

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into as of the 12th day of February, 2013 (the “**Effective Date**”), by and between Bliss Sports, LC, a Kansas limited liability company (“**Developer**”) and Kansas Athletics, Inc., a Kansas not for profit corporation (“**Athletics**”).

BACKGROUND

A. Developer, as lessee, intends to enter into a Ground Lease (“**Stadiums Ground Lease**”) with the RCP, LLC, a Kansas limited liability company (“**RCP**”), a wholly owned subsidiary of Kansas University Endowment Association, a Kansas not for profit corporation (“**Endowment**”), with respect to certain land generally located in the northeast quadrant of the intersection of 6th Street and Kansas Highway 10 in an unincorporated portion of Douglas County, which the parties expect will be annexed by the City of Lawrence, Kansas (the “**City**”), as more particularly depicted and described on **Exhibit A** attached hereto (“**Land**”);

B. Developer intends to construct on the Land a soccer stadium, a track and field stadium, and a softball stadium (collectively, the “**Stadiums**”), along with associated infrastructure, such as landscaping, sidewalks/hardscape, and other site improvements;

C. Developer, as sub-lessor, and Athletics, as sub-lessee, have entered into that certain Amended and Restated Lease Agreement with respect to the Stadiums, dated as of February 12, 2013 (“**Lease Agreement**”);

D. Developer and Athletics have entered into that certain Amended and Restated Operating Agreement with respect to the Stadiums, dated as of February 12, 2013 (“**Operating Agreement**”), which addresses ongoing management and operational issues with respect to the Stadiums, including Developer’s obligation to provide Athletics with access to the Parking Area (as defined herein); and

E. The parties have entered into this Agreement in order to set forth their respective rights and obligations with respect to the design and construction of the Project (as defined below). This Agreement amends and restates in its entirety that certain Development Agreement dated October 12, 2012 between Developer and Athletics.

STATEMENT OF AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

**ARTICLE 1
DEFINITIONS**

- 1.1 “Agreement” will mean this Amended and Restated Development Agreement and all documents attached hereto or incorporated by reference herein.
- 1.2 “Architect” will mean Gould Evans Architects and Paul Werner Architects of Lawrence, Kansas, and/or such other professional architects agreed upon by Developer and Athletics from time to time.
- 1.3 “As-Built Drawings” will mean the final, as-built boundary survey of the Project and a copy of the Final Plans.
- 1.4 “Athletics” will mean Kansas Athletics, Inc., a Kansas not for profit corporation.
- 1.5 “Athletics Directed Change Order” will mean a request by Athletics for a change order to the Construction Documents during the construction of the Project, which shall be subject to the approval of the Developer under Section 4.7 hereof, which shall not be unreasonably delayed or withheld.
- 1.6 “Athletics Work” shall mean those items of furniture, fixtures and equipment and any interior finishes to the Stadiums that are excluded from the Stadium Construction as set forth in the Construction Documents. Any Athletics Work shall be furnished, installed and performed at the sole cost and expense of Athletics.
- 1.7 “Business Day” will mean Monday through Friday, excluding bank holidays and legal holidays recognized by the State of Kansas.
- 1.8 “Contract Documents” will mean, collectively, this Agreement, the Design Development Documents, Construction Documents, Final Plans, the As-Built Drawings, all construction contracts, all other third-party contracts entered into or assumed by Developer in connection with Developer’s obligations for construction of the Project, and will include all written modifications and amendments which may be made from time to time to said documents, and all subsequent drawings, specifications, addenda, bulletins, approved change orders, shop drawings, budgets and schedules.
- 1.9 “Contractor” will mean the general contractor selected by Developer and approved by Athletics, such approval not to be unreasonably delayed or withheld, to construct the Project.
- 1.10 “Construction Documents” will mean all coordinated architectural, structural, mechanical, electrical, plumbing, fire protection, and other specialty consultant technical documents, including: plans, sections, elevations, details, product/material samples, and completed technical specifications required to define the size, quantities and quality of systems, elements, products, materials, as is necessary to competitively bid and construct the Stadiums in accordance with the Design Development Documents and all Governmental Requirements and to obtain all necessary Construction Permits.

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- 1.11 “Construction Commencement” will mean bona fide commencement of construction of the Project including closing of the first mortgage construction loan for the Project with funding having begun and with continued funding to completion being subject only to customary construction period progress.
- 1.12 “Construction Permits” will mean those permits required by the Governmental Authorities to proceed with construction of the Project.
- 1.13 “Design Consultants” means the design professionals, including without limitation the Engineer and Architect, as selected from time to time pursuant to the terms hereof.
- 1.14 “Design Development Documents” will mean all architectural, structural, mechanical, electrical, plumbing, fire protection, and other specialty consultant design documents, including: plans, sections, elevations, details, product/material samples, renderings, models, and outline technical specifications required to define the size, spatial relationships, and general quality of systems, elements, products, and materials, as is necessary to adequately describe the design of the Stadiums and satisfy all Governmental Requirements, such as zoning, development plans, and plat approvals, prepared in accordance with the Development Schedule, and as approved pursuant to the terms hereof.
- 1.15 “Developer” means Bliss Sports, LC, a Kansas limited liability company.
- 1.16 “Development Plan” will mean, collectively, the Development Schedule and the Contract Documents.
- 1.17 “Development Schedule” will mean the consolidated schedule of major activities required to complete the Project, as set forth on **Exhibit B** attached hereto.
- 1.18 “Engineer” and “Engineers” will mean the engineer(s) as selected to provide engineering services with respect to the Project from time to time pursuant to the terms hereof.
- 1.19 “Endowment” means Kansas University Endowment Association, a Kansas not for profit corporation.
- 1.20 “Excused Delays” shall mean any delays in the performance of any obligation under this Agreement (excluding the payment of money) actually caused by the following acts or events, to the extent they are beyond the reasonable control of the party obligated to perform and such party has made reasonable diligent efforts to perform: (a) strikes, lockouts, or labor disputes; (b) fire or other casualty; (c) wars, civil disturbances, riots, insurrections, or sabotage; (d) denial by a Governmental Authority of applications for required permits or other approvals necessary for completion and/or use of the Project; (e) delay in completion of any off-site or on-site infrastructure improvements by the City, utility company, or any other third-party not under contract with Developer or Contractor, (f) any changes in Governmental Requirements taking effect after initial permitting and initial legal approvals for the Project; (g) any similar types of delays which are permitted delays as set forth herein for the Contractor under its contract with Developer; and (h)

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any other event or delay deemed an Excused Delay hereunder. An Excused Delay shall not include any delay caused by the insolvency, financial condition, or illiquidity of the person obligated to perform. In the event of an Excused Delay, Developer shall provide Athletics with written notice of such delay and Athletics and Developer shall work in good faith to agree upon a mutually acceptable solution to resolve the cause of such delay and a reasonable period for such delay.

- 1.21 “Final Plans” will mean the as-built Construction Documents as professionally modified to reflect all approved change orders, as approved in accordance with the terms hereof.
- 1.22 “Governmental Authority” will mean any government body or agency having jurisdiction over the Project in its capacity as a governing or regulating authority (but not in any capacity as a developer of any improvements in, on, or under the Land or outside the land in support of the Project).
- 1.23 “Governmental Requirements” will mean all laws, statutes, ordinances, codes, regulations, rules, orders and directives applicable to the Land or the planning, design, development and construction of the Project, including without limitation all zoning and building codes, the Federal Fair Labor Standards Act, Equal Employment Opportunity Act, the Americans with Disabilities Act, and regulations issued thereunder.
- 1.24 “Land” will mean the real property leased by Developer to Athletics under the Lease Agreement, which is generally located in the northeast quadrant of the intersection of 6th Street and Kansas Highway 10 in an unincorporated portion of Douglas County, which the parties expect will be annexed by the City, as more particularly depicted and described on **Exhibit A** attached hereto.
- 1.25 “Land Use Entitlements” will mean any approvals, other than Construction Permits, required by the Governmental Authorities as a precondition to the construction of the Project, including the City’s approval of any necessary re-zoning, the Project’s site / development plans, and platting or re-platting.
- 1.26 “Lease Agreement” will mean that certain lease agreement to be entered into by and between Developer, as sub-lessor, and Athletics, as sub-lessee, by which Developer leases to Athletics the Land and Stadiums to be constructed thereon.
- 1.27 “Minor Punchlist Items” shall mean those items set forth on the Punchlist that will not materially interfere with Athletics’ use and enjoyment of the Stadiums or the performance of Athletics’ Work.
- 1.28 “Project” will mean the Stadium Construction and Site Improvements. The term “Project” shall not include Athletics Work.
- 1.29 “Parking Area” will mean at least 1,000 paved or turf parking spaces (including approximately 800 paved spaces) near or adjacent to the Stadiums.
- 1.30 “Punchlist” shall have the meaning set forth in Section 4.5.

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- 1.31 “RCP” means RCP, LLC, a Kansas limited liability company.
- 1.32 “Site Improvements” shall mean all improvements to the Land, excluding the Stadiums, which shall be constructed by Developer pursuant to the Development Plan, including, utilities, roadways, landscaping, sidewalks/hardscape, and any other similar site infrastructure and improvements.
- 1.33 “Soccer Stadium” means that certain soccer stadium constructed by Developer to the specifications set forth in the Development Plan.
- 1.34 “Softball Stadium” means that certain softball stadium constructed by Developer to the specifications set forth in the Development Plan.
- 1.35 “Stadiums” will mean the Soccer Stadium, Track and Field Stadium, and Softball Stadium, collectively.
- 1.36 “Stadium Construction” will mean all work to be performed by Developer as set forth in the Construction Documents (as ultimately reflected in the Final Plans) and as otherwise required of Developer for completion of the Stadiums in accordance herewith.
- 1.37 “Substantial Completion” will mean the date on which: (i) the Stadium Construction and construction of the Site Improvements is completed in good working order in accordance with all Governmental Requirements and the Contract Documents as certified by the Architect in a certificate of substantial completion delivered to Athletics, subject only to Minor Punchlist Items; (ii) the Parking Area and access roads have been completed and are available for use by Athletics and there is reasonable unimpeded access to the Parking Area via public streets; (iii) a temporary or permanent certificate of occupancy has been issued by the City for the Stadiums that permits Athletics to use the Stadiums as intended and, if a temporary certificate of occupancy has been issued, it provides that a permanent certificate of occupancy will be issued upon completion of the Minor Punchlist Items; (iv) all utilities have been connected to the Stadiums and all lighting, electrical, plumbing and other mechanical systems are functioning properly (but only to the extent included as part of the Project); (v) the Stadiums are free and clear of all construction materials and equipment and all obstructions and debris; and (vi) possession of the Stadiums has been delivered to Athletics.
- 1.38 “Track and Field Stadium” means that certain track and field stadium constructed by Developer to the specifications set forth in the Development Plan.
- 1.39 “Warranties” shall have the meaning set forth in Section 5.1.
- 1.40 “Warranty Period” shall have the meaning set forth in Section 5.1.

ARTICLE 2 THE UNDERTAKING

- 2.1 The General Undertaking – Developer. Developer shall design the Project with and through the Design Consultants, subject to Athletics’ consent, all as further set forth

herein. Developer shall then cause the Project to be constructed in a good and workmanlike manner and substantially in accordance with the Construction Documents, at its sole cost and expense, and otherwise pursuant to the terms hereof. Developer shall use diligent efforts in the performance of all of its obligations and covenants hereunder.

- 2.2 The General Undertaking – Athletics. Athletics shall, under the Lease Agreement, lease the Project from Developer. Athletics shall use diligent efforts in the performance of all of its obligations and covenants hereunder.

ARTICLE 3 PROJECT DESIGN AND LAND USE ENTITLEMENTS

3.1 Selection of Architect and Other Design Consultants.

3.1.1 Architect. The architect shall be Gould Evans Architects and Paul Werner Architects of Lawrence, Kansas, and/or such other professional architects agreed upon by Developer and Athletics from time to time.

3.1.2 Other Design Consultants. The other Design Consultants, if any, shall be agreed upon by Developer and Athletics from time to time.

3.2 Completion of Design Development Documents.

3.2.1 Responsibility. Developer will, through the Design Consultants, design the Project, subject to Athletics' consent.

3.2.2 Specifications – Generally. The Stadiums shall be designed according to NCAA and national competition standards and practices. Such design shall facilitate the hosting of regional, national, and worldwide athletic events. The Stadiums' design shall be considered "state-of-the-art," except that the Stadiums' scoreboards shall not be of the "Jumbotron" variety (i.e., full interactive display board), but rather shall be smaller and simpler, consisting of game play results and other information, including, with respect to track and field, elapsed time delays.

3.2.3 Timing. Developer shall cause the Design Development Documents necessary to obtain the Land Use Entitlements to be completed in accordance with the Project Schedule, subject to any Excused Delays.

3.2.4 Cost. Developer shall pay for the cost of designing the Project, including the cost of completing the Design Development Documents.

3.3 Land Use Entitlements.

3.3.1 Responsibility. The Developer shall be responsible for securing any Land Use Entitlements required in furtherance of the Project.

3.3.2 Timing. Developer shall proceed with good faith diligence to expeditiously secure the Land Use Entitlements in accordance with the Project Schedule. If Developer consistently proceeds with such diligence, Developer's failure to obtain the Land Use Entitlements pursuant to the deadline set forth in the Project Schedule shall be considered Excused Delay.

3.3.3 Cost. Developer shall pay all costs of securing the Land Use Entitlements, including all legal, design professional, filing, administrative, and other costs and fees.

ARTICLE 4 CONSTRUCTION

4.1 Selection of Contractor. The Contractor hired to construct the Project will be agreed upon by Developer and Athletics. Developer shall enter into a construction contract with the Contractor to construct the Project. Subcontractors shall be agreed upon by Developer and Contractor, and Athletics shall not have any right to select or approve any subcontractor except those responsible for the track and scoreboards.

4.2 Finalize Construction Documents.

4.2.1 Responsibility. The Developer shall cause the Design Consultants to draft and finalize the Construction Documents, which shall be consistent with the Design Development Documents, unless modifications are mutually agreed to by the parties.

4.2.2 Timing. Developer shall cause the Construction Documents to be finalized in accordance with the Project Schedule, subject to any Excused Delays.

4.2.3 Cost. Developer shall pay for the cost of drafting and finalizing the Construction Documents.

4.3 Construction Permits

4.3.1 Responsibility. The Developer shall be responsible for securing any required Construction Permits.

4.3.2 Timing. Developer shall proceed with good faith diligence to expeditiously secure the Construction Permits in accordance with the Project Schedule. If Developer consistently proceeds with such diligence, Developer's failure to obtain the Construction Permits pursuant to the deadline set forth in the Project Schedule shall be considered Excused Delay.

4.3.3 Cost. Developer shall pay all costs of securing the Construction Permits, including all legal, design professional, filing, administrative, and other costs and fees.

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4.4 Construction.

4.4.1 Responsibility. The Developer shall cause the Contractor to construct the Project in accordance with the Design Development Documents, Construction Documents, and Construction Permits, subject to any Athletics Directed Change Orders approved by Developer. Developer shall have exclusive control over the construction process.

4.4.2 Timing. Developer shall be responsible for Commencement of Construction and Substantial Completion of the Project in accordance with the Project Schedule, subject to any Excused Delays.

4.4.3 Cost. Developer shall pay for the cost of Project construction.

4.5 Punchlist Work. Developer shall use diligent efforts to notify Athletics ninety (90) days prior to the expected date of Substantial Completion. Developer shall reconfirm by written notice to Athletics the date of actual delivery of the Project to Athletics in a state of Substantial Completion at least seven (7) days prior to such date. The Architect, Developer and Athletics and/or their respective representatives shall meet at the Project at a mutually acceptable date and time to conduct an on-site inspection of the Project to identify all uncompleted work and any repairs, replacements or correction work that is required to complete the Stadium Construction in accordance with the terms of this Agreement. The Architect shall prepare a detailed written list of all uncompleted work and all repairs, replacements and corrections to be made to the Project based on such inspection (the "Punchlist"). A copy of the Punchlist shall be delivered to Developer and Athletics. Any items on the Punchlist that are not Minor Punchlist Items, as determined by the Architect, shall be completed before Substantial Completion is reached. After all such work that does not constitute Minor Punchlist Items has been completed, the parties shall meet again to inspect the Project and to prepare a final Punchlist. When the Project is completed in accordance with the Contract Documents, except for the Minor Punchlist Items, then: (i) Developer and Athletics shall sign the Punchlist prepared by the Architect and Developer shall cause all such Minor Punchlist Items to be completed within thirty (30) days thereafter, or such longer period if reasonably necessary as long as Developer shall diligently work toward resolution of such items; and (ii) the Architect shall sign the certificate of Substantial Completion referenced in Section 1.34 above and deliver a copy to all parties within seven (7) days of such inspection. In completing the Punchlist items, Developer shall minimize any disruption of Athletics' use and enjoyment of the Stadiums.

4.6 Construction Progress; Athletics' Access; Athletics Work. Developer shall use diligent efforts to construct the Project such that Athletics can commence Athletics Work as soon as reasonably practicable, and, in addition to providing notice to Athletics of all job meetings pursuant to Section 6.3 hereof, Developer shall report at least monthly on the progress of construction. Developer shall respond promptly to any Athletics inquiries with respect to the progress of construction and shall notify Athletics promptly of any matters that are likely to delay Substantial Completion. Developer shall use diligent efforts to give Athletics its good faith estimate of the date that is 180 days prior to the

date that Athletics shall have access to the Project for the purpose of commencing Athletics Work. The parties shall work together in good faith to coordinate all aspects of construction.

4.7 Change Orders.

4.7.1 Athletics Directed Change Order. If Athletics desires to change any aspect of the Construction Documents during construction, it shall submit a proposed Athletics Directed Change Order to Developer. Developer shall, promptly thereafter, notify Athletics (a) that it accepts such change order and will make appropriate changes in the Construction Documents or (b) it rejects the change order because it has determined that such change order would result in additional costs (and specify such additional cost). If Developer rejects an Athletics Directed Change Order, Athletics may, in its discretion, elect to fund such additional cost, and Developer shall thereafter incorporate the proposed change order into the Construction Documents. Athletics shall pay or cause to be paid the full amount of any such additional costs promptly upon such costs becoming due, inclusive of any required advances to any contractor or supplier. Notwithstanding anything to the contrary in the foregoing, to the extent any Athletics Directed Change Order(s) actually cause delays in the construction of the Project, such delays shall be Excused Delays for purposes of Developer's obligations hereunder.

4.7.2 Developer Change Orders. Developer may proceed with any change order in its sole discretion that is minor in scope, does not result in a delay under the Project Schedule, and is not inconsistent with the Design Development Documents. Developer shall promptly provide Athletics with written notice of any such change order. Any other change order proposed by Developer, including any change order affecting the track or scoreboards, shall require Athletics' consent, which shall not be unreasonably delayed or withheld.

4.8 Construction Reports. During construction, Developer will:

4.8.1 Provide Athletics with monthly progress reports so as to keep Athletics fully apprised of the progress of development.

4.8.2 Notify Athletics of any actual or anticipated change in the Development Plan of which Developer becomes aware (including any actual or anticipated Excused Delays), and provide, when possible, an estimate of the impact on the Development Schedule.

4.8.3 Notify Athletics of any actual, potential or anticipated claims against Developer, Athletics, any Design Consultant, or the Contractor involving the Project.

4.8.4 Supervise the performance of the Contractor under the contract with Developer.

4.8.5 Upon the request of Athletics, deliver copies of any draw request for Stadium Construction made to any construction lender and copies of any letters and

submittals having a material effect on and required by Governmental Authorities with respect to the development of the Project.

4.9 Developer's Deliveries. Within ninety (90) days after Substantial Completion, Developer shall deliver to Athletics the following:

- (a) Copies of Warranties obtained pursuant to Section 5.1.1 hereof;
- (b) All operating manuals and similar material in Developer's possession or control and typically available with respect to the Stadium Construction;
- (c) The As-Built Drawings; and
- (d) A list of the name, address and telephone number of all contractors and subcontractors that have supplied labor or furnished a major component of materials or equipment to the Project on behalf of Developer.

ARTICLE 5 PARTIES' RESPONSIBILITIES

5.1 Warranties.

5.1.1 Developer shall obtain commercially reasonable warranties (to the extent customarily available and in form and substance at least equal to those customarily obtained from similar professionals, contractors, manufacturers, vendors and the like, and for similar projects in the State of Kansas) from the Architect, any other Design Consultants and Contractor with respect to the Project and manufacturers, vendors and subcontractors with respect to the track, scoreboards and mechanical systems and fixtures installed at the Stadiums as part of the Project (collectively, "Warranties"). Developer shall use commercially reasonable efforts to negotiate inclusion in the Warranties provisions making Athletics a third party beneficiary with enforcement rights thereunder. If Developer is not able to negotiate inclusion of such third party beneficiary and enforcement rights in one or more Warranties, at Athletics' written request, Developer will assign the applicable Warranties to Athletics. Following any such assignment, Athletics shall assume Developer's obligations under Section 5.1.2 hereof to enforce such Warranties. Without limiting and in addition to the foregoing, Developer shall obtain a representation and warranty from the Contractor in a form customarily obtained from general contractors that (i) the Project conforms to the Final Plans and complies with all Governmental Requirements; (ii) the Stadium Construction, including but not limited to the building structure, is free from defects in design, workmanship and materials and shall remain so for a "Warranty Period" ending one year from Substantial Completion.

5.1.2 If Athletics has actual knowledge of any defect in the design or construction of the Stadiums for which one or more Design Consultants or the Contractor may be

liable, Athletics shall promptly notify Developer in writing. If Developer has actual knowledge of a defect in the design or construction of the Stadiums or any other aspect of the Stadiums covered by a Warranty, Developer shall be responsible for enforcing the Warranties, if applicable.

- 5.2 Design and Construction Approvals. The parties acknowledge that they intend that the Project shall be substantially similar to the approved Design Development Documents. All subsequent plans and specifications shall be a logical extension of and consistent with the Design Development Documents in all material respects. In no event shall the parties withhold their respective approvals to the Construction Documents or other Contract Documents as long as they are consistent with the approved Design Development Documents.
- 5.3 Authority to Act. Subject to the terms and conditions of this Agreement, Developer and Athletics will act in their own name on all contracts, documents and agreements to which each is a party to effect the purposes of this Agreement. Developer and Athletics will be wholly responsible to each other for the performance of their respective obligations under this Agreement.
- 5.4 Standard of Care.
- (a) Developer and Athletics agree to furnish efficient business administration and superintendence, to arrange for timely performance of their respective obligations, and to complete the design and construction of the Stadiums in accordance with the Contract Documents and in compliance with all Governmental Requirements. In connection with performance of their duties hereunder, Developer and Athletics will employ the best skills and resources available to them.
 - (b) Developer and Athletics will exercise, with respect to each other, the highest standards of good faith and fidelity. Further, the parties agree to cooperate in all respects with the Design Consultants and Contractor in the planning, design, bidding and construction phases of the Project. The parties agree to cooperate with the Design Consultants and the Contractor, for the purpose of facilitating the planning, design and construction of the Project, in the most expeditious manner consistent with the requirements of highest quality.
- 5.5 Architect, Contractor and Other Consultants.
- 5.5.1 Errors and Omissions Insurance. The parties will require the Architect, Contractor, and any other Design Consultants to be covered by appropriate errors and omissions insurance, which shall be maintained in full force and effect for the benefit of Athletics and Developer, in form and amounts mutually agreeable to the parties.
- 5.5.2 No Third-Party Rights. Notwithstanding these provisions, nothing in this Agreement is intended to confer upon any other party (other than the parties hereto and their respective successors and assigns) any right or interest

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whatsoever, including without limitation any Architect, Contractor, or other Design Consultant under contract with Developer or Athletics with respect to the Project, nor to any supplier or other vendor with respect to the Project.

- 5.6 Responsibility for Design and Construction. All Contract Documents shall provide that the Architect, Contractor, and any other Design Consultants for the Project will meet and maintain in good standing the applicable professional qualifications and professional standards of their professions. The Contract Documents that provide for continuing rights of Developer after completion of Stadium Construction shall include the right of Athletics, as assignee or third-party beneficiary, to exercise such rights as a direct claim by Athletics against any applicable party.
- 5.7 Permits, Laws and Ordinances. Developer will comply fully and use commercially reasonable efforts to cause the Contractor to comply fully with all Governmental Requirements. Developer or its designee will apply for and secure, at its sole cost, all permits, licenses, approvals and the like required for the proper execution, construction, completion and operation of the Project shall be obtained by Developer. Notwithstanding the foregoing, with respect to any licenses, permits, or similar approvals related to operation and use of the Stadiums by Athletics, excluding any concessions operations, Athletics will apply for and obtain same. Further notwithstanding the foregoing, in no event shall Developer have any responsibility for Athletics' inability to obtain any such permits or licenses. The parties agree to cooperate with each other as reasonably required to obtain the respective permits and licenses.
- 5.8 Conflicts. In the event of any conflicts among the requirements of the Governmental Requirements and Contract Documents, the following order of precedence shall govern which requirement shall prevail: 1.) Governmental Requirements; 2.) approved change orders; 3) Construction Documents; and 4.) other Contract Documents.

ARTICLE 6 ATHLETICS' RIGHTS AND RESPONSIBILITIES

- 6.1 Athletics' Representative. Athletics will designate to Developer one or more representatives who will be fully acquainted with the Project and have authority to promptly render or procure decisions required of Athletics.
- 6.2 Tenant Improvements. Athletics shall, prior to Substantial Completion, have the right to enter the Stadiums for the purposes of performing Athletics Work so long as Athletics does not materially interfere with Developer's construction of the Project. Developer shall promptly notify Athletics when any material portion of the Stadiums is in a condition suitable for commencement of Athletics Work. Athletics shall, at all times prior to Substantial Completion, perform Athletics Work so as to minimize any interference with Developer's construction of the Project. Athletics shall maintain the insurance required pursuant to the Lease Agreement during all construction of Athletics Work.

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- 6.3 Access. Developer shall notify Athletics of all job meetings, and Athletics and its consultants shall be entitled to attend and participate in all job meetings and shall have unlimited access to the Land at all times during construction of the Stadiums (provided that such access shall be conducted in a manner that does not interfere with the construction of the Project). Athletics and its consultants shall have the right to be present during all inspections conducted by Developer's construction lender(s) and/or Governmental Authorities.
- 6.4 Notice of Stadium Opening Date. Athletics shall use reasonable efforts to provide a notice to Developer at least 60 days prior to its anticipated opening of the Stadiums to the public.
- 6.5 Approvals. Neither the review nor approval by Athletics of any of the Contract Documents shall constitute a representation or warranty by Athletics that such Contract Documents are complete or suitable for their intended purpose, it being expressly agreed by Developer that Athletics assumes no responsibility or liability whatsoever to Developer or to any other person or entity for the completion, suitability or compliance with Governmental Requirements of the Contract Documents and that any approval by Athletics shall not constitute a waiver of any obligation of Developer, Design Consultants or Contractor under the Contract Documents.

**ARTICLE 7
REPRESENTATIONS AND WARRANTIES**

- 7.1 Developer's Representations. Developer hereby represents and warrants as follows:
- 7.1.1 Developer is a Kansas limited liability company duly formed, validly existing and in good standing under the laws of Kansas. This Agreement constitutes the valid and legally binding obligation of Developer, enforceable against Developer in accordance with its terms.
- 7.1.2 Developer has full right, power and authority and is duly authorized to enter into this Agreement, to perform each of the covenants on its part to be performed hereunder and to execute and deliver, and to perform its obligations under all documents required to be executed and delivered by it pursuant to this Agreement.
- 7.1.3 No authorization, consent or approval of any Governmental Authority (including courts) is required for the execution and delivery by Developer of this Agreement or the performance of its obligations hereunder.
- 7.1.4 Developer has not entered into any material commitments or agreements with any Governmental Authority affecting the Stadiums except for agreements that: (1) have been disclosed to Athletics; or (2) are a matter of public record at the registry of deeds for the Land.

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- 7.1.5 Developer has not received any written notice from any Governmental Authority requiring the correction of any material condition with respect to the Land or any part thereof, by reason of a material violation of any applicable federal, state, county or municipal law, code, rule or regulation, or stating that any investigation has been commenced or is contemplated regarding any of the same.
 - 7.1.6 Developer has delivered or made available to Athletics true and complete copies of all third-party reports in its possession or control related to physical conditions affecting and/or hazardous materials located on, in or at the Land. To Developer's actual knowledge, except as set forth on such reports, no hazardous materials are present on any portion of the Land in violation of Governmental Requirements. Except as set forth in such reports, no notice has been given or, to the Developer's actual knowledge, threatened to be given, to Developer with respect to the possible presence of any hazardous materials on the Land in violation of Governmental Requirements.
 - 7.1.7 Developer has received no written notice that any litigation materially affecting the Land is pending or currently threatened.
 - 7.1.8 Developer has delivered or made available to Athletics true and complete copies of all contracts, insurance policies, surveys, plans, engineering reports, soils studies, approvals, permits and licenses related to the Land that are in Developer's possession or control and pertain to the ownership, use and operation of the Land, and to Developer's actual knowledge, such contracts, policies, approvals, permits and licenses are in full force and effect to the extent they then purport to be in effect.
- 7.2 Athletics' Representations. Athletics hereby represents and warrants as follows:
- 7.2.1 Athletics is a Kansas not for profit corporation duly formed, validly existing and in good standing under the laws of Kansas. This Agreement constitutes the valid and legally binding obligation of Athletics, enforceable against Athletics in accordance with its terms.
 - (a) Athletics has full right, power and authority and is duly authorized to enter into this Agreement, to perform each of the covenants on its part to be performed hereunder and to execute and deliver, and to perform its obligations under all documents required to be executed and delivered by it pursuant to this Agreement.
 - (b) No authorization, consent or approval of any Governmental Authority (including courts) is required for the execution and delivery by Athletics of this Agreement or the performance of its obligations hereunder.

**ARTICLE 8
INSURANCE AND INDEMNITY**

8.1 Insurance.

8.1.1 During the term of this Agreement, Athletics shall maintain at all times insurance as specified in Section 12 of the Lease Agreement.

8.1.2 As set forth in Section 5.5.1, Developer shall ensure that the Design Consultants and Contractor are covered by appropriate errors and omissions insurance. The Contractor shall also carry appropriate insurance for builder's risk/casualty, general liability (including umbrella coverage), workers' compensation, and automobile liability.

8.2 Indemnity and Waiver. Each party (as an "Indemnitor") hereby agrees to indemnify, protect and save harmless the other party and its officers and employees (hereinafter collectively referred to as "Indemnitees"), of and from any and all claims, demands, liabilities, loss, costs or expenses for any loss or damage (including bodily injury including death or personal injury, land damage, workers compensation benefits, employment benefits, libel, slander, defamation of character and invasion of privacy) and attorneys' fees, caused by, growing out of, or otherwise happening in connection with this Agreement, due to any act or omission (whether intentional or negligent, through theft or otherwise) on the part of Indemnitor, its agents, employees or others working at the direction of Indemnitor or on its behalf, or due to any breach of this Agreement by Indemnitor, or due to the application or violation of any pertinent federal, state or local law, rule or regulation by any person engaged by Indemnitor.

8.2.1 This indemnification applies whether: (i) the activities involve employees, independent contractors or agents of Indemnitor (or Consultants employed by, through, or on behalf of Indemnitor), or (ii) the claim results in a monetary obligation that exceeds any contractual commitment made by Indemnitor or any such other parties.

8.2.2 This indemnification extends to the successors and assigns of Indemnitor and the dissolution or, to the extent allowed by law, the bankruptcy of each respective Indemnitor.

8.2.3 Each Indemnitor will procure within an insurance policy coverage for its indemnification obligations hereunder.

8.2.4 The parties' liabilities under this section shall be limited to actual or contingent liabilities arising prior to the termination or expiration of this Agreement.

8.2.5 The indemnification obligations contained in this Agreement are in addition to any indemnification obligations contained in the Lease and Operating Agreement and control as to matters governed by this Section 8.2.

**ARTICLE 9
DEFAULT**

9.1 Default.

By either party, the following shall be events of default:

- (a) The filing of a voluntary proceeding under present or future bankruptcy, insolvency or other laws respecting debtors' rights;
- (b) The consent to an involuntary proceeding under present or future bankruptcy, insolvency or other laws respecting debtor's rights;
- (c) The entering of an order against a party or the appointment of a receiver, trustee or custodian for all or a substantial part of the land or assets of such party in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of 90 consecutive calendar days;
- (d) Failure to perform or observe any covenant, obligation or requirement of this Agreement, and the continuation of such failure for 30 calendar days after written notice thereof specifying the nature and extent of any such default; provided, however, that if upon receipt of such notice, the party receiving such notice promptly and with all due diligence (if such default is not susceptible of being cured within 30 calendar days) proceeds to attempt to cure the default and thereafter diligently pursues such efforts to completion then the other party will have no right to pursue remedies under this Agreement pursuant to Section 9.2;

9.2 Remedies for Default.

9.2.1 Defaults. Upon an event of default under Section 9.1, the non-defaulting party may bring a claim in any court of competent jurisdiction to enforce its rights hereunder. In no event shall either party be liable for consequential, special, or punitive damages. The non-prevailing party in any such action, as determined by the court, shall pay for or reimburse all of the prevailing party's legal costs and fees associated with the subject claim.

9.2.2 Termination. Notwithstanding any event of default under Section 9.1 hereof, this Agreement shall not be terminated prior to the end of the Term set forth in Section 10.1 hereof unless both parties execute a written termination in their respective sole discretion.

**ARTICLE 10
MISCELLANEOUS PROVISIONS**

10.1 Term. This Agreement shall automatically terminate upon the first to occur of: i) the full performance and satisfaction of all Developer obligations hereunder; or ii) the expiration

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or termination of the Lease Agreement pursuant to the terms thereof; provided, however, that the parties' respective obligations under Sections 5.1.1, 5.1.2 and 8.2 hereof shall survive the expiration or termination of this Agreement.

- 10.2 City Fees. The City of Lawrence, Kansas has agreed to waive all development-related fees and costs associated with the development and construction of the Project.
- 10.3 Intentionally Omitted
- 10.4 Developer's Agreements with RCP and the City. Prior to execution of the Parking and Access Easement (as defined in the Operating Agreement), and Developer's execution of any other agreement with RCP or City dated after the date of the effective date of this Agreement, Developer shall provide Athletics with copies of such documents for Athletics' review and comment and any provisions of such documents that might materially affect the construction, use or operation of the Stadiums or the rights and obligations of Athletics (including the Parking and Access Easement) shall be subject to the prior written consent of Athletics.
- 10.5 Cooperation. The parties agree to cooperate with one another as necessary during the term of this Agreement to effectuate the efficient design, financing, and construction of the Project. Such cooperation shall include, by way of example, cooperation by Athletics (at no cost to Athletics) with Developer's responsibility to secure Land Use Entitlements and Construction Permits under Sections 3.3 and 4.3, respectively, hereunder, and cooperation by Athletics (at no cost to Athletics) with Developer to receive exemption from sales tax on construction materials purchased for the Project, which may involve a request for the City to issue Industrial Revenue Bonds under K.S.A. 12-1740 et seq. so long as the same does not materially increase Athletics' risks and costs in connection with the construction of the Stadiums or Athletics use thereof. In the event Industrial Revenue Bonds are pursued, Developer shall provide documents related thereto to Athletics for its review and comment.
- 10.6 Development Schedule. Notwithstanding anything herein to the contrary, the parties may reasonably agree to modify the Development Schedule from time to time.
- 10.7 Approvals. Except as expressly provided otherwise in this Agreement, whenever this Agreement requires the consent or approval of Athletics or Developer, such consent or approval will not be unreasonably withheld or delayed.
- 10.8 Waiver. The failure of either party to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained, will not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by either party of any term or provision hereof will be deemed to have been made unless expressed in writing and signed by such party.
- 10.9 Partial Invalidity. In the event that any portion of this Agreement will be declared invalid by order, decree or judgment of a court, this Agreement will be construed as if such

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Notice to Developer: Bliss Sports, LC
209 Fall Creek Road
Lawrence, KS 66049

With a copy to: Polsinelli Shughart PC
700 W. 47th Street, Suite 1000
Kansas City, MO 64112
Attn: Trip Frizell
Facsimile: (816) 753-1000

Polsinelli Shughart PC
6201 College Boulevard, Suite 500
Overland Park, KS 66211
Attn: Curtis J. Petersen
Facsimile: (913) 234-7458

or at such other address as from time to time is designated by the party receiving the notice. Such notices shall be deemed received on (i) the date of delivery, if delivered by hand or by overnight express delivery service, or (ii) on the date of transmission, if sent by facsimile transmission.

- 10.14 “Including”. In this Agreement, whenever general words or terms are followed by the word “including” (or other forms of the word “include”) and words of particular and specific meaning, the word “including” (or other forms of the word “include”) will be deemed to mean “including without limitation”, and the general words will be construed in their widest extent, and will not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.
- 10.15 Binding Effect. This Agreement will bind and inure to the benefit of the respective successors and assigns (subject to Section 10.8 hereof) of the parties hereto.
- 10.16 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and writings, including, without limitation, the Letter Agreements, and may be changed only by a writing signed by the parties hereto.
- 10.17 Time of Essence. Time is of the essence of this Agreement. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, expires on a day other than a Business Day, then such time period shall be automatically extended through the close of business on the next regularly scheduled Business Day.
- 10.18 Third-Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer upon any other party other than the parties hereto and their respective successors and assigns, any right or interest whatsoever. No party other than the parties hereto is entitled to rely in any way upon the warranties, representations, obligations or limitations of liability whatsoever in this Agreement.

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10.19 Effectiveness of this Agreement. This Agreement shall not become effective until the Stadium Ground Lease and the Lease Agreement have been fully executed.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

ATHLETICS:

KANSAS ATHLETICS, INC., a Kansas not for profit corporation


By: 
Name: Shekwa Zenger
Title: DIRECTOR OF Athletics

SM
2/12/13

DEVELOPER:

BLISS SPORTS, LC, a Kansas limited liability company

By: 
Thomas S. Fritzel, Manager

By: 
Dru Stewart Fritzel, Member

EXHIBITS

- Exhibit A – Site Map and Description of Land
- Exhibit B – Development Schedule

EXHIBIT A
SITE MAP AND DESCRIPTION OF LAND

LOT 1 OF PROPOSED ROCK CHALK PARK ADDITION NO. 1

LEGAL DESCRIPTION:

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° 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° 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° 06' 58" WEST AND CHORD LENGTH OF 206.91 FEET; THENCE NORTH 00° 20' 28" EAST ALONG SAID RIGHT-OF-WAY, 74.58 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY ON A MEASURED BEARING OF NORTH 46° 12' 54" EAST AND MEASURED DISTANCE OF 320.03 FEET; THENCE SOUTH 65° 51' 23" EAST, 378.00 FEET; THENCE NORTH 22° 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° 29' 49" WEST AND CHORD LENGTH OF 513.11 FEET; THENCE NORTH 16° 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° 43' 53" EAST AND A CHORD LENGTH OF 66.26 FEET; THENCE NORTH 05° 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° 52' 20" EAST AND CHORD LENGTH OF 361.22 FEET; THENCE NORTH 51° 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° 26' 37" EAST AND CHORD LENGTH OF 411.59 FEET; THENCE SOUTH 34° 08' 16" EAST, 136.57 FEET; THENCE NORTH 36° 50' 52" EAST, 105.91 FEET; THENCE SOUTH 01° 55' 19" EAST, 196.21 FEET; THENCE SOUTH 88° 04' 41" EAST, 428.96 FEET; THENCE SOUTH 01° 55' 19" WEST, 575.00 FEET; THENCE SOUTH 88° 04' 41" EAST, 713.94 FEET; THENCE SOUTH 02° 00' 44" EAST PARALLEL TO THE EAST LINE OF SAID SECTION, 708.94 FEET; THENCE SOUTH 88° 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

DEVELOPMENT SCHEDULE

Task	Responsible Party	Deadline
Completion of Design Development Documents necessary for Land Use Entitlements Approval Process (e.g., zoning, platting, site plan)	Developer (subject to Athletics approval)	Within 120 days after the Effective Date
Secure Land Use Entitlements	Developer	Within 90 days after Completion of Design Development Documents necessary for Land Use Entitlements Approval Process
Finalize Construction Documents	Developer (subject to Athletics approval)	Within 60 days after all Land Use Entitlements are secured
Secure Construction Permits	Developer	Within 45 days after Construction Documents are finalized
Construction Commencement	Developer	Within 15 Business Days after all necessary Construction Permits are issued
Substantial Completion	Developer	Within 16 months after Construction Commencement