

ROCK CHALK PARK DEVELOPMENT AGREEMENT

by and between the

CITY OF LAWRENCE, KANSAS,

RCP, LLC,

BLISS SPORTS, LC

and

BLISS SPORTS II, LC

Dated as of March 5, 2013

**Relating to the Development, Design and Construction
of the Rock Chalk Park Project**

ROCK CHALK PARK DEVELOPMENT AGREEMENT

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ROCK CHALK PARK DEVELOPMENT AGREEMENT

THIS ROCK CHALK PARK DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of March 5, 2013, by and between the **CITY OF LAWRENCE, KANSAS**, a municipal corporation (the “**City**”), **RCP, LLC**, a Kansas limited liability company (“**RCP**”), **BLISS SPORTS, LC**, a Kansas limited liability company (“**Bliss Sports**”) and **BLISS SPORTS II, LC**, a Kansas limited liability company (“**Bliss Sports II**”) (each a “**Party**” and collectively the “**Parties**”). Capitalized terms not defined elsewhere in this Agreement shall have the meaning set forth in **Section 1.01** hereof.

WITNESSETH:

A. RCP owns approximately 89 acres of real property located at the northwest intersection of Rock Chalk Drive and George Williams Way east of K-10 within the City, as described on **Exhibit A** attached hereto (the “**Property**”).

B. RCP, the City, Bliss Sports and Bliss Sports II desire to develop and construct on the Property and adjoining parcels a sports village (collectively, the “**Rock Chalk Park Project**”), as generally depicted on **Exhibit B** attached hereto (the “**Site Plan**”) consisting of (i) an approximately 181,000 square foot recreation center for the City (the “**Recreation Center**”), (ii) that certain track and field stadium, softball stadium, soccer stadium and related improvements which are defined as the “Initial KU Improvements” in that certain Ground Lease between RCP and Bliss Sports dated as of February 12, 2013 (such lease being referred to herein as the “**Stadium Lease**” and such stadia and other improvements being referred to as the “**Stadium Facilities**”) and (iii) certain additional amenities and infrastructure improvements hereinafter defined as the Infrastructure Improvements.

C. RCP and the City will enter into a Purchase Agreement for approximately 26 acres of the Property as legally described on **Exhibit A-1** attached hereto (the “**Recreation Center Site**”) in the form attached hereto as **Exhibit C**, (the “**Purchase Agreement**”) which provides that upon (i) the City’s selection of, and execution of the Recreation Center Construction Contract with, the Recreation Center Contractor for the construction of the Recreation Center, (ii) delivery by RCP of an approximately 5 acre site as shown on **Exhibit B** (the “**Pad Site**”) in Pad-Ready Condition for construction of the Recreation Center on the Recreation Center Site, and (iii) certain other conditions specified in **Section 5.03** hereof and the Purchase Agreement, the City will purchase the Recreation Center Site from RCP for a purchase price set forth in the Purchase Agreement which is consistent with **Section 5.02** hereof (the “**Purchase Price**”), and the City will cause development and construction of the Recreation Center on the Recreation Center Site.

D. RCP shall engage Bliss Sports II to develop and manage construction of the following: (i) on approximately 21 acres of the Recreation Center Site, as generally shown on the map attached hereto as **Exhibit A-2** (the “**Infrastructure Site**”), construct approximately 800 paved parking spaces and drives, and eight lighted tennis courts, adjacent to the Recreation Center, and all landscaping and irrigation, (ii) on portions of the Stadium Site, approximately 700 paved parking spaces and drives and approximately five linear miles of walking trails (portions of which will be located on the Property and adjacent property currently owned by the City), and (iii) on portions of both the Infrastructure Site and the Stadium Site, all necessary sanitary sewer, potable water, storm sewer, water detention facilities, public and private streets, sidewalks and related improvements described in **Exhibit F** (collectively, the “**Infrastructure Improvements**”).

E. Upon completion of the Infrastructure Improvements in accordance with **Section 10.01**, the City will pay RCP for completion of the Infrastructure Improvements the amount determined in accordance with **Section 11.01** hereof (the “**Infrastructure Payment**”).

F. RCP owns approximately 57 acres of the Property adjacent to the Recreation Site and the Infrastructure Site, as legally described on **Exhibit A-3** attached hereto (the “**Stadium Site**”), and will lease the Stadium Site to Bliss Sports for the development, construction and operation of the Stadium Facilities subject to the terms and conditions in the Stadium Lease.

G. The Stadium Site will be conveyed by RCP to the City and then leased by the City to RCP in connection with the issuance by the City of industrial revenue bonds for purposes of obtaining property tax abatement and sales tax exemption on construction materials for the Stadium Site.

H. Bliss Sports will sublease the Stadium Site and the Stadium Facilities to Kansas Athletics, Inc., or its affiliate (“**KAI**”), under a triple-net lease (the “**Stadium Sublease**”).

I. The Parties desire to enter into this Agreement in connection with the development and construction of the Rock Chalk Park Project.

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants herein contained, the City, RCP, Bliss and Bliss Sports II agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.01 Definitions.

“**Applicable Laws and Requirements**” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by any unit of government.

“**Architect**” means Gould Evans and Paul Werner.

“**Bonds**” means general obligation temporary notes and/or general obligation bonds issued by the City in order to fund the City’s costs related to the Recreation Center and Infrastructure Improvements.

“**Completion Dates**” means the schedule of dates by which specified portions of the Recreation Center, Stadium Facilities and Infrastructure Improvements, as applicable, must be completed in accordance with this Agreement and the Project Timeline set forth in **Exhibit E**, subject to extension due to Excusable Delays as provided herein.

“**Contract Documents**” means the Recreation Center Construction Documents and the Infrastructure Improvements Construction Documents, as applicable.

“**Contracting Parties**” means all entities that a Party employs to perform Work in connection with the construction and development of the Recreation Center Improvements or Infrastructure Improvements, as applicable.

“**Contractor**” means the Recreation Center Contractor to provide Work for the Recreation Center and RCP (and its construction manager and the contractors for the construction manager) to provide Work for the Infrastructure Improvements, as applicable.

“**Environmental Laws**” means any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees,

judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (“CERCLA”), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.* (“RCRA”), the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Clean Air Act, 42 U.S.C. Sections 7401 *et seq.*, and the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 to 1387, as the foregoing may be amended from time to time.

“Excusable Delays” means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any Federal or State regulatory body, unforeseen site conditions, extraordinary rainfall or snowfall, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable Party using reasonable diligence to overcome which prevents such Party from performing its specific duties or obligation hereunder in a timely manner; provided, however, Excusable Delay does not include lack of financing, unanticipated or unexpected increases in the costs of construction, or errors in business judgment by a Party; and provided further that Excusable Delay shall only extend the time of performance for the period of such Excusable Delay, which shall begin on the date which the event of Excusable Delay first occurs and extend until the date which the event which has caused the Excusable Delay has been corrected or performed, or reasonably should have been corrected or performed.

“Final Completion” means the stage in the progress of the Work after Substantial Completion has been achieved when the Work (including all so-called “punch list” items) is complete in accordance with the respective Contract Documents and all obligations of a Party under this Agreement (except for those obligations which are intended to be satisfied after Final Completion) are fully satisfied.

“Final Completion Date” means the date shown for the Final Completion of the Recreation Center, the Stadium Facilities and the Infrastructure Improvements in the Project Timeline, as applicable.

“Government Authorities” means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence, including the City.

“Infrastructure Improvements” is defined in the Recitals.

“Infrastructure Improvements Construction Contract” shall have the meaning set forth in Section 7.01 of this Agreement.

“Infrastructure Improvements Construction Documents” shall have the meaning set forth in Section 7.02(e) of this Agreement.

“Infrastructure Improvements Plans” shall have the meaning set forth in Section 6.03 of this Agreement.

“Infrastructure Payment” is defined in the Recitals.

“Infrastructure Site” is defined in the Recitals.

“KAI” is defined in the Recitals.

“Lien” shall have the meaning set forth in Section 7.05 of this Agreement.

“Pad-Ready Condition” shall have the meaning set forth in Section 8.02 of this Agreement.

“Pad Site” is defined in the Recitals.

“Parking Easement Agreement” means the Parking Easement Agreement to be entered into between the City, RCP, Bliss Sports and KAI regarding access and parking cross-easements of such parties for the parking facilities located on the Property.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

“Project Timeline” means the schedule for development of the Recreation Center, the Stadium Facilities and the Infrastructure Improvements Site, including details regarding the timing for design, engineering and construction thereof attached hereto as Exhibit E.

“Property” is defined in the Recitals.

“Property Access and Maintenance Agreement” means the Property Maintenance Agreement to be entered into among the City, RCP and Bliss Sports with respect to maintenance of the parking lots, landscaping, trails, detention areas and other common areas within the Property, during the term of the Stadium Lease.

“Purchase Agreement” is defined in the Recitals.

“Purchase Price” is defined in the Recitals.

“Quality Control Manager” means a qualified construction consultant engaged by the City at City expense to fulfill certain functions described in Article VIII.

“Recreation Center Architect’s Fee” shall have the meaning set forth in Section 3.01 of this Agreement.

“Recreation Center” is defined in the Recitals.

“Recreation Center Construction Contract” means the agreement by and between the City and the Recreation Center Contractor for construction of the Recreation Center.

“Recreation Center Contract Documents” means the contracts by and between City and any entities to provide Work on the Recreation Center; the Recreation Center Construction Contract together with the general conditions, exhibits and schedules thereto; purchase orders together with terms and conditions thereof; plans and specifications prepared, approved, or reevaluated by Architect; all approved written or graphic interpretations, clarifications, amendments, and changes to any of the foregoing documents; and change orders and scope changes relating to the performance of Work or provision of services in connection with the design, construction and development of the Recreation Center.

“Recreation Center Contractor” shall have the meaning set forth in Section 4.02 of this Agreement.

“Recreation Center Plans” shall have the meaning set forth in Section 3.03(a) of this Agreement.

“Recreation Center Site” is defined in the Recitals.

“Rock Chalk Park Project” is defined in the Recitals.

“Site Plan” means the site plan and land use plan for development of the Property prepared by Bliss Sports II attached as Exhibit B.

“Stadium Facilities” is defined in the Recitals.

“Stadium Lease” is defined in the Recitals.

“Stadium Site” is defined in the Recitals.

“Stadium Sublease” is defined in the Recitals.

“Substantial Completion” means the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Recreation Center Plans or Infrastructure Improvement Plans, as applicable, and in accordance with the respective Contract Documents so that the Recreation Center or Infrastructure Improvements, as applicable, can be utilized for its intended uses and all aspects of the Recreation Center or Infrastructure Improvements, as applicable, can be open to the general public. Substantial Completion with respect to the Recreation Center only shall not be achieved until, among other things, all Recreation Center systems included in the Work are operational as designed, all designated or required governmental certificates of occupancy and other permits, inspections and certifications have been achieved, made and posted (provided that a temporary certificate of occupancy rather than a permanent certificate of occupancy may have been achieved, made and posted, so long as the obtaining of a temporary, rather than a permanent, certificate of occupancy does not prevent any aspect of the Recreation Center from being open to the general public) and all instruction of the personnel of the City in the operation of the Recreation Center systems that is provided for in the Contract Documents has been completed. In general, the only remaining Work after Substantial Completion has been achieved shall be minor in nature, so that the completion of all remaining Work would not materially interfere with or hamper the normal business operations of the Recreation Center or Infrastructure Improvements, as applicable.

“Work” means the performance and supply through Recreation Center Contractor’s and RCP’s, and their Contractors, as applicable, own forces of all work, labor, services, materials, supplies, and equipment necessary to develop and construct the Recreation Center or Infrastructure Improvements, as applicable, which Work is to be specified in the Recreation Center Plans and Infrastructure Improvement Plans and the respective Contract Documents.

Section 1.02 Rules of Interpretation. Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

(a) The terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided, that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement other than in accordance with Section 15.04 below.

(b) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection and exhibit references are to this Agreement unless otherwise specified. Whenever an item or items are listed after the word “including”, such listing is not intended to be a listing that excludes items not listed.

(c) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

(d) The table of contents, captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(e) In the event of some ambiguity in this Agreement, the Parties shall be deemed to have jointly authored this Agreement and nothing shall be construed against or in favor of one party based on it being deemed the sole author.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties of the City. The City hereby represents and warrants to RCP, Bliss Sports and Bliss Sports II that: (i) the City is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the City, pursuant to this Agreement; (ii) this Agreement was duly authorized by the City Commission pursuant to City ordinance; and (iii) this Agreement is binding upon, and enforceable against the City, in accordance with its terms.

Section 2.02 Representations and Warranties of RCP. RCP hereby represents and warrants to the City, Bliss Sports and Bliss Sports II that: (i) RCP is a duly organized limited liability company existing under the laws of the State of Kansas (ii) RCP is authorized to enter into and perform this Agreement and each agreement to be executed and performed by RCP, pursuant to this Agreement; (iii) the execution and delivery of this Agreement by RCP has been duly and validly authorized and approved by all necessary proceedings; and (iv) this Agreement is binding upon, and enforceable against RCP, in accordance with its terms.

Section 2.03 Representations and Warranties of Bliss Sports II. Bliss Sports II hereby represents and warrants to the City, Bliss Sports and RCP that:

(a) *Due Authority.* Bliss Sports II is a duly organized limited liability company existing under the laws of the State of Kansas and has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of Bliss Sports II herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of Bliss Sports II, enforceable in accordance with its terms.

(b) *No Defaults or Violation of Law.* The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any

corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing. To its knowledge Bliss Sports II is not in default of its obligations under any other agreement related to the Recreation Center, and the execution and performance of Bliss Sports II's obligations hereunder will not constitute a default under any agreement to which Bliss Sports II is a party.

(c) *No Litigation.* No litigation, proceedings or investigations are pending or, to the knowledge of Bliss Sports II (including the knowledge of any member of Bliss Sports II executing this Agreement), threatened against Bliss Sports II (or any member of Bliss Sports II). In addition, no litigation, proceedings or investigations are pending or, to the knowledge of Bliss Sports II (including the knowledge of any member of Bliss Sports II executing this Agreement), threatened against Bliss Sports II (or any member of Bliss Sports II) seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of Bliss Sports II (or any member of Bliss Sports II) to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by Bliss Sports II (or any member of Bliss Sports II) of, the terms and provisions of this Agreement.

(d) *No Material Change.* Bliss Sports II has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement. There has been no material adverse change in the business, financial position, prospects or results of operations of Bliss Sports II, which could affect Bliss Sports II's ability to perform its obligations pursuant to this Agreement.

(e) *Governmental or Corporate Consents.* No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by Bliss Sports II of this Agreement.

(f) *No Default.* No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of Bliss Sports II under this Agreement, or any other material agreement or material instrument to which Bliss Sports II is a party or by which Bliss Sports II is or may be bound.

(g) *Approvals.* Except as otherwise provided herein, Bliss Sports II has received and is in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business as heretofore conducted by it and to own or lease and operate its properties as now owned or leased by it.

(h) *Compliance with Laws.* Bliss Sports II is in compliance with all Applicable Laws and requirements with respect to any of its affairs, business, and operations as contemplated by this Agreement.

(i) *Contracting Parties.* Bliss Sports II expressly affirms for and on behalf of each Contracting Party identified in this Agreement, and which may be identified by Bliss Sports II after the date of this Agreement, that each Contracting Party is or will be contractually bound to perform each and every service described by Bliss Sports II for each Contracting Party.

Section 2.04 Representations and Warranties of Bliss Sports. Bliss Sports hereby represents and warrants to the City and RCP that:

(a) *Due Authority.* Bliss Sports is a duly organized limited liability company existing under the laws of the State of Kansas and has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of Bliss Sports herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of Bliss Sports, enforceable in accordance with its terms.

(b) *No Defaults or Violation of Law.* The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing. To its knowledge Bliss Sports is not in default of its obligations under any other agreement related to the Recreation Center, and the execution and performance of Bliss Sport's obligations hereunder will not constitute a default under any agreement to which Bliss Sports is a party.

(c) *No Litigation.* No litigation, proceedings or investigations are pending or, to the knowledge of Bliss Sports (including the knowledge of any member of Bliss Sports executing this Agreement), threatened against Bliss Sports (or any member of Bliss Sports). In addition, no litigation, proceedings or investigations are pending or, to the knowledge of Bliss Sports (including the knowledge of any member of Bliss Sports executing this Agreement), threatened against Bliss Sports (or any member of Bliss Sports) seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of Bliss Sports (or any member of Bliss Sports) to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by Bliss Sports (or any member of Bliss Sports) of, the terms and provisions of this Agreement.

(d) *No Material Change.* Bliss Sports has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement. There has been no material adverse change in the business, financial position, prospects or results of operations of Bliss Sports, which could affect Bliss Sport's ability to perform its obligations pursuant to this Agreement.

(e) *Governmental or Corporate Consents.* No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by Bliss Sports of this Agreement.

(f) *No Default.* No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of Bliss Sports under this Agreement, or any other material agreement or material instrument to which Bliss Sports is a party or by which Bliss Sports is or may be bound.

(g) *Approvals.* Except as otherwise provided herein, Bliss Sports has received and is in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business as heretofore conducted by it and to own or lease and operate its properties as now owned or leased by it.

(h) *Compliance with Laws.* Bliss Sports is in compliance with all Applicable Laws and requirements with respect to any of its affairs, business, and operations as contemplated by this Agreement.

(i) *Contracting Parties.* Bliss Sports expressly affirms for and on behalf of each Contracting Party identified in this Agreement, and which may be identified by Bliss Sports after the date of this Agreement, that each Contracting Party is or will be contractually bound to perform each and every service described by Bliss Sports for each Contracting Party.

Section 2.05 Warranty Right to Make Agreement. The City, RCP, Bliss Sports and Bliss Sports II each warrant to each other with respect to itself that neither the execution of the Agreement nor the finalization of the transactions contemplated hereby shall: (i) violate any provision of law or judgment, writ, injunction, order or decree of any Governmental Authority having jurisdiction over it; or (ii) result in or constitute a breach or default under any indenture, contract, other commitment or restriction to which it is a party or by which it is bound.

ARTICLE III

RECREATION CENTER DESIGN AND CONSTRUCTION DOCUMENTS

Section 3.01 Engagement of Architect. The City shall engage the Architect to design the Recreation Center. The fees and expenses of the Architect and the fees and expense of engineering firms (including, but not limited to, structural and MEP engineering) for the Recreation Center Plans and construction administration by the Architect (collectively, the “**Recreation Center Architect’s Fee**”), shall be paid by the City (payable directly to the Architect to the extent unpaid, or reimbursed to Bliss Sports II to the extent Bliss Sports II has paid) prior to bidding the Recreation Center construction pursuant to **Section 4.01**. The Recreation Center Architect’s Fees will be included in the calculation of the Infrastructure Payment in accordance with **Section 11.01**. If the City does not construct the Recreation Center as herein provided, the City shall bear the full cost of the Recreation Center Architect’s Fees without reimbursement from any other Party.

Section 3.02 Approval of Recreation Center Plans. The City, RCP and Bliss Sports II shall review and approve the Recreation Center Plans as soon as practicable after completion and the bidding instructions to be used by the City pursuant to **Section 4.02**.

Section 3.03 Design and Construction Documents.

(a) The Architect has prepared or hereafter will prepare design, drawings, plans and specifications setting forth in detail the requirements for development of the Recreation Center consistent with the Site Plan (once approved in accordance with **Section 3.02**, collectively the “**Recreation Center Plans**”).

(b) The Architect shall complete the Recreation Center Plans, including coordination of all documents and corrections based on such coordination, prior to preparing and issuing bid documents for the Recreation Center.

Section 3.04 Incorporation of Recreation Center Plans. Upon approval of the City, RCP and Bliss Sports II, the Recreation Center Plans shall be incorporated into this Agreement by addendum as **Exhibit D**. Incorporation of the Recreation Center Plans may occur administratively, as approved by

City staff, and no action of the City Commission of the City will be required. The Recreation Center Plans shall be the sole and exclusive property of the City.

Section 3.05 Recreation Center Plans Change Orders. Once approved pursuant to **Section 3.02**, no material change to the Recreation Center Plans shall be permitted without the prior written consent of the Parties, provided, however, the Parties will agree to change orders in the ordinary course of construction projects of similar scope and design to render the Recreation Center fully functional and useable for its intended purpose, so long as (i) the scope or design of the Recreation Center is not changed, or (ii) there are no upgrades in building materials or finishes (except to the extent of a corresponding savings in other material or finish line items).

Section 3.06. Accounting. Within ten (10) days of RCP notifying City that the Pad Site is in Pad-Ready Condition (as is provided for in the Purchase Agreement), RCP or at RCP's direction Bliss Sports II as RCP's Contractor for the Infrastructure Improvements, will provide to the City an accounting of the costs to cause the Pad Site to be in Pad-Ready Condition and a written estimate of the costs theretofore incurred or anticipated to be incurred thereafter relating to the balance of the Infrastructure Improvements.

ARTICLE IV

SELECTION OF RECREATION CENTER CONTRACTOR

Section 4.01 Bidding. Within thirty (30) days after the later of final approval and completion of the Recreation Center Plans by the City, RCP and Bliss Sports II and of RCP notifying City that the Pad Site is in Pad-Ready Condition, the City shall solicit bids from contractors for the construction of the Recreation Center. The City shall solicit Guaranteed Maximum Price bids for the construction of the Recreation Center on the Pad Site in Pad-Ready Condition from contractors using the normal bidding process used by the City for its construction projects, including the requirement of payment and performance bonds by the contractor. The opening of the bids for the Recreation Center shall be at City Hall of the City at a time and place as advertised in the bid announcement.

Section 4.02 Bid Selection. After reviewing the amount of each bid submitted by a contractor in accordance with City requirements, the City shall select the lowest responsible bid (the "**Recreation Center Bid Amount**") and shall award the job to such contractor (the "**Recreation Center Contractor**"). A "responsible bid" is one that meets the prescribed specifications required by the bidding instructions. Notwithstanding the aforesaid, if the lowest bid exceeds \$25,000,000 (minus the Recreation Center Architect's Fee and the Purchase Price), the City shall have thirty (30) days from the date the City opens the bids, to give notice to each of the other Parties that it is electing to terminate the Agreement and no Party shall have any obligation or liability to any other Party hereunder after such termination except as stated in the next paragraph and **Section 7.04**. The Parties agree to act in good faith in connection with this provision, since each Party acknowledges that each of the Parties will have made substantial expenditures in connection with the Property, the Recreation Center and the Infrastructure Improvements.

Notwithstanding the aforesaid, if the City elects to terminate this Agreement in accordance with the preceding paragraph, the City will: (a) reimburse RCP for RCP's actual costs incurred to prepare the Pad Site to Pad-Ready Condition (which shall include the actual costs of Bliss Sports II plus a reasonable construction management fee to be mutually agreed upon by the Parties, but not to exceed ten (10%) prior to the bidding process as is provided for in the Purchase Agreement), (b) pay the Recreation Center Architect's Fees and (c) the City's monetary contribution to the cost of Infrastructure Improvements, as

the same may be modified, will be negotiated in good faith by the Parties, and is subject to approval by the governing body of the City.

Section 4.03 Contract for the Recreation Center. Unless the City timely elects to terminate this Agreement with respect to the construction and development of the Recreation Center as provided in **Section 4.02**, the City and Recreation Center Contractor shall execute the form of construction contract and general conditions at a Maximum Guaranteed Price as specified by the City during the bidding process (the “**Recreation Center Construction Contract**”).

Section 4.04 Permits. The City shall cause the Recreation Center Contractor to obtain all necessary permits, licenses, consents, approvals, and other authorizations, including those required by Environmental Laws, and pay all fees, impositions, and other changes in connection therewith. Such permits, licenses, consents, approvals and other authorizations, together with the Recreation Center Construction Contract and the Recreation Center Plans are collectively referred to herein as the “**Recreation Center Construction Documents**”.

Section 4.05 Project Timeline and Agreement to Proceed. The Parties expect that: (a) the development of the Recreation Center Plans, (b) solicitation for bids of contractors, (c) bidding for the Recreation Center, (d) construction of the Infrastructure Improvements and (e) construction of the Stadium Facilities, will each occur in accordance with the Project Timeline attached hereto as **Exhibit E** and incorporated herein by this reference, subject to Excusable Delays and delays caused by any change orders agreed to in writing by the Parties.

ARTICLE V

SALE AND DEVELOPMENT OF THE RECREATION CENTER SITE

Section 5.01 Delivery of Pad Ready Site. RCP shall cause, as part of the Infrastructure Improvements, the preparation and construction of the Pad Site by Bliss Sports II in Pad- Ready Condition as defined in **Section 8.02** hereof and delivery to the City in accordance with the Project Timeline, and subject to and in accordance with the Infrastructure Improvements Construction Contract and the Purchase Agreement.

Section 5.02 Purchase of Recreation Center Site. In accordance with the terms of the Purchase Agreement after execution of the Recreation Center Construction Contract and RCP causing the Pad Site to be in Pad-Ready Condition, the City will acquire fee simple title to the Recreation Center Site in accordance with the terms of the Purchase Agreement.

Section 5.03 Recreation Center. Upon the sale of the Recreation Center Site to the City, the City shall cause the Recreation Center to be developed and constructed thereon by the Recreation Center Contractor in accordance with the Recreation Center Construction Documents in good and workmanlike fashion on or before the Final Completion Date set forth in the Project Timeline, subject to Excusable Delays. As a condition to the closing on the purchase of the Recreation Center Site by the City, the following conditions, in addition to the conditions contained in the Purchase Agreement, shall have been satisfied:

- (a) The Parking Easement Agreement shall have been executed by the parties thereto and recorded against the Property; and
- (b) The Property Access and Maintenance Agreement shall have been executed by the parties thereto and recorded against the Property.

Section 5.04 Funding of the Recreation Center. The City shall pay all the costs of the purchase of the Recreation Center Site, the Infrastructure Payment and development and construction of the Recreation Center, subject to issuance of the Bonds.

Section 5.05 Project Coordination. The Parties will cause their respective Contractors to reasonably coordinate construction of the Stadium Facilities, the Recreation Center and the Infrastructure Improvements. Unless the Recreation Center Contractor is Bliss Sports II, access to the Recreation Center Site will be established by temporary easement from George Williams Way right of way and, until completion of the Infrastructure Improvements, RCP and its Contractor for construction of the Infrastructure Improvements will have the sole right to occupy the Infrastructure Site.

Section 5.06 Repurchase Right. If the City does not construct the Recreation Center within two (2) years of the date hereof, or once constructed, does not open or thereafter ceases to operate the Recreation Center for twelve (12) consecutive months for its intended purpose as primarily a recreational facility, RCP shall have the first right of offer to repurchase the Recreation Center Site pursuant to the Purchase Agreement.

ARTICLE VI

INFRASTRUCTURE IMPROVEMENTS DESIGN AND CONSTRUCTION DOCUMENTS

Section 6.01 Engagement of Architect. RCP shall cause Bliss Sports II to engage the Architect to design the Infrastructure Improvements. The fees and expenses of the Architect shall be paid by Bliss Sports II.

Section 6.02 General. The City, RCP and Bliss Sports II agree that the Architect shall design the Infrastructure Improvements and prepare the Infrastructure Improvement Plans, subject to the approval of RCP, Bliss Sports II and the City and compliance with Applicable Laws and Requirements.

Section 6.03 Design and Construction Documents.

(a) The Architect has prepared or hereafter will prepare the final design, drawings, plans and specifications setting forth in detail the requirements for development of the Infrastructure Improvements consistent with the Site Plan (once approved in accordance with Section 6.03 (b) and the Stadium Lease, collectively the “**Infrastructure Improvements Plans**”).

(b) The Architect shall complete the Infrastructure Improvements Plans, including coordination of all documents and corrections based on such coordination.

Section 6.04 Incorporation of Infrastructure Improvements Plans. The Infrastructure Improvements Plans shall be incorporated into this Agreement by addendum as **Exhibit G**. The Infrastructure Improvements Plans shall be the sole and exclusive property of RCP and Bliss Sports II.

Section 6.05 Design Changes. Subject to **Section 4.02** and **Section 7.01**, once approved pursuant to Section 6.03(b) and the Ground Lease, no material change to the Infrastructure Improvements Plans shall be permitted without the prior written consent of the Parties.

ARTICLE VII

DEVELOPMENT OF THE INFRASTRUCTURE IMPROVEMENTS

Section 7.01 Infrastructure Improvements. RCP shall engage Bliss Sports II to be the construction manager and general contractor for the development and construction of the Infrastructure Improvements pursuant to a construction management agreement between RCP and Bliss Sports II which permits Bliss Sports II to engage Kings Construction Co., Inc. to construct the Infrastructure Improvements (collectively, the “**Infrastructure Improvements Construction Contract**”). Bliss Sports II shall cause the Infrastructure Improvements to be developed and constructed in accordance with the Infrastructure Improvements Plans and the Infrastructure Improvements Construction Contract in a diligent manner. Subject to **Section 4.02**, in no event shall RCP or Bliss Sports II have the right to reduce the design, scope, functionality or amenities of the Infrastructure Improvements or to amend or modify the Infrastructure Improvements Plans without the prior written approval of RCP, Bliss Sports II and the City. In no event shall the City have the right to increase the design, scope, functionality or amenities of the Infrastructure Improvements or to amend or modify the Infrastructure Improvements Plans without the prior written approval of the City, RCP and Bliss Sports II.

Section 7.02 Development. Bliss Sports II hereby agrees that it shall, subject to the terms of the Infrastructure Improvements Construction Contract and this Agreement:

(a) Develop and construct the Infrastructure Improvements. The Infrastructure Improvements shall be constructed on the Infrastructure Improvements Site in accordance with the Infrastructure Improvements Plans, with only such changes as RCP and the City may approve in writing;

(b) Provide all things required for completion of the development and construction of the Infrastructure Improvements, and to do all other things necessary to prepare the Infrastructure Improvements for operation;

(c) Complete or cause the Infrastructure Improvements to be completed in substantial conformance with the Infrastructure Improvements Plans in good and workmanlike fashion on or before the Final Completion Date set forth in the Project Timeline and deliver the Infrastructure Improvements to the City on or before the Final Completion Date, subject to Excusable Delays;

(d) Perform or cause to be performed, in a diligent and efficient manner, general administration and supervision of the development and construction of the Infrastructure Improvements;

(e) Obtain and comply with all necessary permits, licenses, consents, approvals, and other authorizations, including those required by Environmental Laws, and pay all fees, impositions, and other changes in connection therewith (such permits, licenses, consents, approvals and other authorizations, together with the Infrastructure Improvements Construction Contract and the Infrastructure Improvements Plans are collectively referred to herein as the “**Infrastructure Improvements Construction Documents**”); and

(f) Provide, as part of the Infrastructure Improvements Cost, policies of insurance which satisfy the insurance requirements set forth in **Article XIV** hereof.

Section 7.03 Compliance with Applicable Laws. Bliss Sports II shall comply with all of the City’s ordinances, rules and procedures in connection with development and construction of the Infrastructure Improvements.

Section 7.04 Payment of Fees. Bliss Sports II and Bliss Sports shall pay all impact, building permit, system development and other fees associated with the development and construction of the

Infrastructure Improvements and the Stadium Facilities, respectively; provided that whether or not the City purchases the Recreation Center Site the City shall, by ordinance agree that, within thirty (30) days of payment of such fees, the City will pay them back to the respective Party which paid them as an economic development grant.

Section 7.05 Liens. Bliss Sports II shall complete the Work for the Infrastructure Improvements, including without limitation making the Pad Site into Pad-Ready Condition, free of any laborer's, materialman's, mechanic's or other liens ("**Lien**") on any part of the Recreation Center Site, or the Infrastructure Improvements and shall not voluntarily permit any Lien to be filed or otherwise imposed on any part of the Recreation Center Site or the Infrastructure Improvements.

Section 7.06 Coordination with Recreation Center Development. RCP, Bliss Sports and Bliss Sports II will make reasonable efforts to coordinate development and construction of the Infrastructure Improvements with the City and the Recreation Center Contractor to provide coordination of construction efforts on the Property.

ARTICLE VIII

ADDITIONAL PROVISIONS CONCERNING CONSTRUCTION OF THE INFRASTRUCTURE IMPROVEMENTS

Section 8.01 Funding of the Infrastructure Improvements. Subject to the terms of the Infrastructure Improvements Construction Contract, Bliss Sports II shall pay all the costs of the design, development, and construction of the Infrastructure Improvements.

Section 8.02 Pad-Ready Condition. As part of the Infrastructure Improvements, RCP shall cause Bliss Sports II to improve the Pad Site to a pad-ready, building-permit ready condition, with plans for all necessary potable water, sanitary sewer, storm sewer, gas, electric, and other utility improvements, complete with locations for stubbing to the Pad Site on which the Recreation Center is to be constructed ("**Pad-Ready Condition**") in accordance with the Purchase Agreement and prior to solicitation of bids under **Section 4.01** hereof. Upon the occurrence of Substantial Completion of the Pad Site in Pad-Ready Condition, RCP shall cause Bliss Sports II, pursuant to the Infrastructure Improvements Construction Contract, to submit to the City a certificate substantially in the form attached hereto as **Exhibit H** attesting that the Pad Site is in Pad-Ready Condition, and within seven (7) days the City, acting reasonably and in good faith, will issue a certificate of acceptance agreeing that the Pad Site is in Pad-Ready Condition or state in a writing delivered to RCP and Bliss Sports II any alleged deficiency from Pad-Ready Condition; provided that any disagreement as to whether or not there is Pad-Ready Condition will be resolved in accordance with **Article XIII** hereof. Upon the Pad Site being in Pad-Ready Condition as evidenced by **Exhibit H** being executed, delivered and accepted by the City, any additional costs to maintain the Pad Site in Pad-Ready Condition shall be included as part of the Recreation Center Construction Contract.

Section 8.03. Infrastructure Improvements.

(a) Subject to **Section 4.02**, as part of the Infrastructure Improvements, pursuant to the Infrastructure Improvements Construction Contract RCP shall cause Bliss Sports II to be responsible for the design, construction and completion of the Infrastructure Improvements, which shall be included within the Infrastructure Improvements Plans approved in accordance with **Section 6.02**.

(b) Subject to **Section 4.02**, RCP shall make reasonable efforts to cause Bliss Sports II to make reasonable efforts to cooperate and coordinate the construction of the Infrastructure Improvements in order to (i) not unreasonably delay the construction of the Recreation Center or Stadium, and (ii) insure full compatibility of the Recreation Center, the Infrastructure Improvements and the Stadium Facilities.

(c) Within fifteen (15) days after the Infrastructure Improvements Plans are approved in accordance with **Section 6.03**, Bliss Sports II will provide to RCP and the City a schedule of the completion dates for the Infrastructure Improvements, subject to Excusable Delays.

Section 8.04 Performance Deficiencies. If the City or the Quality Control Manager determine in their reasonable belief that any of the Infrastructure Improvements are not being constructed in accordance with the Infrastructure Improvement Plans or this Agreement in any material respect, they shall immediately notify RCP and Bliss Sports II in writing stating the alleged deficiency and the City, the Quality Control Manager, the Architect, RCP and Bliss Sports II will meet within seven (7) days of the giving of such notice to discuss whether the Infrastructure Improvements are not being constructed in accordance with the Infrastructure Improvement Plans or this Agreement in any material respect and, if the City, RCP and Architect agree that they are not, then RCP shall cause Bliss Sports II to correct such deficiencies. The failure by the City to provide any notice of any observed deficiency shall not give rise to any liability to the City and shall not be considered a waiver of any right of the City under this Agreement, including without limitation, the enforcement of the representations and warranties of Bliss Sports II under this Agreement and any warranties that may be made to the City by any Contracting Parties under the Infrastructure Construction Contract Documents with respect to the completion of the Infrastructure Improvements in accordance with the Infrastructure Improvement Plans and the Project Timeline.

Section 8.05 Park Entrance Signage. If the City acquires title to the Recreation Center Site and the Infrastructure Site, the City, Bliss Sports and RCP will negotiate in good faith concerning the design and construction of a possible monument entrance sign for the Property, which, if approved by all three parties, shall comply with all applicable City codes and requirements and all design criteria, approval and other provisions of the Stadium Lease.

Section 8.06 City Construction Responsibility. Except for the amounts payable to RCP under this Agreement and the Purchase Agreement and any violation of such Agreements by the City or the Recreation Center Construction Contractor, the City (i) shall have no liability, obligation or responsibility whatsoever with respect to the conduct of the construction of the Infrastructure Improvements and (ii) shall not be liable for the performance or default of RCP, Bliss Sports II or their respective Contracting Parties. Nothing, including any inspection on behalf of the City, shall be construed as a warranty, expressed or implied, to any party by the City; provided that for purposes of the Agreement and the Purchase Agreement the City will be bound by any written acceptance by the City of the Infrastructure Improvements, including without limitation the Pad-Ready Condition of the Pad Site, as being in compliance with the terms of this Agreement, the Purchase Agreement and the Infrastructure Improvement Plans.

Section 8.07 Stadium Facilities IRB's. Subject to compliance with the City's policies and procedures, the City agrees to issue industrial revenue bonds upon request of RCP, Bliss Sports and Bliss Sports II for the construction of the Stadium Facilities and the portions of the Infrastructure Improvements located on the Stadium Site in order to assist RCP, Bliss Sports and Bliss Sports II in obtaining the 10-year property tax exemption and sales tax exemption for construction materials available for projects financed with industrial revenue bonds under Kansas law.

ARTICLE IX

CITY OVERSIGHT OF CONSTRUCTION OF INFRASTRUCTURE IMPROVEMENTS

Section 9.01 Infrastructure Improvements Updates and Team. The City shall have the right, and upon RCP's request will attend, to review in an Infrastructure Improvements team meeting, which may, but unless provided otherwise in the Infrastructure Improvements Construction Contract are not required to, occur more frequently than monthly, the development and construction of the Infrastructure Improvements to determine that the Infrastructure Improvements are being developed and constructed in accordance with this Agreement, the Infrastructure Improvement Documents and all Applicable Laws and Requirements.

Section 9.02 Infrastructure Improvements Site Access. Bliss Sports II agrees to permit the City, or its designees access to inspect the construction of the Infrastructure Improvements in order to ascertain and determine that the requirements of the City and the terms of this Agreement have been met and that the Infrastructure Improvements are being constructed in accordance with the Infrastructure Improvements Construction Documents. Such inspections shall be in accordance with the City's normal construction inspection process for similar types of improvements. Unless otherwise agreed in writing by Bliss Sports II and RCP, the Recreation Center Construction Contractor cannot access the Infrastructure Site until completion of the Infrastructure Improvements.

Section 9.03 Reports. Bliss Sports and Bliss Sports II agree to provide the City and, without waiving any more frequent or other reports required under the Infrastructure Improvements Construction Agreement or the Stadium Lease, RCP with monthly progress reports and updates on the status of causing the Pad Site to be in Pad-Ready Condition and of constructing the Stadium Facilities and the Infrastructure Improvements and all reports relating to the Pad Site, Stadium Facilities and Infrastructure Improvements prepared for submission to any other Governmental Authority as soon as practicable after they are available. Such reports should contain at a minimum the following: (i) a status report on the progress of development; (ii) a description of all construction issues, liens or potential liens or controversies; (iii) a review of whether the Infrastructure Improvements is on schedule, and (iv) as to the Infrastructure Improvements such other matters as the City, RCP and Bliss Sports II shall reasonably agree.

ARTICLE X

FINAL ACCEPTANCE OF INFRASTRUCTURE IMPROVEMENTS

Section 10.01 Acceptance. If the City has acquired title to the Recreation Center Site in accordance with the Purchase Agreement, then upon the occurrence of Substantial Completion of the Infrastructure Improvements, RCP shall cause Bliss Sports II, pursuant to the Infrastructure Improvements Construction Contract, to submit to the City a Certificate of Completion of Construction substantially in the form attached hereto as **Exhibit H**, and within thirty (30) days the City, acting reasonably and in good faith, will issue a certificate of acceptance of the Infrastructure Improvements as having achieved Final Completion or state in a writing delivered to RCP and Bliss Sports II any alleged deficiency from the Infrastructure Improvement Plans, as the same may have been amended in accordance with the provisions of this Agreement; provided that any disagreement as to whether or not there is a deficiency will be resolved in accordance with **Article XIII** hereof (the date of acceptance or other determination that the Infrastructure Improvements have achieved Final Completion in accordance with the **Article XIII** being the "Infrastructure Improvements Completion Date").

ARTICLE XI

INFRASTRUCTURE PAYMENT

Section 11.01 Payment of the Infrastructure Payment. If the City has acquired title to the Recreation Center Site in accordance with the Purchase Agreement, then within thirty (30) days after the Infrastructure Improvements Completion Date, the City will pay RCP the Infrastructure Payment which shall equal: (a) Twenty-Five Million Dollars (\$25,000,000) minus (b) the sum of (i) the Recreation Center Construction Contract amount, (ii) the amount of all Recreation Center Construction Contract change orders pursuant to **Section 3.05**, (iii) the Recreation Center Architect's Fee and (iv) the Purchase Price. The Parties acknowledge that the Infrastructure Payment could equal zero, but will not be a negative number.

The Infrastructure Payment shall not exceed the sum of (a) all of the hard costs and soft out of pocket costs incurred by Bliss Sports II in connection with development and construction of the Infrastructure Improvements plus (b) construction management fee to be mutually agreed upon by the parties, but not to exceed ten (10%) of the amount described in (a) (the "**Infrastructure Improvements Cost**").

Bliss Sports II shall be responsible for its costs and those of its Contractors of completing the Infrastructure Improvements regardless of whether they exceed the Infrastructure Payment or not.

Section 11.02 Infrastructure Improvements Cost. Without limiting any reporting requirements that Bliss Sports II may have to RCP under other written agreements, Bliss Sports II shall provide to RCP and the City copies of those of Bliss Sports II's books and records which evidence out of pocket costs incurred and payments made by Bliss Sports II which constitute a portion of the Infrastructure Improvements Cost, and substantiation of actual costs incurred and payments made on a monthly basis and shall also provide to RCP and the City a complete accounting of such out of pocket costs and payments within ten (10) days after the completion of the Infrastructure Improvements as determined in accordance with **Section 10.01**. Without limitation, soft costs included in the Infrastructure Improvements Cost include interest carry costs incurred in financing such costs, compliance costs, engineering and architectural fees, legal fees and other professional services costs attributable to the zoning, platting, plan approval and permitting of the Recreation Center Site and the Infrastructure Improvements and to the negotiation of this Agreement, the Purchase Agreement and the Infrastructure Improvements Construction Contract. To the extent that third party fees pertain to work performed with respect to the Recreation Center Site, the portions of the Stadium Site upon which Infrastructure Improvements are located and other portions of the Property, such monthly reports and final, complete accounting shall show the allocation of the out of pocket costs and payments for the Infrastructure Improvements between those located on the Stadium Site and those located on the Property outside of the Stadium Site, which, unless agreed otherwise in the Infrastructure Improvements Construction Contract will be split based on the relative acreages of (a) Recreation Center Site and (b) the Stadium Site.

ARTICLE XII

INSURANCE

Section 12.01 Obligation to Obtain Insurance. RCP shall carry or cause Bliss Sports, Bliss Sports II or other third parties to carry, at no cost to the City, only with respect to any portion of the Property on which Infrastructure Improvements are to be constructed under this Agreement and during the period from the date of this Agreement until the Infrastructure Improvements Completion Date

(except that this **Article XII** will not apply to the Recreation Center Site and any portion of the Infrastructure Improvements thereon following the transfer of title to the Recreation Center Site to the City):

(a) Builder's risk insurance for the Infrastructure Improvements from the date of the execution of this Agreement until the Final Completion Date of the Infrastructure Improvements, which shall be on a 100% completed value (replacement cost) form and shall cover the perils covered under a special causes of loss ("all-risks") form and include cold testing, windstorm, and collapse, including collapse resulting from design error;

(b) Property insurance, in each case (i) providing coverage during the construction of the Infrastructure Improvements for full replacement cost for the full insurable value (as defined below) for property damage during the construction of the Infrastructure Improvements, (ii) providing coverage (including increased costs from changes in building laws, demolition costs and replacement cost coverage) for those risks which is equal or broader than that currently covered by an all-risk policy covering all improvements, fixtures and equipment comprising the Infrastructure Improvements, (iii) providing for no deductible in excess of \$100,000 (as increased each year by multiplying such number by the increase in the CPI for the preceding calendar year, if any) for all such insurance coverage, and (iv) covering, without limitation, loss, including but not limited to the following:

- (1) fire,
- (2) extended coverage perils,
- (3) vandalism and malicious mischief,
- (4) water damage,
- (5) debris removal,
- (6) collapse,
- (7) comprehensive boiler and machinery insurance,
- (8) earthquake, and
- (9) flood

in each case on a replacement cost basis in an amount equal to "full insurable value" of the Infrastructure Improvements. "Full insurable value" means the greater of (i) an amount sufficient to prevent the application of any co-insurance contribution on any loss but in no event less than one hundred percent (100%) of the actual replacement cost of the Recreation Center, including but not limited to additional costs and expenses over and above original construction costs, such as engineering, legal and administrative fees, costs that may be incurred for late delivery, without deduction for depreciation, or (ii) if the Recreation Center is not replaced, the "actual cash value" of the Recreation Center;

(c) Commercial general liability ("CGL") insurance (providing coverage for those liabilities which is equal or broader than that currently covered by a CGL policy (a standard ISO CGL form)) (including at least the following hazards: (1) premises and operations; (2) products and completed operations; (3) independent contractors; and (4) blanket contractual liability for all legal contracts); such insurance (a) to be on an "occurrence" form with a combined limit of not less than \$2,000,000 in the aggregate and \$1,000,000 per occurrence, and (b) with excess coverage of not less than \$10,000,000;

(d) Workers' compensation insurance or self-insurance, subject to statutory limits and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 for disease aggregate in respect of any Work or operations on or about the Recreation Center Site, or in connection with the Recreation Center or its operation if applicable in accordance with the applicable worker's compensation laws;

Section 12.02 Policy Requirements.

(a) Each insurance policy obtained in satisfaction of the foregoing requirements:

(i) shall be by such insurer or insurers as shall be financially responsible, and shall have a rating equal to or higher than A- or better by Best Insurance Guide and Key Ratings or shall be acceptable to the Insurance Consultant as evidenced by a written certificate delivered to the City, and

(ii) shall be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved as evidenced by a written report of the Insurance Consultant delivered to the City.

(b) All such policies, or a certificate or certificates of the insurers that such insurance is in full force and effect, shall be deposited with the City and, prior to expiration of any such policy, RCP shall furnish the City with satisfactory evidence that such policy has been renewed or replaced or is no longer required by this Agreement; provided, however, RCP may choose to satisfy this requirement by providing blanket policies now or hereafter maintained by RCP if the Insurance Consultant certifies to the effect that such coverage is substantially the same as that provided by individual policies.

(c) In the event RCP shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement, the City may (but shall be under no obligation to) contract for the required policies of insurance and pay the premiums on the same; and RCP agrees to reimburse the City to the extent of the amounts so advanced, with interest thereon at the 7% per annum. The City shall notify RCP in writing that RCP has failed to maintain the insurance coverage required by this Agreement prior to purchasing any such insurance.

(d) The City shall be named as an additional insured on all policies. Nothing in this Agreement shall be deemed to waive the City's sovereign immunity or a defense against any tort claim based on sovereign immunity.

(e) All such policies shall apply to property intended for incorporation into the Infrastructure Improvements for the duration of the applicable contract including: (i) property in the course of construction, reconstruction, or repair; (ii) property while in transport to the Infrastructure Improvements Site; (iii) property stored at the Infrastructure Improvements Site or off premises; and (iv) scaffolding, staging, shoring, formwork, fences, false work, and temporary buildings and any similar items commonly referred to as construction equipment located at the Infrastructure Improvements Site (except that this **Article XII** will not apply to the Recreation Center Site and any portion of the Infrastructure Improvements thereon following the transfer of title to the Recreation Center Site to the City).

(f) The policies shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any applicable law, ordinance or regulation.

(g) The policies shall contain permission to occupy or a partial occupancy clause or definition and shall allow occupancy without qualification.

Section 12.03. Obligation to Restore. During the performance of its obligations under this Agreement until the Final Completion Date, RCP hereby agrees that if any portion of the Infrastructure Improvements shall be damaged or destroyed, in whole or in part, by fire or other casualty (whether or not covered by insurance), RCP shall promptly restore, replace or rebuild the same, or shall promptly cause the same to be restored, replaced or rebuilt, to as nearly as possible the value, quality and condition it was

in immediately prior to such fire or other casualty, with such alterations or changes as may be approved in writing by the City, which approval shall not be unreasonably withheld. RCP agrees that it will cause Bliss Sports II to include in any documents for Bliss Sports II private financing a requirement that, in the event insurance covering fire or other casualty results in payment of insurance proceeds to a lender of Bliss Sports II, the lender shall be obligated to restore the Infrastructure Improvements in accordance with this Section. Bliss Sports II shall within one hundred eighty (180) days give written notice to the City of any damages or destruction to any of the Infrastructure Improvements by fire or other casualty, irrespective of the amount of such damage or destruction, but in such circumstances Bliss Sports II shall make the property safe and in compliance with all applicable laws as provided herein.

ARTICLE XIII

DISPUTE RESOLUTION

Section 13.01 Good Faith Negotiations. The parties agree that in the event of a disagreement under or in connection with this Agreement, including, without limitation, any disagreement concerning any proposed change in the Construction Documents, the parties agree to negotiate, in good faith, in an attempt to resolve such disagreement for a period of no more than thirty (30) days following receipt of notice from either party setting forth the specifics of the disagreement and the relief requested.

Section 13.02 Mediation. If the parties are unable to resolve such disagreement through good faith negotiation, the City, RCP and/or Bliss Sports II agree to attempt in good faith to resolve such disagreement through mediation administered by a reputable organization offering commercial mediation services. All mediation proceedings shall be conducted in Lawrence, Kansas, and the cost thereof shall be divided amongst the number of Parties that are parties to the Mediation.

Section 13.03 Litigation. Should the City, RCP and/or Bliss Sports II be unable to resolve such disagreement through mediation, the parties hereto may seek an adjudication of the controversy in the District Court of Douglas County, and the prevailing party therein shall be entitled to recover all costs and expenses, including reasonable attorneys' fees and expenses associated therewith.

ARTICLE XIV

EVENTS OF DEFAULT AND REMEDIES

Section 14.01 Event of Default. Each of the following shall constitute an "Event of Default" by the respective Party:

(a) failure of RCP (or of a third party, whether Bliss Sports, Bliss Sports II or otherwise, which has agreed in writing to fulfill RCP's obligations) to obtain and maintain or to cause a third party to obtain or maintain the insurance required by **Article XII** hereof;

(b) any representation or warranty made by Bliss Sports or Bliss Sports II herein or in any written statement or certificate furnished to a Party by another Party with respect to the performance of this Agreement, proves untrue in any material respect as of the date of the issuance or making thereof which is not corrected or brought into compliance within 30 days after the recipient Party gives the Party which gave the untrue written statement or certificate a written notice specifying such untruth and requiring it to be remedied; provided, that if such untruth cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the defaulting Party is diligently attempting to remedy such untruth, such untruth shall not constitute an event of default if the defaulting

Party shall immediately upon receipt of such notice diligently attempting to remedy such untruth and shall thereafter prosecute and complete the same with due diligence and dispatch; or

(c) any judgment which is final, writ or warrant of attachment or any similar process shall be entered or filed against a Party which remains unvacated, unpaid, unbonded, unstayed or uncontested in good faith for a period of 90 days; provided, however, that none of the foregoing shall constitute an event of default unless the amount of such judgment, writ, warrant of attachment or similar process, together with the amount of all other such judgments, writs, warrants or similar processes so unvacated, unpaid, unbonded, unstayed or uncontested, exceeds \$2,000,000; or

(d) the entry of a decree or order by a court having jurisdiction in the premises for relief in respect of a Party, or adjudging a Party a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, adjustment or composition of or in respect of a Party under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of or for a Party or any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 120 consecutive days; or

(e) the commencement by a Party of a voluntary case, by it of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to a Party of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization, arrangement or relief under the United States Bankruptcy Code or any other applicable federal or state law, or the consent or acquiescence by it to the filing of any such petition or the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of a Party or any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability or its failure to pay its debts generally as they become due, or the taking of corporate action by a Party in furtherance of any such action; or

(f) any default by a Party in the performance, or breach, of any covenant or agreement of such Party in this Agreement, and continuance of such default or breach for a period of thirty (30) days after the other Party entitled to performance of such covenant or agreement has been delivered to defaulting Party a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied and the defaulting Party is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if defaulting Party shall, immediately upon receipt of such notice, diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 14.02 Remedies. Upon the occurrence of an Event of Default, the non-defaulting Party shall have the right to pursue any one or more of the following courses of action: (i) to take such actions as deemed necessary by the non-defaulting Party to remedy the breach, the costs of which may be charged to the defaulting Party or offset against any payments due under this Agreement to the defaulting Party; (ii) to terminate this Agreement by written notice to the defaulting party, which termination shall be effective as of the effective date which is set forth in said notice, provided that said effective date shall be at least thirty (30) days after the date of said notice; (iii) and to institute an action for specific performance or actual damages. In no event will a Party be entitled to consequential or punitive damages for a breach of any obligations or covenants hereunder.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.01 Consents and Cooperation. Wherever in this Agreement the consent or approval of the City, RCP and/or Bliss Sports II is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned, shall be in writing and shall be executed by a duly authorized officer or agent of the party granting such consent or approval; provided that RCP does not waive, and expressly retains, any rights to grant or withhold consents that RCP has the right to grant or withhold under the Stadium Lease, for any or no reason. Further, the City, RCP and Bliss Sports II agree to take such reasonable actions as may be necessary to carry out the terms, provisions and intent of this Agreement, and to aid and assist each other in carrying out such terms, provisions and intent. Any consent or approval required by the City may be provided by the City Manager unless otherwise indicated, and the City Manager may seek the input or a decision from the City Commission on any matter.

Section 15.02 Relationship. Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making any Party to be a partner, joint venturer with, or agent of, any other Party and any Party performing Work or other obligations or covenants for another Party pursuant to this Agreement, the Contract Documents, the Purchase Agreement or any other agreement referred to herein shall be acting as an independent contractor and no Party will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the Parties hereto with respect to any of such agreements.

Section 15.03 Applicable Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by, the laws of the State of Kansas for all purposes and intents.

Section 15.04 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the parties. It supersedes all prior written or oral understandings with respect thereto. Notwithstanding the preceding two sentences, any contrary provisions of the respective Contract Documents, the Purchase Agreement and Stadium Lease shall supersede the provisions of this Agreement as between the parties to such other agreements. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the Parties.

Section 15.05 Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

Section 15.06 Severability. In the event any section, term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision.

Section 15.07 Limit on Liability. The Parties agree that no member, director, officer, agent, employee, representative, attorney or consultant of a Party shall be personally or otherwise in any way liable to another Party in the event of any default, breach or failure of performance by such Party under this Agreement or for any amount which may become due to a Party or with respect to any agreement, indemnity, or other obligation under this Agreement.

Section 15.08 Headings. Headings of articles and sections are inserted only for convenience and are in no way to be construed as a limitation or expansion on the scope of the particular articles, sections or subsections to which they refer. Words in the singular shall include the plural, and vice versa, where appropriate.

Section 15.09 Notices. Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally.

To Bliss and Bliss Sports II:

President
Bliss Sports, LC
Bliss Sports II, LC
209 Fallcreek Road
Lawrence, KS 66049

To the City:

City Manager
City of Lawrence
6 E. 6th Street
Lawrence, KS 66044

With copies to:

Trip Frizell
Polsinelli Shughart PC
700 W. 47th Street, Suite 1000
Kansas City, MO 64112

With copies to:

City Attorney
City of Lawrence
6 E. 6th Street
Lawrence, KS 66044

and

Gary Anderson
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108

To RCP:

RCP, LLC
Attention: Monte Soukup
1891 Constant Avenue
Lawrence, KS 66047-3743

With copies to:

Harry Wigner
Lathrop & Gage LLP
10851 Mastin, Suite 1000
Overland Park, KS 66210

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 15.10 Waiver. The failure of a Party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this

Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by a Party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party.

Section 15.11 Negotiation of Agreement. The Parties are governmental and business entities, as applicable, each having been represented and advised by competent counsel, and each has fully participated in the negotiation and drafting of this Agreement and has had ample opportunity to review and comment on all previous drafts. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

Section 15.12 Assignment. None of the Parties may transfer, lease or permit any assignment or lien to exist or in any other manner dispose of its rights in this Agreement without the prior written consent of the other Parties hereto, as applicable. Until the Infrastructure Improvements Completion Date, the membership interests in RCP may not be transferred to a third party other than the University of Kansas or Kansas Athletics, Inc. Bliss Sports II may collaterally assign its interest in this Agreement to Bliss Sports II's lender for the Infrastructure Improvements to solely secure Bliss Sports II's financing for the construction of the Infrastructure Improvements and any Infrastructure Improvements constructed by Bliss Sports II.

Section 15.13 Tax Implications. Bliss Sports, Bliss Sports II and RCP each acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents nor any other Party hereto have provided to Bliss Sports, Bliss Sports II and/or RCP any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) Bliss Sports, Bliss Sports II and RCP are each relying solely upon their own tax advisors in this regard.

Section 15.14 Indemnity.

- (a) Bliss Sports and Bliss Sports II agrees to indemnify, defend, and hold the City, its commissioners, officers, employees, agents, and independent contractors and consultants (the **"City Indemnified Parties"**) harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with: (i) the construction of the Infrastructure Improvements, or (ii) the gross negligence or willful misconduct of Bliss Sports or Bliss Sports II, its members, employees, agents or independent contractors in connection with construction of the Infrastructure Improvements.
- (b) In the event any suit, action, investigation, claim or proceeding (collectively, an **"Action"**) is begun or made as a result of which Bliss Sports or Bliss Sports II may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties shall give prompt notice to Bliss Sports or Bliss Sports II of the occurrence of such event. After receipt of such notice, Bliss Sports or Bliss Sports II may elect to defend, contest or otherwise protect the City Indemnified Parties against any such Action, at the cost and expense of Bliss Sports or Bliss Sports II utilizing counsel of their choice. The City Indemnified Parties shall assist, at Bliss Sports or Bliss Sports II sole discretion, in the defense thereof. In the event that Bliss Sports or Bliss Sports II shall fail timely to defend, contest or otherwise protect any of the City Indemnified Parties against such Action, the City

Indemnified Parties shall have the right to do so, and (if such defense is undertaken by the City Indemnified Parties after notice to Bliss Sports or Bliss Sports II asserting their failure to timely defend, contest or otherwise protect against such Action) the cost of such defense shall be at the expense of Bliss Sports and Bliss Sports II.

- (c) Any one of the City Indemnified Parties shall submit to Bliss Sports and Bliss Sports II any settlement proposal that the City Indemnified Parties shall receive which may only be accepted with the approval of Bliss Sports and Bliss Sports II. Bliss Sports and Bliss Sports II shall be liable for the payment of any amounts paid in settlement of any Action to the extent that and only with respect to any part RCP expressly assumes in writing as part of such settlement. Neither Bliss Sports nor Bliss Sports II nor the City Indemnified Parties will unreasonably withhold their respective consent to a proposed settlement.
- (d) The indemnifications set forth in this Article shall survive termination or expiration of this Agreement.

[Remainder of page intentionally left blank]

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

CITY OF LAWRENCE, KANSAS
a Kansas limited liability company

(Seal)

By: _____
Name: Robert J. Schumm
Title: Mayor

ATTEST:

Name: Jonathan M. Douglass
Title: City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF DOUGLAS)

BE IT REMEMBERED that on this ____ day of March, 2013, before me, a notary public in and for said county and state, came Robert J. Schumm, Mayor of the City of Lawrence, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and Jonathan M. Douglass, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

RCP, LLC, a Kansas limited liability company

By: The Kansas University Endowment
Association, its sole member

By: _____
Dale Seufferling, President

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of March, 2013, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Dale Seufferling as the President of The Kansas University Endowment Association, a Kansas not for profit corporation, as the sole member of RCP, LLC, a Kansas limited liability company, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed the within instrument on behalf of said corporation in its capacity as member of such limited liability company, and such officer duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

BLISS SPORTS II, LC

By: _____
Name: Thomas S. Fritzelt
Title: Manager

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of March, 2013, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Thomas S. Fritzelt, the Manager of Bliss Sports II, LC, a Kansas limited liability company, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed the within instrument on behalf of said limited liability company, and such officer duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

BLISS SPORTS, LC

By: _____
Name: Thomas S. Fritzelt
Title: Manager

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of March, 2013, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Thomas S. Fritzelt, the Manager of Bliss Sports, LC, a Kansas limited liability company, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed the within instrument on behalf of said limited liability company, and such officer duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

DESCRIPTION OF PROPERTY



EXHIBIT A-1

LEGAL DESCRIPTION OF RECREATION CENTER SITE

Lot 2, Rock Chalk Park Addition No. 1, a subdivision in the City of Lawrence, Douglas County, Kansas

EXHIBIT A-2

LEGAL DESCRIPTION OF INFRASTRUCTURE SITE

[TO BE ATTACHED UPON AGREEMENT OF THE PARTIES]

EXHIBIT A-3

LEGAL DESCRIPTION OF STADIUM SITE

A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 12 SOUTH, RANGE 19 EAST OF THE 6TH PRINCIPAL MERIDIAN, IN THE CITY OF LAWRENCE, 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" WEST, 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 QUARTER SECTION, 708.94 FEET; THENCE SOUTH 88° 03' 57" WEST PARALLEL TO THE SOUTH LINE OF SAID QUARTER SECTION, 2252.56 FEET TO THE POINT OF BEGINNING.

Being Lot 1 of the proposed plat of Rock Chalk Park Addition No. 1, in the City of Lawrence, Douglas County, Kansas.

EXHIBIT B

SITE PLAN



EXHIBIT C

PURCHASE AGREEMENT

CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE

THIS CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE (the "Agreement") is made as of _____, 2013, by and between RCP, LLC, a Kansas limited liability company ("Seller") and CITY OF LAWRENCE, KANSAS, a municipal corporation ("Purchaser").

RECITALS

A. Seller is the owner of fee simple title to certain parcels of real property located in Douglas County, Kansas, more fully described on: (i) Exhibit A attached hereto (said real property, together with those other items described in Section 1 hereof are sometimes referred to herein collectively as the "Recreation Center Site") and (iii) Exhibit B (the "Stadium Site");

B. Seller, Purchaser, Bliss Sports, LC, a Kansas limited liability company ("Bliss I") and Bliss Sports, II, LC, a Kansas limited liability company ("Bliss II") are parties to a certain Rock Chalk Park Development Agreement dated as of March 5, 2013 (the "Development Agreement") which provides for the coordinated construction of the Recreation Center (as defined in the Development Agreement) on an approximately 5 acre portion of the Recreation Center Site (as generally depicted on Exhibit C hereto and referred to in the Development Agreement and herein as the "Pad Site"), of the "Initial KU Improvements" (as that term is defined in a certain Ground Lease between Seller and Bliss I dated as of February 12, 2013, the "Ground Lease") on the Stadium Site and of certain "Infrastructure Improvements" (as that term is defined in the Development Agreement and used herein) on the Recreation Center Site and the Stadium Site;

C. Seller desires to sell the Recreation Center Site and Purchaser desires to purchase the Recreation Center Site, all upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants hereinafter made and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the parties hereby agree as follows:

1. **Purchase and Sale.** Seller hereby agrees to sell, and Purchaser hereby agrees to purchase, all the Recreation Center Site. The term Recreation Center Site includes all easements, tenements, hereditaments, appurtenances, adjacent strips and gores on or appurtenant to the Recreation Center Site on the Closing Date (as hereinafter defined). The term Recreation Center Site shall also include any improvements and fixtures left, placed or installed on the Recreation Center Site as a portion of the Infrastructure Improvements pursuant to the Development Agreement on the Closing Date.

2. **Purchase Price.** Subject to prorations provided for herein, the purchase price for the Recreation Center Site (the "Purchase Price") shall be the product of \$30,000.00 multiplied by the number of acres of the Recreation Center Site. For purposes of this Agreement the Recreation Center Site shall be deemed to consist of 26.135 acres so that, subject to prorations provided for herein, the Purchase Price shall be \$784,050.00.

3. **Closings.** So long as all conditions precedent set forth in this Agreement have been satisfied or waived by the benefited party, the sale of the Recreation Center Site (the “Closing”) shall occur on a date that is specified by Purchaser in a written notice to Seller and Kansas Secured Title (the “Title Company”) which date is no sooner than ten (10) days after the receipt of such notice by Seller and is no later than sixty (60) days after the date that Purchaser issues a certificate of acceptance agreeing with Seller that the Pad Site is in “Pad-Ready Condition” (as that term is defined in the Development Agreement and used herein) in accordance with Section 8.02 of the Development Agreement or another date agreed upon in writing by Seller and Purchaser (the “Closing Date”) at a mutually acceptable time at the offices of the Title Company in Lawrence, Kansas; provided that if Purchaser fails to specify the Closing Date as provided above, then the Closing Date shall be on the sixtieth (60th) day after the date that the Pad Site is accepted or otherwise to be determined to be in “Pad-Ready Condition” in accordance with Section 8.02 of the Development Agreement.

4. **Seller’s Closing Deliveries.** At or before the Closing Seller shall sign and deliver to the Title Company:

(a) Seller’s Special Warranty Deed executed by Seller (the “Deed”) in the form attached hereto as Exhibit D conveying to Purchaser fee simple title to the Recreation Center Site, free and clear of all liens and encumbrances created or suffered by Seller except as otherwise permitted hereunder; and

(b) Any other documents or instruments required or reasonably necessary to be executed to fulfill this Agreement as to the Recreation Center Site, including without limitation such documents as the Title Company may require to issue the Policy (as hereinafter defined) provided for hereunder.

5. **Purchaser’s Closing Deliveries.** At or before the Closing Purchaser shall sign and deliver to the Title Company:

(a) The Purchase Price, after all prorations provided for herein; and

(b) Any other documents or instruments required or reasonably necessary to be executed to fulfill this Agreement, including without limitation such documents as the Title Company may require to issue the Policy provided for hereunder.

6. **Actions at Closings by Title Company.** At the Closing the parties will cause the Title Company to:

(a) Record the Deed;

(b) Issue the Policy (as hereinafter defined) in the name of Purchaser in the full amount of the Purchase Price;

(c) Deliver to Purchaser the recorded Deed and any other documents and funds to the appropriate parties pursuant to this Agreement;

(d) Prepare a settlement statement setting forth the respective amounts due from and to the Purchaser and the Seller in connection with the Closing in accordance with the provisions hereof; and

(e) Disburse the Purchase Price in accordance with the settlement statement referred to in Section 6(d).

7. **Prorations and Other Closing Costs.** At the Closing on the Closing Date:

(a) Purchaser shall pay the costs of recording the Deed.

(b) Seller shall pay all fees, photocopy charges, premiums and other charges for the Commitment (as hereinafter defined) and the Policy and copies of instruments of record which are to be furnished to Purchaser hereunder. Any Closing fee charged by the Title Company will be split evenly by Seller and Purchaser.

(c) Seller will pay in full the amount secured by any mortgage, deed of trust or other lien on the Recreation Center Site which is outstanding at the time of the Closing (other than any created by Purchaser) and, subject to this Section 7, shall also be responsible for all bills and payables related to the Recreation Center Site based on events prior to the Closing Date (which obligation will survive the Closing). Purchaser shall pay the recording costs and any mortgage registration tax or fee due upon the recording of any mortgage or other lien on the Recreation Center Site which Purchaser creates or grants simultaneously with Closing. Seller will pay all general real estate taxes and installments of special assessments for tax periods prior to the one in which Closing occurs.

(d) The general real estate taxes and installments of special assessments for the tax period in which the Closing occurs shall be prorated as of the Closing Date. If some prorations cannot be computed at the time of the Closing using actual data for the calendar year in which the Closing occurs, the parties agree that in making the prorations they shall use the most recent actual data available for a preceding year; provided further that if a mistake is made in calculating the prorations, the parties agree that as soon as possible after the Closing each shall make any necessary payments owing the other party in order to correct such mistake.

8. **Possession.** The right to possession of the Recreation Center Site shall transfer to Purchaser at the Closing subject to the rights of Seller and its contractors to complete any Infrastructure Improvements thereon in accordance with the Development Agreement.

9. **Title Commitments and Policy.** Within fifteen (15) days after the date hereof, Seller shall deliver to Purchaser, at Seller's expense, a title insurance commitment for the Recreation Center Site issued by the Title Company as agent for Chicago Title Insurance Company, effective as of a date no earlier than sixty (60) days prior to the date hereof (the "Commitment"), together with complete, legible copies of all exceptions to title listed on any schedule to the Commitment. At the Closing, Seller shall pay the premium for, and cause the Title Company to deliver to Purchaser, an ALTA form of owner's title insurance policy, including any endorsements thereto which Purchaser elects to pay for (collectively the "Policy") insuring, in the amount of the Purchase Price, that, upon the Closing, Purchaser has acquired fee simple title to the Recreation Center Site subject only to those stipulations, terms, conditions, exclusions and exceptions, if any, listed in the Commitment, less any to which Purchaser objects in writing within ten (10) days after receipt of the Commitment (the "Title Inspection Period"). The parties acknowledge that, at a minimum, and without limitation upon Purchaser's ability to refuse to deem any other matter to be an acceptable exception in the Policy, Purchaser will require deletion of the following standard exceptions from the Policy:

(a) Rights or claims of parties in possession not shown by public records or disclosed by Seller;

(b) Any lien, or right to lien, for services, labor or material theretofore or thereafter furnished, imposed by law and not shown by public records; and

(c) Defects and liens first appearing subsequent to the effective date of the Commitment but prior to the respective Closing Date.

Notwithstanding anything to the contrary herein, if Purchaser properly objects prior to the expiration of the Title Inspection Period to any other exception to the Policy reflected in the Commitment and if Seller gives Purchaser notice that Seller elects not to cure such objection in a notice given to the Purchaser within ten (10) days after the end of the Title Inspection Period then Purchaser will be deemed to have withdrawn such objection unless, prior to the end of ten (10) days after receipt of such a notice from Seller, Purchaser gives Seller notice that Purchaser is terminating this Agreement in which case, upon notice of such termination this Agreement will be null and void and neither party will have any other obligations to the other hereunder. Further, the parties acknowledge that unless the Infrastructure Improvements have been completed by the Closing Date, that a permitted exception to the Policy will be the right for mechanics and materialmen liens to be filed against the Recreation Center Site for Infrastructure Improvements and work and materials provided in connection therewith; provided that no later than upon completion of the Infrastructure Improvements and payment to Seller by Purchaser therefor, all in accordance with the Development Agreement, Seller shall cause any and all mechanics and materialmen liens with respect to the Infrastructure Improvements to be released of record from the Recreation Center Site. Seller shall have no responsibility for the removal of any mechanics or materialmens liens incurred during the construction of any improvements other than the Infrastructure Improvements done by or for the Purchaser on the Recreation Center Site.

10. **Survey.** Within fifteen (15) days after the date hereof, Seller shall deliver to Purchaser a copy of the most recent survey of the Recreation Center Site in Seller's possession.

11. **Access During Inspection Period.** Upon execution of this Agreement and continuing for a period of thirty (30) days thereafter (the "Inspection Period"), Seller shall allow Purchaser or Purchaser's agents or representatives access to the Recreation Center Site for purposes of physical or environmental inspection of the Recreation Center Site and, to the extent not provided to Purchaser by Seller, Purchaser's or Purchaser's agents' reviewing and copying of Seller's books, records or documentation relating to the Recreation Center Site. Purchaser shall have until the end of the Inspection Period to evaluate and determine the feasibility of the Recreation Center Site for Purchaser's intended use. To the extent permitted by law, Purchaser agrees to indemnify and hold harmless Seller from and against any damages, losses, injuries, claims, liabilities and costs (including reasonable attorneys' fees) caused by Purchaser's or its designees' entry onto the Recreation Center Site, or performance of tests or inspections on the Recreation Center Site, on behalf of the Purchaser during the Inspection Period.

12. **Seller's Affirmative Covenants.** Seller agrees that:

(a) Until Closing, Seller shall perform and pay all mortgages and other obligations affecting the Recreation Center Site, except such taxes or other costs, if any, as are being contested in good faith or are to be assumed and paid by Purchaser under the express terms hereof; provided that any such taxes or other costs as are being contested in good faith shall be settled or paid by Seller no later than the respective Closing.

(b) During the Inspection Period, Seller will provide Purchaser and Purchaser's designees, at reasonable times and upon reasonable notice, complete access to the Recreation Center Site for the purpose of obtaining environmental, soil boring, mechanical, structural, engineering and other inspections and tests; provided that Purchaser and Purchaser's designees must coordinate any testing and inspections with persons on the Recreation Center Site pursuant to contracts with the Seller who are performing work related to making the Pad Site in Pad Ready Condition or other Infrastructure Improvements pursuant to the Development Agreement.

(c) During the Inspection Period, Seller shall give Purchaser or Purchaser's agents access during normal business hours to any service contracts and records in regard to the Recreation Center Site, if any, and shall furnish Purchaser and Purchaser's agents during such period with all such information concerning the Recreation Center Site as Purchaser may reasonably request; provided that if this transaction does not close, Purchaser agrees to return all such written information obtained to Seller and to keep the same confidential except that which is otherwise in the public domain or not of a confidential nature.

(d) Unless and until this Agreement is terminated by its terms, from and after the date of this Agreement except as may be contemplated in the Development Agreement or otherwise agreed to in writing by the Purchaser, Seller will not enter into or grant any commitments, options, contracts, leases, easements, licenses, rights of way or the like affecting a portion of the Recreation Center Site after its respective Closing Date.

13. **Purchaser's Conditions Precedent.** Notwithstanding any other provision of this Agreement to the contrary, Purchaser's obligation to purchase the Recreation Center Site is subject to each of the following conditions precedent either being satisfied in full, or being waived by Purchaser in writing, acting in Purchaser's sole discretion, prior to the expiration of the Inspection Period, such other deadline specified herein or, if there is no such deadline specified herein, then by the Closing:

(a) Purchaser's receipt, review and, in Purchaser's sole discretion, approval of one or more appraisals, environmental, mechanical, structural and other inspections, tests and reports as may be conducted on or concerning the Recreation Center Site by Purchaser or its designated representatives, at Purchaser's option and expense, during the Inspection Period;

(b) Purchaser's receipt, review and, in its sole discretion, approval of the Commitment and all exceptions noted therein and, if Purchaser objects to any exceptions therein by the expiration of the Title Inspection Deadline (subject to the last sentence of Section 9), Seller agreeing to remove such objected to exceptions from the Policy;

(c) Seller having caused the Pad Site to be in a Pad-Ready Condition within the meaning therefor in the Development Agreement no later than _____, 2013, subject to reasonable extensions for events which constitute force majeure; and

(d) Performance by Seller of all of its obligations hereunder prior to the respective Closing.

If Purchaser has reasonably determined that one or more of the conditions precedent have neither been satisfied nor waived in writing by Purchaser by the deadline therefor, Purchaser may withhold further performance under this Agreement and, if Purchaser has full performed its obligations under this Agreement due prior thereto and the Seller's conditions precedent specified in Section 14 hereof have been satisfied or have been waived in writing by Seller (other than any further performance by Purchaser being withheld pursuant to this sentence), then Purchaser may declare a default under Section 21 hereof.

14. **Seller's Condition Precedent.** Notwithstanding any other provision of this Agreement to the contrary, Seller's obligations under this Agreement shall be subject to the following conditions precedent either being satisfied in full, or being waived by Seller in writing, acting in Seller's sole discretion, prior to the Closing or other deadline specified herein therefor:

(a) Purchaser shall have entered into a Recreation Center Construction Contract (as that term is defined in the Development Agreement); and

(b) the condition precedent that either Purchaser shall have fully performed Purchaser's obligations hereunder, or such performance shall have been waived by Seller in writing, prior to the respective Closing.

If Seller has reasonably determined that one or more of the conditions precedent have neither been satisfied nor waived in writing by Seller by the deadline therefor, Seller may withhold further performance under this Agreement and, if Seller has full performed its obligations under this Agreement due prior thereto and the Purchaser's conditions precedent specified in Section 13 hereof have been satisfied or have been waived in writing by Purchaser (other than any further performance by Seller being withheld pursuant to this sentence), then Seller may declare a default under Section 21 hereof.

15. **Eminent Domain.** If the Recreation Center Site or any part thereof is taken or threatened to be taken pursuant to eminent domain or similar proceedings by any entity which is not related to the Purchaser prior to Closing, Seller shall notify Purchaser of the pendency of such proceedings within three (3) days of learning of the same and Purchaser shall have the right, at Purchaser's election, to cancel and terminate this Agreement within five (5) days after receiving written notice of such proceedings from Seller. If Purchaser does not so elect to cancel this Agreement within such period, this Agreement shall remain in full force and effect except that the Recreation Center Site shall thereafter refer to the Recreation Center Site in its then "AS-IS" condition and Purchaser shall be entitled to receive all condemnation proceeds resulting from such actual or threatened condemnation upon any Closing which thereafter occurs hereunder.

16. **Casualty.** If after the execution hereof and before the Closing the Recreation Center Site or any improvements on the Recreation Center Site are destroyed or damaged by any casualty, Seller may repair, replace or rebuild, without notice, if the damage is "minor" (for purposes hereof, damage is "minor" if the cost of repairing the same is \$5,000.00 or less and repairs to bring the Recreation Center Site to the same condition it was in as of the date of Purchaser's most recent prior inspection of the Recreation Center Site can be completed prior to the respective Closing Date); provided that if the damage is not "minor" (as that term is defined herein), then within three (3) days of such damage occurring, Seller shall notify Purchaser in writing of such occurrence and Purchaser shall have the right, at Purchaser's election, to cancel and terminate this Agreement within five (5) days after receiving written notice of such occurrence from Seller. If Purchaser does not so elect to cancel this Agreement within such period, this Agreement shall remain in full force and effect except that the term "Recreation Center Site" shall thereafter refer to the Recreation Center Site in its then "AS-IS" condition and Purchaser shall be entitled to receive all proceeds of Seller's fire and extended coverage insurance, if any.

17. **Non-Assumption of Other Liabilities.** Purchaser shall not assume any of the liabilities or obligations of Seller related to or arising out of the ownership, maintenance or operation of any portion of the Recreation Center Site by Seller prior to the respective Closing, except as specifically set forth herein or in the Development Agreement.

18. **Mail Forwarded; Removal of Property; Notice to Public.** Purchaser shall promptly forward to Seller all correspondence, mail, payments and documents received by Purchaser after Closing which relate to the operation of the Recreation Center Site prior to Closing and are the property of Seller. Seller shall promptly forward to Purchaser all correspondence, mail, payments and documents received by Seller which relate to the operation of the Recreation Center Site after Closing and are the property of Purchaser. Purchaser and Seller shall take reasonable steps to inform the public of the sale of the Recreation Center Site and its operation by new owners.

19. **Expenses.** Except as expressly provided otherwise herein or in the Development Agreement, the parties each agree to bear their own legal, accounting and other expenses in connection with the preparation of documentation for and consummation of this transaction, whether or not it closes.

20. **Representations and Warranties of Parties.**

(a) Seller and Purchaser each represent and warrant to the other that they have been duly authorized to enter into and to perform under this Agreement and that the execution of this Agreement and the Closing do not and will not violate the terms of any agreement or obligation by which it or the Recreation Center Site is bound.

(b) Seller hereby represents and warrants that no parties have options, rights to purchase, tenancy rights in, or otherwise in possession of, any portion of the Recreation Center Site except for the Seller and any contractors performing work related to the Development Agreement.

(c) Seller and Purchaser each represent and warrant to the other that there are no claims, suits, or other proceedings threatened or pending against them which will materially and adversely affect their ability to perform their obligations hereunder.

(d) Seller represents and warrants that, to the Knowledge of the Seller, except to the extent disclosed or referred to in that certain Phase One Environmental Report issued by _____ dated _____, 2012, a copy of which Purchaser acknowledges having received: (i) there are no "wetlands," burial grounds, cemeteries, archeology sites or landfills on the Recreation Center Site. (ii) no portion of the Recreation Center Site consists of filled ground or contains any underground storage tanks for gasoline or other substances; and (iii) no portion of the Recreation Center Site has been used for the production, generation, treatment, storage or disposal of any hazardous wastes, substances, materials, pollutants or contaminants which are subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986) ("CERCLA") or the Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq., as amended by the Hazardous and Solid Waste Amendments of 1984) (hereinafter referred to as the "RCRA"), or any other currently applicable local, state or federal environmental statute or regulation, including but not limited to the Leaking Underground Storage Tanks Act, 42 U.S.C. §6991, et seq., as amended, nor is any portion of the Recreation Center Site located on or over a "sanitary landfill" or an "open dump" within the meaning of the RCRA (collectively, "Environmental Law"). Seller hereby represents and warrants that, to the Knowledge of the present officers and directors of Seller, Seller has not: (i) received any notice from a governmental agency or authority of; (ii) conducted, commissioned or otherwise received a report of any investigation which indicated; or (iii) otherwise obtained actual knowledge of: (w) the presence of any Hazardous Substance on, in or under the Recreation Center Site; (x) any currently or previously existing spill, leak, disposal, release or threat of release of any Hazardous Substance on, in or under the Recreation Center Site; (y) any underground storage tanks currently or previously placed in the Recreation Center Site; or (z) any violation or alleged violation of any applicable Environmental Law or of any other federal, state or local statute, regulation, ordinance or court or regulatory order on or about the Recreation Center Site. For the purposes of this Agreement the term "Hazardous Substance" shall mean any substance or material that has at any time been listed as "hazardous" or "toxic" under any Environmental Law. The term "Hazardous Substance" shall also include, without limitation, asbestos and petroleum products and bi-products. For purposes of this Section, the term "Knowledge" shall mean that the President and Vice President Property of the sole member of the Seller are not aware of any facts or circumstances that give them actual knowledge that the matters represented and warranted by Seller herein are not true. Seller represents and warrants that Seller does not have and has never received an environmental report concerning any portion of the Recreation Center Site and that Seller did not clear the

Recreation Center Site of the residences that previously were on the Recreation Center Site. To the extent permitted by law, Purchaser agrees not to make a claim against Seller for any Hazardous Substances that are expressly disclosed in writing in any Phase I report concerning the Recreation Center Site that Purchaser may obtain prior to Closing.

(e) Seller represents and warrants that there are no service or other agreements relating to the Recreation Center Site which will be binding upon the Purchaser after the Closing except for any matters of record or any which may be permitted under the Development Agreement.

(f) Seller and Purchaser each warrant and represent to the other that they have not had any contact or dealings regarding the Recreation Center Site, or any communication in connection with the subject matter of this transaction or Agreement, through any real estate broker or other person who can claim a right to a commission or finder's fee as the procuring cause of the sale contemplated herein. If any other real estate broker, sales person or finder asserts a claim for commission or finder's fee based upon any contact, dealings or communication on behalf of one of the parties hereto, the party on whose behalf the broker or finder asserts it made any such contact, dealings or communication which allegedly entitles it to a claim for commission or finder's fee shall indemnify, save harmless and defend the other party from said claim, and all costs and expenses (including reasonable attorneys' fees) incurred by the other party in defending against any such claim.

(g) Each of Seller and Purchaser, to the extent permitted by law, agrees to indemnify the other against any claim, damage or loss of which the party to be indemnified gives the indemnifying party written notice of within twelve (12) months from the latest Closing to occur hereunder which results from any material damage or deficiency resulting from any misrepresentation, breach of warranty or non-fulfillment of any agreement of the indemnifying party contained herein or from any misrepresentation in or omission from any document or instrument furnished or to be furnished by the indemnifying party under this Agreement.

21. **Default.**

(a) If by the date set for a respective Closing, Seller has fulfilled all of Seller's obligations hereunder (other than any withheld in accordance with Section 14) and all of Purchaser's conditions precedent to closing have been satisfied or waived in writing by Purchaser (other than any performance by Seller withheld in accordance with Section 14), and Purchaser, without lawful excuse, fails to fulfill its obligations hereunder and continues to fail and refuse to fulfill Purchaser's obligations hereunder for more than five (5) days after receipt of written notice of such default from Seller, Seller may either: (i) terminate this Agreement; or (ii) seek specific performance of this Agreement in a court of competent jurisdiction.

(b) If by the date set for a respective Closing, Purchaser has fulfilled all of Purchaser's obligations hereunder (other than any withheld in accordance with Section 13) and all of Seller's conditions precedent to Closing have been satisfied or waived in writing by Seller (other than any performance by Purchaser withheld in accordance with Section 13), and Seller, without lawful excuse, fails to fulfill Seller's obligations hereunder for more than five (5) days after receipt of written notice of such default from Purchaser, Purchaser may either: (i) terminate this Agreement; or (ii) seek specific performance of this Agreement in a court of competent jurisdiction.

(c) Notwithstanding anything else to the contrary herein, if before or after Seller gives Purchaser notice that the Pad Site is in Pad-Ready Condition the Purchaser notifies Seller that Purchaser has elected not to enter into a Recreation Center Construction Contract (as that term is defined in the Development Agreement) by the latest date specified for the Closing Date herein, then this Agreement

shall automatically terminate and, in addition to any obligations Purchaser may have under the Development Agreement, within thirty (30) days after Seller notifies Purchaser of the amount payable by Seller to Bliss Sports II or third parties for causing the Pad Site to be in Pad-Ready Condition (limited to the out of pocket expenses of Bliss Sports II or such a third party plus _____ percent (____%))(the "Pad Site Ready Improvement Amount"), Purchaser will pay such amount to Seller, together with its out of pocket expenses for the Commitment and copies of exception documents. Upon reasonable request, will provide Purchaser with access to the Seller's, Bliss Sports II's and any such third party's books and records evidencing the Pad Site Ready Improvement Amount.

22. **Survival.** For a period of twelve (12) months from the latest Closing to occur hereunder, all representations, warranties and agreements made herein by any party to this Agreement shall survive such Closing and any inspection at any time made by or on behalf of any other party prior to said Closing.

23. **Notices.** Unless otherwise indicated, all notices, waivers and consents required or permitted pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, sent by verifiable facsimile, or mailed by an overnight mail delivery service or by certified or registered mail, postage prepaid, to the respective parties at the addresses set forth on or before the date such notice, waiver and consent must be given:

a. **If to Seller, to:**

RCP, LLC
c/o The Kansas University Endowment Association
Attn: Monte Soukup
P.O. Box 928
Lawrence, KS 66044-0928
Telecopier: (785) 832-7494
Email: msoukup@kuendowment.org

with a copy to:

Harry Wigner, Jr.
Lathrop & Gage LLP
10851 Mastin Blvd., Suite 1000
Overland Park, KS 66210
Telecopier: (913) 451-5131
Email: hwigner@lathropgage.com

b. **If to Purchaser, to:**

City of Lawrence, Kansas
Attn: City Manager
6 E. 6th Street
Lawrence, KS 66044
Email: dcorliss@lawrenceks.org

with a copy to:

City Attorney
City of Lawrence, Kansas
6 E. 6th Street
Lawrence, KS 66044
Email: twheeler@lawrenceks.org

This section shall not limit the effectiveness of other methods of giving notices, waivers or consents but shall be a method of giving such notices, waivers or consents deemed effective for all purposes. Any person or entity, by giving a written notice to the others, may change the address for such person's or entity's receipt of said notices, waivers and consents.

24. **General.** Each party agrees to perform any further acts and deliver any additional documents that may be reasonably requested to carry out the provisions of this Agreement. Each party shall comply with all laws and regulations applicable to the performance of its obligations hereunder. Whenever any party is required to act hereunder within a particular period of time after the occurrence of a particular event, such period shall begin to run on the day next following the day on which the event occurred and shall expire at 6:00 p.m. Central Time (Standard or Daylight Savings, as then in effect in Douglas County, Kansas) on the final day of the period. In the event that the day scheduled for the performance or completion of any act hereunder shall fall on a Saturday, Sunday or legal holiday recognized by the State of Kansas or the United States of America, the said time period therefor shall automatically be extended to the next day that is not a Saturday, Sunday or legal holiday. Time is of the essence with respect to the performance of all obligations and the satisfaction of all conditions and contingencies hereunder. Should any part, term or provision of this Agreement be declared illegal or in conflict with any law, rule, or regulation, the validity of the remaining portion, terms, or provisions shall not be affected thereby. The terms and conditions contained herein constitute the entire agreement of the parties and supersede all prior written and oral agreements and understandings relating to the subject matter hereof. The captions at the beginning of Sections and Subsections are used for convenience only and are not to be used in attempting to construe any part of this Agreement. Unless the context indicates otherwise, words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations, partnerships, corporations and other entities of any type whatsoever, including without limitation, public bodies and entities, as well as natural persons, and words of masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. None of the provisions of this Agreement may be amended without the written consent of all parties. Any waiver by a party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, unless such waiver be so expressed in writing and signed by the party to be bound. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors and assigns of the parties, as the case may be. Upon request, any person executing this Agreement in a representative capacity shall furnish proof of such person's authority in standard form. This Agreement may be executed at different times and in any number of originals or counterparts, each of which shall be deemed an original, but all of which together shall constitute only one instrument.

25. **Right to Repurchase.** Notwithstanding anything to the contrary in this Agreement, at the Closing Seller and Purchaser will execute, and the Title Company will record against the Recreation Center Site, a mutually agreed upon recordable form of Memorandum of Repurchase Rights (the "Memorandum of Repurchase Rights"). The Memorandum of Repurchase Rights will provide that RCP, or its successor in interest as owner of fee title to the Stadium Site, will have: (a) a right of first offer to

buy the Recreation Center Site and any improvements thereon, or such portion of such land and improvements as the City may elect to offer for sale, upon such terms and conditions as the City may offer to sell them; (b) a right of first refusal to buy the Recreation Center Site and any improvements thereon, or such portion of such land and improvements as the City may elect to offer for sale, upon the same terms and conditions upon which the City is otherwise prepared to sell them to a third party; and (c) if the City fails to construct a Recreation Center (as defined in the Development Agreement) thereon within two (2) years of the date of this Agreement or, if the City causes one to be built but fails to operate the same or any other improvements thereon primarily as a recreational facility open to the general public for a period of twelve (12) consecutive months (exclusive of up to six (6) months following a casualty event affecting a substantial portion of any such Recreation Center), an option to purchase the same for the then fair market value thereof as determined through an appraisal process more fully described therein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date stated above by their duly authorized representatives.

SELLER: **RCP, LLC**, a Kansas limited liability company

By: The Kansas University Endowment Association,
a Kansas non profit corporation, its sole member

By: _____
Dale Seuferling, President

PURCHASER: **CITY OF LAWRENCE, KANSAS**, a municipal corporation

By: _____
Name: _____
Mayor

EXHIBIT D

RECREATION CENTER PLANS

[TO BE ATTACHED OR INCORPORATED UPON COMPLETION]

EXHIBIT E

PROJECT TIMELINE

Recreation Center Plans Completion Date	March 2013
Recreation Center Construction Commencement Date	May 2013
Infrastructure Plans Finalized	March 2013
Infrastructure Construction Commencement Date	March 2013
Pad Site in Pad-Ready Condition	March 2013
Stadium Facilities Construction Commencement Date	March 2013
Recreation Center Complete	Spring 2014
Infrastructure Complete	Spring 2014
Stadium Facilities Complete	Spring 2014

EXHIBIT F

INFRASTRUCTURE IMPROVEMENTS

- 1. Eight (8) lighted tennis courts on the Recreation Center Site**
- 2. George Williams Way extension**
- 3. Rock Chalk Drive construction**
- 4. On-site storm water system and detention pond**
- 5. Approximately 1500 parking spaces**
- 6. Landscaping and internal drives, sidewalks, paths, bus lanes, etc.**
- 7. 5 mile improved multi-use path**
- 8. All necessary waterlines**
- 9. All necessary sanitary sewer lines**
- 10. All other necessary and related public improvements as set forth in the City approved public improvement plans and as provided in the Development Agreement**

EXHIBIT G

INFRASTRUCTURE IMPROVEMENT PLANS

[TO BE ATTACHED OR INCORPORATED UPON COMPLETION]

EXHIBIT H

CERTIFICATE OF PAD-READY CONDITION

The undersigned, Bliss Sports II, LLC ("Bliss Sports II"), pursuant to that certain Rock Chalk Park Development Agreement (the "Development Agreement") dated March 5, 2013, among the City of Lawrence, Kansas ("City"), RCP, LLC, Bliss Sports, LC and Bliss Sports II, hereby certifies to the City as follows:

1. That as of _____, 20____, the construction of the Pad Site in Pad-Ready Condition (as such term is defined in the Development Agreement) has been completed in accordance with the Development Agreement.
2. The Pad Site has been completed in a good and workmanlike manner and in accordance with the Contract Documents (as defined in the Development Agreement).
3. The Pad Site has achieved Substantial Completion and is in Pad-Ready Condition (as defined in the Development Agreement).
4. This Certificate of Pad-Ready Condition is being issued by Bliss Sports II to the City in accordance with the Development Agreement and the Purchase Agreement.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, _____.

BLISS SPORTS II, LLC

By: _____
Name: _____

ARCHITECT'S CERTIFICATE

The Pad Site has been fully completed substantially in accordance with the Plans, as amended to date, and is in Pad-Ready Condition.

By: _____

Title: _____

ACCEPTED:

CITY OF LAWRENCE, KANSAS

By: _____

Name: _____

Title: _____

(Insert Notary Form(s) and Legal Description)