

PROPERTY ACCESS AND MAINTENANCE AGREEMENT FOR THE TRAILS

THIS PROPERTY ACCESS AND MAINTENANCE AGREEMENT FOR THE TRAILS (the "Agreement") is made as of the ____ day of _____, 2013, by and among RCP, LLC, a Kansas limited liability company ("RCP"), the CITY OF LAWRENCE, KANSAS, a municipal corporation organized and existing under the laws of the State of Kansas (the "City") and BLISS SPORTS, LC, a Kansas limited liability company ("Bliss Sports") and KANSAS ATHLETICS, INC., a Kansas non-profit corporation ("KAI").

WITNESSETH:

WHEREAS, RCP, the City, Bliss Sports and Bliss Sports II, LC, a Kansas limited liability company (the "Bliss Sports II") are parties to a certain Rock Chalk Park Development Agreement dated March 5, 2013 (the "Development Agreement") concerning the development of certain improvements on a tract of approximately eighty-nine (89) acres of real property located at the northwest intersection of Rock Chalk Drive and George Williams Way which is more fully described on Exhibit A attached hereto (which is referred to herein and in the Development Agreement as the "Property");

WHEREAS, contemporaneously with the execution hereof, pursuant to a certain Purchase Agreement the City is, acquiring from RCP approximately twenty-six (26) acres of the Property which is more fully described on Exhibit B attached hereto (the "Recreation Center Site") on which the City intends to construct a "Recreation Center" (as such term is defined in the Development Agreement and used herein) and related facilities for public use;

WHEREAS, RCP and Bliss Sports have entered into a certain Ground Lease dated as of February 12, 2013 (the "Ground Lease") concerning the portion of the Property which is more fully described on Exhibit C attached hereto (the "Stadium Site") on which under the Ground Lease Bliss Sports is permitted to build certain improvements more fully described in the Ground Lease which include a track and field stadium, soccer stadium, and softball complex (which are referred to in the Development Agreement as the "Stadium Facilities" and in the Ground Lease as the "Initial KU Improvements");

WHEREAS, as permitted in the Ground Lease, Bliss Sports and KAI have entered into a certain Amended and Restated Lease Agreement dated as of February 12, 2013 pursuant to

which KAI has certain rights to use the Stadium Site and the Stadium Facilities on the terms set forth therein but subject to the terms and conditions of the Ground Lease;

WHEREAS, City owns certain adjacent property which is more fully described on Exhibit D (the “Existing City Tract”);

WHEREAS, pursuant to the Development Agreement, approximately five (5) linear miles of running and walking trails (the “Trails”) which collectively constitute a portion of the “Infrastructure Improvements” (as that term is defined in the Development Agreement) will be constructed on the Recreation Center Site, the Stadium Site and the Existing City Tract, which are depicted on the site plan attached hereto as Exhibit E (collectively, the “Trails”);

WHEREAS, the parties hereto desire to set forth the respective responsibilities of the parties to provide access to the Trails and to maintain the Trails during the Easement Term (as herein defined);

NOW, THEREFORE, in consideration of the mutual grants, covenants and promises contained herein, and of the mutual benefits accruing to each of the parties hereto, their respective heirs, successors, legal representatives and assigns, the parties hereto hereby declare and agree as follows:

1. Access. During the Easement Term the parties hereby grant to each other and to the public a non-exclusive easement to the Trails in order to allow the public and each of the parties and their tenants, subtenants, contractors, vendors, invitees, employees and licensees to have rights of ingress, egress and use on, over and across the Trails during the Easement Term for customary use as a walking and running trail.
2. Routine Maintenance. During the Easement Term, once the Trails are installed, KAI shall cause the Trails to be repaired and maintained, including without limitation the making of all surface and subsurface repairs and maintenance, seal coating and removal of trash, rubbish and other refuse, if any, so as to maintain such Trails in good condition, reasonable wear and tear excepted, in a professional manner that is reasonably acceptable to each of the parties. The cost of the maintenance shall be split evenly between the City and KAI.
3. Reconstruction. If during the Easement Term, the party designated in Section 2 as being responsible for performing the routine repairs and maintenance of the Trails shall reasonably determine that some or all of such Trails need to be completely replaced, or need repairs beyond normal repairs, then such party will notify the other parties to this Agreement and shall provide a written estimate of the costs of such reconstruction or major repairs. Unless the parties otherwise agree in writing, KAI shall complete or cause such replacement or major repairs in a timely manner and the costs of such major replacement or renovation shall be split evenly between the City and KAI.
4. Intentional or Negligent Acts. Notwithstanding anything to the contrary in this Agreement, but subject to Section 10, each party hereto shall be solely responsible for the repair of any and all damage to the Trails caused by any intentional or negligent act or omission of its subtenants, agents, employees, business invitees and licensees.

5. Defaults. An “Event of Default” or “default” shall mean, wherever used in this Agreement, any failure by one or more of the parties hereto to observe and perform any covenant, condition or agreement in this Agreement on its part to be observed or performed and the lapse of a period of 60 days after written notice, specifying such failure and requesting that it be remedied, given to such party by the other party, provided, that if such default cannot be fully remedied within such 60-day period, but can reasonably be expected to be fully remedied, such default shall not constitute an Event of Default if the defaulting party shall within a reasonable period of receipt of such notice commence the curing of such default and shall thereafter prosecute and complete the same with due diligence and dispatch.

6. Remedies. If there is an Event of Default by a party, the other non-defaulting parties hereunder shall each be entitled to all rights and remedies at law or in equity, including specific performance and injunctive or other equitable relief, notwithstanding availability of an adequate remedy at law. The prevailing party in any action to enforce this Agreement shall recover as part of its costs, reasonable attorneys’ fees and court costs and interest on funds expended by the prevailing party to cure such default by another party.

7. Self-Help. If there is an Event of Default by a party and after written notice to the parties to this Agreement, any or all of the other non-defaulting parties hereunder may, but shall have no obligation to, perform such actions as may be necessary to correct or remedy the default, and any monies expended shall be reimbursed by the defaulting party upon written notice from the party(ies) which cause such correction or remedy. Nothing in this Section is intended to imply that a party must take any action unless specifically required to do so by this Agreement.

8. Easement Term. For purposes of this Agreement “Easement Term” shall mean the period from the date hereof until the soonest to occur of: (a) the expiration or sooner termination of the Ground Lease; (b) the sooner to occur of (i) City failing to build a Recreation Center on the Recreation Center Site 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); or (c) the execution by the parties hereto or their respective successors and assigns and recording in the office of the Register of Deeds of Douglas County, Kansas of an agreement terminating this Agreement. Once the Easement Term has expired under the preceding sentence any party to this Agreement may execute and record a notice that the Easement Term has expired and thereafter this Agreement will have no further force or effect.

9. Covenant Running with Land. The covenants and agreements granted herein are and shall be deemed to be covenants running with the land and shall be binding upon the parties hereto and upon their successors and assigns until the expiration of the Easement Term.

10. Not an Agent of RCP. None of the City, Bliss Sports, KAI or their respective designees, contractors, employees or agents will be an agent of RCP for the purpose of making any improvements on the portions of the Property owned by RCP and the terms and provisions of the Ground Lease shall supersede and be binding upon Bliss Sports and its successors, assigns, tenants, subtenants, designees, contractors employees and agents notwithstanding

anything that could be construed to the contrary in this Agreement. Notwithstanding anything to the contrary in this Agreement, including without limitation Section 4, unless hereafter agreed in writing by RCP, neither RCP nor any real or personal property of RCP will be liable for any of the costs and expenses of performing any of the maintenance, repair, reconstruction, installation and other services and materials provided for in this Agreement.

11. Miscellaneous.

(a) 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 Sports:

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

To KAI:

Director of Athletics
Kansas Athletics, Inc.
1651 Naismith Drive
Lawrence, KS 66049

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.

(b) Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their respective successors and assigns, and the other Benefitted Parties.

(c) Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(d) Amendments, Changes and Modifications. This Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto and their successors or assigns.

(e) Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(f) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

(g) Captions. The captions or 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.

[Remainder of Page Intentionally Left Blank. Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in its name and attested by its duly authorized officers all as of the date first above written.

RCP, LLC, a Kansas limited liability company

By: The Kansas University Endowment Association, its
sole member

By: _____
Dale Seuferling, President

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 Dale Seuferling 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 _____.

CITY OF LAWRENCE, KANSAS
a municipal corporation

(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 _____, 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 _____.

BLISS SPORTS, LC,
a Kansas limited liability company

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of _____, 2013, before me the undersigned, a Notary Public in and for the County and State aforesaid, came _____ and _____ the _____ of Bliss Sports, LC, a Kansas limited liability company, who are personally known to me to be such _____, and who are personally known to me to be the same persons who executed the within instrument on behalf of said limited liability company, and such _____ 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 _____.

KANSAS ATHLETICS, INC.
a Kansas non-profit corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of _____, 2013, before me the undersigned, a Notary Public in and for the County and State aforesaid, came _____ and _____ the _____ of Kansas Athletics, Inc., a Kansas non-profit corporation, who are personally known to me to be such _____, and who are personally known to me to be the same persons who executed the within instrument on behalf of said corporation, and such _____ duly acknowledged the execution of the same to be the act and deed of said corporation.

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 _____.

EXHIBIT A

LEGAL DESCRIPTION OF ROCK CHALK PARK

EXHIBIT B

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 C

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 D

LEGAL DESCRIPTION OF EXISTING CITY TRACT

EXHIBIT E

SITE PLAN