall append a copy of the Offer. The Offer shall be open for acceptance by the Tenant for 60 days (the "Acceptance Period") after receipt of the Offer by the Tenant in accordance with the notice provisions of this Lease, and may be exercised by the Tenant delivering notice in writing thereof (the "Exercise Notice") to the City during the Acceptance Period and specifying in the Exercise Notice that the Tenant wishes to purchase the Premises and the Wintergarden or to lease the Premises, as the case may be, on the terms contained in the Offer.

The issuance of an Acceptance Notice by the Tenant will constitute a binding agreement between the City and the Tenant for Sale, or the Lease, as the case may be, on the terms and conditions contained in the Offer. In the event the Tenant does not accept the Offer within the Acceptance Period, the City shall thereafter be entitled to proceed with the Sale or the Lease, as the case may be, to the third party offeror on the terms and conditions contained in the Offer (but not otherwise), for a period of 60 days. If the transaction contemplated by the Offer to the third party offeror is not completed within 60 days, the City shall be required to once again comply with this section 31.3 and to provide the Offer or any revised Offer to the Tenant even though the terms of the proposed transaction may not have changed.

- 31.4 The City covenants and agrees that it will not accept an offer from, or enter into an agreement with, any third party whereby the City agrees to Sell or Lease, or transfer, assign or otherwise part with any of its right, title, estate or interest in the Premises or the Wintergarden, in whole or in part unless the offer or agreement recognizes the City's obligation to comply with the rights of first negotiation and refusal herein granted and the offer or agreement is made subject to its terms.
- 31.5 The City acknowledges, agrees and understands that, without prejudice to any and all remedies available to the Tenant that a breach of this Article 31 would cause irreparable harm to the Tenant, not compensable in damages and therefore an injunction is the most effective remedy for any breach of the City's covenants under this Article 31. Accordingly, the City hereby agrees that the Tenant may apply for and is entitled to injunctive relief, including an interim or interlocutory injunction, in any court of competent jurisdiction to enforce any of the provisions in this Article 31 upon the breach thereof. The City further agrees that the Tenant may apply for and is entitled to injunctive relief without having to prove damages.

**IN WITNESS WHEREOF** the Parties have executed this Lease by the officers duly authorized on their behalf as of the day and year first above written.

**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: \_\_\_\_\_  
John D. Karvellas, Director

**SCHEDULE "A"**

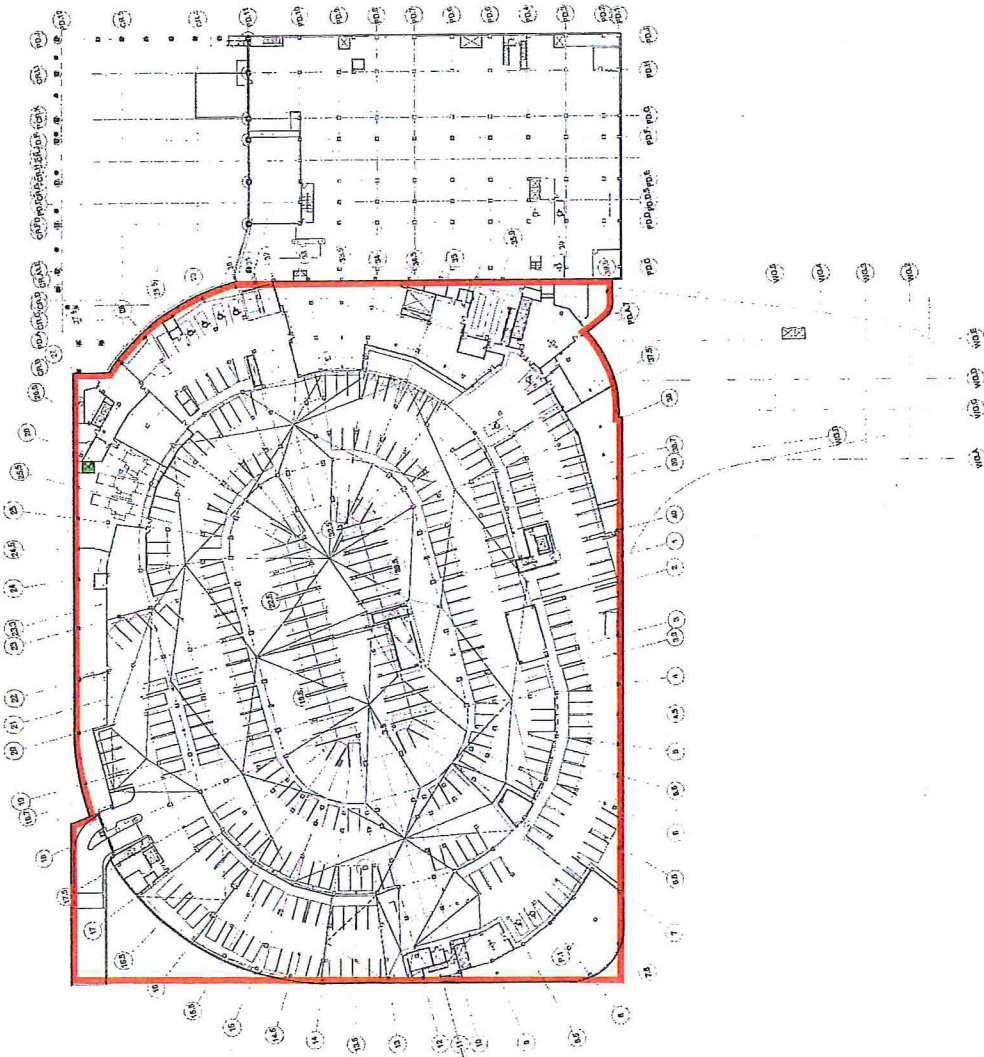
Outline of Premises and  
LRT Link, Wintergarden and Corridor, and  
showing portion of Block K on which any portion of  
the loading dock, access lane and Corridor are situate

**[Sketches to be attached, which will be updated on finalization of plans]**

# SCHEDULE A

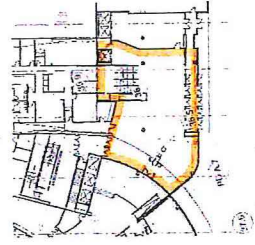
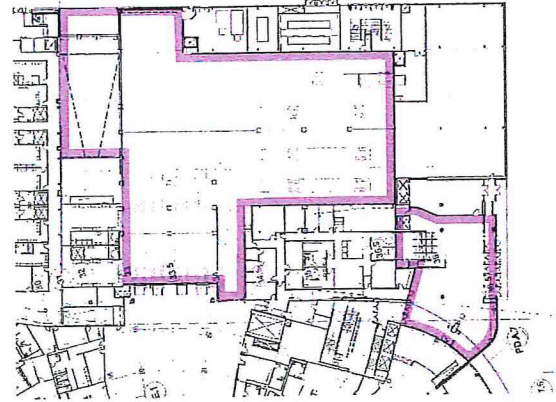
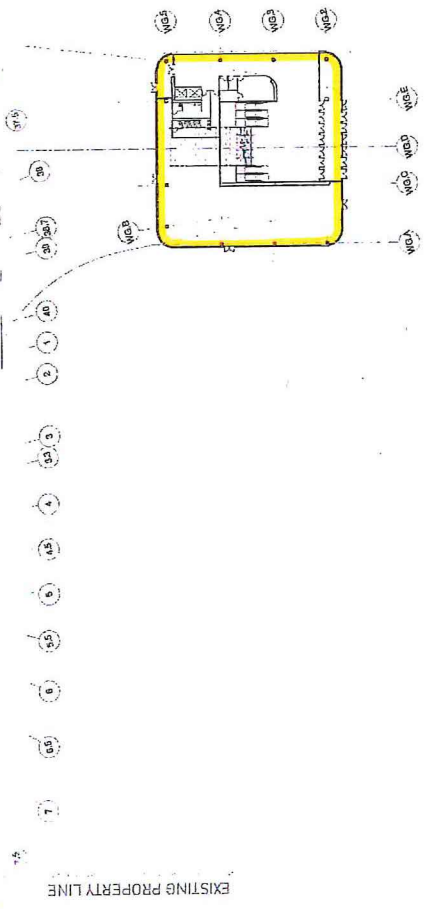
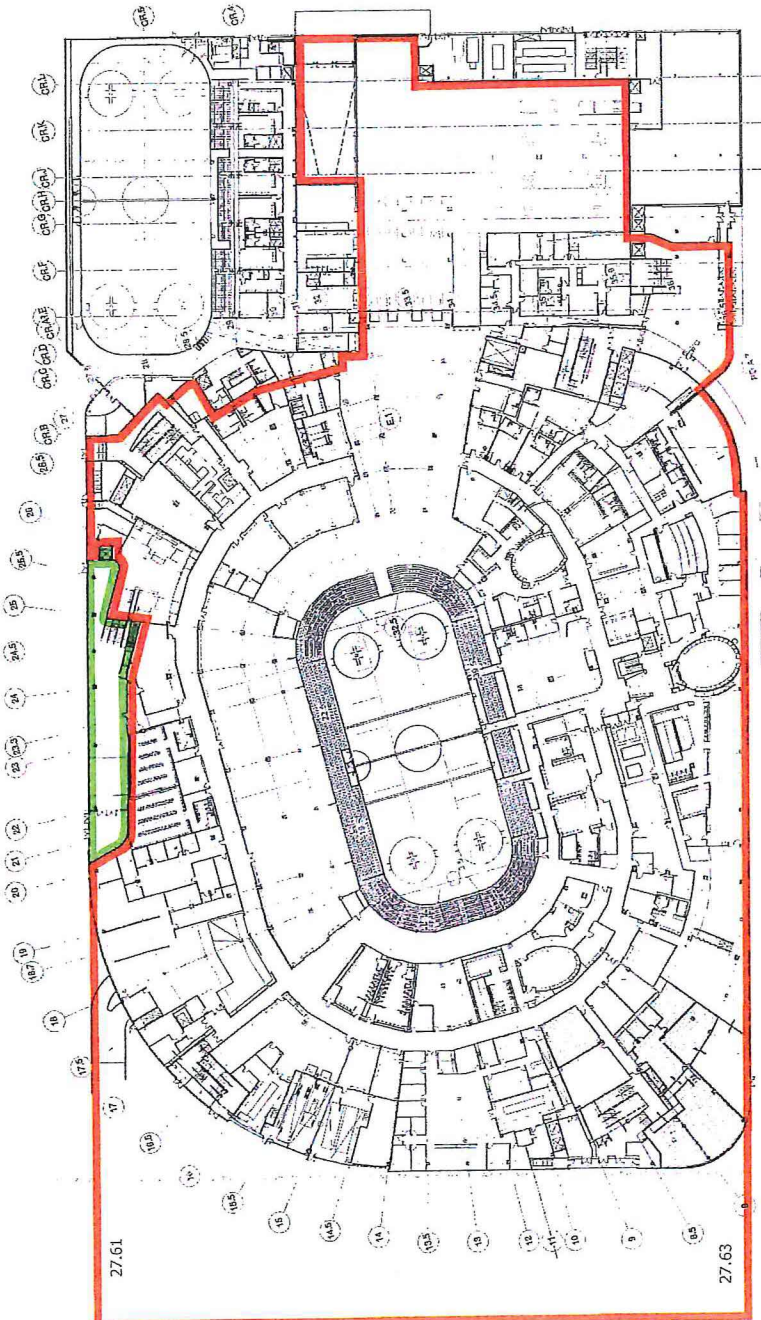
## LEASE AGREEMENT

EDMONTON, ALBERTA	ARENA & RELATED FACILITIES PROJECT	SCHEDULE A / LEASE AGREEMENT
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- PREMISES
- CORRIDOR BLOCK K
- ARENA FACILITIES
- LRT LINK
- WINTER GARDEN

EDMONTON, ALBERTA	ARENA & RELATED FACILITIES PROJECT	SCHEDULE A / LEASE AGREEMENT	PARKADE LEVEL
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- PREMISES
- CORRIDOR BLOCK K
- ARENA FACILITIES
- LRT LINK
- WINTER GARDEN

EDMONTON, ALBERTA      ARENA & RELATED FACILITIES      SCHEDULE A / LEASE      EVENT LEVEL

27.61

27.63

EXISTING PROPERTY LINE

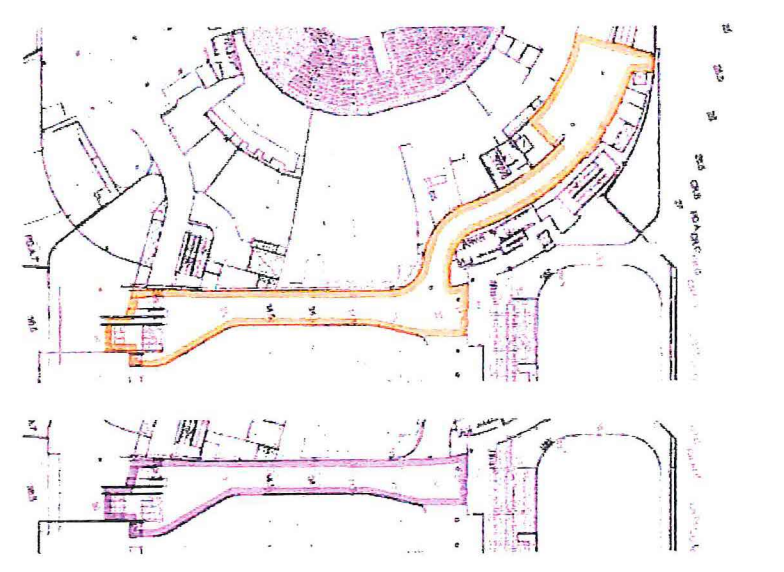
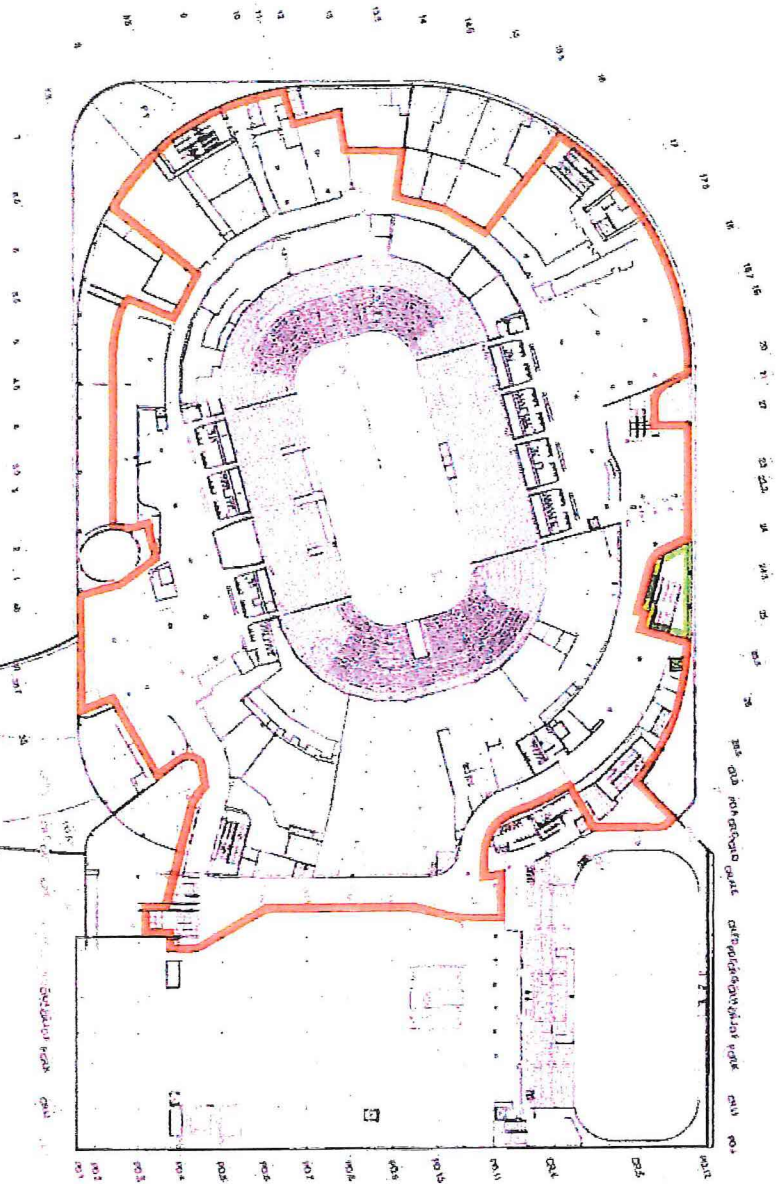
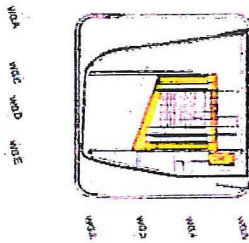
EDMONTON, ALBERTA

ARENA & RELATED FACILITIES PROJECT

SCHEDULE A / LEASE AGREEMENT

MEZZANINE LEVEL

- PREMISES
- CORRIDOR BLOCK K
- ARENA FACILITIES
- LRT LINK
- WINTER GARDEN



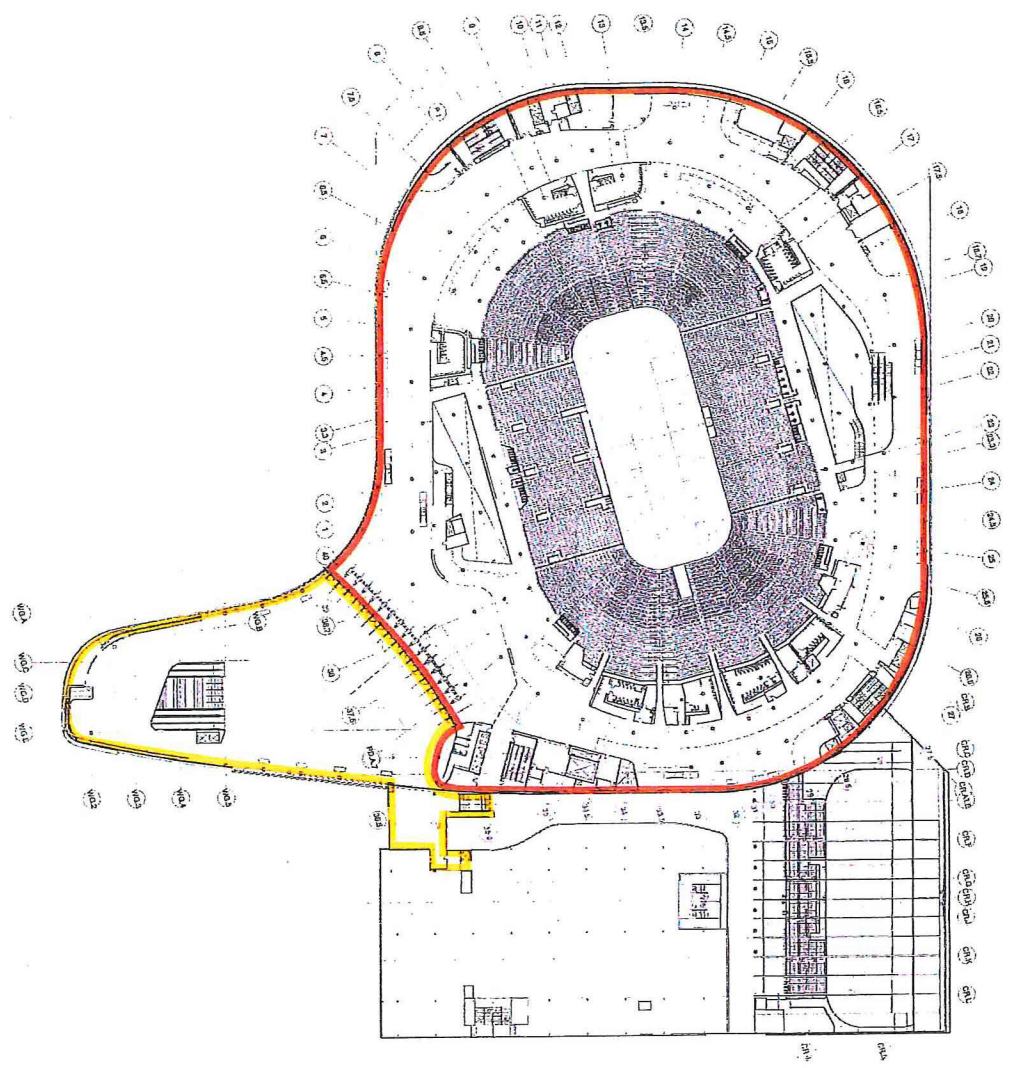
EDMONTON, ALBERTA

ARENA & RELATED FACILITIES PROJECT

SCHEDULE A / LEASE AGREEMENT

MAIN CONCOURSE

- PREMISES
- CORRIDOR BLOCK K
- ARENA FACILITIES
- LRT LINK
- WINTER GARDEN





SCHEDULE "B"

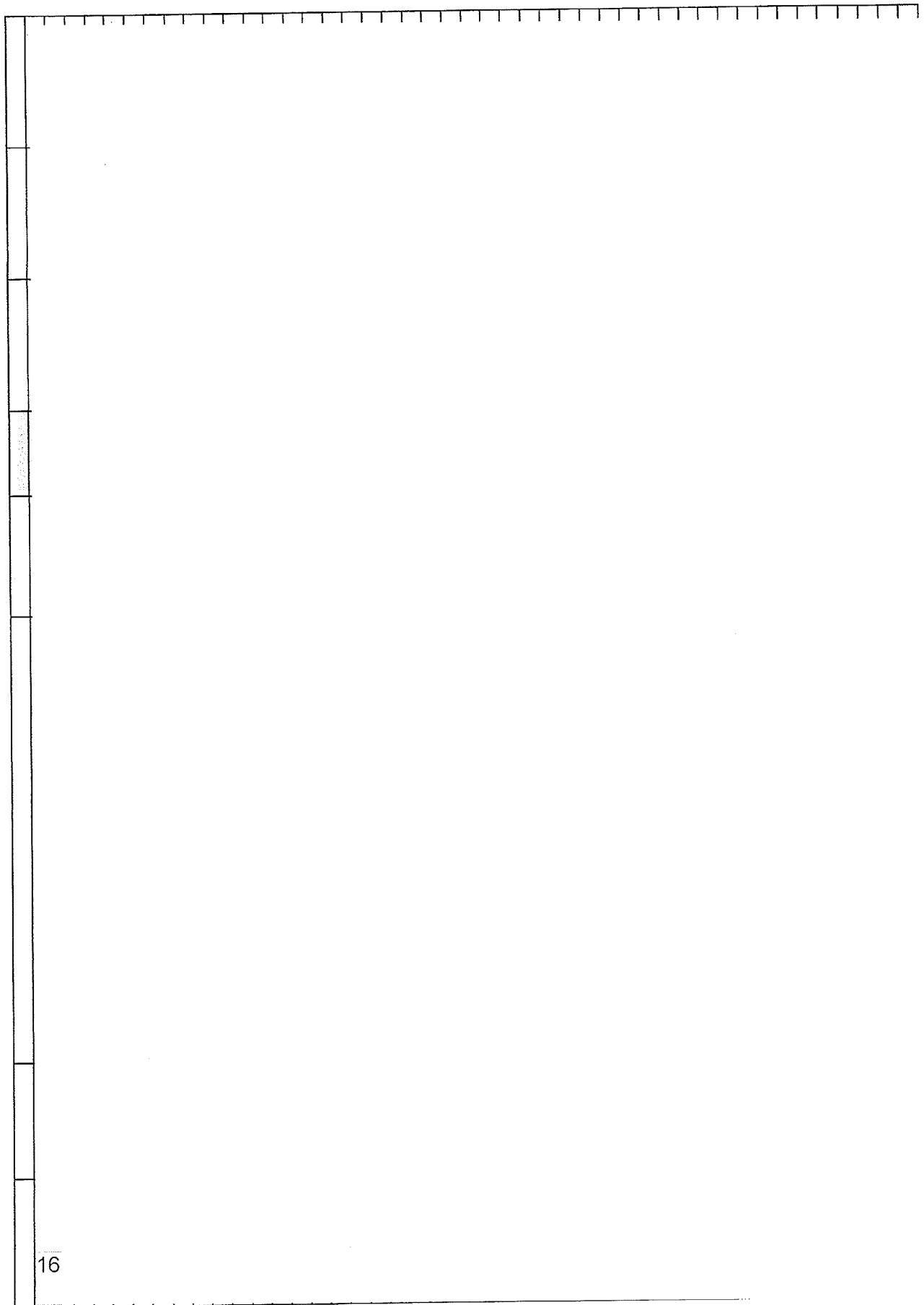
Capital Replacement Plan for New Edmonton Downtown Arena

Uniformat No.	# of Units	Component	Type of Work	Main. Cycle/Yr.	Tenant Responsibility	City of Edmonton Responsibility	Post 35 Year Capital Maintenance















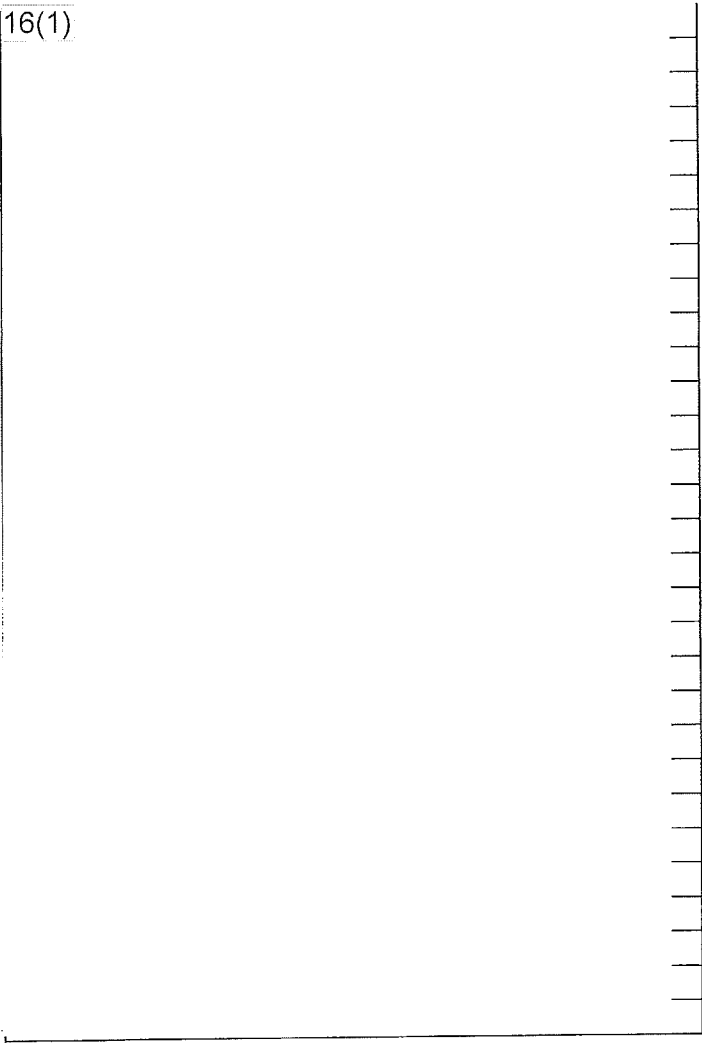


**SCHEDULE "C"**

**Arena Furniture, Fixtures and Equipment List**

16(1)

16(1)



**Schedule "D"**  
**Payment Dates and Amounts**

The Parties agree that this Schedule "D" is a proforma based on certain assumptions as to applicable rates and other matters, all as more particularly described in Schedule "C" of the Master Agreement. This Schedule "D" will be amended and replaced within eight months of the Lease Commencement Date to incorporate the final calculation of "Rent A" and "Rent B", which comprise the "Basic Rent", all in accordance with Schedule "C" of the Master Agreement.

The Tenant will make payments on account of Basic Rent as stipulated in this proforma Schedule "D" until the final form of this Schedule "D" is finalized and all necessary adjustments for over or underpayment of Basic Rent will be made between the Parties within 15 days thereafter.

Date	"Rent A"	"Rent B"	"Rent A" + "Rent B" = Basic Rent
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16(1)

16(1)