

AMENDED AND RESTATED OPERATING AGREEMENT

THIS AMENDED AND RESTATED OPERATING 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 RCP, LLC, a Kansas limited liability company (“**RCP**”) a wholly owned subsidiary of the 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 Development Agreement with respect to the Stadiums, dated as of February 12, 2013 (“**Development Agreement**”), which addresses Developer’s and Athletics’ rights and obligations with respect to the design, financing, and construction of the Stadiums; and

E. The parties have entered into this Agreement in order to set forth their respective rights and obligations with respect to the ongoing use, operation, maintenance, and further improvement of the Stadiums, and for other related purposes. This Agreement amends and restates in its entirety that certain Operating 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 Operating Agreement and all documents attached hereto or incorporated by reference herein.
- 1.2 “Alterations” will have the meaning set forth in Section 4.2 hereof.
- 1.3 “Athletics” will mean Kansas Athletics, Inc., a Kansas not for profit corporation.
- 1.4 “Athletics-Sponsored Event” means a use of the Stadiums for an event whereby Athletics is primarily responsible for planning, publicizing, and financing such event.
- 1.5 “Concessions” shall mean the marketing and sale of any tangible item in or around the Stadiums.
- 1.6 “Developer” means Bliss Sports, LC, a Kansas limited liability company.
- 1.7 “Developer-Sponsored Event” means a use of the Stadiums for an event whereby Developer is primarily responsible for planning, publicizing, and financing such event.
- 1.8 “Endowment” means Kansas University Endowment Association, a Kansas not for profit corporation.
- 1.9 “Environmental Laws” means any applicable law, statute or ordinance relating to public health, safety or the environment, including, without limitation, relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, transportation, treatment, storage or management of solid or hazardous wastes or to exposure to toxic or hazardous materials, to the handling, transportation, discharge or release of gaseous or liquid substances and any regulation, order, notice or demand issued pursuant to such law, statute or ordinance, in each case applicable to the Premises or Tenant or the operation, construction or modification of the Premises, including without limitation the following: the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Solid Waste Disposal Act, and any state statutes addressing similar matters, and any state statute providing for financial responsibility for cleanup or other actions with respect to the release or threatened release of hazardous substances and any state nuisance statute.
- 1.10 “Governmental Authority” will mean any government agency having jurisdiction over the Land and/or the Stadiums in its capacity as a 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 Stadiums).

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- 1.11 “Governmental Requirements” will mean all laws, statutes, ordinances, codes, regulations, rules, orders and directives applicable to the Stadiums, including without limitation all zoning and building codes, the Federal Fair Labor Standards Act, Equal Employment Opportunity Act, the Americans with Disabilities Act, Environmental Laws, and regulations issued thereunder.
- 1.12 “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.
- 1.13 “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.
- 1.14 “Major Repairs” will have the meaning set forth in Section 4.1.2.
- 1.15 “Maintenance Fund” will have the meaning set forth in Section 2.4.4.
- 1.16 “Parking and Access Easement” will have the meaning set forth in Section 3.1.1.
- 1.17 “Parking Area” will mean at least 1,000 paved or turf parking spaces (including approximately 800 paved spaces) near or adjacent to the Stadiums.
- 1.18 “Rental Charge” will have the meaning set forth in Section 2.2.3.
- 1.19 “RCP” means RCP, LLC, a Kansas limited liability company.
- 1.20 “Soccer Stadium” means that certain soccer stadium to be constructed by Developer on the Land.
- 1.21 “Softball Stadium” means that certain softball stadium to be constructed by Developer on the Land.
- 1.22 “Stadiums” will mean the Soccer Stadium, Track and Field Stadium, and the Soccer Stadium, collectively.
- 1.23 “Stadiums Ground Lease” will have the meaning set forth in Recital A.
- 1.24 “Third Party Users” will mean any persons or entities, other than Athletics and Developer, that wish to use the Stadiums for a Third Party-Sponsored Event.
- 1.25 “Third Party-Sponsored Event” means a use of the Stadiums for an event whereby a Third Party User is primarily responsible for planning, publicizing, and financing such event.

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- 1.26 “Track and Field Stadium” means that certain track and field stadium to be constructed by Developer on the Land.
- 1.27 “Use Agreement” will have the meaning set forth in Section 2.2.3.
- 1.28 “User Fee” will have the meaning set forth in Section 2.2.3.

ARTICLE 2 USE OF STADIUMS

- 2.1 Athletics Use of the Stadiums. Subject to compliance at all times with Governmental Requirements, Athletics shall have the right to use the Stadiums for any Athletics-Sponsored Event.
- 2.2 Developer Use; Third Party Users.
- 2.2.1 Approval of Requests by Developer. Developer may request use of the Stadiums for any Developer-Sponsored Event and Athletics shall approve Developer’s request so long as: i) the proposed use and timing of such event would not unreasonably interfere with Athletics’ practices, games/meets, or other scheduled use of the Stadiums; ii) the use complies with all Governmental Requirements; and iii) the proposed use does not pose a material risk of damage to the Stadiums that could interfere with Athletics’ scheduled use of the Stadiums (e.g., destruction of turf just before a soccer game).
- 2.2.2 Approval of Requests by Third Party Users. No Third Party-Sponsored Event shall be permitted without consent of Athletics and Developer, which shall not be unreasonably withheld or delayed.
- 2.2.3 Stadiums Use Agreements. Developer and any Third Party User shall be required to enter into a use agreement (the “**Use Agreement**”) with Athletics regarding such party’s use of the Stadiums. The Use Agreements shall be prepared by Athletics, specifically define the scope of the approved use of the Stadiums and require compliance by the user with certain rules and requirements. The Use Agreements may also require the user to provide a security deposit, pay a rental charge (not applicable to Developer, as set forth below) (the “**Rental Charge**”), and pay a user’s fee (the “**User’s Fee**”) in an amount estimated to cover Athletics’ costs (clean-up, maintenance, security, etc.) to be incurred in connection with use. Use Agreements shall set forth rules and requirements relating to Concessions, as approved by Developer and consistent with the terms of this Agreement.
- 2.2.4 Insurance. Developer and any Third Party User shall be required to provide Athletics with proof of liability insurance (which shall include coverage for bodily harm, death, and property damage) covering the user’s proposed use of the Stadiums, and such insurance shall list Developer and Athletics as additional insureds. Minimum insurance requirements, such as minimum policy limits, may

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be reasonably established by mutual agreement of Developer and Athletics from time to time.

- 2.3 Concessions. Developer shall have the exclusive right to control and manage all Concessions associated with any use of the Stadiums, including Athletics-Sponsored Events, Developer-Sponsored Events, and Third Party-Sponsored Events. For any such events, Developer shall have the right to reasonably locate and operate such Concessions in and around the Stadiums. Athletics shall cooperate with Developer, as necessary, to ensure that Developer has sufficient access and use of the Stadiums to accommodate the Concessions, such as, by way of example, access to and use of loading docks, sufficient on-site secure storage space, adequate sales areas, food preparation facilities, restrooms, potable water supply, etc. Athletics shall cooperate (at no cost to Athletics) with Developer, as necessary, to secure Developer's right to operate the Concessions, which may include, by way of example, assisting with Developer's application for certain business licenses or permits, including executing documents in furtherance thereof. Without limiting Developer's rights to operate Concessions at any events, Developer shall be required to operate Concessions at all Athletics-Sponsored Events requested by Athletics.
- 2.4 Revenues from Operations.
- 2.4.1 Security Deposits and User Fees. Athletics shall have the sole right to determine the amount of, collect, and retain reasonable security deposits and User Fees associated with Developer-Sponsored Events and Third Party-Sponsored Events. The User Fee shall be a reasonable estimation of the costs to be incurred to return the Stadiums after such requested use to the condition that existed prior to such use and to cover other costs to be incurred by Athletics in connection with such use.
- 2.4.2 Third Party User Rental Charges. In response to each request by a Third Party User to use the Stadiums for a Third Party-Sponsored Event, Athletics and Developer shall mutually agree upon the amount of the Rental Charge to be required. The parties may require a flat Rental Charge, base the Rental Charge on a percentage of ticket sales, some combination of both, or any other method of calculating the Rental Charge.
- 2.4.3 Rental Charges for Developer-Sponsored Events. There shall be no Rental Charges for Developer-Sponsored Events.
- 2.4.4 Maintenance Fund. All Rental Charges collected from Third Party-Sponsored Events shall be used to capitalize a Stadiums maintenance fund (the "**Maintenance Fund**") in the amount to be agreed to between Developer and Athletics. Except as otherwise set forth herein or as mutually agreed to by Developer and Athletics in their respective sole discretion, amounts in the Maintenance Fund shall only be utilized to pay for Major Repairs. Before expending funds from the Maintenance Fund to pay for Major Repairs, Athletics shall obtain Developer's consent, except that Developer's consent shall not be

required for use of the Maintenance Fund to pay for the repair or replacement of the track within the Track and Field Stadium, the field within the Soccer Stadium or Softball Stadium, or one or more scoreboards within the Stadiums. Upon the expiration of the Term of this Agreement or its earlier termination, all funds in the Maintenance Fund shall belong to Athletics free of any claim by or interest of Developer.

2.4.5 Ticket Revenue.

- (a) Athletics shall have the sole right to collect and retain revenue from the sales of tickets to any Athletics-Sponsored Event.
- (b) Where tickets are issued and sold for a Third Party-Sponsored Event, the Third Party User shall have the right to ticket sales revenue, except where some or all of the revenues from such ticket sales are to be paid to Developer and Athletics under Section 2.4.2 hereof as a Rental Charge.
- (c) In connection with its activities pursuant to Section 2.5 below, Athletics shall have the right to charge and retain reasonable processing and handling charges for tickets sold, which will be deducted from ticket revenue.

2.4.6 Concessions Revenue. Any net revenues (i.e. revenues net of associated costs) generated by Concessions shall be deposited in the Maintenance Fund.

2.4.7 Advertising, Sponsorship, & Naming Rights Revenue. Subject to Section 9.2.2 hereof, Athletics shall have the sole right to collect and retain any revenues from advertising located at the Stadiums, sponsorship rights associated with the Stadiums, and revenues generated from the sale of naming rights for the Stadiums and any component parts thereof.

2.4.8 Parking Fees. All net parking fee revenues (i.e., revenues net of any associated costs) charged under Section 3.1.5 hereof shall be deposited in the Maintenance Fund.

2.5 Ticket Office. All ticketed events held at the Stadiums shall use Athletics' ticketing system and Athletics' ticketing offices, including any ticketing office located at the Stadiums. Athletics' ticketing office and all ticketing activities associated with use of the Stadiums shall be exclusively operated by Athletics or its agents.

ARTICLE 3 ACCESS DRIVES & PARKING AREAS

3.1 Parking Area.

3.1.1 Parking Easement. It is not yet determined whether the Parking Area will be located on the Land leased by Developer to Athletics under the Lease Agreement.

If the Parking Area is not located on the Land, Developer shall secure a parking and access easement (the “**Parking and Access Easement**”) for the benefit of the Developer, its tenants and their respective tenants, licensees, contractors, and invitees with certain rights to access and use the Parking Area in conjunction with use of the Stadiums.

- 3.1.2 Large Event Parking. For any particular Athletics sponsored event at the Stadiums expected to attract more than 5,000 attendees, Developer shall provide Athletics with access and use of the entire Parking Area except any portion excluded by the terms of the Parking and Access Easement.
 - 3.1.3 Smaller Event Parking. For any particular Athletics Sponsored Event at the Stadiums expected to attract 5,000 or less attendees, Developer shall provide Athletics with access to a portion of the Parking Area reasonably necessary to accommodate the estimated number of attendees.
 - 3.1.4 Notice of Events. Athletics shall provide Developer with at least thirty (30) days written notice of all events estimated to attract more than 500 attendees to enable the Developer to ensure adequate access and use of the Parking Area as set forth in this Section 3.1.
 - 3.1.5 Use Charges. Developer and Athletics shall have the right to charge reasonable parking fees for use of the Parking Area during any events held at the Stadiums, but only upon mutual agreement of Developer and Athletics for any particular event, agreement to which shall not be unreasonably withheld or delayed. It is the intent of the parties that, as a general rule, at a minimum, parking fees will be charged for conference-wide collegiate athletic events; statewide, regional, national, and world-wide sporting events; and Third Party-Sponsored Events.
- 3.2 Access Drives. Pursuant to the Parking and Access Easement to be secured by Developer, Developer, its tenants, and their respective tenants, licensees, contractors, and invitees shall have the right to access and use all drives located on land owned by Endowment that is adjacent to the Land as is necessary to provide the Land with ingress and egress to and from the Parking Area and adjacent public streets. If pursuant to Section 3.1.1 hereof the Parking and Access Easement is not necessary for provision of access and use of the Parking Area (i.e., if the Parking Area is located on the Land), but an access easement is still necessary to provide the Land with ingress and egress to and from the public streets, the Developer shall be responsible for obtaining such access easement.
 - 3.3 Maintenance. Athletics shall not have any obligation to repair, maintain, or improve the Parking Area or the drives mentioned in Section 3.2 hereof.
 - 3.4 Compliance With Parking and Access Easement. Developer shall timely comply with and perform all obligations of Developer under the Parking and Access Easement.

**ARTICLE 4
MAINTENANCE, REPAIR, & IMPROVEMENTS**

4.1 Maintenance/Repairs.

4.1.1 Maintenance and Repairs. Except as set forth in Section 4.1.3, Athletics shall have sole responsibility to maintain the Stadiums at all times in good repair and condition (e.g., safe, clean, well-kept, and well-maintained) and in compliance with all Governmental Requirements. All maintenance, repairs, and replacements shall be at least equal in quality to the original quality of the Stadiums, and such work shall be completed in accordance with requirements of all valid design and contractor warranties so as not to void such warranties. Athletics shall undergo all maintenance and make all repairs when reasonably necessary without delay. Such maintenance and repairs will include, by way of example, maintenance of the Stadiums' landscaping and grounds, heating and cooling systems, appearance of the exterior walls of the Stadiums, sealing the Stadiums' concrete surface, and maintenance of all other aspects and components of the Stadiums. Maintenance and repairs shall also include replacement, as necessary.

4.1.2 Major Repairs. Athletics' maintenance and repair obligation shall also include repairs to the Stadiums in excess of \$100,000 ("**Major Repairs**"). Such items may include, by way of example, replacement of the track in the Track and Field Stadium as necessary from time to time.

4.1.3 Structural Defects. Notwithstanding Athletics' maintenance obligations set forth in this Section 4.1, Developer shall be solely responsible for repairing any defects in workmanship in the concrete-poured structure of the Stadiums.

4.1.4 In addition to the language in this Section 4.1, Athletics' maintenance and repair obligations are more fully described in Section 9 of the Lease Agreement.

4.2 Selection of Contractor. With respect to any maintenance or repairs by Athletics under Section 4.1 hereof, Athletics shall only use contractors mutually agreed upon by Athletics and Developer; provided that, Athletics may choose a contractor in its sole discretion for any maintenance or repairs, the cost of which is less than One Hundred Thousand Dollars (\$100,000) or for any repair or replacement of the track, soccer field, softball field and scoreboards.

4.3 No Liens. In conjunction with maintenance, repairs, and replacement, or any other work by Athletics under this Agreement, its agents or contractors, Athletics shall keep the Stadiums free of all liens pursuant to the requirements of the Lease Agreement set forth in Section 7 thereof.

**ARTICLE 5
REPRESENTATIONS AND WARRANTIES**

- 5.1 Developer's Representations. Developer hereby represents and warrants as follows:
- 5.1.1 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.
 - 5.1.2 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.
 - 5.1.3 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.
 - 5.1.4 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.
 - 5.1.5 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.
 - 5.1.6 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.
 - 5.1.7 Developer has received no written notice that any litigation materially affecting the Land is pending or currently threatened.
 - 5.1.8 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.

5.2 Athletics' Representations. Athletics hereby represents and warrants as follows:

5.2.1 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 6
ASSIGNMENT**

6.1 Assignment; Ownership Interests in Developer.

6.1.1 Developer may not assign its interest hereunder without the prior written consent of Athletics, which Athletics may withhold in its sole discretion; provided that, Athletics' consent is not required for Developer's collateral assignment of its interest hereunder to a lender holding a mortgage on Developer's leasehold estate in the Stadiums Ground Lease.

6.1.2 Thomas and Dru Fritzel collectively own all membership interests in Developer. Such membership interests may not be assigned to any other person or entity without the prior written consent of Athletics, except that such interests may be assigned without such consent to one or more trusts controlled by and for the benefit of Thomas or Dru Fritzel, or their children, for purposes of estate planning.

6.1.3 Athletics may not assign its interest hereunder without the prior written consent of the Developer, which Developer may withhold in its sole discretion.

6.1.4 Any assignments in violation of this Section 6.1.4 shall be null and void and shall transfer no rights or interests to the assignee. Any permitted assignee shall be deemed to have assumed all of the obligations of the assignor under this Agreement applicable to the period after the effective date of such assignment.

**ARTICLE 7
INSURANCE AND INDEMNITY**

7.1 Insurance.

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

7.1.2 Athletics shall also carry business interruption insurance that shall, in the event of damage or destruction of the Stadiums, condemnation, or in the event of any other business interruption, provide benefits in the amount necessary to make the full monthly payments under the Lease Agreement for a period of twelve (12) months or until such time as the business interruption is resolved, whichever is first to occur.

7.2 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.

7.2.1 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.

7.2.2 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.

7.2.3 Each Indemnitor will procure within an insurance policy specific insurance coverage to cover its indemnification obligations hereunder.

7.2.4 The parties’ obligations under this section shall survive expiration or termination of this Agreement and shall not be limited or affected by Athletics’ obligation to carry liability insurance as set forth in Section 7.1.1 hereof. The parties’ liabilities under this section shall be limited to actual or contingent liabilities arising prior to the termination or expiration of this Agreement.

7.2.5 The insurance and indemnity provisions of this Article 7 shall be in addition to those set forth in Section 8 of the Lease Agreement.

ARTICLE 8 DEFAULT

8.1 Default.

8.1.1 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 8.2.

8.2 Remedies for Default.

8.2.1 Legal Action; Non-Prevailing Party Pays Legal Fees. Upon an event of default hereunder, 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.

8.2.2 Termination. Notwithstanding any event of default under Section 8.1 hereof, the parties agree that this Agreement shall not be terminated prior to the end of the term set forth in Section 9.1 hereof unless both parties execute a written termination in their respective sole discretion.

**ARTICLE 9
MISCELLANEOUS PROVISIONS**

- 9.1 Term. This Agreement shall automatically expire upon termination or expiration of the Lease Agreement pursuant to the terms thereof.
- 9.2 Advertising, Sponsorship, & Naming Rights.
- 9.2.1 Subject to Section 9.2.2, Athletics shall have exclusive rights to and control over all advertising, sponsorship, and naming rights at the Stadiums during the term of this Agreement.
- 9.2.2 From time to time during the term of this Agreement, Developer may request that Athletics permit Developer the right to place or display at the Stadiums advertising procured by Developer or for Developer and its affiliates. Athletics agrees not to unreasonably withhold its consent to such requests.
- 9.3 Signage.
- 9.3.1 All signage erected, placed, or installed at the Stadiums shall comply with all Governmental Requirements.
- 9.3.2 With respect to any signage paid for in full by Athletics, Athletics may erect or modify such signage without Developer consent. Any signage paid for in whole in or in part by Developer shall be subject to the reasonable consent of Developer.
- 9.4 Evening Events. It is the intent of the parties that events held in the Stadiums shall conclude by 11:00 pm.
- 9.5 Intellectual Property of the University of Kansas. Athletics shall be permitted to use the name, logos, trademarks, and symbols of the University of Kansas at and in association with its use of the Stadiums.
- 9.6 Prohibition on Duplicative Facilities.
- 9.6.1 Tennis Facility. During the term of the Agreement, Developer shall not construct a tennis facility on the Land or the Recreation Center Land as long as Athletics is a stakeholder in, has ownership in, and/or has a management role in the Jayhawk Tennis Center, located at 5200 Clinton Parkway, Lawrence, Kansas 66047.
- 9.6.2 Track and Field Facility. Athletics agrees that it shall not commence construction of a competition track and field facility anywhere else in Douglas County, Kansas before the next to last year of the term of the Lease Agreement.
- 9.7 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.

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.

- 9.13 “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.
- 9.14 Binding Effect. This Agreement will bind and inure to the benefit of the respective successors and assigns (subject to Section 6.1 hereof) of the parties hereto.
- 9.15 Entire Agreement. Subject to Section 9.17 hereof, this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and writings and may be changed only by a writing signed by the parties hereto.
- 9.16 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.
- 9.17 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.
- 9.18 Conflicts. This Agreement, the Development Agreement, and the Lease Agreement have all been contemporaneously negotiated and executed in furtherance of the design, construction, lease, and operations of the Stadiums. Where possible, when more than one of the aforementioned agreements addresses a certain issue, the language in each of the agreements should be given meaning and shall be applicable. In certain instances, language in one or more of the agreements indicates which agreement shall control in the event of a conflict pertaining to a certain provision. In the event of a conflict where such explicit priority language is not included, the more restrictive language in each of the relevant agreements shall apply.

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9.19 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: Shea Van 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

Execution Copy

EXHIBITS

Exhibit A – Site Map and Description of Land

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.