

GROUND LEASE

THIS GROUND LEASE ("Lease") is made as of the 12th day of February, 2013 (the "Effective Date") by and between RCP, LLC, a Kansas limited liability company (hereinafter called "Landlord"), and Bliss Sports, LC, a Kansas limited liability company (hereinafter called "Tenant").

In consideration of the rents to be paid and the mutual covenants and agreements contained herein, and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

ARTICLE 1. DEMISED PREMISES

Landlord leases to Tenant, upon and subject to the terms, conditions, covenants, and provisions contained herein, all of that real property having the legal description set forth on Exhibit A, including all improvements thereon as of the Effective Date (the "Demised Premises").

ARTICLE 2. TERM

Section 2.1 **Term of Lease.** The term of this Lease (the "Lease Term") shall begin on the Rent Commencement Date and shall terminate, unless the Lease Term is extended by a written agreement executed by Landlord and Tenant or is sooner terminated as provided herein, on the earlier to occur of the first business day after the expiration or sooner termination of the KU Athletics Sublease Term, as it may be extended, or December 31, 2064. Notwithstanding the preceding sentence or anything else to the contrary in this Lease, unless hereafter agreed otherwise in writing by Landlord and Tenant, if the Rent Commencement Date has not occurred by November 30, 2013, either Landlord or Tenant may terminate the Lease effective thirty (30) days after either of such parties has given notice of its election to terminate this Lease unless on or before such thirtieth (30th) day the Rent Commencement Date has occurred.

Section 2.2 **Rent Commencement Date.** Unless hereafter agreed otherwise in writing by Landlord and Tenant, the term "Rent Commencement Date" shall mean the first date by which all of the following have occurred:

(a) there is then no uncured default by Tenant under this Lease or any event or condition which, with the giving of notice, passage of time or both would constitute a default by Tenant under this Lease;

(b) all conditions precedent to the KU Athletics Sublease (as hereinafter defined) being effective have been satisfied or waived by KU Athletics (as hereinafter defined);

(c) the Infrastructure Plans (as hereinafter defined) have been approved in writing by Landlord, Tenant and KU Athletics; and

(d) the Initial KU Improvements Plans (as hereinafter defined) have been approved in writing by Landlord, Tenant and KU Athletics.

If the Rent Commencement Date occurs prior to the termination of this Lease, upon the request of Landlord, Tenant will promptly execute a letter agreement or other instrument by which Landlord and Tenant agree as to what date shall be deemed the Rent Commencement Date.

Section 2.3 Infrastructure Contracts. Notwithstanding Section 2.2 or anything else to the contrary in this Lease, unless hereafter agreed otherwise in writing by Landlord and Tenant, if the Rent Commencement Date occurs before:

(a) Landlord and the City of Lawrence, Kansas ("City") have entered into or agreed in writing to enter into a written agreement by which City has agreed or will agree to pay for all of Landlord's costs, or Tenant's costs that are intended to be reimbursed by Landlord, of contracting for, designing and constructing the Infrastructure Improvements on the Demised Premises, an adjacent tract of land having a legal description set forth on Exhibit B (the "City Rec Center Site") and any other property on which City already holds, or in which agreement City commits to obtain, by condemnation or otherwise, all easements and other rights necessary to complete the Infrastructure Improvements (the "Off Site Tracts"); and

(b) Tenant or Tenant's affiliate has entered into one or more written agreements with one or more engineers, architects and contractors selected by Tenant or Tenant's affiliate, which engineers, architects and contractors are approved by Landlord and City (which approval Landlord will not unreasonably withhold, delay or condition) for the design and construction of the Infrastructure Improvements, which Infrastructure Improvements are to be completed within twelve (12) months of Rent Commencement Date, subject to delay for events which constitute force majeure or delays in City obtaining all rights in the Off Site Tracts necessary to complete the Infrastructure Improvements (the agreements described in Sections 2.3(a) and (b) being referred to as the "Infrastructure Contracts");

then Landlord will have no obligation to pay for, to construct or to permit the construction of any portion of the improvements provided for in the Infrastructure Plans. If the Infrastructure Contracts are not executed by February 28, 2013, then on or before March 31, 2013, Tenant will enter into a written agreement with KU Athletics which provides for a modification of the Initial KU Improvements so as to include the construction, at no cost to Landlord, of all or a lesser portion of the improvements provided for in the Infrastructure Plans, which modification of the Initial KU Improvements is submitted to and approved in writing by Landlord, in accordance with Article 6.

Section 2.4 Certain Definitions. For purposes of this Lease, the following terms have the following definitions:

(a) "Athletics Events" shall mean, as to the Demised Premises, softball, soccer and track and field competitions, practices, events and recreation, whether at the intercollegiate or other level and, insofar as "Athletics Events" conducted on the City Rec Center Site are referred to in this Lease, shall mean cross country, basketball, volleyball and tennis competitions, practices, events and recreation, whether at the intercollegiate or other level.

(b) “Business day” shall mean any day other than a Saturday, Sunday or federal holiday.

(c) “Infrastructure Improvements” means those improvements provided for in the Infrastructure Plans.

(d) “Infrastructure Plans” means those plans and specifications for private streets and water, sewer and electric utility lines on the Demised Premises, the City Rec Center Site and Off Site Tracts which plans and specifications are designated as such in writing by Landlord, Tenant, KU Athletics and the City.

(e) “Initial KU Improvements” means those improvements and fixtures specifically provided for in the Initial KU Improvements Plans.

(f) “Initial KU Improvements Plans” means those plans and specification for a track and field stadium, a softball stadium, a soccer stadium and related improvements which Tenant has committed to build pursuant to the KU Athletics Sublease and that certain KU Athletics Development Agreement between Tenant and KU Athletics, which set of plans and specifications are designated as such in writing by Landlord, Tenant and KU Athletics, as such Initial KU Improvements Plans may be modified by written change orders agreed upon in writing by Tenant and KU Athletics and, unless permitted as a matter of right under Section 6.1 hereof, consented to by Landlord from time to time.

(g) “KU Athletics” means Kansas Athletics, Inc., a Kansas not for profit corporation, or, from time to time, a successor in interest entity then affiliated with, and which then sponsors or operates the intercollegiate athletic teams of, the University of Kansas.

(h) “KU Athletics Agreements” shall collectively mean the KU Athletics Development Agreement, the KU Athletics Operating Agreement and the KU Athletics Sublease.

(i) “KU Athletics Development Agreement” means that certain Amended and Restated Development Agreement dated on or about the date hereof between KU Athletics and Tenant regarding the design and construction of Initial KU Improvements.

(j) “KU Athletics Operating Agreement” means that certain Amended and Restated Operating Agreement dated on or about the date hereof between KU Athletics and Tenant regarding ongoing use, operation, maintenance and further improvements of the Initial KU Improvements.

(k) “KU Athletics Sublease” means that certain Amended and Restated Lease Agreement dated on or about the date hereof, and effective on the date certain conditions therein set forth are satisfied, as amended, by which Tenant subleases the use of the Demised Premises and improvements thereon to KU Athletics for a term more fully described therein.

(l) “KU Athletics Sublease Term” means the sublease term by which KU Athletics subleases the use of the Demised Premises from Tenant or its successors or assigns

pursuant to the KU Athletics Sublease, as the same may be amended or extended from time to time by Tenant and KU Athletics or their respective successors and assigns.

(m) "Lease Year" shall mean any twelve (12) calendar month period commencing on January 1st and terminating on the following December 31st; provided that the first Lease Year of the Lease Term will be the period which commences upon the Rent Commencement Date and ends upon December 31, 2013.

ARTICLE 3. RENT

Section 3.1 Base Rent.

(a) If the Rent Commencement Date occurs prior to the termination of this Lease, then on or before December 31st of each of the first five (5) Lease Years Tenant will pay Landlord, without demand, deduction or set-off, at such place as Landlord shall from time to time direct by written notice to Tenant, one of five installments of Base Rent equal to: (i) one-fifth of the sum of (A) the appraised value of the Demised Premises, the City Rec Center Site and nearby real property (the "Nearby Tract") acquired by Landlord in the same transaction (i.e., \$3,725,000.00); (B) the expenses reimbursed by Landlord to Tenant for land planning, surveys and other costs related to the acquisition, zoning and platting of the Demised Premises and the City Rec Center (which the parties acknowledge as of the date of this Lease totals \$284,329.73 and that Landlord has no obligation to reimburse Tenant for any additional sums except as may be specifically agreed otherwise in a written agreement that may hereafter be executed by Landlord and Tenant); and (C) other out of pocket expenses incurred by Landlord heretofore and hereafter, in connection with the acquisition of the Demised Premises, the City Rec Center Site and the Nearby Tract, the negotiation and performance of this Lease, the Infrastructure Agreements, any written agreement hereafter executed by the City and Landlord which provides for the sale by Landlord to the City of fee title to the City Rec Center Site (the "City Purchase Agreement") and any other written agreements that may hereafter be executed by Landlord and one or more of the City, Tenant, KU Athletics, an affiliate of Tenant, including without limitation Bliss Sports II, LC, or a third party which relates to the lease of the Demised Premises to the Tenant, the sale of the City Rec Center Site to City, the design, construction or financing of the improvements provided for in the Infrastructure Plans (as the same may be modified) that Landlord agrees to cause to be built on or near the City Rec Center Site pursuant to the City Purchase Agreement, the Infrastructure Agreements or otherwise, or the design, construction or financing of the Initial KU Improvements (as the same may be modified in accordance with Section 2.3 or otherwise) or any of the foregoing agreements, less any portion of such sum which is reimbursed to Landlord from a third party pursuant to the City Purchase Agreement or any of the Infrastructure Agreements, plus (ii) all theretofore accrued but unpaid interest on the unpaid principal balance of such sum, which interest accrues from the date hereof at Prime Rate plus one percent per annum, as adjusted each July 1st commencing July 1, 2013 and continuing each July 1st thereafter until all of the Base Rent has been paid in full. The parties acknowledge that at the execution of this Lease the sum described in clause (i) above is less than \$4,500,000.00 but that such sum continues to accrue and that, no later than November 30th of each year in which an installment of Base Rent is due, the Landlord shall furnish to Tenant a written calculation of the amount that will be due for Base Rent as of the following December 31st pursuant to this Section

3.1. The parties agree that the fifth installment of Base Rent due on December 31, 2017, will include all amounts described in (i) and (ii) above which have accrued but not theretofore been paid. Unless hereafter agreed otherwise by Landlord and Tenant in a separate written agreement, after the payment in full of the foregoing five (5) installments of Base Rent, except as provided in Section 15.1, no additional Base Rent will be due from Tenant to Landlord during the Lease Term. For purposes hereof, the term "Prime Rate" shall mean the "prime rate" as designated by the Wall Street Journal or, if publication thereof ceases, a similar national business oriented publication reasonably selected by Landlord. Notwithstanding anything to the contrary in this Section 3.1 to the contrary, if Tenant notifies Landlord in writing on or before November 30, 2013 that the Initial KU Improvements are not substantially completed then Tenant will notify Landlord within five (5) days after the Initial KU Improvements are substantially completed and the first installment of Base Rent that otherwise would be due from Tenant to Landlord on December 31, 2013 will not be due until the sooner to occur of (i) thirty (30) days after the date that the Initial KU Improvements are substantially completed or (ii) June 30, 2014 and Landlord's written calculation of the amount of such first installment of Base Rent will not be due until ten (10) days before payment of such first installment of Base Rent is due.

(b) Landlord and Tenant intend that except as otherwise provided herein (i) the Base Rent shall be net to Landlord, so that Tenant's payments to Landlord shall yield to Landlord the net Base Rent set forth herein, together with the Additional Rent (as hereinafter defined) during the Lease Term, and (ii) all costs, expenses and obligations of every kind relating to the Demised Premises, which arise and become due during the term of this Lease, including, without limitation, all costs, expenses and obligations attributable to the use of the Demised Premises during the Lease Term and the operation of any improvements thereon, shall be paid by Tenant and Landlord shall have no liability or obligation therefor.

Section 3.2 **Additional Rent.** Any and all amounts payable by Tenant to Landlord pursuant to this Lease in addition to Base Rent shall be called "Additional Rent." Additional Rent shall include Real Estate Taxes and any other amounts which Tenant is required to pay pursuant to the terms of this Lease. Except as otherwise specifically provided herein, Tenant shall pay to Landlord the Additional Rent without demand, deduction or set-off.

ARTICLE 4. TAXES

Section 4.1 **Personal Property Taxes.** Tenant shall be liable for all taxes, special assessments, excise taxes, payments in lieu of taxes and other governmental impositions of every kind and nature whatsoever, levied, assessed, or imposed upon or against any personal property and trade fixtures on the Demised Premises for any period of time, any portion of which occurs after the Effective Date and on or before the date of Tenant's vacation of the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, whether the same are assessed or due prior to, during or after such period.

Section 4.2 **Real Estate Taxes.**

(a) Tenant shall pay to Landlord as Additional Rent the Real Estate Taxes (as defined hereinafter) imposed upon the Demised Premises or any improvements or

fixtures thereon for any period of time, any portion of which occurs after the date of Landlord's acquisition of the Demised Premises and on or before the date of Tenant's vacation of the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, whether the same are assessed or due prior to, during or after such period. In addition, Tenant shall pay to Landlord as Additional Rent the Real Estate Taxes imposed upon the City Rec Center Site for any period of time, any portion of which occurs after the date of Landlord's acquisition of the City Rec Center Site and on or before the sooner of the date that Landlord conveys the City Rec Center Site to the City pursuant to the agreement referred to in Section 2.3(a) above or the date upon which the City's right to acquire title to the City Rec Center Site under such agreement expires or is terminated.

(b) The term "Real Estate Taxes" shall include all real estate taxes, special assessments, excise taxes, payments in lieu of taxes, water and sewer rents, and other governmental impositions of every kind and nature whatsoever levied, assessed, or imposed upon or against the Demised Premises or City Rec Center Site, as the case may be, and any buildings or improvements from time to time erected thereon, including without limitation the portions of the Infrastructure Improvements on the Demised Premises and all increases therein.

(c) Tax and assessment payments for any partial years shall be prorated. Landlord shall attempt to cause the appropriate governmental taxing authority to separately assess the Demised Premises and the City Rec Center Site after the Effective Date.

Section 4.3 Payment of Taxes.

(a) Tenant shall pay the applicable amount(s) of all Personal Property Taxes and all Real Estate Taxes at least ten (10) days before the dates such Personal Property Taxes and Real Estate Taxes are delinquent and shall furnish Landlord with documentation reasonably acceptable to Landlord of such payment prior to the respective delinquency date.

(b) If Tenant wishes, Tenant may, by appropriate proceedings diligently conducted in good faith at Tenant's cost and expense, attempt to secure a reduction or abatement of any Personal Property Taxes or Real Estate Taxes. Tenant shall give Landlord written notice of the same and, to the extent permitted by law, defer payment of the Personal Property Taxes or Real Estate Taxes while any appeal or other proceeding is pending. Tenant shall save and indemnify Landlord from any liability, costs, expenses, interest and penalties relating to the same, and in any event shall pay the Personal Property Taxes and Real Estate Taxes (and such costs, expenses, interest and penalties) before either Landlord or Tenant becomes subject to criminal liability or civil liability (other than the liability for the payment of the Personal Property Taxes or Real Estate Taxes) or the tax lien is foreclosed for the nonpayment thereof. Tenant shall give whatever notices, post whatever bonds, and perform such other acts as may be required in connection with any such appeal or proceeding.

ARTICLE 5. CONDITION OF PREMISES; ENVIRONMENTAL COVENANTS

Section 5.1 Condition of Demised Property. Tenant has inspected and knows the condition of the Demised Premises and accepts the same in their present condition, "as is,"

“where is” and “with all faults.” Tenant acknowledges that neither Landlord nor any other person acting on behalf of Landlord has made any warranties or representations concerning the Demised Premises, and that Tenant relies upon no such warranties or representations in entering into this Lease.

Section 5.2 Environmental Covenants.

(a) Tenant shall not use or from and after the Effective Date until the date that Tenant vacates the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term permit or suffer any other party to use all or any part of the Demised Premises including any improvements hereafter constructed thereon as (which shall for purposes of this Article 5 be included within the term “Demised Premises”) to refine, produce, store, handle, transfer, process or transport Hazardous Material or any pollutant or contaminate, as those terms are defined in any Environmental Regulations (as hereinafter defined), as the same may be amended from time to time, or any petroleum products, in any manner which would result in a release or threatened release which would or could violate, or could require response under, applicable Environmental Regulations.

(b) As used herein, the term “Hazardous Material” means any radioactive, hazardous, or toxic substance, material, waste, chemical, or similar item, the presence of which on the Property, or the discharge, emission, release, or threat of release of which on or from the Property, is prohibited or otherwise regulated by any laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the State of Kansas, and any local or governmental or regulatory authorities exercising jurisdiction over Tenant or the Property, or which require special handling in collection, storage, treatment, or disposal by any such laws or requirements. The term Hazardous Material includes, but is not limited to, any material, substance, waste or similar item which is now or hereafter defined as a hazardous material, substance or term of similar meaning under any then applicable provisions of the laws of the State of Kansas; any of the following federal statutes, as the same may be amended from time to time, to-wit: the Federal Water Pollution Control Act (33 U.S.C. Section 1317), the Federal Resource Conservation and Recovery Act (RCRA) (42 U.S.C. Section 6901, et seq.), the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and (SARA) (42 U.S.C. Section 9601, et seq.), any rules or regulations adopted by any administrative agency, including, but not limited to, the Environmental Protection Agency, the Department of Transportation, and any similar state or local agency having jurisdiction over the Demised Premises or the Hazardous Material, whether or not such rules and regulations have the force of law. The term “Environmental Regulations” as used herein means any federal, state or local laws, statutes, codes, ordinances, regulations, requirements, rules or agency or court orders relating to any environmental matters, including the removal, handling, and disposal of hazardous or toxic waste materials.

(c) From and after the Effective Date until the date that Tenant vacates the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, Tenant shall cause all activities conducted by Tenant or others on the Demised Premises to be conducted in a careful and prudent manner in compliance with all applicable Environmental Regulations and shall avoid and prevent any “release,” as defined in CERCLA § 9601 (22), of any Hazardous Material on or about the Demised Premises into any waters or onto any lands, or

air unless such release or disposal is pursuant to and in compliance with all applicable Environmental Regulations.

(d) Tenant shall give written notice to Landlord immediately if (i) Tenant acquires knowledge of the presence of any Hazardous Material on the Demised Premises or any Hazardous Material contamination; (ii) Tenant receives any notices alleging that the Demised Premises contains Hazardous Material or contamination thereof; (iii) Tenant acquires knowledge or receives a notice that a violation or potential violation of any Environmental Regulations exists on or at the Demised Premises; (iv) Tenant receives or becomes aware of claims made or threatened by any third party relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Material pertaining to the Demised Premises; or (v) Tenant receives any notice or otherwise becomes aware of any violation of this Article 5 or a threat or allegation of any such violation.

(e) If any local governmental authority, any state or the federal government, or any agency or court of any of them, including, but not limited to, the United States Environmental Protection Agency, notifies Tenant that an investigation is being or will be conducted regarding the Demised Premises or that any "removal" or "remedial action" (as these terms are defined in 42 U.S.C. §§ 9601 (23) and (24) or any other Environmental Regulations), or any clean-up operations of any kind or nature are necessary to be performed on the Demised Premises, or in the event any of such authorities commence, perform or complete any clean-up operation, then Tenant shall immediately notify Landlord thereof. If the removal, remedial action or clean-up operations relate in whole or in part to any event or condition which occurred or existed prior to the later of the end of the Lease Term and Tenant's vacation of the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, Tenant shall promptly begin the clean-up operation within any time period specified by the governmental authority, cooperate with any governmental authority conducting any clean-up operation, reimburse said authority for the cost thereof if required by law to do so, and fully reimburse any other party in accordance with said final nonappealable judgment for any cleanup operation performed as required by law, and obtain a release from such party and furnish Landlord a copy of such release.

(f) If Tenant fails to remove or cause the removal of any Hazardous Material or otherwise comply with the Environmental Regulations which relate in whole or in part to any event or condition which occurred or existed prior to the later of the end of the Lease Term and Tenant's vacation of the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, Landlord may, after ten (10) days' prior notice to Tenant (except that Landlord may take such actions immediately in the event of an emergency or immediate threat to life, health or safety) do whatever is necessary to either eliminate such Hazardous Material from the Demised Premises or otherwise cause compliance with the Environmental Regulations. All losses, costs, damages, claims, and expenses incurred by Landlord on account of Tenant's failure to perform the obligations described in this Lease shall be immediately due and payable with interest thereon at the rate stated in Section 15.9.

(g) Tenant agrees to defend, indemnify and hold Landlord and its member(s) and their respective officers, directors, trustees and members harmless from all of the following which relate in whole or in part to any event or condition which occurred or existed

prior to the later of the end of the Lease Term and Tenant's vacation of the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, any and all actions, loss, liability, damage, cost or expense occasioned by, resulting from, or consequent to any Hazardous Material or Hazardous Material contamination on the Demised Premises; any releases or discharges of Hazardous Material from the Demised Premises; any manufacturing, treating, storing, maintaining, holding, handling, transporting, spilling, leaking or dumping of Hazardous Material on, from or at the Demised Premises; any other violation of Environmental Regulations; any claim or assertion that any Hazardous Material or Hazardous Material contamination is located on the Demised Premises; any claim that any such activities or violations have been, or are being, engaged in on the Demised Premises; or any other failure or alleged failure of Tenant to comply with the provisions of this Agreement.

(h) The provisions of this Article 5 shall survive the expiration or sooner termination of the Lease Term and this Lease.

ARTICLE 6. IMPROVEMENTS

Section 6.1 **Permitted Improvements.** During the period commencing with the Effective Date and continuing thereafter until the date that Tenant vacates the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, in addition to the Infrastructure Improvements, the only fixtures and improvements which Tenant, its sublessees and their respective contractors, subcontractors, employees, agents, licensees, successors or assigns (each of Tenant and such third parties being referred to herein sometimes as a "Tenant Contractor") may construct or permit or suffer to be constructed (the "Permitted Improvements") on the Demised Premises are:

- (a) the Initial KU Improvements;
- (b) those modifications and additions to then existing improvements and fixtures on the Demised Premises which otherwise constitute Permitted Improvements which: (i) are required to be made from time to time by applicable law; or (ii) together with any related improvements not otherwise constituting Permitted Improvements cost less than Twenty Thousand AND NO/100 DOLLARS (\$20,000.00) in the aggregate, occupy no more than two (200) hundred square feet and are no more than twenty (20) feet high;
- (c) a reconstruction of a Permitted Improvement which has been destroyed or damaged by a fire, weather or other casualty event;
- (d) a restoration of the Demised Premises or of a Permitted Improvement as a result of a taking of all or any portion of the Demised Premised or of such Permitted Improvement, by eminent domain or a conveyance in lieu thereof;
- (e) improvements related to the repair, restoration or use for Athletics Events of the Initial KU Improvements which are constructed inside of the footprints of the Initial KU Improvements and are not visible from the boundary of the Demised Premises; and

(f) those other improvements and fixtures which are consented to in writing by Landlord, from time to time; provided that Landlord may withhold its consent in its sole discretion except that Landlord will not unreasonably withhold, delay or condition consent to a proposed improvement or fixture which: (i) is not inconsistent with any provision of this Lease; (ii) together with any related improvements not otherwise constituting Permitted Improvements cost less than Twenty Thousand AND NO/100 DOLLARS (\$20,000.00) in the aggregate, occupy no more than two (200) hundred square feet and are no more than twenty (20) feet high; and (iii) during the KU Athletics Sublease Term does not unreasonably interfere with the use of the Initial KU Improvements for Athletics Events; provided further that Landlord will be deemed to have consented if Landlord has neither refused to consent nor requested additional information in a notice given to Tenant within ten (10) business days of Landlord's actual receipt of the request for consent to a given set of proposed improvements and fixtures from Tenant which request includes a reasonably detailed description thereof. If Tenant requests Landlord to approve or consent to a proposed improvement or fixture on the Demised Premises other than the Initial KU Improvements and Landlord reasonably determines that in order to evaluate such request Landlord requires the services of an architect, engineer or other third party advisor, within thirty (30) days of Landlord's request therefor, Tenant shall reimburse Landlord for all out of pocket expenses incurred by Landlord in evaluating whether or not to give such approval or consent, which reimbursement obligations will constitute Additional Rent. The provisions of subsections Section 6.1(a), (b), (c), (d), (e) and (f) will not apply to any improvement which constitutes a sign or advertising medium, which are governed by Section 6.13.

Section 6.2 **Permits.** Prior to constructing or permitting or suffering the construction of any portion of the Permitted Improvements, Tenant shall, or shall cause another Tenant Contractor to, apply for and obtain, at the sole cost and expense of Tenant or another Tenant Contractor, all zoning and final site plan approval required under applicable law for the construction, use and operation of such portion of the Permitted Improvements on the Demised Premises. Tenant shall not file any application for, or take any action with respect to, the approval by the applicable governmental authorities without Landlord's prior approval of such application, action, and any related plans and specifications (including, without limitation, the final site plan), and elevations provided; provided that Landlord will not unreasonably withhold approval of such application, action and any related plans and specifications which: (a) are necessary solely for the construction of one or more of the Permitted Improvements described in Section 6.1(a), (b)(i), (c), (d) or (e); or (b) (i) are not inconsistent with any provision of this Lease and (ii) during the KU Athletics Sublease Term do not unreasonably interfere with the use of the Initial KU Improvements for Athletics Events; provided further that Landlord will be deemed to have consented if Landlord has neither refused to consent nor requested additional information in a notice given to Tenant within ten (10) business days of Landlord's actual receipt of the request for consent from Tenant to a given set of proposed zoning and final site plans from Tenant which request includes a reasonably detailed description thereof. Notwithstanding anything to the contrary in the preceding sentence, unless specifically agreed otherwise in writing, (i) Landlord will not be deemed to have agreed to any permit, zoning or final plat which would impose upon Landlord or Landlord's interests in the Demised Premises any assessment, excise tax or other liability, and (ii) Tenant shall not be obligated to obtain Landlord's approval with respect to permits for a Permitted Improvement under Section 6.1(e) unless Landlord is required by applicable law to be a party to such permit, but Tenant will provide Landlord with copies of all such permits and applications therefor promptly after filing. Landlord agrees to

cooperate with Tenant's efforts to obtain the approved permits and approvals including, without limitation, by permitting the use of Landlord's name on applications, if necessary, because of Landlord's ownership of the Demised Premises; provided that within thirty (30) days of Landlord's request therefor, Tenant shall reimburse Landlord for all expenses incurred by Landlord in doing so, which reimbursement obligations will constitute Additional Rent.

Section 6.3 Costs of Designing, Constructing, Permitting and Maintaining Permitted Improvements. Subject to Section 6.12 as to Infrastructure Improvements, Tenant shall pay, or cause third parties other than Landlord to pay, all costs of designing, constructing, obtaining permits for and maintaining all Permitted Improvements. Such costs which were paid for by Landlord will be reimbursed by Tenant either directly, or indirectly through payment of Base Rent. In no event will Landlord or any property of Landlord, including without limitation the Landlord's interests in the Demised Premises, be liable for the payment of any of the costs of designing, constructing, obtaining permits for or of maintaining the Permitted Improvements.

Section 6.4 Mechanics Liens. Tenant shall not file or permit any third party to file, perfect or seek to foreclose any architect's, engineer's, mechanic's or materialmen's lien against the Demised Premises or any improvement or fixture thereon, including without limitation the Permitted Improvements. Notwithstanding the preceding sentence to the contrary, if Tenant, or KU Athletics, under the KU Athletics Sublease, as applicable, in good faith disputes the validity, amount, existence or applicability of any such claim of architect's, engineer's, mechanic's or materialmen's lien, Tenant or KU Athletics, as applicable, upon prior written notice to Landlord, may, by appropriate proceedings diligently conducted in good faith at Tenant's cost and expense, attempt to secure a reduction or release of such lien; provided that Tenant must prevent the collection of, or foreclosure of such lien. Landlord, in its reasonable discretion as a condition to Tenant's or KU Athletics' right to contest pursuant to the preceding sentence, may require that Tenant provide such security, as may be reasonably required by Landlord, which at the option of Landlord, shall be in the form of acceptable surety bond or cash in the amount of 100% of the contested amount (including costs), a guaranty from a financially responsible party, or such other reasonable security to insure compliance by Tenant with the foregoing provisions of this Section. In any event, Tenant shall save and indemnify Landlord, the Demised Premises, all improvements and fixtures thereon and fee title to the real property subject to this Lease from any liability, costs, expenses, interest and penalties relating to any such architect's, engineer's, mechanic's or materialmen's lien.

Section 6.5 Not Landlord's Agent. Nothing in this Lease or in any consent granted by Landlord shall be construed as making any Tenant Contractor an agent of Landlord for purposes of making any Permitted Improvements or any other fixtures or improvements on the Demised Premises.

Section 6.6 No Warranty by Landlord. No approval or consent by Landlord of the Initial KU Improvements Plans, Infrastructure Plans or any other plans for any Permitted Improvements shall be deemed a warranty or representation of any type which may be relied upon by Tenant or by any persons or entities not a party to this Lease for any purpose.

Section 6.7 Qualifications and Insurance of Tenant Contractors. In connection with designing, constructing and maintaining the Permitted Improvements, Tenant shall only use,

or permit Tenant Contractors to use, architects, engineers, contractors and materialmen who have all necessary licenses and permits required under applicable law to do such work, who are well qualified to do such work, who carry all insurance required by Article 9 or under applicable law and who have been approved by KU Athletics if such approval is required under the KU Athletics Sublease or any other agreement between Tenant and KU Athletics.

Section 6.8 Maintenance and Repairs. During the Lease Term Tenant shall, or shall cause a third party other than Landlord to, keep and maintain the Demised Premises and the Permitted Improvements, in good repair and condition (ordinary and reasonable wear and tear excepted), with all costs of doing so being paid by Tenant or a third party other than Landlord.

Section 6.9 Requirements of Law. During the Lease Term Tenant shall, or shall cause a third party other than Landlord to, cause the Demised Premises and the Permitted Improvements to be in compliance with all present and future laws, ordinances, regulations, requirements, and orders of any government authority, with all costs of doing so being paid by Tenant or a third party other than Landlord. If Tenant, or KU Athletics under the KU Athletics Sublease, as applicable, in good faith disputes the validity or applicability of any such present and future laws, ordinances, regulations, requirements or orders (“Applicable Law”) Tenant or KU Athletics, as applicable, upon prior written notice to Landlord, may challenge such Applicable Law, ordinance, regulation, requirement or order by appropriate proceedings diligently conducted in good faith at Tenant’s cost and expense, provided that during the pendency of such proceeding, Tenant is legally able to and shall prevent the enforcement of such Applicable Law, and is both legally, and as a practical matter, able to indemnify, save and defend Landlord and the Demised Premises from damages or liability by reason of such challenge. Landlord, in its reasonable discretion as a condition to the right of Tenant or KU Athletics to contest pursuant to the preceding sentence, may require that Tenant provide such security, as may be reasonable required by Landlord, which at the option of Landlord, shall be in the form of acceptable surety bond or cash in the amount of 100% of the contested amount (including costs), guaranty from a financially responsible party, or such other reasonable security to insure compliance by Tenant with the foregoing provisions of this Section. In any event, Tenant shall save and indemnify Landlord, the Demised Premises, all improvements and fixtures thereon and fee title to the real property subject to this Lease from any liability, costs, expenses, interest and penalties relating to any such laws, ordinances, regulations, requirements or orders.

Section 6.10 Utilities. Tenant shall pay or shall cause a third party other than Landlord to pay the cost of all utility services for the Demised Premises and the Permitted Improvements during the Lease Term.

Section 6.11 Title to Permitted Improvements During, and Removal or Conveyance at End of, Lease Term.

(a) Until the expiration or sooner termination of the Lease Term, title to the Permitted Improvements on the Demised Premises shall remain in Tenant.

(b) Upon the expiration or sooner termination, of the Lease Term, Tenant shall leave all Permitted Improvements on the Demised Premises in broom clean condition, and Tenant shall cause such improvements and fixtures to become the property of

Landlord, free and clear of any liens or encumbrances whatsoever (including without limitation free and clear of any Leasehold Mortgage), effective as of the expiration or sooner termination of the Lease Term.

(c) If upon expiration or sooner termination of the Lease Term, any improvements on the Demised Premises are surrendered to Landlord in accordance with Section 6.11.(b) with damage suffered by fire or any other insured casualty, if Tenant has not previously assigned to Landlord all of Tenant's rights in and to any insurance proceeds payable because of such fire or other insured casualty damage to the improvements on the Demised Premises, Tenant shall forthwith assign and set over to Landlord, all of Tenant's right, title and interest in and to all such insurance proceeds payable because of such fire or other insured casualty, exclusive only of insurance proceeds solely payable to Tenant to reimburse Tenant for the value of its personal property and fixtures lost or damaged by such fire or other casualty, and Tenant shall forthwith pay to Landlord a sum equal to any deductible claimed by the insurance company in settling Landlord's insurance claim under any insurance policy maintained by Tenant in compliance with this Lease, and Tenant shall cooperate with Landlord as reasonably requested by Landlord, in pursuing any such claim on Landlord's behalf.

(d) If Tenant is not then in default under this Lease at the time the Lease Term ends, Tenant shall have the right and privilege, and at Landlord's option, even if Tenant is in default under this Lease at the time the Lease Term ends, the obligation, to forthwith remove any movable office equipment and other personal property installed and maintained by Tenant or third parties on the Demised Premises and Tenant shall pay to Landlord as Additional Rent, all costs which would be incurred by Landlord if Landlord were to repair all such damage, if any, to the improvements on the Demised Premises resulting from the removal of such property. Upon Tenant surrendering possession of the Demised Premises to Landlord, if any property remains in or on the Demised Premises, at Landlord's option, such property shall be deemed to be abandoned by Tenant and shall become the property of Landlord, as though it had been conveyed by Tenant to Landlord as of the date Tenant surrendered possession of the Demised Premises to Landlord, even if the Lease Term has not ended, by an appropriate bill of sale with special warranties of title, free and clear of all liens and encumbrances, and Tenant hereby authorizes Landlord to immediately take possession of all such property without notice to Tenant and to remove such property or any portion of it from the Demised Premises or make such other disposition of such property or any portion of it as Landlord may desire, all without any liability to Tenant for compensation or damages. Landlord's rights hereunder include, but are not limited to the right to sell or otherwise dispose of such property in any manner, including, but not limited to the right to deliver possession of all or any portion of such property to any person or firm which claims to own or hold a lien on any such property without liability for compensation or damages to Tenant, or to any other person or firm which may claim to own or hold a lien on such property. All proceeds, if any, realized by Landlord in disposing of such property shall be retained by Landlord as Additional Rent, to offset Tenant's obligation to reimburse Landlord for all costs, incurred by Landlord in disposing of such property, with any balance to compensate Landlord for having to dispose of such property; provided that in any event Tenant shall be responsible to reimburse Landlord for Landlord's costs to the extent of any deficiency in the amount of such proceeds. Tenant hereby agrees to indemnify and hold Landlord harmless from all suits, actions, liability, loss, damages and expenses incurred in connection with or incident to any removal, exercise or dominion over and/or disposition of such

property by Landlord, without limitation, including, but not limited to reasonable attorney fees, resulting from any action taken, or not taken by Landlord with regard to any such property.

(e) Tenant shall reimburse Landlord on demand for all costs and expenses incurred by Landlord in removing such property from the Demised Premises pursuant to the preceding subsection (d), all costs incurred by Landlord in restoring the Demised Premises to broom clean condition (or condition required pursuant to Article 11 or Article 12 if applicable) and all costs incurred by Landlord, including reasonable attorney fees, if any, because of any breach of the provisions of this Section 6.11, all of which shall constitute Additional Rent.

(f) The terms and provisions of this Section 6.11 shall survive the expiration or other termination of the Lease Term.

Section 6.12 Infrastructure Improvements. Subject to Section 2.3, during the Lease Term, Landlord shall not make any improvements or alterations on the Demised Premises except for the Infrastructure Improvements through Landlord's separate agreement with Tenant or Tenant's affiliate. Tenant shall not have any title to the Infrastructure Improvements and shall have no obligations to remove any of the Infrastructure Improvements during the Lease Term but during the Lease Term Tenant will pay, or cause a third party other than Landlord to pay, all costs of maintaining, reconstructing and operating the Infrastructure Improvements which are attributable to the Demised Premises under any cross access easement or maintenance agreement to which the Demised Premises or any portion thereof may be subject during the Lease Term.

Section 6.13 Exterior Signs; Communications Towers. During the Lease Term, Tenant and Permitted Subtenants shall have the right, at their sole cost and expense, to install, maintain and place in, on or about the Demised Premises such signs and advertising matter as they may reasonably desire except that, unless hereafter approved in advance in writing by Landlord, no such signs may: (a) promote or oppose any political candidate(s), position or issues; or (b) if either located outside of the footprints of the Initial KU Improvements, or located within the footprint of the KU Improvements but visible from the boundary of the Demised Premises, constitute advertising or an announcement of sponsorship of one or more of the Permitted Improvements or a Permitted Use. Except as set forth in previous sentence, in no event may a billboard or permanent sign be installed and leased to advertise anything unrelated to a Permitted Use of the Demised Premises except with the prior written consent of the Landlord. In no event may any microwave, cell phone, data or other communication tower or equipment (other than any solely for uses permitted on the Demised Premises under this Lease) be installed on the Demised Premises, any Permitted Improvements or any Infrastructure Improvements except with the prior written consent of the Landlord. For the purposes of this Section 6.13, signage does not mean signage which is either designed to last, or which, in any one (1) calendar month, is left on the Demised Premises for less than seventy-two (72) hours. Tenant and Permitted Subtenants shall comply with all applicable requirements of the City and any other governmental authorities having jurisdiction with respect to signs on the Demised Premises and shall obtain any necessary permits for such purposes. As used in this Lease, the word "sign" shall be construed to include any placard, light or other advertising symbol, name, or object, irrespective of whether the same be temporary or permanent.

Section 6.14 **Removal of Other Improvements.** If Tenant or any Tenant Contractor or Permitted Subtenant constructs, reconstructs or alters, or if Tenant permits or suffers construction, reconstruction or alteration by any third party of, any improvements or fixtures on the Demised Premises during the Lease Term which improvements or fixtures do not constitute Permitted Improvements, Infrastructure Improvements or alterations of Permitted Improvements or Infrastructure Improvements approved in writing in advance by Landlord (together with any signage and any microwave, cell phone, data or other communication tower or equipment not expressly permitted under this Lease or in writing by Landlord, "Non-Conforming Improvements"), then, within ninety (90) days of notice from Landlord, Tenant shall either modify the Non-Conforming Improvements so as to become Permitted Improvements or Infrastructure Improvements approved by Landlord or specifically permitted by this Lease or Tenant shall remove the Non-Conforming Improvements and restore any otherwise Permitted Improvements or Infrastructure Improvement as the case may be that were altered by such Non-Conforming Improvements to the condition of a Permitted Improvements or Infrastructure Improvement; provided that once any Non-Conforming Improvements are removed Tenant shall restore such portion of the Demised Premises and any affected Permitted Improvements to be put in the condition they were in prior to the construction of such Non-Conforming Improvements, with Tenant causing all modification or removal and restoration costs to be paid by the Tenant or a third party other than Landlord. If Tenant fails to modify or remove any Non-Conforming Improvements in accordance with this Section 6.14 within said ninety (90) day period then, at Landlord's option, Landlord may: (a) declare Tenant to be in default under this Lease; (b) may remove the same and restore the affected portions of the Demised Premises and any Permitted Improvements and Infrastructure Improvements affected thereby in which case the Tenant shall reimburse Landlord for its expenses of removal and restoration as Additional Rent within thirty (30) days of demand therefor; or (c) both.

ARTICLE 7. USE

Except with the prior written consent of Landlord, which may be withheld in Landlord's sole discretion, during the Lease Term the Demised Premises may only be used for: (a) the construction, reconstruction, repair and maintenance of Permitted Improvements and Infrastructure Improvements; (b) the conduct of Athletics Events held on the Demised Premises which are conducted by Tenant or Permitted Subtenants (as hereinafter defined); or (c) providing parking and concessions for participants or spectators of Athletics Events conducted only on the Demised Premises, the City Rec Center Site or both by the Tenant, Permitted Subtenants or, as to the City Rec Center Site by, the City or the City's invitees (each a "Permitted Use"). Landlord will be deemed to have consented to a request by Tenant for a use other than a Permitted Use, if Landlord has neither refused to consent nor requested additional information in a notice given to Tenant within ten (10) business days of Landlord's actual receipt of the written request for consent to a use from Tenant which request includes a reasonably detailed description thereof. If Tenant requests Landlord to approve or consent to a use other than a Permitted Use and Landlord reasonably determines that in order to evaluate such request Landlord requires the services of a third party advisor, within thirty (30) days of Landlord's request therefor, Tenant shall reimburse Landlord for all out of pocket expenses incurred by Landlord in evaluating whether or not to give such approval or consent, which reimbursement obligations will constitute Additional Rent. Notwithstanding anything herein to the contrary, Landlord's approval of the KU Athletics

Agreements or any Permitted Subleases shall not be deemed to permit any uses other than Permitted Uses unless otherwise expressly agreed in writing by Landlord.

**ARTICLE 8.
TENANT'S OTHER COVENANTS AND AGREEMENTS**

Section 8.1 **Tenant's Covenants.** Tenant covenants and agrees, for itself and its Permitted Subtenants, as follows:

(a) To procure, or to cause a third party to obtain, at no cost to Landlord, all licenses and permits required for any use made of the Demised Premises by Tenant and its Permitted Subtenants.

(b) To use, maintain and occupy, or permit or suffer third parties to use, maintain and occupy, the Permitted Improvements and Infrastructure Improvements on the Demised Premises in a lawful manner in conformity with this Lease and applicable government laws and ordinances.

**ARTICLE 9.
INDEMNITY AND INSURANCE.**

Section 9.1 **Indemnity.** Tenant shall defend and indemnify Landlord and its members and their respective trustees, officers, employees, agents and managers from and against all actions, liabilities, expenses, injuries, losses, claims, or damages to any person or property, including reasonable attorneys' fees and expenses, arising from or out of any occurrence in connection with the use or occupancy of the Demised Premises by any person or entity during the period commencing with the Effective Date and continuing thereafter until the date that Tenant vacates the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, except to the extent (i) caused by the gross negligence or willful misconduct of Landlord or its employees, agents or contractors (other than Tenant or Tenant's affiliates) acting within the scope of their respective employment, authority or contract, or (ii) such occurrence is insured by KU Athletics under the KU Athletics Sublease to the extent Landlord recovers as an additional insured under such policy. If any action is brought against the Landlord or any of its members or their respective trustees, officers, employees, agents and managers in connection with any claims as to which Tenant has an obligation to provide a defense or indemnification, Tenant, upon notice from Landlord, shall defend the same at the Tenant's expense with counsel approved by Landlord, which approval shall not be unreasonably withheld.

Section 9.2 **Liability Insurance.** Without limiting the generality of the Tenant's obligations under Section 9.1, during the period commencing with the Effective Date and continuing thereafter until the date that Tenant vacates the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, Tenant shall cause to be maintained, at the cost of Tenant or a third party other than Landlord, general liability insurance from an insurance company licensed to provide such coverage in the State of Kansas with limits of not less than \$5,000,000.00 in respect of bodily injury or death to any one person or of not less than \$2,000,000.00 in respect of any one accident and of not less than \$1,000,000.00 for property

damage, with deductible amounts of no more than \$100,000.00, insuring Landlord and its members and their respective trustees, officers, employees, agents and managers, as primary and non-contributory additional insureds, against injury to persons or damage to property arising from the use or occupancy of the Demised Premises by anyone, including without limitation Tenant, Tenant Contractors or Permitted Subtenants. Such liability insurance coverage will include, without limitation, products and completed operations, premises liability, personal and advertising liability, medical expense, contractual liability, and legal liability and shall not include any exclusions related to athletic events. The liability insurance policy should either be site specific or should be endorsed to provide a per project endorsement on a blanket policy so that the above coverages apply fully to the Demised Premises and the improvements thereon.

Section 9.3 All-Risk Insurance. During the Lease Term and thereafter until the date that Tenant vacates the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, Tenant shall cause to be maintained, at the cost of Tenant or a third party other than Landlord, all-risk insurance on the Permitted Improvements and Infrastructure Improvements for the benefit of Tenant, any Permitted Subtenants, any Leasehold Mortgagee(s) (as hereinafter defined) and Landlord (as a primary and non-contributory additional insured), as their interests may appear. The amount of such insurance shall not be less than the replacement cost of the Permitted Improvements and Infrastructure Improvements, without any deduction being made for depreciation, but exclusive of foundations and excavations. All proceeds payable at any time and from time to time by any insurance company under such policies shall be payable to the Leasehold Mortgagee(s), if any, or, if none, to Tenant; provided that the recipient thereof must either use the proceeds to reduce any Permitted Debt, to restore or replace the Permitted Improvements or Infrastructure Improvements, as the case may be, or some combination of both; provided further that if Tenant receives such proceeds and does not elect to restore or replace the Permitted Improvements or Infrastructure Improvements, then Tenant must comply with Section 6.11 as to any portion(s) of the Demised Premises which are not restored as though as to such portion(s) of the Demised Premises the Lease Term had expired. Landlord shall, at Tenant's cost and expense, reasonably cooperate with Tenant in order to cause such proceeds to be paid as hereinbefore provided.

Section 9.4 Builder's Risk Insurance. During construction, reconstruction, restoration, repair and removal of any of the Permitted Improvements, Infrastructure Improvements and any improvements or alterations on the Demised Premises during the Lease Term and thereafter until the date that Tenant vacates the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, Tenant shall cause to be maintained, at the cost of Tenant or a third party other than Landlord, until completion of construction, reconstruction, restoration, repair and removal, builder's risk insurance insuring the improvements, on a non-reporting and completed value basis as the same are constructed, for the benefit of Tenant, any Permitted Subtenants, any Leasehold Mortgagee(s) (as hereinafter defined) and Landlord (as a primary and non-contributory additional insured), as their interests may appear.

Section 9.5 Workers' Compensation Insurance. During construction, reconstruction, restoration, maintenance, landscaping and repair of any of the Permitted Improvements, Infrastructure Improvements and any improvements or alterations on the Demised Premises and during operations of the Demised Premises, Tenant shall cause to be

maintained, at the cost of Tenant or a third party other than Landlord, until completion of construction, reconstruction, restoration, maintenance, landscaping and repair, all worker's compensation insurance policies required to be carried by the entity performing such work under applicable law, *provided* that if permitted under the laws of such State of Kansas in lieu of such worker's compensation insurance, Tenant may maintain a program of self-insurance complying with the rules and regulations and requirements from time to time in effect of the appropriate state agency of the State of Kansas.

Section 9.6 Waiver of Subrogation. To the extent permitted by applicable law, Landlord and Tenant hereby release each other from any and all liability and responsibility to one another, or to anyone claiming through or under either of them by way of subrogation or otherwise, for any and all loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties covered by insurance to the extent insurance proceeds are received therefor, even if such fire or other casualty shall have been caused by the fault or negligence of Landlord or Tenant, or anyone for whom Landlord or Tenant may have been responsible. Landlord's and Tenant's insurance policies shall include appropriate clauses (a) waiving all rights of subrogation against Landlord or Tenant, as the case may be, with respect to losses payable under such policies, and (b) agreeing that such policies shall not be invalidated should the insured waive in writing prior to a loss any and all rights of recovery against the other party hereto for losses covered by such policies.

Section 9.7 Other Insurance. During the Lease Term and thereafter until the date that Tenant vacates the Demised Premises in accordance with the provisions of this Lease at the end of the Lease Term, Tenant shall cause to be maintained, at the cost of Tenant or a third party other than Landlord, insuring Landlord and its members and their respective trustees, officers, employees, agents and managers, as primary and non-contributory additional insureds, the following additional coverages: (a) auto liability coverage; and (b) if cereal malt beverages or alcoholic beverages including liquor will be permitted or served on the Demised Premises (which this reference does not constitute permission by the Landlord to do) full liquor liability coverage with liability limits acceptable to Landlord.

Section 9.8 License, Rating and Certificates. All insurance provided for in this Article 9 or elsewhere in this Lease shall be effected under policies issued by insurers which are licensed to do business in the State of Kansas and which shall be A.M. Best rated at A- X or higher. Each such policy shall contain a provision that no unintentional act or omission of the insured shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained by Landlord or any Fee Mortgagee, in the case of liability coverage, or by any Tenant or Leasehold Mortgagee, in the case of casualty coverage. One or more certificates of insurance shall be delivered to Landlord on or before the Effective Date and each time thereafter that new or substitute insurance policies are put into effect by Tenant or third parties to satisfy the insurance coverage obligations under this Article. Tenant will notify Landlord at least twenty (20) days prior to terminating, not renewing or obtaining an alternate provider for an insurance policy which provides the insurance coverages required by this Article.

Section 9.9 Survival. The provisions of this Article 9 shall survive the expiration or sooner termination of the Lease Term and this Lease.

ARTICLE 10.
ASSIGNMENT AND SUBLETTING

Section 10.1 **Generally.** Except as may be permitted otherwise in this Article 10 or may be approved hereafter in writing in advance by Landlord, Tenant shall not: (i) transfer or assign this Lease or any interest therein; (ii) sublet or grant a license to use all or any portions of the Demised Premises or any improvements thereon; (iii) permit any Permitted Subtenant (as hereinafter defined) to sublet or license the use of all or any portion of the Demised Premises or any improvements thereon except to Tenant or another Permitted Subtenant; or (iv) grant or suffer, whether by Tenant or any Permitted Subtenant, any lien, encumbrance or security interest on or in this Lease, the Demised Premises, any improvement thereon or any subleases or licenses permitted under this Article 10. For purposes hereof, one or more transfers of equity in Tenant which result in less than fifty percent (50%) of the equity interests therein being owned by Thomas Fritz, Dru Fritz, descendants of one or the other of them, trusts of which one or more of the foregoing are the settlor and one or more of the foregoing are a beneficiary or entities owned or controlled by one or more of the foregoing, will be deemed a transfer or assignment of this Lease or an interest therein. Upon any transfer, assignment, sublease, grant or sufferance in violation of this Section 10.1, Landlord may declare Tenant to be in default under this Lease and such transfer, assignment, sublease, grant or sufferance shall be void and as of no effect as against Landlord, this Lease, the Demised Premises and any improvements thereon. Notwithstanding anything to the contrary in this Section 10.1, Tenant may assign all of Tenant's right, title and interest under this Lease to KU Athletics.

Section 10.2 **Permitted Subtenants and Subleases.** Notwithstanding anything to the contrary in Section 10.1, Tenant may: (a) enter into the KU Athletics Sublease with KU Athletics for the conduct of Athletics Events on the Demised Premises; (b) sublet, or grant a license to use, the Demised Premises and any improvements thereon to the City and third parties for the conduct of Athletics Events or other events approved by Landlord pursuant to Article 7 hereof on the Demised Premises; and (c) permit the City and any third party referred to in (b) to sub-sublet, or grant a sublicense to use, the Demised Premises and any improvements thereon to the City and third parties for the conduct of Athletics Events or other events approved by Landlord pursuant to Article 7 hereof on the Demised Premises; (each of KU Athletics, the City and any such third party sublessee, sub-sublessee, licensee or sublicensee as to the conduct of Athletics Events or other events approved by Landlord pursuant to Article 7 hereof being referred to herein as a "Permitted Subtenant" and any such permitted sublease, sub-sublease, license and sublicense is referred to herein as a "Permitted Sublease"); provided that the KU Athletics Sublease and any other Permitted Subleases must end no later than the end of the Lease Term and shall be subject to all of the other terms and conditions of this Lease. No other sublease, sub-sublease, license or sublicense of all or any portion of the Demised Premises or any improvement thereon or the right to use any portion or all of the same may be made without the prior written consent of the Landlord which Landlord may withhold in its sole discretion and the creation or sufferance of the same shall, at Landlord's option, be a default under this Lease and shall be void and as of no effect as against Landlord, this Lease, the Demised Premises and any improvements thereon.

Section 10.3 **Notices to and Performance of Tenant's Obligations by Permitted Subtenants.** Commencing ten (10) days after Landlord's actual receipt of a written notice from

Tenant that Landlord is to send a copy of any notice required or permitted under this Lease to a given Permitted Subtenant, Landlord shall thereafter send copies of any such notices to such Permitted Subtenant simultaneously with the giving of any notice to Tenant. Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any Permitted Subtenant and the performance of such act shall be deemed to be performance by Tenant; provided that Tenant shall remain primarily liable for the performance and observance of all the obligations to be performed by Tenant under this Lease, regardless of whether or not Tenant has entered into any Permitted Sublease with any Permitted Subtenant.

Section 10.4 Permitted Lenders and Leasehold Mortgages.

(a) From time to time, so long as Tenant is not then in default under this Lease and there is then no event or condition which, with the passage of time, the giving of notice or both would constitute or give Landlord the option to declare a default by Tenant under this Lease, Tenant may grant a mortgage or collateral assignment of Tenant's leasehold estate under this Lease solely to secure indebtedness incurred by Tenant to construct or operate any of the Permitted Improvements (together with sums advanced by the holder of such mortgage or collateral assignment to cure a default by Tenant hereunder or otherwise to protect the Permitted Improvements and the reasonable costs incurred by the holder in enforcing the same, the "Permitted Indebtedness") by: (i) executing one or more leasehold mortgages or collateral assignments which (A) comply with the provisions of this Section 10.4 and (B) have been consented to in writing in advance by Landlord (each a "Leasehold Mortgage"); and (ii) delivering to Landlord an intercreditor agreement, in a form reasonably required by Landlord (each a "Lender Acknowledgment") that complies with the provisions of Section 10.4.(b) and is executed by the holder of the Leasehold Mortgage (a "Permitted Lender") and Tenant. If Tenant grants or suffers any lien, encumbrance or security interest on or in this Lease, the Demised Premises, any improvement thereon or any subleases or licenses permitted under this Article 10 other than through a Leasehold Mortgage or if any Leasehold Mortgage secures indebtedness or obligations other than Permitted Indebtedness, then, in either case, at the option of Landlord, the same will be a default under this Lease.

(b) The Lender Acknowledgment will provide, among other provisions reasonably required by Landlord, that:

(i) while the Leasehold Mortgage remains unsatisfied the Permitted Lender, simultaneously with sending the same to Tenant, will give Landlord a copy of each notice of default or of a right to cure that the Permitted Lender sends to the Tenant which relates to the Leasehold Mortgage or any other related loan documents;

(ii) during the Lease Term while the Leasehold Mortgage remains unsatisfied the Landlord, simultaneously with sending the same to Tenant, will give Permitted Lender a copy of each notice of default or of a right to cure that the Landlord sends to the Tenant which relates to the Lease;

(iii) within thirty (30) days after the deadline for the Tenant to cure any default by Tenant under the Leasehold Mortgage and any related loan

documents, Landlord may, but need not, cure any default by Tenant under the Leasehold Mortgage and any related loan documents; provided that any amounts which Landlord pays or incurs to effect any such cure shall immediately be due and payable by Tenant to Landlord as Additional Rent;

(iv) within thirty (30) days after the deadline for the Tenant to cure any default by Tenant under the Lease, the Permitted Lender may, but need not, cure any default by Tenant under the Lease; provided that if the Permitted Lender effects such a cure, then this Lease shall continue for the balance of the Lease Term (or its sooner termination in the event of a subsequent default) so long as the Permitted Lender continues to pay all rentals and other monetary obligations of Tenant under this Lease as the same may become due, and performs all of Tenant's other covenants hereunder;

(v) upon the occurrence of an event or condition which would give the Permitted Lender the right to foreclose the Leasehold Mortgage, before commencing foreclosure the Permitted Lender will give the Landlord an additional notice (beyond that specified in (a) above) of the Permitted Lender's intent to pursue foreclosure and, upon Landlord's election exercised by written notice given to the Permitted Lender within sixty (60) days of Landlord's receipt of such additional notice, Landlord will have the first right to acquire, and the Permitted Lender will sell to Landlord, all of the Permitted Lender's right, title and interest in the Leasehold Mortgage, any related loan documents, the loan evidenced and secured thereby and in any other collateral for such indebtedness, for an amount equal to the then outstanding balance of the Permitted Indebtedness, without premium and without warranty other than that the Permitted Lender is the holder of such indebtedness and rights, title and interest; and

(vi) the Leasehold Mortgage and the rights, title and interests of Permitted Lender and its successors and assigns, whether through foreclosure or assignment in lieu of foreclosure or otherwise, in the Tenant's leasehold created hereunder and interests in the Permitted Improvements and the Infrastructure Improvements and any other improvements or fixtures on the Demised Premises are, and upon any foreclosure of the Leasehold Mortgage or assignment of the leasehold in lieu of foreclosure will be, subordinate and subject to the rights of the Landlord under this Lease so that any successor in interest to the rights, title and interests of the Tenant will have no fewer obligations than the Tenant does under this Lease and will be liable for performing any unperformed obligations of the Tenant, whether they occur before or after any such foreclosure or assignment in lieu thereof.

(c) Each time that Tenant enters into a Leasehold Mortgage or amends an existing Leasehold Mortgage or the loan documents related thereto, Tenant shall provide promptly to Landlord a copy of each such document and all amendments or modifications thereof.

(d) So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Demised Premises and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise.

Section 10.5 Industrial Revenue Bonds. Upon the written request of the Tenant, the City and KU Athletics, Landlord will cooperate in requesting the City's issuance of industrial revenue bonds to finance the land acquisition, construction, and equipping of the Initial KU Improvements (the "Bonds"), which shall include Landlord's conveyance of fee title of the Demised Premises to the City, and leasing, with a repurchase right, the Demised Premises from, the City under a trust indenture, on an as-is basis, to secure the unpaid balance of the Bonds, subject to the following conditions:

(a) the Bonds must be acquired by the Tenant or the Permitted Lender with the proceeds of a Leasehold Mortgage for which a Lender Acknowledgement has been executed and delivered to Landlord, and the Bonds may not be assigned to any third party except that the Bonds shall be collaterally assigned by the holder thereof to the Permitted Lender, to secure the loan evidenced and secured by the Leasehold Mortgage and related loan documents and such assignment shall provide that such assignment of the Bonds shall be transferred and assigned to any transferee of the Leasehold Mortgage, including the Landlord under Section 10.4(b) hereof;

(b) the principal amount of the Bonds must not exceed the actual costs of acquiring the Demised Premises, and constructing and equipping the Initial KU Improvements plus the costs of issuance of the Bonds;

(c) all documents related to the issuance of the Bonds, including without limitation the trust indenture, must be acceptable in form and content to Landlord in its sole discretion; and

(d) in addition to the Permitted Lender executing a Lender Acknowledgement similar to that provided for in Section 10.4(b), the holder of the Bonds and the Permitted Lender must enter into a similar collateral assignment or agreement, acceptable in form and content to Landlord in its sole discretion, by which each of them gives Landlord a first right to buy the Bonds and the related Leasehold Mortgage (together with related indebtedness and documents in accordance with Section 10.4(b) for the then outstanding balance of the Permitted Indebtedness, on par, so that, if Landlord elects to and does purchase the related Leasehold Mortgage (together with related indebtedness and documents in accordance with Section 10.4(b) within sixty (60) days of notice of a default under the trust indenture, the Leasehold Mortgage or any related documents, the Landlord will also acquire all right, title and interest in the Bonds free and clear of the rights of the Permitted Lender and the Tenant.

Section 10.6 Rent Rolls, Estoppel Certificates and Copies of Certain Documents. Within thirty (30) days of request therefor from Landlord (but, unless Tenant commits a default under the Lease, no more often than once per Lease Year), Tenant shall provide Landlord with such of the following as Landlord requests: (a) a written roll of all persons and entities other

than KU Athletics or the City then having an occupancy or use right on the Demised Premises or any improvements or alterations thereon; (b) true and complete copies of all Permitted Subleases (other than the KU Athletics Sublease or a sublease to the City which has been previously provided and which has not been subsequently amended) and any other agreements purporting to grant any sublease, subsublease, license or sublicense to any third party with respect to the Demised Premises or any improvements or alterations thereon; (c) estoppel certificates from each of the Permitted Subtenants, other than KU Athletics or the City, or any other persons or entities listed in a roll given pursuant to (a) above who have the right to use the Demised Premises for at least ten (10) days during any Lease Year, specifying whether or not the Permitted Subtenants or other person or entity contend there is any default by Tenant or other parties under their respective Permitted Subleases or other purported agreement; (d) true and complete copies of all Leasehold Mortgages then in effect; (e) a statement by Tenant of the name and address of any Leasehold Mortgagee and the amount secured by the Leasehold Mortgages then in effect; and (f) if any Bonds (as hereinafter defined) are then outstanding, a statement by Tenant of the amount of indebtedness evidenced by such Bonds on such date.

Section 10.7 **Landlord's Right to Assign.** Landlord agrees that it will not sell, assign, convey, or otherwise dispose of its interest in this Lease during the Lease Term, except as provided in Article 13, or an assignment of all of Landlord's right, title and interest hereunder to KU Athletics, the University of Kansas or an entity wholly owned or controlled by one or both of them; provided, however, if Landlord reasonably determines that it is required to divest itself from the Demised Premises due to tax or NCAA requirements and neither KU Athletics nor the University of Kansas will agree to accept title to the Demised Premises, then Landlord may transfer its interests in this Lease during the Lease Term to any third party in Landlord's sole discretion.

ARTICLE 11. DAMAGE AND DESTRUCTION

Section 11.1 **Repairs and Restoration on Demised Premises.** If any Permitted Improvements or Infrastructure Improvements on the Demised Premises are destroyed or damaged in whole or in part by fire or other casualty, Tenant shall, at Tenant's expense or that of a third party other than Landlord, diligently remove the debris resulting from such event and provide a light barrier. Thereafter, within a reasonable time, at Tenant's expense or that of a third party other than Landlord, and in accordance with the provisions of Article 6, Tenant shall either repair or reconstruct any Permitted Improvements and Infrastructure Improvements to their previous condition, or replace the same with new Permitted Improvements and Infrastructure Improvements, of equal or greater value, with the plans and specifications to be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed, unless replacement is allowed as a matter of right under Section 6.1 hereof. Notwithstanding anything to the contrary in this Section 11.1, if the extent and timing of the destruction or damage is such that KU Athletics has and does exercise a right to terminate the KU Athletics Sublease under Section 11(b)(ii) of the KU Athletics Sublease, then Tenant only needs to fulfill its obligations under the first sentence of this Section 11.1.

ARTICLE 12. EMINENT DOMAIN

Section 12.1 **Total Taking.** If during the Lease Term (a) the entire Demised Premises, or (b) a sufficient portion of the Demised Premises is taken under power of eminent domain by any public or private authority, or virtue of a conveyance by Landlord in lieu of such taking consented to by Tenant (which consent will not be unreasonably withheld if requested by Landlord), such that the KU Athletics Sublease will be terminated pursuant to Section 11(c)(i) thereof, then this Lease shall terminate as of the date of transfer of title or transfer of possession, whichever is earlier and Landlord and Tenant may each make a separate claim for compensation for their respective losses caused by such eminent domain taking. Landlord acknowledges and agrees that its loss caused by such eminent domain taking shall be limited to (a) unpaid Base Rent hereunder, plus (b) the residual value of the Demised Premises and any Permitted Improvements thereon as of such date after the end of the Lease Term assuming the Lease Term continued until December 31, 2064. In no event will Landlord refund to Tenant any Base Rent or Additional Rent that was previously paid to Landlord; provided that Tenant will remain liable to Landlord for the payment of any Base Rent or Additional Rent which becomes due and payable through the date of termination.

Section 12.2 **Partial Taking.** If, during the Lease Term any portion of the Demised Premises is taken under power of eminent domain by any public or private authority, or conveyed by Landlord in lieu of such taking consented to by Tenant (which consent will not be unreasonably withheld if requested by Landlord) but the portion taken is not so extensive that the KU Athletics Sublease is terminated under Section 11(c)(i) thereof, then, unless hereafter agreed otherwise in writing by Landlord and Tenant, this Lease shall not terminate, Landlord and Tenant may each make a separate claim for compensation for their respective losses caused by such eminent domain taking, the Lease shall be deemed amended so as to exclude the property so taken, the Basic Rent and Additional Rent theretofore or thereafter payable shall not be adjusted or refunded and Tenant shall cause any award or compensation to Tenant and KU Athletics to be administered in accordance with the applicable provisions of Section 11(c)(iii) or (iv) of the KU Athletics Sublease, within a reasonable period of time.

ARTICLE 13. LANDLORD'S MORTGAGES

Section 13.1 **Fee Mortgages.** Landlord shall have the right at any time during the Lease Term to mortgage all or any portion of the Demised Premises and all of Landlord's rights in any improvements thereon (a "Fee Mortgage"). The owner or holder of any such Fee Mortgage as to which Tenant has received prior notice shall be referred to as the "Fee Mortgagee."

Section 13.2 **Subordination to Fee Mortgages.** This Lease shall become subject and subordinate to any Fee Mortgage if and only if the Fee Mortgagee enters into a subordination, nondisturbance and attornment agreement ("SNDA") that contains an address for notices to the Fee mortgagee and provides that so long as Tenant is not in default under the Lease the Fee Mortgagee and its successors and assigns, including without limitation any purchaser upon a foreclosure of the Fee Mortgage, must abide by the Lease and not disturb Tenant's occupancy of the Demised Premises for the then balance of the Lease Term; provided that neither the Fee Mortgagee nor any such successors or assigns will be liable for any obligations of the Landlord which accrued prior to such foreclosure. No later than twenty (20) days after receipt of a form of

SNDA which contains the preceding provisions, Tenant shall execute the same; provided that Landlord will not grant a Fee Mortgage until the expiration of such twenty (20) day period; provided that if Tenant fails to execute said document within said period, then Landlord upon five (5) business days' prior written notice to Tenant may, as the agent and attorney-in-fact of Tenant, execute said SNDA on Tenant's behalf and Tenant hereby appoints Landlord Tenant's agent and attorney-in-fact for such purposes. Any Fee Mortgagee shall have the right to subordinate such Fee Mortgage to this Lease on such terms and subject to such conditions as such holder shall deem appropriate in its discretion, and Tenant shall execute any instruments reasonably necessary to evidence the subordination of such Fee Mortgage to this Lease. Landlord will reimburse Tenant for reasonable attorneys fees incurred by Tenant in connection with the review and execution of such SNDA within thirty (30) days of request therefor.

Section 13.3 Notices to Fee Mortgagees. After receiving notice of the existence of a Fee Mortgage and receipt of an executed counterpart of the SNDA, Tenant will give prompt written notice to any Fee Mortgagee of any default on the part of Landlord declared by Tenant under this Lease at the address for notices specified in the SNDA. Such Fee Mortgagee shall be provided a concurrent (within the time to cure provided to Landlord under this Lease) opportunity to cure such default (but not less than sixty (60) days after receipt of such notice of default) prior to the exercise by Tenant of any of its rights as to such default under this Lease, it being agreed that the correction of any such default by such Fee Mortgagee shall have the same effect and be treated as a correction by Landlord. No default notice given by Tenant under this Lease shall be effective against a Fee Mortgagee to whom Tenant is required as aforesaid to send notice of default unless a duplicate copy has been given to such Fee Mortgagee and to Landlord.

Section 13.4 Quiet Enjoyment. Landlord covenants and agrees with Tenant, that upon Tenant paying the rent and observing and performing all of the terms, covenants, and conditions of this Lease on Tenant's part to be observed or performed hereunder, Tenant and any Permitted Subtenants shall peaceably and quietly have, hold, occupy, and enjoy the Demised Premises and all rights, covenants, appurtenances, and privileges belonging or otherwise appertaining thereto, without hindrance or molestation by Landlord, its successors or assigns.

ARTICLE 14. DEFAULTS AND REMEDIES

Section 14.1 Tenant Default. If any one or more of the following events shall have occurred and has not been remedied as hereinafter provided:

- (a) Tenant's failure to pay any installment of Base Rent or Additional Rent until ten (10) days after the same shall be due and payable;
- (b) Tenant's failure to perform any of the other covenants, conditions and agreements herein contained on Tenant's part to be kept or performed within forty-five (45) days after Landlord's written notice to Tenant specifying in the nature of such failure; or
- (c) Tenant becoming the subject of a voluntary or involuntary bankruptcy, insolvency or other similar proceeding which is not dismissed within ninety (90)

days of being instituted or making an assignment for the benefit of creditors of substantially all of its assets;

then Landlord may give to Tenant a notice that Landlord has declared Tenant to be in default under this Lease; provided that if Landlord gives notice of a failure to perform a covenant, condition or agreement herein contained which cannot reasonably be cured within such forty-five (45) day period, then the cure period shall be extended so long as Tenant, after receiving notice, commences to cure same within the forty-five (45) day period and proceeds to cure the default as soon as reasonably possible; provided that such extension will not exceed one hundred eighty (180) days, unless Tenant's default is a result of the default of KU Athletics under the KU Athletics Sublease (at a time that KU Athletics is a "controlled corporation"), and KU Athletics is diligently pursuing cure as permitted under the KU Athletics Sublease, in which event the extension shall not be subject to such one hundred eighty (180) day period.

Section 14.2 **Landlord Remedies.** After giving Tenant a notice that Landlord has declared Tenant to be in default under this Lease, Landlord may do any one or more of the following:

- (a) sue Tenant for damages caused by such default;
- (b) seek specific performance of Tenant's obligations under this Lease; or
- (c) enter the Demised Premises and cure Tenant's default in which case the costs incurred by Landlord in curing such default will become Additional Rent that is immediately due upon demand by Landlord.

In addition, if Tenant has become the subject of a proceeding that is described in Section 14.1(c) or if Landlord has obtained a judgment for sums owed to Landlord by exercising Landlord's remedies under Section 14.2(a) or (c) which judgment has been levied upon but such levy has been returned unsatisfied, then, unless KU Athletics (while a "controlled corporation") has failed to pay Tenant sums due to Tenant under the KU Athletics Sublease which equal or exceed the principal amount (exclusive of interest, fees and costs of the legal proceeding) of the unsatisfied judgment, Landlord also shall have the following additional remedies: (x) terminate this Lease upon a date specified in the notice of default or any subsequent notice given to Tenant, which date shall be not less than five (5) business days after the date of the notice; provided that on the date specified in the notice of termination this Lease shall terminate as against Tenant and any other occupants of the Demised Premises (unless otherwise agreed in writing by Landlord) but subject to any additional cure rights that any then existing Leasehold Mortgagee may have; (y) in addition to and without prejudice to any other rights and remedies, re-enter the Demised Premises, recover possession thereof and dispossess any or all occupants of the Demised Premises in the manner prescribed by the statute relating to summary proceedings or similar statutes; and/or (z) exercise any other rights or remedies which Landlord has under applicable law. For purposes of this Article 14, KU Athletics would be deemed a "controlled corporation" only while either one or more of the University of Kansas, Landlord or the Kansas University Endowment Association singly has, or collectively have, the right to appoint at least a majority of the members of the governing board of KU Athletics, the Chancellor of the University of

Kansas has the final authority for the conduct and administration of KU Athletics or the articles of incorporation of KU Athletics (as the same may be amended from time to time) provide that a majority of the voting members of the governing board of KU Athletics has to be comprised of, or be appointed by specified employees or officers of the University of Kansas.

Section 14.3 **Survival of Certain Tenant Obligations.** Notwithstanding any termination of the Lease, Tenant's obligations under Article 5, Article 6, Article 9 and Article 10 (including without limitation any document executed pursuant thereto) will survive and remain binding upon the Tenant.

Section 14.4 **Landlord Default.** If Landlord fails to perform any of the covenants, conditions and agreements herein contained on Landlord's part to be kept or performed within forty-five (45) days after Tenant's written notice to Landlord specifying in the nature of such failure; then Tenant may give to Landlord a notice that Tenant has declared Landlord to be in default under this Lease; provided that if Tenant gives notice of a failure to perform a covenant, condition or agreement herein contained which cannot reasonably be cured within such forty-five (45) day period, then the cure period shall be extended so long as Landlord, after receiving notice, commences to cure same within the forty-five (45) day period and proceeds to cure the default as soon as reasonably possible; provided that such extension will not exceed one hundred eighty (180) days. If Landlord fails to timely cure a default by Landlord under this Lease, then Tenant's sole remedy will be to sue Landlord for actual (but not consequential) damages caused by such default or to seek specific performance of such cure.

ARTICLE 15. MISCELLANEOUS

Section 15.1 **Holding Over.** Upon the expiration or sooner termination of the Lease Term, Tenant shall peacefully and quietly quit and surrender the Demised Premises, together with all improvements and alterations which are part of the realty, in accordance with the provisions of Section 6.11. In the event Tenant or anyone claiming under Tenant continues occupancy of the Demised Premises after the expiration of the Lease Term without any agreement in writing between Landlord and Tenant, such occupancy shall not be deemed to extend or renew the Lease Term, but such occupancy shall continue as a tenancy at will from month to month upon the covenants, provisions and conditions herein contained and at one hundred twenty five percent (125%) of the last installment of Base Rent payable under this Lease, prorated and payable for the period of such occupancy.

Section 15.2 **Waivers.** Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by Landlord of any partial payment shall constitute an accord and satisfaction, but shall only be deemed a partial payment on account. If any action by either party shall require the consent or approval of the other party, the other party's consent or approval of such action on any one occasion shall not be deemed a consent to or approval of

said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.

Section 15.3 Notices. All notices and other communications authorized or required hereunder shall be in writing and shall be given by mailing the same by certified mail or registered mail, return receipt requested, postage prepaid, or by overnight air courier with proof of delivery acknowledged. Any such notice or other communication shall be deemed to have been given and effective four (4) days after posting in the case of mail, or the day after deposit with the air courier, in the case of courier delivery, to the following addresses or to an address specifying a replacement address which notice of replacement address is given in accordance with the provisions of this Section:

Landlord: RCP, LLC
1891 Constant Avenue
Lawrence, Kansas 66047-3743

Tenant: Bliss Sports, LC
209 Fall Creek Road
Lawrence, Kansas 66049

Section 15.4 Force Majeure. If Landlord or Tenant is delayed, substantially hindered or prevented from performing of any act (other than Tenant's obligation to make payments of Base Rent, Additional Rent, and other charges required hereunder) by reason of strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, unforeseeable weather conditions, casualty, the default of the other party, war or other reason beyond its control, then the performance of such act shall be excused for the period of the delay, and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds or financing shall not be deemed to be a cause beyond control of either party.

Section 15.5 Recordation. Simultaneously herewith, Landlord and Tenant have entered into a Memorandum of Lease for recording in the form attached hereto and made a part hereof as Exhibit C supplementing this Lease. The fees to record such Memorandum of Lease shall be paid by Tenant.

Section 15.6 Brokerage. Landlord and Tenant represent and warrant to each other that each has not dealt with any real estate agent or broker in connection with this transaction, and each agrees to indemnify and save the other harmless from and against all loss, cost and expense, including reasonable attorneys' fees and expenses, incurred by reason of the breach of such representation and warranty.

Section 15.7 Captions and Definitions. The captions of the Sections and Subsections of this Lease are inserted for convenience only and are not a part of this Lease and do not in any

way limit or amplify the terms and provisions of this Lease. The word "rent" as used herein shall be deemed to include Base Rent, Additional Rent and any other charges payable by Tenant under this Lease. Any pronoun shall be read in the singular or plural number and in such gender as the context may require.

Section 15.8 No Joint Venture. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto. The relationship between the parties hereto is solely that of landlord and tenant.

Section 15.9 Late Payments. In the event either party fails to pay any amount when due, then interest shall accrue on such overdue amount from and after the day such amount has not been paid at the rate of ten percent (10%) per annum.

Section 15.10 Certificates. Either party shall, without charge, at any time and from time to time, within ten (10) business days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the existence of any known default under this Lease, and if so, a description of each such default; (c) as to the existence of any offsets, counterclaims or defenses on the part of the responding party with respect to its obligations under this Lease, thereto on the part of such other party; (d) as to the Rent Commencement Date and expiration date of the Lease Term; and (e) as to any other matters as may reasonably be requested. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

Section 15.11 Governing Law. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Kansas.

Section 15.12 Partial Invalidity. If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 15.13 Interpretation. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each one and the same instrument. In the event of an ambiguity with respect to any portion of this Lease, no negative inference shall be drawn against the party whose counsel drafted the ambiguous part or any other portion of this Lease.

Section 15.14 **Entire Agreement.** No oral statement or prior written matter not contained in this instrument shall have any force or effect. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or canceled except by writing executed by both parties.

Section 15.15 **Successors and Assigns.** The covenants and agreements contained in the Lease shall bind and inure to the benefit of Landlord and Tenant and the respective heirs, personal representatives, successors and (in the case of Tenant) permitted assigns.

Section 15.16 **Exculpation.** If Landlord defaults with respect to any obligation hereunder, Tenant agrees to look for satisfaction solely to the equity of Landlord in the Demised Premises and the rents, issues and profits therefrom. The liability of Landlord under this Lease shall in no event exceed to the amount of such equity, and no other assets of Landlord shall be subject to levy, execution or other procedures for the satisfaction of procedures for the satisfaction of Tenant's remedies, it being intended hereby to limit the assets of Landlord available for the satisfaction of any judgment against Landlord to Landlord's equity in the Demised Premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LANDLORD:

RCP, LLC, a Kansas limited liability company

By: The Kansas University Endowment Association,
a Kansas not for profit corporation, its sole member

By: 

Dale Seuferling, President

TENANT:

BLISS SPORTS, LC, a Kansas limited liability company

By: 

Thomas S. Fritzel, Manager

and

By: 

Dru Stewart Fritzel, Member

EXHIBIT A

(Legal Description of Demised Premises)

Proposed Lot 1 of Rock Chalk Park Addition No. 1, a Preliminary Plat for a Subdivision in the City of Lawrence, Douglas County, Kansas more particularly described as follows:

A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 12 SOUTH, RANGE 19 EAST OF THE 6TH PRINCIPAL MERIDIAN IN DOUGLAS COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH $88^{\circ} 03' 57''$ WEST, 2289.78 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION TO THE EASTERLY LINE OF A RIGHT-OF-WAY DEEDED TO THE STATE OF KANSAS; THENCE ON A CURVE TO THE LEFT ALONG SAID RIGHT-OF-WAY, HAVING A RADIUS OF 4069.72 FEET, AN ARC LENGTH OF 81.03 FEET, A CHORD BEARING NORTH $11^{\circ} 05' 14''$ WEST AND CHORD LENGTH OF 81.03 FEET TO THE POINT OF BEGINNING; THENCE ON A CURVE TO THE LEFT ALONG SAID RIGHT-OF-WAY, HAVING A RADIUS OF 4069.72 FEET, AN ARC LENGTH OF 206.94 FEET, A CHORD BEARING NORTH $13^{\circ} 06' 58''$ WEST AND CHORD LENGTH OF 206.91 FEET; THENCE NORTH $00^{\circ} 20' 28''$ EAST ALONG SAID RIGHT-OF-WAY, 74.58 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY ON A MEASURED BEARING OF NORTH $46^{\circ} 12' 54''$ EAST AND MEASURED DISTANCE OF 320.03 FEET; THENCE SOUTH $65^{\circ} 51' 23''$ EAST, 378.00 FEET; THENCE NORTH $22^{\circ} 02' 16''$ EAST 30.33 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 380.00 FEET, AN ARC LENGTH OF 563.28 FEET, A CHORD BEARING NORTH $25^{\circ} 29' 49''$ WEST AND CHORD LENGTH OF 513.11 FEET; THENCE NORTH $16^{\circ} 58' 06''$ EAST, 93.80 FEET; THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET, AN ARC LENGTH OF 66.69 FEET, A CHORD BEARING NORTH $05^{\circ} 43' 53''$ EAST AND A CHORD LENGTH OF 66.26 FEET; THENCE NORTH $05^{\circ} 30' 23''$ WEST, 284.93 FEET; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 380.00 FEET, AN ARC LENGTH OF 376.42 FEET, A CHORD BEARING NORTH $22^{\circ} 52' 20''$ EAST AND CHORD LENGTH OF 361.22 FEET; THENCE NORTH $51^{\circ} 15' 03''$ EAST, 122.85 FEET; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 280.00 FEET, AN ARC LENGTH OF 462.36 FEET, A CHORD BEARING SOUTH $81^{\circ} 26' 37''$ EAST AND CHORD LENGTH OF 411.59 FEET; THENCE SOUTH $34^{\circ} 08' 16''$ EAST, 136.57 FEET; THENCE NORTH $36^{\circ} 50' 52''$ EAST, 105.91 FEET; THENCE SOUTH $01^{\circ} 55' 19''$ EAST, 196.21 FEET; THENCE SOUTH $88^{\circ} 04' 41''$ EAST, 428.96 FEET; THENCE SOUTH $01^{\circ} 55' 19''$ WEST, 575.00 FEET; THENCE SOUTH $88^{\circ} 04' 41''$ EAST, 713.94 FEET; THENCE SOUTH $02^{\circ} 00' 44''$ EAST PARALLEL TO THE EAST LINE OF SAID SECTION, 708.94 FEET; THENCE SOUTH $88^{\circ} 03' 57''$ WEST PARALLEL TO THE SOUTH LINE OF SAID SECTION, 2252.56 FEET TO THE POINT OF BEGINNING. CONTAINING 56.957 ACRES, MORE OR LESS.

EXHIBIT B

(Legal Description of City Rec Center Site)

Proposed Lot 2 of Rock Chalk Park Addition No. 1, a Preliminary Plat for a Subdivision in the City of Lawrence, Douglas County, Kansas more particularly described as follows:

A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 12 SOUTH, RANGE 19 EAST OF THE 6TH PRINCIPAL MERIDIAN IN DOUGLAS COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION; THENCE NORTH 02° 00' 44" WEST, 2270.86 FEET ALONG THE EAST LINE OF SAID QUARTER SECTION; THENCE SOUTH 66° 27' 53" WEST, 53.75 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 02° 00' 44" EAST PARALLEL TO THE EAST LINE OF SAID SECTION, 1462.13 FEET; THENCE NORTH 88° 04' 41" WEST, 713.94 FEET; THENCE NORTH 01° 55' 19" EAST, 575.00 FEET; THENCE NORTH 88° 04' 41" WEST, 428.96 FEET; THENCE NORTH 01° 55' 19" EAST, 196.21 FEET; THENCE NORTH 05° 32' 15" EAST, 56.74 FEET; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, AN ARC LENGTH OF 606.37 FEET, A CHORD BEARING NORTH 42° 26' 34" EAST AND A CHORD LENGTH OF 468.29 FEET; THENCE SOUTH 79° 27' 52" EAST, 120.73 FEET; THENCE NORTH 66° 27' 53" WEST, 681.55 FEET TO THE POINT OF BEGINNING. CONTAINING 26.135 ACRES, MORE OR LESS.

EXHIBIT C
(Form of Memorandum of Lease)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (the "Memorandum") is made and entered into as of the 12th day of February, 2013, by and between RCP, LLC, a Kansas limited liability company (hereinafter called "Landlord"), and Bliss Sports, LC, a Kansas limited liability company (hereinafter called "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a certain Ground Lease dated February 12, 2013 which provides Tenant with certain rights described therein to use the real property described on Exhibit A attached hereto (the "Lease");

WHEREAS, the term of the Lease (the "Lease Term") shall begin on the Rent Commencement Date (as defined in the Lease) and shall terminate, unless the Lease Term is extended by a written agreement executed by Landlord and Tenant or is sooner terminated as provided in the Lease, on the earlier to occur of the first business day after the expiration or sooner termination of the KU Athletics Sublease Term (as defined in the Lease), as it may be extended, or December 31, 2064; and

WHEREAS, Landlord and Tenant desire to execute this Memorandum to memorialize of record the Lease and to provide notice to all third parties of the Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the terms and provisions of the Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to and state the following:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Binding Effect. The covenants, agreements and conditions set forth herein and contained in the Lease shall run with the land and shall be binding upon and inure to the parties hereto and to their respective heirs, successors and assigns.
3. Terms and Conditions of the Lease. All of the other terms and conditions of the Lease are more fully set forth in the Lease and are incorporated herein by this reference.
4. No Alteration of Terms of Lease. This Memorandum is executed for recording purposes only and is not intended to alter or amend the terms of the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum the day and year first above written.

LANDLORD:

RCP, LLC, a Kansas limited liability company

By: The Kansas University Endowment Association,
a Kansas not for profit corporation, its sole member

By: _____
Dale Seufferling, President

TENANT:

BLISS SPORTS, LC, a Kansas limited liability company

By: _____
Thomas S. Fritzel, Manager
and

By: _____
Dru Stewart Fritzel, Member

STATE OF KANSAS)
)
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on February ____, 2013, by Dale Seufferling as the President of The Kansas University Endowment Association, a Kansas not for profit corporation, in such corporation's capacity as the sole member of RCP, LLC, a Kansas limited liability company, who is personally known to me to be such officer, and who acknowledged that the execution of the foregoing was the free act and deed of said corporation acting as the sole member of such limited liability company.

(SEAL)

_____, Notary Public

My Appointment Expires: _____

STATE OF KANSAS)
)
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on February ____, 2013, by Thomas S. Fritzel as the manager of Bliss Sports, LC, a Kansas limited liability company, who is personally known to me, and who acknowledged that the execution of the foregoing was the free act and deed of said limited liability company.

(SEAL)

_____, Notary Public

My Appointment Expires: _____

STATE OF KANSAS)
)
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on February ____, 2013, by Dru Stewart Fritzel as a member of Bliss Sports, LC, a Kansas limited liability company, who is personally known to me, and who acknowledged that the execution of the foregoing was the free act and deed of said limited liability company.

(SEAL)

_____, Notary Public

My Appointment Expires: _____