
PERFORMANCE AGREEMENT

Dated as of September 1, 2013

BETWEEN THE

CITY OF LAWRENCE, KANSAS

AND

RCP, LLC

AND

BLISS SPORTS, LC

Prepared By:

Gilmore & Bell, P.C.
Kansas City, Missouri

PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT, dated as of September 1, 2013 (the “**Agreement**”), between the **CITY OF LAWRENCE, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the “**Issuer**”), **RCP, LLC**, a Kansas limited liability company (the “**Tenant**”) and **BLISS SPORTS, LC**, a Kansas limited liability company (the “**Subtenant**”);

WITNESSETH:

WHEREAS, the Issuer is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “**Act**”), to acquire, construct and improve certain facilities for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for said projects, and to issue revenue bonds for the purpose of paying the cost of any such facilities;

WHEREAS, pursuant to such authorization, the governing body of the Issuer has passed and approved an Ordinance authorizing the Issuer to issue its Industrial Revenue Bonds (Rock Chalk Park Stadium Project), Series 2013, in the principal amount of not to exceed \$40,000,000 (the “**Bonds**”), for the purpose of acquiring, constructing, installing and equipping a track and field stadium, softball stadium, soccer stadium and related improvements to be located on the Project Site (as hereinafter defined) [together with the Project Site, the “**Project**”, which is more fully described in the Application (as hereinafter defined)], and authorizing the Issuer to lease the Project to the Tenant pursuant to a Lease Agreement (the “**Lease Agreement**”) to be entered into by and between the Issuer, as lessor, and the Tenant, as lessee, at the time the Bonds are issued;

WHEREAS, pursuant to a Ground Lease dated February 12, 2013 between Tenant and the Subtenant (the “**Sublease**”), Tenant has leased the Project Site to Subtenant, and in accordance therewith the Subtenant will construct the Project, and pay all ad valorem taxation on the Project;

WHEREAS, the Issuer is authorized and empowered under the Act and K.S.A. 79-201a, as amended (the “**Abatement Statute**”) to exempt from ad valorem taxation all or any portion of the Project financed with the proceeds of the Bonds, subject to the limitations set forth in the Abatement Statute and this Agreement; and

WHEREAS, pursuant to the foregoing, the Issuer desires to enter into this Agreement with the Tenant and the Subtenant in consideration of the Subtenant’s desire to purchase, construct and equip the Project as more fully described in the hereinafter defined Application upon the terms and conditions hereinafter set forth and in the Lease Agreement and the Sublease;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the Issuer, Tenant and the Subtenant hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. The following words and terms as used herein shall have the following meanings:

“Abatement Statute” means K.S.A. 79-201a, as amended.

“Ad valorem taxes” or **“ad valorem taxation”** means all property taxes imposed on real or personal property (including fixtures) and eligible for exemption pursuant to the Abatement Statute.

“Agreement” means this Performance Agreement dated as of September 1, 2013, between the Issuer and the Tenant and the Subtenant, as from time to time amended and supplemented in accordance with the provisions hereof.

“Application” means the Application for Issuance of Industrial Revenue Bonds filed with the Issuer by the Subtenant in connection with the request for the issuance of the Bonds, a copy of which is attached hereto as **Exhibit A**.

“Bond Financed Portion of the Project” means that portion of the Project financed in whole from the proceeds of the Bonds as evidenced by the requisitions submitted by the Subtenant to the bond trustee in accordance with **Section 2.8** hereof.

“Bonds” means the Issuer’s Industrial Revenue Bonds (Rock Chalk Park Stadium Project), Series 2013, issued in the maximum aggregate principal amount of \$40,000,000.

“Court of Tax Appeals” means the State of Kansas Court of Tax Appeals.

“Event of Default” means any Event of Default as described in **Section 5.1** hereof.

“Exempt Period” means calendar years 2014 through 2023, inclusive.

“Exempt Property” means all Property that is exempt from taxation pursuant to K.S.A. 79-201(a) *Second* by reason that such property was constructed or purchased with the proceeds of the Bonds authorized by and in accordance with the Abatement Statute.

“Future Facility Additions” means any additions, improvements or renovations to or equipping of the Bond Financed Portion of the Project. As used herein, **“Future Facility Additions”** shall never include any future additions, improvements or renovations to or equipping of the Project that are exempt from ad valorem taxes.

“Issuer” means the City of Lawrence, Kansas.

“KAI” means Kansas Athletics, Inc., a Kansas non-profit corporation.

“Property” means all real and personal property subject to taxation pursuant to K.S.A. 79-101.

“Project” means acquiring, constructing, installing and equipping a track and field stadium, softball stadium, soccer stadium and related improvements to be located on the Project Site.

“Project Costs” means all costs and expenses of every nature paid after January 22, 2013, from proceeds of the Bonds and relating to the acquisition, construction, and equipping of the Project; provided, however, the Project Costs shall not include any of the foregoing items if such item was paid or incurred prior to January 22, 2013, with the following two exceptions: (i) costs and expenses relating to architectural and engineering services for the Project constitute Project Costs within the meaning of this definition regardless of the date such costs were paid to the extent such costs are properly capitalizable in accordance with generally accepted accounting principles, and (ii) costs and expenses necessary or

incidental to the acquisition by the Issuer of the Project Site constitute Project Costs within the meaning of this definition regardless of the date such costs were paid.

“**Project Site**” means all of the real property described in **Exhibit B** attached hereto and by this reference made a part hereof which is located at the northwest intersection of Rock Chalk Drive and George Williams Way east of K-10 in Lawrence, Kansas.

“**Sublease**” means that certain Ground Lease dated February 12, 2013 between Tenant and the Subtenant.

“**Sub-Sublease**” means that certain Amended and Restated Lease Agreement dated February 12, 2013 between Subtenant and KAI.

“**Subtenant**” means Bliss Sports, LC, a Kansas limited liability company.

“**Tax Payment**” means a payment-in-lieu of taxes in an amount equal to the amount set forth in **Section 2.12** hereof.

“**Tenant**” means RCP, LLC, a Kansas limited liability company and its successors and assigns.

“**Tenant’s Delegee**” means, during the term of the Sublease, the Subtenant (or, if so provided in the Sub-Sublease and permitted in the Sublease, at Subtenant’s option, KAI) and after any termination of the Sublease then a person or entity designated in a writing delivered to Issuer from time to time by Tenant.

ARTICLE II

EXEMPTION

Section 2.1. Exempt Property. During the Exempt Period, and so long as the Issuer owns title to the Project, the Issuer agrees to use its best efforts to cause the Bond Financed Portion of the Project to be Exempt Property.

Section 2.2. Term of Agreement. This Agreement shall become effective upon execution, and subject to earlier termination pursuant to the provisions of this Agreement (including particularly **Article V** hereof), shall terminate on December 1, 2023.

Section 2.3. No Abatement of Special Assessments. The Issuer and the Tenant and the Subtenant hereby agree that the Abatement Statute and any tax abatement with respect to the Project shall not apply to special assessments. The parties acknowledge that as between the Tenant and the Subtenant, Subtenant is obligated to make all of such payments pursuant to the terms of the Sublease.

Section 2.4. Obligation of City to Effect Tax Abatement. The Issuer agrees to use its best efforts to cause the Bond Financed Portion of the Project to be Exempt Property, and agrees to make all filings required by the Douglas County Board of County Commissioners or the Court of Tax Appeals; provided, however, the Issuer shall not be liable for any failure of the Court of Tax Appeals to effect the exemption permitted by the Abatement Statute. The Issuer covenants that it will not knowingly take any action that the Issuer has knowledge may cause the Bond Financed Portion of the Project to no longer be Exempt Property. In the event the Bond Financed Portion of the Project is determined to no longer be Exempt Property, the Issuer and Tenant shall, at the Subtenant’s request, cooperate with the Subtenant in all

reasonable ways to cause the Bond Financed Portion of the Project to be Exempt Property, including cooperating with the Subtenant in any related litigation. The Subtenant agrees to pay to the Issuer and the Tenant the costs that the Issuer and Tenant incur (including legal fees and expenses) in cooperating with the Subtenant in the manner required by this Section.

Section 2.5. Compliance. Beginning on the January 15th following the issuance of the Bonds and continuing on each January 15th thereafter until the Project is completed, and at any other time upon the request of the Issuer, the Subtenant shall provide the Issuer and Tenant with (i) copies of the requisitions submitted by the Subtenant to the bond trustee in accordance with the Lease Agreement for the preceding calendar year, (ii) a list containing a brief description and the amount of all costs of the Bond Financed Portion of the Project, and (iii) the total costs of the Project, all in such reasonable detail as the Issuer or Tenant shall request.

Section 2.6. Value of the Project Not Determined By Bonds. The Issuer, Tenant and the Subtenant acknowledge that it is not the intent of the parties that the principal amount of the Bonds be used for the purpose of determining the appraised value of the Project or any portion thereof for tax purposes.

Section 2.7. Classification; Limitation on Tenant's Right To Protest. If the Project Site is not currently classified as commercial, the Tenant and the Subtenant acknowledge that the county appraiser may reclassify the Project Site to commercial as a result of the issuance of the Bonds. During the term of this Agreement, the Tenant and the Subtenant agree that they will not, without the written consent of the Issuer, (i) seek to change the classification of all or any portion of the Project Site from commercial to another classification, or (ii) contest the reclassification of all or any portion of the Project Site to commercial.

Except as set forth in the preceding paragraph, nothing in this Agreement shall be construed to limit or in any way restrict the ability of the Tenant to utilize any provision of Kansas law to appeal, protest or otherwise contest any property tax valuation, assessment or similar action with respect to the Project Site or any portion thereof.

Section 2.8. No Abatement on Appraised Value of Future Facility Additions. In the event any Future Facility Additions are determined to be Exempt Property as a result of the issuance of the Bonds, this Agreement or for any other reason, so long as this Agreement remains in effect, the Tenant and the Subtenant hereby agree that 100% of the amount of such abated ad valorem taxes attributable to the Future Facility Additions shall be paid to the Issuer at the times when ad valorem taxes are due and payable for other real property located in Douglas County, Kansas. This provision shall not be construed as restricting the Tenant or Subtenant from applying to the Issuer or to any other governmental entity for any future tax abatement in connection with the Future Facility Additions.

Section 2.9. Tax Abatement Order. The Issuer and the Tenant and the Subtenant acknowledge that, prior to the Bond Financed Portion of the Project being determined to be Exempt Property, the Issuer must obtain on behalf of the Tenant and the Subtenant an order from the Court of Tax Appeals approving tax abatement on the Bond Financed Portion of the Project for the Exempt Period.

Section 2.10. Projected Construction Schedule. The Subtenant expects to commence and complete construction of the Project as in accordance with the schedule set forth on **Exhibit C**. Failure of the Subtenant to actually commence or complete construction of the Project in accordance with the schedule set forth on **Exhibit C** shall not constitute a breach or default under this Agreement.

Section 2.11. Determination of Appraised Value and Assessments. The Tenant and the Subtenant acknowledge that the county appraiser independently determines the appraised value of Property. The Tenant and the Subtenant further acknowledge that the Issuer does not have input in or in any way control the determination of the appraised value of Property or the assessment of Property, and that the Issuer cannot and is not attempting to bind the county appraiser or any other governmental authority with respect to a determination of the appraised value of the Bond Financed Portion of the Project.

Section 2.12 Agreement to Make Tax Payments. Subject to **Section 5.4** hereof, the Tenant covenants and agrees that, for each calendar year during the Exempt Period that the Bond Financed Portion of the Project is Exempt Property, Tenant shall make a payment in lieu of tax payment to the Issuer (or, if the Issuer shall direct, to the County Treasurer) in an amount equal to 100% of the ad valorem taxes that would otherwise be due with respect to the Project without the Project being treated as Exempt Property in the event that the Sub-Sublease has terminated.

ARTICLE III

COVENANTS OF THE COMPANY

Section 3.1. Inspection. Subject to the Issuer obtaining KAI's written consent, the Tenant and the Subtenant agree that the Issuer and its duly authorized agents shall have the right at reasonable times (during business hours), subject to at least 48 hours advance notice and to the Subtenant's usual business proprietary, safety and security requirements, to enter upon the Project Site to examine and inspect the Project and the records of the Subtenant which demonstrate compliance with this Agreement.

Section 3.2. Compliance with Laws. During the term of the Sublease, the Subtenant will cause the Project to comply in all material respects with all applicable building and zoning, health, environmental and safety ordinances and regulations and all other applicable laws, rules and regulations.

Section 3.3. Construction. The Subtenant will cause the Project to be constructed, equipped and operated in a manner that is consistent with the description of the Project herein; provided that as between Tenant and Subtenant the provisions of the Sublease shall supersede any inconsistent provisions of this Agreement. In the event the Project is constructed in a manner that the Issuer determines, in its reasonable discretion, is materially inconsistent with the description of the Project herein, the Issuer reserves the right to declare an Event of Default in accordance with **Section 5.1** hereof.

Section 3.4. Payment of Fees and Reimbursement or Payment of Costs.

(a) The Subtenant agrees to pay to the Issuer the standard fees charged by the Issuer in connection with tax abatement projects and the issuance of industrial revenue bonds. These fees are an initial application fee and an annual administrative fee, which is currently \$200 per year.

(b) The Subtenant (or if the Sublease has terminated, then, subject to **Section 5.4** hereof, Tenant) agrees to promptly reimburse the Issuer, upon receipt by the Subtenant (or if the Sublease has terminated, then Tenant) of an invoice from the Issuer, for any amounts that the Issuer pays to any other party as a result of the Issuer pursuing, obtaining or maintaining the tax abatement granted pursuant to this Agreement. These costs shall include, but shall not be limited to, all fees and expenses for filings with the Court of Tax Appeals (including the application fee and annual administration fee), legal notice publication expenses, and the costs and expenses of the Issuer's legal counsel.

ARTICLE IV

SALE AND ASSIGNMENT

The benefits granted by the Issuer to the Tenant and the Subtenant pursuant to this Agreement shall belong solely to the Tenant and the Subtenant and such benefits shall not be transferred (other than to an affiliate of the Tenant or Subtenant), assigned, pledged or in any other manner hypothecated without the express written consent of the Issuer; provided, nothing herein shall preclude the Tenant or Subtenant from assigning or pledging its interest in the Project so long as the Subtenant continues to occupy the Project and otherwise remains responsible for its undertakings herein.

Notwithstanding the foregoing, the Issuer has consented to the Sublease and the Sub-Sublease.

Notwithstanding the foregoing, as between the Tenant and the Subtenant, the right to assign or pledge their respective interests in the Project shall be governed by the Sublease.

ARTICLE V

DEFAULT AND REMEDIES

Section 5.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an “Event of Default” hereunder:

- (a) the Tenant or Subtenant shall fail to perform any of its obligations hereunder;
- (b) the Tenant or Subtenant shall breach any covenant contained herein or any representation of the Tenant or Subtenant contained herein shall prove to be materially false or erroneous; or
- (c) the Tenant shall be in default under the Lease Agreement.

Section 5.2. Remedies on Default. Upon the occurrence of an Event of Default hereunder, the Tenant and the Subtenant shall be given 60 days (or such longer period as the Issuer and the Tenant and the Subtenant may agree), following written notice by the Issuer to the Tenant and the Subtenant of the occurrence of such Event of Default, to cure such Event of Default. If such Event of Default is not cured within such time, this Agreement may be terminated by written notice to the Tenant and the Subtenant from the Issuer. Such termination shall be effective immediately following delivery of such written notice. Upon the termination of this Agreement, subject to **Section 5.4** hereof, a payment shall be made to the Issuer (or as the Issuer may otherwise direct) in an amount equal to the sum of (i) the pro rata amount of any taxes that would be due for the remaining portion of the current calendar year assuming the Bond Financed Portion of the Project were not Exempt Property, and (ii) the amount of any costs and attorneys’ fees incurred by the Issuer as a result of such Event of Default and in enforcing this Agreement. Subtenant acknowledges that as between the Tenant and the Subtenant, the obligation to make such payment shall be that of Subtenant pursuant to the terms of the Sublease.

Section 5.3. Payments on Defaulted Amounts. Any amounts due hereunder which are not paid when due shall bear interest at the interest rate imposed by Kansas law on overdue ad valorem taxes from the date such payment was first due. In addition, amounts payable hereunder in lieu of ad valorem

taxes that are not paid when due shall be subject to the same penalties imposed by Kansas law on overdue ad valorem taxes.

Section 5.4. Non-Recourse Nature of Tenant's Obligations. Notwithstanding anything to the contrary in this Performance Agreement or in any other document executed in connection with the Bonds, including without limitation the Indenture and the Lease, Tenant's obligations under the Performance Agreement and such documents shall not be personal obligations of Tenant and Issuer's and any other parties' sole remedies hereunder or under such other documents as the case may be upon a failure to perform or breach of any obligation by Tenant shall be to exercise their respective remedies under this Performance Agreement or such other documents as against Tenant's right, title and interest in the Project. Nothing herein shall be construed as preventing Subtenant or another Tenant's Delegee other than Tenant from agreeing to be personally liable for any or all of any of Tenant's obligations hereunder or under such other documents.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1. Notice and Waiver of Tenant. The Issuer reserves the right to grant tax abatement for projects that are located adjacent to or in the proximity of the Project or for projects that are located elsewhere within the Issuer but are similar to the Project in amounts that are above or below the amounts set forth herein.

Section 6.2. Severability. If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 6.3. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Kansas.

Section 6.4. Execution in Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 6.5. Waiver. The Issuer and the Tenant and the Subtenant acknowledge and agree that the amounts payable hereunder shall constitute payments due the Issuer under the Lease Agreement. The Tenant and the Subtenant shall not be entitled to any extension of payment of such amounts as a result of a filing by or against the Tenant or Subtenant in any bankruptcy court.

Section 6.6 Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given (i) three days after being mailed by registered or certified mail, postage prepaid, or (ii) one day after being sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

(a) To the Issuer:

City of Lawrence, Kansas, Kansas
City Hall
100 East Santa Fe
Lawrence, Kansas 66061
Attention: Clerk

(b) To the Tenant

RCP, LLC
c/o The Kansas University Endowment Association
1891 Constant Avenue
Lawrence, Kansas 66047-3743
Attention: Monte Soukup

With a copy to:

Lathrop & Gage LLP
10851 Mastin Blvd., Suite 1000
Overland Park, Kansas 66210
Attention: Harry Wigner

(c) To the Subtenant

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

With a copy to:

Polsinelli PC
6201 College Boulevard, Suite 500
Overland Park, Kansas 66211
Attention: Curt Petersen

The Issuer and the Tenant and the Subtenant may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent. Any notice may be given by the attorney for such party.

Section 6.7 Estoppel Certificate. The Issuer agrees that it will, from time to time, upon request by the Tenant or Subtenant, execute and deliver to the Tenant or Subtenant and to any parties designated by the Tenant or Subtenant, within ten (10) days following demand therefor, an estoppel certificate on the Tenant's or Subtenant's form, certifying (i) that this Agreement is unmodified and in full force and effect (or if there had been modifications, that the same are in full force and effect as so modified, (ii) that there are no defaults hereunder (or specifying any claimed defaults), and (iii) such other matters as may be reasonably requested by the Tenant or Subtenant.

Section 6.8 Further Assurances. The parties each agree to do, execute, acknowledge and deliver any and all other documents and instruments and to take all such further action as shall be reasonably necessary or reasonably required in order to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.

Section 6.9 Authority, etc. Each party to this Agreement represents and warrants to each other party as follows: (i) that such party has the requisite power and authority to enter into and perform this Agreement; (ii) that this Agreement has been duly authorized by all necessary action on the part of such party; (iii) that the execution and deliver and performance by each party of this Agreement will not conflict with or result in a violation of such party's organizational documents or any judgment, order or decree of any court or arbiter to which such party is bound; and (iv) that this Agreement constitutes the valid and binding obligation of such party, and is enforceable against such party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, creditor's rights and other similar laws.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

CITY OF LAWRENCE, KANSAS

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
Clerk

RCP, LLC, a Kansas limited liability company

By: The Kansas University Endowment
Association, its sole member

By: _____
Dale Seufferling, President

BLISS SPORTS, LC, a Kansas limited liability
company

By: _____
Thomas S. Fritzel, Manager

and

By: _____
Dru Stewart Fritzel, Member

EXHIBIT A

APPLICATION FOR THE ISSUANCE OF INDUSTRIAL REVENUE BONDS

EXHIBIT B

PROJECT SITE

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

EXHIBIT C

ESTIMATED CONSTRUCTION SCHEDULE

| <u>Event</u> | <u>Projected Date</u> |
|--|----------------------------------|
| Substantial Completion of Construction | April 30, 2014 |
| Final Completion | May 31, 2014 |