
CITY OF LAWRENCE, KANSAS,
As lessor,

AND

RCP, LLC,
As lessee

AND

BLISS SPORTS, LC
As subtenant

AND

KANSAS ATHLETICS, INC.
As sub-subtenant

LEASE AGREEMENT

Dated as of October 1, 2013

Relating to:

\$40,000,000
(Aggregate Maximum Principal Amount)
City of Lawrence, Kansas
Industrial Revenue Bonds
(Rock Chalk Park Stadium Project)
Series 2013

The interest of the City of Lawrence, Kansas (the “Issuer”), in this Lease Agreement has been pledged and assigned to BOKE, N.A., as Trustee under the Trust Indenture dated as of October 1, 2013, between the Issuer and the Trustee.

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of October 1, 2013 (the **“Lease”**), between the **CITY OF LAWRENCE, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the **“Issuer”**), as lessor, **RCP, LLC**, a Kansas limited liability company (the **“Tenant”**), as lessee, and **BLISS SPORTS, LC**, a Kansas limited liability company (the **“Subtenant”**) and **KANSAS ATHLETICS, INC.**, a Kansas non-profit corporation (**“KAP”**);

WITNESSETH:

WHEREAS, the Issuer is authorized under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the **“Act”**), to purchase, acquire, construct, improve, equip, remodel, sell and lease certain facilities within its jurisdiction for commercial purposes, and to issue revenue bonds for the purpose of paying the cost of such facilities, and to pledge the income and revenues to be derived from the operation of such facilities to secure the payment of the principal of and interest on such bonds;

WHEREAS, pursuant to the Act, the governing body of the Issuer has heretofore passed Ordinance No. _____ (the **“Ordinance”**) on October __, 2013, authorizing the Issuer to issue its Industrial Revenue Bonds (Rock Chalk Park Stadium Project), Series 2013, in the maximum principal amount of \$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 at the northwest intersection of Rock Chalk Drive and George Williams Way east of K-10 in Lawrence, Kansas including land, buildings, structures, improvements, fixtures, machinery and equipment as hereinafter more fully described (the **“Project”**), and authorizing the Issuer to lease the Project to the Tenant;

WHEREAS, pursuant to the Ordinance, the Issuer is authorized to enter into a Trust Indenture of even date herewith (the **“Indenture”**), with BOKF, N.A. (the **“Trustee”**), for the purpose of issuing and securing the Bonds, as therein provided, and to enter into this Lease with the Tenant under which the Issuer will acquire, purchase, construct, improve, equip and remodel the Project and will lease the Project to the Tenant in consideration of rental payments by the Tenant which will be sufficient to pay the principal of and interest on the Bonds;

WHEREAS, pursuant to the foregoing, the Issuer desires to lease the Project to the Tenant and the Tenant desires to lease the Project from the Issuer, for the rentals and upon the terms and conditions hereinafter set forth;

WHEREAS, pursuant to the Sublease, herein consented to by the Issuer, the Tenant has leased the Project Site to the Subtenant, and subject to the terms and conditions of the Sublease the Subtenant will construct the Project thereon and, during the term of the Sublease, will perform, or cause third parties to perform at no cost to Tenant, the obligations of Tenant hereunder;

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

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease and the words and terms defined in **Section 101** of the Indenture which definitions are hereby incorporated herein by reference, and terms defined, the following words and terms as used in this Lease shall have the following meanings:

“Additional Rent” means the additional rental described in **Sections 5.2** and **6.2** of this Lease and, in addition, all payments required to be made to the Douglas County Treasurer in lieu of general ad valorem and personal property taxes pursuant to the Performance Agreement.

“Amended and Restated Lease” means the Amended and Restated Lease Agreement dated February 12, 2013 between Subtenant and KAI with respect to the Project.

“Basic Rent” means the rental described in **Section 5.1** of this Lease.

“Event of Default” means any Event of Default as described in **Section 12.1** of this Lease.

“Facility Agreements” means, collectively, the Amended and Restated Lease, the Amended and Restated Development Agreement dated February 12, 2013 between Subtenant and KAI and the Amended and Restated Operating Agreement dated February 12, 2013 between Subtenant and KAI, as the same may be amended, supplemented and amended and restated.

“Full Insurable Value” means an amount at least sufficient to avoid the effect of any coinsurance provisions of the applicable fire and casualty insurance policy.

“Indenture” means the Trust Indenture dated as of October 1, 2013, between the Issuer and the Trustee, as from time to time amended and supplemented in accordance with the provisions thereof.

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

“Lease” means this Lease Agreement, between the Issuer and the Tenant and the Subtenant, as from time to time amended and supplemented in accordance with the provisions of **Article XIV** of this Lease and **Article XII** of the Indenture.

“Leasehold Mortgage” means any Leasehold Mortgage, Assignment of Rents and Leases and Security Agreement, relating to the Project and permitted under the Sublease and any other leasehold mortgage permitted pursuant to the provisions of **Section 10.4(b)** hereof and permitted under the Sublease.

“Lease Term” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2(a)** of this Lease, or pursuant to **Section 3.2(b)** of this Lease if the initial term of this Lease is extended as provided therein.

“Mortgage” means the Leasehold Mortgage and any other mortgage granted by the Tenant or the Tenant’s Delegee with Tenant’s prior written consent, to secure a loan to Tenant or Tenant’s

Deegee, which mortgage constitutes a lien on a portion or all of the Tenant's or Tenant's Deeegee's interests, as the case may be, in the Project; provided, however, the total indebtedness secured by all mortgages shall not exceed the maximum principal amount of the Bonds. Tenant hereby consents to Subtenant's prior grant of a Leasehold Mortgage to Permitted Lender in conjunction with Permitted Lender's loan to Subtenant for construction of the Project.

"Net Proceeds" means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the Issuer and the Trustee) incurred in the collection of such gross proceeds.

"Permitted Encumbrances" means, as of any particular time (a) liens for ad valorem taxes and special assessments not then delinquent, (b) the Indenture, (c) this Lease, (d) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances permitted by the Sublease or otherwise in writing by Tenant that will not materially interfere with or impair the operations permitted to be conducted by the Sublease or otherwise in writing by Tenant on the Project Site or easements granted to the Issuer, (e) such minor defects, irregularities, encumbrances, easements, mechanic's liens, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the Issuer, (f) the Mortgage, and (g) any other lien, encumbrance, lease, easements, restrictions or covenants consented to by the Tenant (in the Sublease or otherwise in writing) and by the then Owner of 100% of the principal amount of the Bonds.

"Plans and Specifications" means the plans and specifications prepared for and showing the Project, as amended by the Tenant from time to time prior to the Completion Date, the same being duly certified by the Tenant, and on file at the principal office of the Tenant and which Tenant shall cause to be available for reasonable inspection by the Issuer, the Trustee and their duly appointed representatives.

"Project Equipment" means all items of machinery, equipment and parts or other personal property installed or acquired or to be acquired for installation in the Project Improvements or elsewhere on the Project Site pursuant to **Article IV** hereof and paid for in whole or in part from the proceeds of Bonds, as described in **Exhibit C** attached hereto and by this reference made a part hereof, and all replacements thereof and substitutions therefor made pursuant to this Lease.

"Project Improvements" means all buildings, structures, improvements and fixtures located on or to be acquired, purchased, constructed, improved or remodeled on the Project Site pursuant to **Article IV** hereof, as described in **Exhibit B** attached hereto and by this reference made a part hereof, and all additions, alterations, modifications and improvements thereof made pursuant to this Lease.

"Project Site" means all of the real estate described in **Exhibit A** attached hereto and by this reference made a part hereof.

"Sublease" means the Ground Lease dated February 12, 2013 between Tenant and Subtenant.

"Subtenant" means Bliss Sports, LC, a Kansas limited liability company.

“Tenant’s Delegee” means, during the term of the Sublease, the Subtenant (or, if so provided in the Amended and Restated Lease 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.

“Trustee” means BOKF, N.A., a state banking corporation duly organized and existing under the laws of the Kansas, and its successor or successors and any other corporation which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

Section 1.2. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including governmental entities, as well as natural persons.

(c) Subject to **Section 12.4**, wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the Issuer. The Issuer makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Issuer is a municipal corporation duly organized and validly existing under the laws of the State of Kansas. Under the provisions of the Act, the Issuer has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the Issuer has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(b) The Issuer proposes to acquire the Project Site, subject to Permitted Encumbrances, and proposes to acquire, purchase, construct, improve, equip and remodel or cause to be acquired,

purchased, constructed, improved, equipped and remodeled on the Project Site the Project Improvements, and proposes to acquire and install, or cause to be acquired and installed, the Project Equipment in the Project Improvements or on the Project Site. The Issuer proposes to lease the Project to the Tenant and sell the Project to the Tenant if the Tenant exercises its option to purchase the Project, all for the purpose of furthering the public purposes of the Act, and the governing body of the Issuer has found and determined that the acquisition, purchase, construction, improving, equipping and remodeling of the Project will further the public purposes of the Act.

(c) To finance the costs of the Project, the Issuer proposes to issue the Bonds which will be scheduled to mature as set forth in **Article II** of the Indenture and will be subject to redemption prior to maturity in accordance with the provisions of **Article III** of the Indenture.

(d) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project and the net earnings therefrom, including all rents, revenues and receipts to be derived by the Issuer from the leasing or sale of the Project, will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Bonds.

(e) The Issuer will not mortgage the Project or pledge the revenues derived therefrom for any bonds or other obligations other than the Bonds except with the written consent of the Authorized Tenant Representative.

(f) The Issuer shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof.

(g) The acquisition, purchase, construction, improvement, equipping and remodeling of the Project and the leasing of the Project by the Issuer to the Tenant will further the public purposes of the Act.

(h) No member of the governing body of the Issuer or any other officer of the Issuer has any significant or conflicting interest, financial, employment or otherwise, in the Tenant or in the transactions contemplated hereby.

(i) Issuer hereby consents to Tenant subleasing the Project to the Subtenant under the Sublease and to the sub-subleasing of the Project by Subtenant to KAI under the Amended and Restated Lease.

Section 2.2. Representations by the Tenant. The Tenant makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Tenant is a duly organized and validly existing limited liability company organized under the laws of the State of Kansas and duly qualified to do business in the State of Kansas.

(b) The Tenant has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its members, the Tenant has been duly authorized to execute and deliver this Lease.

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Tenant will not conflict with or result in a material breach of any of the terms,

conditions or provisions of, or constitute a material default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Tenant is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the Tenant or any of its property of any court or governmental body, or constitute a material default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Tenant under the terms of any instrument or agreement to which the Tenant is a party.

(d) Subject to **Section 12.4**, the Tenant shall cause the Tenant's Delegee to cause the Project to comply with all presently applicable building and zoning, health, environmental and safety ordinances and laws, and to the best of Tenant's actual knowledge, without independent investigation, the Project will comply with all other applicable laws, rules and regulations.

(e) The Project is located wholly within the corporate limits of the City of Lawrence, Kansas, Kansas.

Section 2.3. Representations by the Subtenant. The Subtenant makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Subtenant is a duly organized and validly existing limited liability company organized under the laws of the State of Kansas and duly qualified to do business in the State of Kansas.

(b) The Subtenant has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its members, the Subtenant has been duly authorized to execute and deliver this Lease.

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Subtenant will not conflict with or result in a material breach of any of the terms, conditions or provisions of, or constitute a material default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Subtenant is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the Subtenant or any of its property of any court or governmental body, or constitute a material default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Subtenant under the terms of any instrument or agreement to which the Subtenant is a party.

(d) During the term of the Sublease the Subtenant shall cause the Project to comply with all presently applicable building and zoning, health, environmental and safety ordinances and laws, and to the best of Subtenant's actual knowledge, without independent investigation, the Project will comply with all other applicable laws, rules and regulations.

(e) The Project is located wholly within the corporate limits of the City of Lawrence, Kansas, Kansas.

Section 2.4. Representations by KAI. KAI makes the following representations as the basis for the undertakings on its part herein contained:

(a) KAI is a duly organized and validly existing non-profit corporation organized under the laws of the State of Kansas and duly qualified to do business in the State of Kansas.

(b) KAI has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its members, KAI has been duly authorized to execute and deliver this Lease.

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by KAI will not conflict with or result in a material breach of any of the terms, conditions or provisions of, or constitute a material default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which KAI is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to KAI or any of its property of any court or governmental body, or constitute a material default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of KAI under the terms of any instrument or agreement to which KAI is a party.

(d) During the term of the Amended and Restated Lease, KAI shall cause the Project to comply with all presently applicable building and zoning, health, environmental and safety ordinances and laws, and to the best of KAI's actual knowledge, without independent investigation, the Project will comply with all other applicable laws, rules and regulations.

(e) The Project is located wholly within the corporate limits of the City of Lawrence, Kansas, Kansas.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The Issuer hereby rents, leases and lets the Project to the Tenant, subject to Permitted Encumbrances, and the Tenant hereby rents, leases and hires the Project from the Issuer, subject to Permitted Encumbrances, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term. This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have an initial term commencing as of the date of this Lease and terminating on December 1, 2023.

Section 3.3. Possession and Use of the Project.

(a) The Issuer covenants and agrees that as long as neither the Issuer nor the Trustee has exercised any of the remedies set forth in **Section 12.2(c)** following the occurrence and continuance of an Event of Default, the Tenant shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the Issuer's and the Trustee's right of access pursuant to **Section 10.3** hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The Issuer covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII** of this Lease, to prevent the Tenant from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the

request and expense of the Tenant, cooperate with the Tenant in order that the Tenant may have quiet and peaceable possession and enjoyment of the Project and will defend the Tenant's enjoyment and possession thereof against all parties.

(b) Subject to the provisions of this Section, the Tenant shall have the right to use the Project for any lawful purpose allowed by law and contemplated by the Act, including without limitation by entering into the Sublease and permitting Subtenant to enter into and grant KAI rights in the Project under the Amended and Restated Lease.

(c) Subject to **Section 12.4**, the Tenant shall cause the Tenant's Delegee to comply with, and during the term of the Sublease Subtenant agrees to comply with, all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. Subject to **Section 12.4**, the Tenant shall also cause the Tenant's Delegee to comply with, and during the term of the Sublease Subtenant agrees to comply with, the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof.

(d) Subject to **Section 12.4** hereof, the Tenant shall pay, and during the term of the Sublease Subtenant agrees to pay, all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Tenant to comply with the provisions of this Section.

(e) Notwithstanding any provision contained in this Section, however, the Tenant and, to the extent permitted by Tenant in the Sublease or otherwise in writing, Tenant's Delegee shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Tenant may refrain from complying therewith.

ARTICLE IV

PURCHASE, CONSTRUCTION, RENOVATION, INSTALLATION AND EQUIPPING OF THE PROJECT

Section 4.1. Issuance of the Bonds.

(a) In order to provide funds for the payment of the Project Costs, the Issuer agrees that it will issue, sell and cause to be delivered to the purchaser thereof the Bonds in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for the account of the Issuer. The Trustee shall promptly deposit such proceeds, when received, as provided in the Indenture, to be used and applied as hereinafter provided in this Article and in the Indenture.

(b) The Issuer may authorize the issuance of Additional Bonds from time to time upon the terms and conditions provided in **Section 209** of the Indenture for the purposes described therein.

(c) If the Tenant is not in default hereunder, the Issuer will, at the request of the Tenant (or, if so requested in writing by Tenant, the Tenant's Delegee), from time to time, use its best efforts to issue the amount of Additional Bonds specified by the Tenant (or, if so requested in writing by Tenant, the Tenant's Delegee); provided that the terms of such Additional Bonds, the purchase price to be paid therefor and the manner in which the proceeds therefrom are to be disbursed shall have been approved in writing by the Tenant and, if requested by Tenant, then also by Tenant's Delegee; provided further that the Tenant and the Issuer shall have entered into an amendment to this Lease to provide for rent in an amount at least sufficient to pay principal and interest on the Additional Bonds when due and the Issuer shall have otherwise complied with the provisions of the Indenture with respect to the issuance of such Additional Bonds.

Section 4.2. Purchase, Construction, Renovation, Installation and Equipping of the Project. The Issuer and the Tenant agree that the Issuer will and, subject to the provisions of **Section 12.4** the Tenant as the agent of the Issuer shall, but solely from the Project Fund except as otherwise provided herein, acquire, purchase, construct, improve, equip and remodel the Project as follows:

(a) Concurrently with the execution of this Lease, the Issuer will acquire the Project Site and any Project Improvements and Project Equipment located on the Project Site and which the Tenant desires to convey to the Issuer. Concurrently with the execution of this Lease (1) a deed and any other necessary instruments of transfer will be delivered to the Issuer, (2) said deed will be placed of record, and (3) the title insurance policies required by **Article VII** hereof or commitments to issue such policies will be delivered to the Trustee.

(b) Subject to **Section 12.4**, the Tenant will, on behalf of the Issuer, cause the Tenant's Delegee to, and during the term of the Sublease the Subtenant agrees that as Tenant's Delegee it shall, acquire, purchase, construct, improve and remodel the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Tenant may, but is not obligated to, and, to the extent permitted by Tenant in the Sublease or otherwise in writing, will permit Tenant's Delegee to make minor changes in and to the Construction Contracts and the Plans and Specifications incorporated therein without the consent of the Issuer. The Tenant shall notify the Issuer in writing of major changes in and to the Construction Contracts and the Plans and Specifications which are approved by Tenant. Major changes shall be any change that has an estimated cost (increase or decrease) of \$250,000.

(c) Subject to **Section 12.4**, the Tenant will, on behalf of the Issuer, cause the Tenant's Delegee to, and during the term of the Sublease the Subtenant agrees that as Tenant's Delegee it shall, purchase and install the Project Equipment in the Project Improvements or on the Project Site in accordance with the Plans and Specifications. The Issuer and the Tenant recognize that the Project Equipment is subject to change during the Construction Period and thereafter pursuant to the provisions of this Lease, and agree that the definitive list of the Project Equipment shall be the list maintained by the Trustee pursuant to **Section 10.8** of this Lease.

(d) Subject to **Section 12.4**, the Tenant agrees that it will use its best efforts to cause the Tenant's Delegee to cause the acquisition, purchase, construction, improvement, equipping and remodeling of the Project to be completed as soon as practicable with all reasonable dispatch. In the event such acquisition, purchase, construction, improvement, and equipping and remodeling commences prior to the receipt of proceeds from the sale of the Bonds, subject to **Section 12.4** the Tenant agrees to cause the Tenant's Delegee to advance all funds necessary for such purpose. The Tenant's Delegee may seek reimbursement for all such funds it has so advanced.

Section 4.3. Project Costs. The term Project Costs shall have the meaning set forth in the Indenture.

The Issuer hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a certificate pursuant to **Section 4.4** hereof.

Section 4.4. Payment for Project Costs. All Project Costs as specified in **Section 4.3** hereof shall be paid by the Trustee from the Project Fund as more fully provided in the Indenture. The Issuer hereby authorizes and directs the Trustee to make disbursements from the Project Fund, upon receipt by the Trustee of certificates in substantially the form attached hereto as **Exhibit D**, signed by an Authorized Subtenant Representative or, if the Sublease has expired or otherwise terminated and Tenant has designated another Tenant's Delegee besides Subtenant to complete the Project, such other Tenant's Delegee, and approved in writing by an Authorized Tenant Representative and the Permitted Lender:

(a) requesting payment of a specified amount of such funds and directing to whom such amount shall be paid (whose name and address shall be stated);

(b) describing in reasonable detail each item of Project Costs for which payment is being requested;

(c) stating that each item for which payment is requested is or was necessary and appropriate in connection with the purchase, acquisition, construction, improvement, equipping or remodeling of the Project, has been properly incurred and is a proper charge against the Project Fund, that the amount requested either has been paid, or is justly due, and has not been the basis of any previous requisition from the Project Fund; and

(d) stating that, except for the amounts, if any, stated in said certificate, to the best of their knowledge there are no outstanding statements which are then due and payable for labor, wages, materials, supplies or services in connection with the purchase, acquisition, construction, improving, equipping or remodeling of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or other similar lien upon the Project or any part thereof, or setting out (i) all disputed statements and the reason for such disputes, and (ii) all statements in process but not yet presented to the Trustee for payment.

The Trustee may rely conclusively on any such certificate and shall not be required to make any independent investigation in connection therewith.

Section 4.5. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee by a certificate signed by the Authorized Subtenant Representative or, if the Sublease has expired or otherwise terminated and Tenant has designated another Tenant's Delegee besides Subtenant to complete the Project, such other Tenant's Delegee, stating (a) that the acquisition, purchase, construction, improvement, equipping and remodeling of the Project has been completed in accordance with the Plans and Specifications, (b) that all costs and expenses incurred in the acquisition, purchase, construction, improvement, equipping and remodeling of the Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Tenant or the respective Tenant's Delegee, and (c) amounts to be

retained by Trustee with respect to item (b) above. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The Tenant, the Subtenant and the Issuer agree to cooperate in causing such certificate to be furnished to the Trustee.

Section 4.6. Surplus or Deficiency in Project Fund.

(a) Upon receipt of the certificate described in **Section 4.5** hereof, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Subtenant or, if the Sublease has expired or otherwise terminated by then, as directed by the Authorized Tenant Representative, solely to (1) the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (2) at the option of the Subtenant, or, if the Sublease has expired or otherwise terminated by then, another Tenant's Delegee designated in writing by Tenant (the holder of such option being the "Option Holder") to the purchase of Bonds, to the extent practical, pursuant to the appropriate written instructions of the Option Holder, at such earlier date or dates as the Option Holder may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

(b) If the Project Fund shall be insufficient to pay fully all Project Costs and to complete the Project lien free, subject to **Section 12.4**, the Tenant shall cause the Tenant's Delegee to, and as to all Project Costs incurred or accrued during the term of the Sublease the Subtenant agrees that Subtenant shall, pay in cash, the full amount of any such deficiency by making payments thereof directly to the contractors and to the suppliers of materials and services as the same shall become due, and, subject to **Section 12.4**, the Tenant shall cause the Tenant's Delegee to, and as to all Project Costs incurred or accrued during the term of the Sublease the Subtenant agrees that Subtenant shall, save the Issuer and the Trustee whole and harmless from any obligation to pay such deficiency.

Section 4.7. Project Property of the Issuer. The Project Site and all Project Improvements located thereon at the execution hereof and which the Tenant desires to convey to the Issuer, all work and materials on the Project Improvements as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, including Project Equipment, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Tenant or Tenant's Delegee under the provisions of this Lease, including without limitation any of such items done by a Tenant's Delegee, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the Issuer, subject only to Permitted Encumbrances and this Lease.

Section 4.8. Machinery and Equipment Purchased by the Tenant or Subtenant. Any item of machinery or equipment the entire purchase price of which is paid for by the Tenant or Tenant's Delegee with the Tenant's own funds or by the Subtenant with the Subtenant's own funds or by KAI with KAI's own funds, and no part of the purchase price of which is paid for from funds deposited pursuant to the terms of this Lease in the Project Fund, shall be the property of the Tenant, the Subtenant or KAI, as applicable, subject, however, as to any such property of the Subtenant, the terms of the Sublease, and, as to any such property of KAI, the terms of the Amended and Restated Lease.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. Subject to **Section 12.4**, the Tenant covenants and agrees to cause Tenant's Delegee to, and as to any Basic Rent which accrues during the term of the Sublease the Subtenant agrees to, pay the Trustee in same day funds for the account of the Issuer during this Lease Term, for deposit in the Bond Fund on or before 11:00 A.M., Trustee's local time, on May 1st of each year commencing May 1, 2015, the amount of principal of and the interest on the Bonds then due in accordance with the provisions of the Indenture, as Basic Rent for the Project, in an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal on the Bonds and the interest thereon on such payment date, shall be equal to the amount payable on such payment date as principal of the Bonds and the interest thereon as provided in the Indenture. All payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture. Subject to the other provisions of this Lease and the Indenture, at any time that the Subtenant or, if the Sublease has expired or sooner terminated by then, Tenant or another Tenant's Delegee, is the sole Bondowner or, by the terms of an assignment thereof by the Bondowner in an intercreditor agreement or otherwise has express written authority to do so, the Tenant or Tenant's Delegee may, at its option, make payments of Basic Rent by causing a portion of the principal amount of the Bonds equal to such principal payment thereon to be tendered to the Trustee for cancellation.

Section 5.2. Additional Rent. Subject to **Section 12.4**, the Tenant shall cause to be paid by the Tenant's Delegee, and Subtenant agrees that as to any Additional Rent which accrues during the term of the Sublease Subtenant shall pay, as Additional Rent the following amounts:

(a) all reasonable fees, charges and expenses, including, without limitation, agent and counsel fees and expenses, of the Trustee and the Paying Agent incurred under the Indenture, the Lease or any other document entered into in connection with the Bonds, as and when the same become due;

(b) all costs incident to the payment of the principal of and interest on the Bonds as the same becomes due and payable, including all costs and expenses in connection with the call, redemption and payment of all Outstanding Bonds;

(c) all fees, costs, charges and expenses reasonably incurred in connection with the enforcement of any rights against the Tenant or the Project under this Lease or the Indenture by the Issuer, the Trustee or the Bondowners, except for such expenses as may be incurred solely as a result of the negligence or wrongful misconduct of the Issuer, the Trustee or both;

(d) an amount sufficient to reimburse the Issuer for all expenses reasonably incurred by the Issuer hereunder and in connection with the performance of its obligations under this Lease, the Indenture or the Performance Agreement;

(e) all amounts payable under the Performance Agreement;

(f) all annual fees of the Issuer or the Kansas Court of Tax Appeals; and

(g) all other payments of whatever nature which the Tenant has agreed to pay or assume under the provisions of this Lease, the Indenture or any other document entered into in connection with the Bonds.

Section 5.3. Obligations of Tenant Absolute and Unconditional.

(a) Subject to **Section 12.4**, the obligations of the Tenant under this Lease to cause payments of Basic Rent and Additional Rent to be made on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project shall have been started or completed, or whether the Issuer's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Tenant's use thereof, the eviction or constructive eviction of the Tenant, any change in the tax or other laws of the United States of America, the State of Kansas or any political subdivision thereof, any change in the Issuer's legal organization or status, or any default of the Issuer hereunder, and regardless of the invalidity of any action of the Issuer, and regardless of the invalidity of any portion of this Lease.

(b) Nothing in this Lease shall be construed to release the Issuer from the performance of any agreement on its part herein contained or as a waiver by the Tenant of any rights or claims the Tenant may have against the Issuer under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the Issuer separately, it being the intent of this Lease that subject to **Section 12.4** the Tenant shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Bondowners. The Tenant or at Tenant's option a designated Tenant's Delegee may, however, at its own cost and expense and in its own name or in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving third persons which the Tenant deems reasonably necessary or appropriate in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the Issuer hereby agrees to cooperate fully with the Tenant or such designated Tenant's Delegee and to take all action necessary or appropriate to effect the substitution of the Tenant or such designated Tenant's Delegee for the Issuer in any such action or proceeding if the Tenant or such designated Tenant's Delegee shall so request.

Section 5.4. Prepayment of Basic Rent. The Tenant or Tenant's Delegee may at any time prepay all or any part of the Basic Rent provided for hereunder. During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then remaining unpaid, the Tenant shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

Section 5.5. Redemption of Bonds. The Issuer and the Trustee, at the written direction of the Tenant or at Tenant's option a designated Tenant's Delegee, at any time the aggregate moneys in the Bond Fund are sufficient for such purposes, shall (a) if the same are then redeemable under the provision of **Article III** of the Indenture, take all steps that may be necessary under the applicable redemption provisions of the Indenture to effect the redemption of all or such part of the then

Outstanding Bonds as may be specified by the Tenant or such designated Tenant's Delegee, on such redemption date as may be specified by the Tenant or such designated Tenant's Delegee or (b) cause such moneys in the Bond Fund or such part thereof as the Tenant or such designated Tenant's Delegee shall direct, to be applied by the Trustee, to the extent practical, pursuant to the appropriate written instructions of the Tenant or such designated Tenant's Delegee, for the purchase of Bonds in the open market for the purpose of cancellation at prices not exceeding the principal amount thereof, or (c) a combination of (a) and (b) as provided in such direction.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Maintenance and Repairs. Subject to **Section 12.4**, throughout the Lease Term the Tenant shall cause the Tenant's Delegee to, and Subtenant agrees that during the term of the Sublease that Subtenant shall, at no expense to the Issuer or Trustee, keep the Project in as reasonably safe condition as the operation thereof will permit, and keep the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

(a) Subject to **Section 12.4**, the Tenant shall cause the Tenant's Delegee to, and Subtenant agrees that during the term of the Sublease that Subtenant shall, pay and discharge promptly, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against the Project, or any part thereof or interest therein (including the leasehold estate of the Tenant therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Tenant or Tenant's Delegee, or the income therefrom or Basic Rent and other amounts payable under this Lease, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would materially impair the security of the Bonds or materially encumber the Issuer's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, subject to **Section 12.4**, the Tenant or Tenant's Delegee as the case may be shall be obligated to cause to be paid only such installments thereof as become due and payable during the Lease Term.

(b) The Tenant, or at Tenant's option a designated Tenant's Delegee, shall have the right, in its own name or in the Issuer's name, to contest the validity or amount of any tax, assessment or other governmental charge which the Tenant or such Tenant's Delegee is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Tenant or such Tenant's Delegee as the case may be, before instituting any such contest, gives the Issuer and the Trustee written notice of its intention so to do, (2) the Tenant or such Tenant's Delegee as the case may be diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the Tenant or such Tenant's Delegee as the case may be promptly pays any final

judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The Issuer agrees to cooperate fully with the Tenant or such Tenant's Delegee as the case may be in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. Subject to **Section 12.4**, the Tenant shall cause a Tenant's Delegee to, and Subtenant agrees that during the term of the Sublease Subtenant shall, hold the Issuer and the Trustee whole and harmless from any costs and expenses the Issuer may incur related to any of the above.

Section 6.3. Utilities. Subject to **Section 12.4** Tenant shall cause the Tenant's Delegee which uses utilities and utility services on the Project to pay for all utilities and utility services so used in, on or about the Project. All such utilities and utility services shall be contracted for by the Tenant's Delegee in the Tenant's Delegee's own name, and subject to **Section 12.4** the Tenant shall cause the Tenant's Delegee, at its sole cost and expense, to procure any and all permits, licenses or authorizations necessary in connection therewith. Subtenant agrees to pay or cause to be paid at no cost to Tenant all such obligations of Tenant or Tenant's Delegee under this **Section 6.3** which accrue or are incurred during the term of the Sublease.

Section 6.4. Ad Valorem Taxes. The Issuer and the Tenant acknowledge that under the existing provisions of K.S.A. 79-201a, as amended, the property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with the proceeds of the Bonds is entitled to exemption from general ad valorem and property taxes (other than special assessments levied on account of special benefits) on real and personal property, other than inventory for a period of ten (10) calendar years after the calendar year in which the Bonds are issued, provided proper application is made therefor. The Issuer covenants that it will not voluntarily take any action which may be reasonably construed as tending to cause or induce the levy or assessment of such ad valorem or property taxes on the Project so long as any of the Bonds are Outstanding and unpaid or for said ten (10) year period, whichever shall be the shorter time, and at the Tenant's, or at Tenant's option a designated Tenant's Delegee's, request, fully cooperate with the Tenant or such designated Tenant's Delegee in all reasonable ways to prevent any such levy or assessment. The Issuer shall timely file the Application for Exemption to effect the property tax abatement described in K.S.A. 79-201a and the Tenant agrees to fully cooperate with the Issuer in connection with such Application for Exemption. Subject to **Section 12.4**, the Tenant agrees to cause a Tenant's Delegee to pay or to cause to be paid, and during the term of the Sublease Subtenant shall pay or cause to be paid, any such levies or assessments that are lawful on the Project.

Section 6.5. Kansas Retailers' Sales Tax.

(a) The parties have entered into this Lease Agreement in contemplation that, under the existing provisions of K.S.A. 79-3606(d) and other applicable laws, sales of tangible personal property or services purchased in connection with acquisition, purchase, construction, improving, equipping or remodeling of the Project are entitled to exemption from the tax imposed by the Kansas Retailers' Sales Tax Act. The parties agree that the Issuer shall, upon the request of and with the Tenant's and Subtenant's assistance, promptly obtain from the State and furnish to the contractors and suppliers an exemption certificate for the acquisition, purchase, construction, improving, equipping or remodeling of the Project. Each of the Tenant and Subtenant severally (and not jointly) covenants that said exemption shall be used by them respectively only in connection with the purchase of tangible personal property or services becoming a part of the Project. Subject to **Section 12.4** Tenant agrees to prevent a Tenant's Delegee other than Subtenant and Subtenant's contractors from using said exemption except in connection with the purchase of tangible personal property or services becoming a part of the Project.

(b) The parties further acknowledge that, under the existing provisions of K.S.A. 79-3603(h), a tax may be levied at the currently lawful rate upon the gross receipts derived by the Issuer from the renting or leasing of personal property, if any, purchased from the proceeds of the Bonds. Subject to **Section 12.4** the Tenant agrees to cause a Tenant's Delegee to, and during the term of the Sublease Subtenant agrees it shall, pay, as Additional Rent hereunder, the full amount of any such tax as hereinafter determined. Such payments, if required, shall be made at the same time as the installments of Rent provided for hereby, and shall be made directly to the Issuer, or in such other manner as the Issuer may from time to time direct in writing. It shall be the duty of the Issuer to promptly file any returns and remit any such taxes to the State, or to make suitable provision therefor, in accordance with applicable laws, rulings and regulations. The Issuer's taxable gross receipts shall be determined by multiplying that portion of each installment of Basic Rent which represents the payment of principal of the Bonds by a fraction in which the total proceeds of the Bonds is the denominator, and the amount expended from Bond proceeds for the acquisition of personal property, which amount shall be determined by the Tenant or at Tenant's option a designated Tenant's Delegee and set forth in a certificate delivered by Tenant or such Tenant's Delegee to the Issuer, the Tenant and the Trustee immediately following completion of acquisition, purchase, construction, improving, equipping or remodeling of the Project, is the numerator. The amount of each installment of tax due shall be determined by multiplying the Issuer's taxable gross receipts determined in accordance with the preceding sentence (unless a different determination has been made in a judicial or administrative proceeding as hereinafter provided), by such other tax rate percentage as may from time to time be imposed by applicable law. Notwithstanding the foregoing provisions, if it shall be determined in any judicial or administrative proceeding that the Issuer's taxable gross receipts are in an amount other than the amount determined by applying the foregoing provisions, subject to **Section 12.4** the Tenant shall cause the Tenant's Delegee to pay or cause to be paid the full amount of such tax, based upon such judicially or administratively determined gross receipts, it being the intent of this provision that the Tenant shall cause a Tenant's Delegee to pay, and during the term of the Sublease Subtenant shall pay or cause to be paid, in full the amount of any such tax, but no more than such amount, which the Issuer is obligated to collect under the present or any future laws of the State.

ARTICLE VII

INSURANCE

Section 7.1. [Reserved].

Section 7.2. **Casualty Insurance.**

(a) Subject to **Section 12.4** and the right of the Tenant to increase the deductibles described herein and to provide for self-insurance as provided in subparagraph (c) of this Section, the Tenant shall at all times during the Construction Period cause a Tenant's Delegee to maintain at its sole cost and expense, or to cause the contractors under the Construction Contracts to maintain, in full force and effect a policy or policies of Builder's Risk-Completed Value Form Insurance insuring the Project against fire, lightning and all other risks covered by the extended coverage endorsement then in use in the State of Kansas to the Full Insurable Value of the Project (subject to reasonable loss deductible clauses not to exceed \$1,000,000).

Subject to **Section 12.4** and the rights of the Tenant provided in subparagraph (c) of this Section, prior to or simultaneously with the expiration of said Builder's Risk Insurance, the Tenant shall cause a Tenant's Delegee to, at its sole cost and expense, obtain and maintain throughout the Lease Term, a policy or policies of insurance to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Kansas in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible clauses not to exceed \$1,000,000). The initial determination of Full Insurable Value shall be made at the Completion Date, and thereafter, the Full Insurable Value of the Project shall be provided from time to time at the written request of the Issuer or the Trustee (but not more frequently than once in every three years) by the certificate of an Authorized Tenant Representative or the chief financial officer of the Tenant. Subject to **Section 12.4** Tenant shall cause a Tenant's Delegee to cause, at no expense to Issuer or Tenant, the insurance required pursuant to this Section to be maintained with generally recognized responsible insurance company or companies authorized to do business in the State of Kansas as may be selected or approved by the Tenant. Tenant shall cause a Tenant's Delegee to, and during the term of the Sublease Subtenant agrees that Subtenant will, deliver copies of the insurance policies required under this Section, or originals or certificates thereof, to the Trustee upon written request of the Trustee. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Issuer, the Tenant, the Tenant's Delegee and the Trustee as insureds as their respective interests may appear, and shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the Issuer, the Tenant and the Trustee, and shall be payable to the Trustee.

(b) In the event of loss or damage to the Project, the Net Proceeds of casualty insurance carried pursuant to this Section shall be paid and applied as provided in **Article IX** of this Lease.

(c) In lieu of obtaining all or any part of the insurance required by subparagraph (a) hereof, the Tenant may elect to be self-insured for all or any part of the foregoing requirements (which right to self insure shall include the right of the Tenant to increase the deductibles on such policies to an amount not to exceed \$500,000) provided the Tenant complies with each of the following: (i) the Tenant notifies the Issuer and the Trustee in writing that it has elected to increase one or more of the deductibles on such policies or to provide such coverages through a self-insurance program, (ii) if the self-insurance program is maintained by a legal entity other than the Tenant, the Tenant notifies the Issuer and the Trustee in writing of an address to which the Issuer and the Trustee may submit claims under such self-insurance program, and (iii) the provider of such self insurance program is rated in one of the three highest rating categories by a nationally recognized rating agency (without regard to any rating modifiers).

(d) During the term of the Sublease Subtenant will cause the insurance to be provided by Tenant under this **Section 7.2** to be provided. Nothing in this subsection shall be construed as waiving any insurance that Subtenant is required to cause to be provided to Tenant or others under the Sublease.

Section 7.3. Public Liability Insurance.

(a) Subject to **Section 12.4** and the right of the Tenant to increase the deductibles described herein and to provide for self-insurance as provided in subparagraph (c) of this Section, the Tenant shall cause a Tenant's Delegee, at its sole cost and expense, to maintain or cause to be maintained at all times during the Lease Term general accident and public liability insurance

(including but not limited to coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which the Issuer, the Tenant and the Trustee shall be named as additional insureds, properly protecting and indemnifying the Issuer and the Trustee, in an amount not less than \$1,210,428 for bodily injury (including death) in any one occurrence (subject to reasonable loss deductible clauses not to exceed \$1,000,000), and not less than \$1,000,000 for property damage in any one occurrence (subject to reasonable loss deductible clauses not to exceed \$1,000,000). The policies of said insurance shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the Issuer, the Tenant and the Trustee. Such policies or copies or certificates thereof shall be furnished to the Trustee.

(b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

(c) In lieu of obtaining all or any part of the insurance required by subparagraph (a) hereof, the Tenant may elect to be self-insured for all or any part of the foregoing requirements (which right to self insure shall include the right of the Tenant to increase the deductibles on such policies to an amount not to exceed \$500,000) provided the Tenant complies with each of the following: (i) the Tenant notifies the Issuer and the Trustee in writing that it has elected to increase one or more of the deductibles on such policies or to provide such coverages through a self-insurance program, (ii) if the self-insurance program is maintained by a legal entity other than the Tenant, the Tenant notifies the Issuer and the Trustee in writing of an address to which the Issuer and the Trustee may submit claims under such self-insurance program, and (iii) the provider of such self-insurance program is rated in one of the three highest rating categories by a nationally recognized rating agency (without regard to any rating modifiers).

(d) During the term of the Sublease Subtenant will cause the insurance to be provided by Tenant under this **Section 7.3** to be provided. Nothing in this **Section 7.3** shall be construed as waiving any insurance that Subtenant is required to cause to be provided to Tenant or others under the Sublease.

Section 7.4. Blanket Insurance Policies. The Tenant or at Tenant's option a Tenant's Delegee may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

Section 7.5. Indemnification of Trustee. Subject to **Section 12.4**, the Tenant agrees to cause a Tenant's Delegee to, and Subtenant agrees that as to any which arise during the term of the Sublease Subtenant shall, indemnify and save the Trustee harmless against and from all claims, costs, losses, liabilities and expenses (including, without limitation, attorney's fees and expenses) by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the Project during the Lease Term, and against and from all claims, costs, losses, liabilities and expenses (including, without limitation, attorney's fees and expenses) arising during the Lease Term from (a) any condition of the Project caused or permitted by the Tenant or a Tenant's Delegee, (b) any breach or default on the part of the Tenant or a Tenant's Delegee in the performance of any of its obligations under this Lease, (c) any contract entered into by the Tenant, a Tenant's Delegee or their respective agents, employees or contracting obligees in connection with the acquisition, purchase, construction, improving, equipping or remodeling of the Project, (d) any

act of negligence of the Tenant or a Tenant's Delegee or of any of their respective agents, contractors, servants, employees or licensees, and (e) any act of negligence of any assignee or sublessee of the Tenant or Tenant's Delegee, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Tenant or Tenant's Delegee.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements of the Project. The Tenant shall have and is hereby given the right to make, or to the extent permitted by Tenant in the Sublease or otherwise in writing and not prohibited under the Facility Agreements, to permit a Tenant's Delegee to make, at its sole cost and expense, such additions, modifications and improvements in and to any part of the Project as the Tenant from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Tenant pursuant to the authority of this Section shall (a) be made in workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project; provided, however, that additions of machinery and equipment installed in the Project by the Tenant not purchased or acquired from funds deposited with the Trustee hereunder and not constituting repairs, renewals or replacements of Project Equipment under **Section 8.2** hereof shall remain the property of the Tenant and may be removed by the Tenant.

Section 8.2. Removal of Project Equipment. The Tenant, or to the extent permitted by Tenant in the Sublease or otherwise in writing and not prohibited under the Facility Agreements, a Tenant's Delegee, shall have the right, provided the Tenant is not in default in the payment of Basic Rent or Additional Rent hereunder, to remove from the Project and (on behalf of the Issuer) sell, exchange or otherwise dispose of, without responsibility or accountability to the Issuer or the Trustee with respect thereto, any items of machinery and equipment which constitute a part of the Project Equipment and which have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary or which, in the sound discretion of the Tenant, are otherwise no longer useful to the Tenant in its operations conducted on or in the Project; provided that, if the aggregate value of Project Equipment sold, exchanged or disposed of in any fiscal year (on a non cumulative basis) exceeds \$100,000, then with respect to the proposed removal in such fiscal year of such items of Project Equipment that originally cost \$25,000 or more, the Tenant, or such a Tenant's Delegee, shall either:

(a) Prior to any such removal, deliver to the Issuer and the Trustee a certificate signed by the Tenant and any such Tenant's Delegee (1) containing a description of any machinery or equipment constituting a part of the Project Equipment which it proposes to remove from the Project, (2) stating the reason for such removal, and (3) setting forth the estimated market value of such machinery or equipment; and pay the estimated value of such machinery or equipment as set forth in said certificate to the Trustee for deposit in the Bond Fund or obtain a written waiver from the Owners of all of the Bonds of the requirement that the estimated value be deposited into the Bond Fund; or

(b) Promptly replace any such Project Equipment so removed with machinery and equipment of the same or a different kind but with a value equal to or greater than the fair market value of the Project Equipment so removed, and such machinery and equipment

shall be deemed a part of the Project Equipment; within 30 days after any such replacement, deliver to the Trustee a certificate signed by the Tenant and any such permitted Tenant's Delegee (1) setting forth a complete description, including make, model and serial numbers, if any, of the machinery and equipment which the Tenant or Tenant's Delegee has acquired to replace the Project Equipment so removed by the Tenant or Tenant's Delegee, (2) stating the cost thereof, and (3) stating that the machinery and equipment described in said certificate are fully paid for and have been installed on the Project.

The Trustee shall amend the list of Project Equipment maintained by it pursuant to **Section 10.8** hereof upon receipt of such certificate. All machinery and equipment that replaces Project Equipment removed from the Project by the Tenant or Tenant's Delegee pursuant to paragraph (b) of this Section shall become and be deemed a part of the Project.

In all cases, subject to **Section 12.4** the Tenant shall cause a Tenant's Delegee to pay all the costs and expenses of the removal and repair of all damage to the Project caused thereby. The Tenant's or such Tenant's Delegee's rights under this Section to remove from the Project machinery and equipment constituting a part of the Project Equipment is intended only to permit the Tenant or such Tenant's Delegee to maintain an efficient operation by the removal of machinery and equipment which is no longer suitable to the Tenant's or such Tenant's Delegee's use of the Project for any of the reasons set forth in this Section, and such right is not to be construed to permit a removal under any other circumstances and specifically is not to be construed to permit the Tenant or such Tenant's Delegee to make a wholesale removal of the Project Equipment.

Section 8.3. Additional Improvements on the Project Site. The Tenant or at Tenant's option a Tenant's Delegee shall have and is hereby given the right, at its sole cost and expense, to construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Tenant from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Tenant, or with Tenant's written consent, a Tenant's Delegee, pursuant to the authority of this Section shall, during the life of this Lease, remain the property of the Tenant, or with Tenant's written consent, a Tenant's Delegee, and may be added to, altered or razed and removed by the Tenant, or with Tenant's written consent, a Tenant's Delegee, at any time. The Tenant covenants and agrees to cause a Tenant's Delegee to, and during the term of the Sublease Subtenant agrees to: (a) make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, (b) keep and maintain said additional buildings and improvements in good condition and repair, ordinary wear and tear excepted, and (c) promptly and with due diligence either raze and remove in a good and workmanlike manner, or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty.

Section 8.4. Permits and Authorizations. The Tenant shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. The Issuer agrees not to charge the Tenant or any Tenant's Delegee acting with Tenant's written consent any fees for any such permits or authorizations. Subject to **Section 12.4** Tenant shall cause a Tenant's Delegee to, and during the term of the Sublease Subtenant shall, do all such work in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the requirements,

rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII** hereof.

Section 8.5. Mechanics' Liens.

(a) None of the Issuer, the Tenant or any Tenant's Delegee, including during the term of the Sublease the Subtenant, shall do or suffer anything to be done whereby the Project, or any part thereof, may be encumbered by any mechanics' or other similar lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project, subject to **Section 12.4** the Tenant shall cause a Tenant's Delegee to discharge the same of record within 90 days after the date of filing; provided that during the term of the Sublease Subtenant shall comply with the stricter of these provisions or those of the Sublease. Notice is hereby given that the Issuer shall not be liable for any labor or materials furnished the Tenant or anyone claiming by, through or under the Tenant upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the Issuer in and to the Project or any part thereof.

(b) Notwithstanding paragraph (a) above, the Tenant shall have the right to contest any such mechanics' or other similar lien if within said 90-day period stated above it notifies the Issuer and the Trustee in writing of its intention so to do, and provided the Tenant diligently prosecutes such contest, at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, and pays or otherwise satisfies any final judgment enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof. Subject to **Section 12.4**, the Tenant shall cause a Tenant's Delegee to, and during the term of the Sublease the Subtenant shall, hold the Issuer and the Trustee whole and harmless from any loss, costs or expenses the Issuer may incur related to any such contest. The Issuer shall cooperate fully with the Tenant in any such contest.

Section 8.6. Option to Purchase Unimproved Portions of the Project Site. The Issuer hereby grants to the Tenant the right at any time and from time to time to purchase any unimproved portion or portions of the Project Site. For the purposes of this Section "unimproved" shall mean real property upon which no improvements are located, excluding improvements relating to streets, sidewalks, bridges, stormwater, grading, utility or other similar improvements. As conditions to such purchase the Issuer and the Trustee shall receive from the Tenant at least 30 days prior to the proposed date for completing the purchase the following (1) a written certificate from the Tenant to the effect (i) that the Tenant desires to purchase an unimproved portion of the Project Site, (ii) the proposed date for completing the purchase, and (iii) that the Tenant is not in default under any of the provisions of this Lease or the Indenture, (2) providing the Issuer and the Trustee with an adequate legal description of that portion (together with the interest in such portion) of the property to be purchased and a copy of a title commitment with respect to such property, (3) a certificate of an independent engineer or surveyor, dated not more than 30 days prior to the date of the request stating that, in the opinion of the person signing such certificate, (i) the unimproved portion of the Project Site is unimproved within the definition contained in this Section (ii) the unimproved portion of the Project Site so proposed to be purchased is not needed for the operation of the Project, and (iii) the proposed purchase will not impair the usefulness of the Project for its intended purposes and will not destroy the means of ingress thereto and egress therefrom, and (4) the written consent of the Owners of all of the Bonds, which consent shall not be withheld if Subtenant, a member thereof or an affiliate of any of them is then the Owner of the Bonds.

The purchase price for such unimproved portion of the Project Site shall be determined by the Owners of all of the Bonds and shall be received in writing by the Issuer and the Trustee at least 10 days prior to the proposed date for completing the purchase. Such purchase price shall be paid to the Trustee at the time the Issuer executes and delivers a Special Warranty Deed conveying the property which is to be purchased to the Tenant. The Trustee shall deposit such amount (if any) into the Bond Fund. If such amount is more than \$1,000, such amount shall be used by the Trustee to redeem Bonds in accordance with **Section 302(a)** of the Indenture. If such amount is \$1,000 or less the Trustee shall apply such amount to the next interest payment on the Bonds.

Upon the Issuer's receipt of written notice from the Trustee that the Trustee has received all of the items required by this Section, any duly authorized officers of the Issuer shall execute a Special Warranty Deed conveying such property to the Tenant and shall deliver such deed to the Tenant. Such Special Warranty Deed shall be subject to the following: (1) those liens and encumbrances, if any, to which title to that portion of the Project Site was subject when conveyed to the Issuer; (2) those liens and encumbrances created by the Tenant or to the creation or suffering of which the Tenant consented in writing; (3) those liens and encumbrances resulting from the failure of the Tenant to perform or observe any of the agreement on its part contained in this Lease; (4) Permitted Encumbrances other than the Indenture and this Lease; and (5) if the unimproved portion of the Project Site or any part thereof is being condemned, the rights and title of any condemning authority.

Upon any purchase of portions of the Project Site pursuant to this Section, the portions of the Project Site so purchased shall no longer be entitled to the benefits of the Performance Agreement.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

(a) If the Project shall be damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Tenant, as promptly as practicable, shall, subject to **Section 12.4**, cause a Tenant's Delegee either to repair, restore, replace or rebuild the same to as nearly as may be practicable their condition and character immediately prior to such damage or destruction so that upon completion of such repairs, restoration, replacement or rebuilding such Project shall be of a value not less than the value thereof immediately prior to the occurrence of such damage or destruction or, at the Tenant's option, to construct upon the Project Site new buildings and improvements thereafter together with all new machinery, equipment and fixtures which are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (i) the value thereof shall not be less than the value of such destroyed or damaged Project Improvements and/or Project Equipment immediately prior to the occurrence of such damage or destruction and (ii) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Project as an enterprise permitted by the Act.

If the Tenant shall construct, or elect to allow a Tenant's Delegee to construct, any such new buildings and improvements, for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings and improvements and all additions thereto and all replacements and alterations thereof and any reference to the words "Project

Equipment” shall be deemed to include any such new machinery, equipment and fixtures which are either attached to or are used in connection with the operation or maintenance of such new buildings and improvements and all additions or replacements thereof.

The Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Project, shall be disbursed in accordance with the Amended and Restated Lease while it is in effect, otherwise in accordance with the Mortgages and the Sublease. If the Amended and Restated Lease is no longer in effect and there is no Mortgage and no Leasehold Mortgage and the Net Proceeds are less than \$100,000, the Net Proceeds shall be paid to the Tenant. If the Net Proceeds equal or exceed \$100,000, the Net Proceeds shall be paid to the Trustee and shall be applied in the following manner:

(i) there shall be paid to the Tenant from the Net Proceeds such part thereof as shall equal the cost to the Tenant of making such temporary repairs or doing such other work, as, in the Tenant's reasonable opinion, may be necessary in order to protect the Project pending adjustment of the insurance loss or the making of permanent repairs, restoration, replacement or rebuilding;

(ii) there shall be paid to the Tenant from the Net Proceeds such part thereof as shall equal the cost to the Tenant of repairing, restoring, replacing or rebuilding the Project or any part thereof;

(iii) payment to the Tenant pursuant to subdivisions (i) or (ii) of this subsection (a) from such Net Proceeds shall be made to the Tenant from time to time as the work progresses, in amounts equal to the cost of labor and material incorporated into and used in such work, the buildings', architects' and engineers' fees, and other charges in connection with such work, upon delivery to the Trustee of a certificate of the Tenant's architect or general contractor, as the case may be, in charge of such work, certifying: (1) that the amounts so to be paid to the Tenant are payable to the Tenant in accordance with the provisions of this Article and that such amounts are then due and payable by the Tenant or have theretofore been paid by the Tenant; (2) the progress of the work; (3) that the work has been done in accordance with the plans and specifications therefor and all insurance requirements of **Article VII** hereof; (4) that the sum requested when added to all sums previously paid out under this Article for the work does not exceed the value of the work done to the date of such certificate; (5) the estimated cost of completing the work, in reasonable detail; and (6) that the remaining Net Proceeds are sufficient to pay the estimated cost of completing the work (the Trustee may rely conclusively upon each such certificate and shall not be required to make any inquiry or investigation with respect thereto);

(iv) the Tenant shall furnish to the Trustee at the time of any such payment, an official search, or other evidence reasonably satisfactory to the Trustee, that there has not been filed with respect to the Project Site or the Project Improvements any mechanic's or other lien which has not been discharged of record, in respect of any work, labor, services or materials performed, furnished or supplied, in connection with the work and that all of said materials have been purchased free and clear of all security interest or other encumbrances. The Trustee shall not pay out any such sum when the Project Site or the Project Improvements shall be encumbered with any such security interest or encumbrance. Upon the termination of this Lease and the payment in full of the Bonds or any monies then held by the Trustee shall be paid over to the Tenant.

(b) The insurance monies, if any, paid to the Tenant as provided under this Article, on account of any loss or destruction to the Project, shall be held by it in trust and applied only for the purposes of repairing, reconstructing or restoring the Project or constructing new buildings and improvements and installing new machinery, equipment and fixtures thereto. During the term of the Amended and Restated Lease, Tenant shall make the insurance proceeds available to KAI to be applied as provided in the Amended and Restated Lease.

(c) If any of the insurance monies paid by the insurance company to the Trustee or the Tenant as hereinabove provided, shall remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease shall not have terminated, the excess shall be paid to KAI during the term of the Amended and Restated Lease, otherwise the excess shall be deposited in the Bond Fund. If the Net Proceeds shall be insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, subject to **Section 12.4** the Tenant shall cause a Tenant's Delegee to pay the deficiency.

(d) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and subject to **Section 12.4** the Tenant shall remain and continue liable for the payment of all Basic Rent and Additional Rental and all other charges required hereunder to be paid by the Tenant, as though no damage by fire or any other casualty has occurred.

(e) The Issuer, the Tenant, during the term of the Sublease, the Subtenant, and, during the term of the Amended and Restated Lease, KAI agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(f) The Tenant, and during the term of the Sublease the Subtenant, agrees to give prompt notice to the Issuer and the Trustee with respect to all fires and any other casualties occurring in, on, at or about the Project, to the extent the respective party has actual knowledge of such casualties.

(g) If the Tenant shall determine that rebuilding, repairing, restoring or replacing the Project is not practicable and desirable, or if KAI exercises its right to terminate the Amended and Restated Lease with respect to the Project, any Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall be paid into the Bond Fund and may, if directed by the Permitted Lender, be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same become due, all subject to rights of the mortgagee under the Mortgage. The Tenant agrees to be reasonable in exercising its judgment pursuant to this subsection (g).

(h) The Tenant shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the Issuer, the Trustee or the Bondholders (unless provided otherwise as between Tenant and Bondholders in a separate written agreement) or to any abatement or diminution of the rentals payable by the Tenant under this Lease or of any other obligations of the Tenant under this Lease except as expressly provided in this Section.

(i) Notwithstanding anything to the contrary in this **Section 9.1**, to the extent Subtenant does not have an obligation to perform one or more of Tenant's obligations under this **Section 9.1** by virtue of contrary terms of the Sublease, then Tenant shall have no obligation to perform such obligations that Tenant might otherwise have under this **Section 9.1**.

Section 9.2. Condemnation.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project shall be condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$100,000, the Tenant, or if the Sublease is still then in effect the Subtenant, shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the Issuer, the Trustee, the Tenant (if the Sublease is still in effect) and the mortgagees under the Mortgage (if any) or the Leasehold Mortgage (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Tenant shall determine that such substitution is practicable and desirable, the Tenant or at Tenant's option a Tenant's Delegee shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed prior to the exercise of the said power of eminent domain, including the acquisition or construction of other improvements suitable for the Tenant's or Tenant's Delegee's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Tenant or Tenant's Delegee without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the Issuer subject to no liens, security interests or encumbrances prior to the lien and/or security interest afforded by the Indenture other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds). Notwithstanding anything to the contrary in this **Section 9.2**, to the extent Subtenant does not have an obligation to perform one or more of Tenant's obligations under this **Section 9.2** by virtue of contrary terms of the Sublease, then Tenant shall have no obligation to perform such obligations that Tenant might otherwise have under this **Section 9.2**.

(c) If the Tenant shall determine that it is not practicable and desirable to acquire or construct substitute improvements or if KAI exercises its right to terminate the Amended and Restated Lease with respect to the Project, any Net Proceeds of condemnation awards received by the Tenant shall be paid into the Bond Fund and shall, if directed by the Permitted Lender or by Tenant per a written intercreditor agreement between Tenant and such Permitted Lender (an "Intercreditor Agreement") and if the Sublease is then in effect, the Sublease, be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due and payable, all subject to the rights of the mortgagees or Tenant under the Mortgage or Leasehold Mortgage, the Intercreditor Agreement or the Sublease, if any.

(d) The Tenant shall not, by reason of its inability to use all or any part of the Project during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the Issuer, the Trustee or the Bondowners or to any abatement or diminution of the rentals payable by the Tenant or Tenant's

Deegee under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The Issuer shall cooperate fully with the Tenant and at its option a Tenant's Deeree in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Tenant or such a Tenant's Deeree to litigate in any such proceeding in the name and on behalf of the Issuer. In no event will the Issuer voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Tenant.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the Issuer; Exculpation and Indemnification. The Issuer makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Tenant's purposes or needs. The Tenant releases the Issuer from, agrees that the Issuer shall not be liable for and agrees to hold the Issuer harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project or the use thereof; unless such loss is the result of the Issuer's gross negligence or willful misconduct.

Section 10.2. Surrender of Possession. Upon accrual of the Issuer's right of re-entry because of the Tenant's default hereunder or upon the cancellation or termination of this Lease for any reason other than the Tenant's purchase of the Project pursuant to **Article XI** hereof, subject to **Section 12.4** the Tenant shall cause the peaceful surrender possession of the Project to the Issuer in good condition and repair, ordinary wear and tear excepted; provided, however, the Tenant shall have the right within 90 days (or such later date as the Issuer may agree to) after the termination of this Lease to remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Tenant or a Tenant's Deeree and not constituting part of the Project. Subject to **Section 12.4**, all repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Tenant, or per the Sublease if then in effect the Subtenant, and during said 90-day (or extended) period, subject to **Section 12.4**, the Tenant, or per the Sublease if then in effect the Subtenant, shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Tenant or a Tenant's Deeree and which are not so removed from the Project prior to the expiration of said period shall be the separate and absolute property of the Issuer.

Section 10.3. Issuer's Right of Access to the Project. In addition to the inspection rights of the Issuer pursuant to **Section 3.1** of the Performance Agreement, the Tenant, and during the term of the Sublease the Subtenant, agrees that the Issuer and the Trustee and their duly authorized agents shall have the right to enter upon the Project Site after delivering written notice to the Tenant (a) as may be reasonably necessary to cause to be completed the acquisition, purchase, construction, improving, equipping or remodeling provided for in **Section 4.2** hereof, (b) to perform such work in and about the Project made necessary by reason of the Tenant's default under any of

the provisions of this Lease, and (c) following an Event of Default, to exhibit the Project to prospective purchasers, lessees or trustees.

Section 10.4. Granting of Easements; Leasehold Mortgages

(a) If no Event of Default under this Lease shall have happened and be continuing, the Tenant may at any time or times (1) grant easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (2) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Tenant shall determine, or (3) incur Permitted Encumbrances. The Issuer agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the Issuer and the Trustee of: (i) a copy of the instrument of grant or release or of the agreement or other arrangement, (ii) a written application signed by an Authorized Tenant Representative requesting such instrument, and (iii) a certificate executed by an Authorized Tenant Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Tenant, will not impair the effective use or interfere with the efficient and economical operation of the Project, and will not materially adversely affect the security intended to be given by or under the Indenture. If the instrument of grant shall provide that any such easement or right and the rights of such other parties thereunder shall be superior to the rights of the Issuer and the Trustee under this Lease and the Indenture and shall not be affected by any termination of this Lease or default on the part of the Tenant hereunder then such easement shall not have any effect whatsoever without the written consent of the Issuer. If no Event of Default shall have happened and be continuing beyond any applicable grace period, any payments or other consideration received by the Tenant for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Tenant, but, in the event of the termination of this Lease or during the continuation of an Event of Default, all rights then existing of the Tenant with respect to or under such grant shall inure to the benefit of and be exercisable by the Issuer and the Trustee.

(b) The Tenant may mortgage the leasehold estate created by this Lease and at Tenant's option may permit Subtenant or another Tenant's Delegee to mortgage any sublease estate without the Issuer's consent, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such leasehold mortgage, and the note or other obligation secured thereby, is delivered to the Issuer and the Trustee within thirty (30) days after the execution thereof. Notwithstanding anything herein to the contrary, Tenant acknowledges that Tenant has previously consented to the Sublease Leasehold Mortgage granted by the Subtenant to the Permitted Lender subject to the terms of a certain Intercreditor Agreement to which Tenant, Subtenant, Permitted Lender, Thomas S. Fritzel and Dru S. Fritzel are parties.

(c) Notwithstanding anything contained to the contrary in this Lease, (a) the Tenant shall have the right to assign this Lease and any subleases to any leasehold mortgagee or to the designee or nominee of such leasehold mortgagee, without the consent of the Issuer, and (b) if the leasehold mortgagee or its designee or nominee shall acquire ownership of the leasehold estate, either following foreclosure of such leasehold mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof, the leasehold mortgagee or its designee or nominee shall have the further right to further assign this Lease and any subleases and any purchase money mortgage accepted in connection therewith, without the consent of the Issuer and such assignee shall enjoy all rights, powers and privileges granted herein to leasehold mortgagees.

(d) If (1) the Tenant or, in accordance with Tenant's written consent, Tenant's Designee shall execute and deliver a Leasehold Mortgage, and (2) the provisions and conditions of subsection (b) above shall have been fully complied with and observed with respect to such Leasehold Mortgage, and (3) the Tenant, such permitted Tenant's Designee or the mortgagee under such Leasehold Mortgage shall have notified the Issuer in writing of the making thereof and of the name and address of such Leasehold Mortgagee; then:

(i) this Lease may not be modified, amended, canceled or surrendered by agreement between the Issuer and the Tenant, without the prior written consent of such leasehold mortgagee;

(ii) there shall be no merger of this Lease or of the leasehold estate created hereby with the fee title to the Project, notwithstanding that this Lease or said leasehold estate and said fee title shall be owned by the same person or persons, without the prior written consent of such leasehold mortgagee;

(iii) the Issuer shall serve upon each such leasehold mortgagee a copy of each notice of default and each notice of termination given to the Tenant under this Lease, at the same time as such notice is served upon the Tenant. No such notice to the Tenant shall be effective unless a copy thereof is thus served upon each leasehold mortgagee;

(iv) each leasehold mortgagee and its assignee (which per the Intercreditor Agreement may be the Tenant) shall have the same period of time after the service of such notice upon it within which the Tenant may remedy or cause to be remedied the default which is the basis of the notice plus ninety (90) days; and the Issuer shall accept performance by such leasehold mortgagee as timely performance by the Tenant;

(v) such leasehold mortgagee or its assignee shall not be required to continue possession or continue foreclosure proceedings under paragraph (vii) of this subsection if the particular default has been cured;

(vi) the Issuer may exercise any of its rights or remedies with respect to any other default by the Tenant occurring during the period of such forbearance provided for under said paragraph (vii), subject to the rights of the leasehold mortgagee or its assignee under this Section as to such other defaults;

(vii) in case of default by the Tenant under this Lease, other than a default in the payment of money, the Issuer shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving to such leasehold mortgagee a reasonable time of no less than ninety (90) days after notice of default within which either to obtain possession of the Project and to remedy such default in the case of a default which is susceptible of being cured when such leasehold mortgagee has obtained possession of the Project, or to institute and with reasonable diligence to complete foreclosure proceedings or otherwise acquire the Tenant's leasehold estate under this Lease in the case of a default which is not so susceptible of being remedied by such leasehold mortgagee, provided that the leasehold mortgagee or its assignee shall deliver to the Issuer within ninety (90) days after the expiration of the grace period applicable to the particular default, an instrument unconditionally agreeing to remedy such default other than a default not susceptible of being remedied by such leasehold mortgagee or assignee. The Issuer's right to terminate this

Lease by reason of a default which is not susceptible of being remedied by such leasehold mortgagee shall end with respect to such default when the leasehold mortgagee or its assignee obtains possession of the Project as aforesaid, which possession shall be deemed to include possession by a receiver;

(viii) if this Lease shall terminate prior to the expiration of the Lease Term, the Issuer shall enter into a new lease for the Project with any such leasehold mortgagee, or its assignee, designee or nominee, for the remainder of the term, effective as of the date of such termination, at the same rent and upon the same terms, covenants and conditions contained herein, except that such new lease shall not guarantee possession of the Project to the new tenant as against the Tenant and/or anyone claiming under the Tenant, and the Issuer, simultaneously with the execution and delivery of such new lease, shall turn over to the new tenant all monies, if any, then held by the Issuer under the Lease on behalf of the Tenant, on condition that:

(A) such leasehold mortgagee or assignee shall make written request for such new lease within ninety (90) days after the date of such termination, and

(B) on the commencement date of the term of the new lease, such leasehold mortgagee or assignee shall cure all defaults of the Tenant under the Lease (susceptible of being cured by such leasehold mortgagee) which remain uncured on that date, and shall pay or cause to be paid all unpaid sums which at such time would have been payable under this Lease but for such termination, and shall pay or cause to be paid to the Issuer on that date all fees, costs, charges and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements, incurred by the Issuer or the Trustee in connection with any such default and termination as well as in connection with the execution and delivery of such new lease;

(ix) if such leasehold mortgagee or its designee or nominee shall become the owner of this Lease either following foreclosure of such leasehold mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof and such leasehold mortgagee or its assignee, designee or nominee shall have assigned this Lease, such leasehold mortgagee or its assignee, designee or nominee so assigning shall be released from all liability accruing from and after the date of such assignment.

If more than one leasehold mortgagee shall request such new lease, such new lease shall be made with and delivered to the leasehold mortgagee (or its nominee or designee) whose mortgage is prior in lien to those of any others. The opinion of a reputable title insurance company, licensed to insure title to real property in the State of Kansas, setting forth the order of priority of such mortgage liens, may be relied on by the Issuer and the Trustee as conclusive evidence of such priority.

Section 10.5. Indemnification of Issuer and Trustee. Subject to **Section 12.4**, the Tenant shall cause a Tenant's Delegee to, and as to matters which accrue or arise during the term of the Sublease Subtenant shall, indemnify and save the Issuer and the Trustee harmless from and against all claims, losses, liabilities, damages, costs and expenses (including, without limitation, attorney's fees and expenses) by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Project during the Lease Term, and against and from all claims, losses, liabilities, damages, costs and expenses (including, without limitation, attorney's fees and expenses) arising during the Lease Term from (a)

any condition of the Project caused by the Tenant, (b) any breach or default on the part of the Tenant in the performance of any of its obligations under this Lease, (c) any contract entered into in by the Tenant or its sublessee, if any, in connection with the acquisition, purchase, construction, improving, equipping or remodeling of the Project, (d) any act of negligence of the Tenant or of any of its agents, contractors, servants, employees or licensees, and (e) any act of negligence of any assignee or sublessee of the Tenant, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Tenant; provided, however, the indemnification contained in this **Section 10.5** shall not extend to the Issuer or the Trustee if (i) such claim is the result of work being performed at the Project by employees of the Issuer, or (ii) such claim is the result of the Issuer's negligence or willful misconduct. Subject to **Section 12.4**, the Tenant shall cause a Tenant's Delegee to, and as to matters which accrue or arise during the term of the Sublease Subtenant shall, indemnify and save the Issuer and the Trustee harmless from and against all costs and expenses, including, without limitation, attorney's fees and expenses, (except those which have arisen from the willful misconduct or negligence of the Issuer or the Trustee) incurred in or in connection with any action or proceeding brought in connection with claims arising from circumstances described in clauses (a) through (e), and upon notice from the Issuer or the Trustee, subject to **Section 12.4**, the Tenant shall cause a Tenant's Delegee to, and as to matters which accrue or arise during the term of the Sublease Subtenant shall, defend them or either of them in any such action or proceeding.

Subject to **Section 12.4**, the Tenant shall cause a Tenant's Delegee to, and as to matters which accrue or arise during the term of the Sublease Subtenant shall, indemnify and reimburse the Issuer and the Trustee, and their respective members, directors, officers, employees, agents, attorneys, successors and assigns for any liability, loss, damage, expense or cost, including, without limitation, attorney's fees and expenses, arising out of or incurred by the Issuer or the Trustee or their respective members, directors, officers, employees, agents, attorneys, successors and assigns, which is the result of any liability, loss, damage, expense or cost sustained as a result of any failure to comply any law, statute, ordinance, rule, code, order or regulation, whether federal, state or local, relating to environmental protection, environmental contamination and the cleanup thereof, asbestos, underground storage tanks and other environmental matters ("Environmental Laws") or of there being located in, on or about the Project Site or the Project any hazardous, dangerous, or toxic pollutants, wastes or chemicals, together with attorney's fees and expenses incurred in connection with the defense of any action against the Issuer or the Trustee arising out of the above. The Tenant represents and warrants to the Issuer and the Trustee that, limited to the actual knowledge of the President of the sole member of the Tenant, the Project Site and the Project complies with and will comply with all Environmental Laws. Subject to **Section 12.4**, the Tenant shall cause a Tenant's Delegee to, and as to matters which accrue or arise during the term of the Sublease Subtenant shall, promptly and diligently take or cause to be taken all actions necessary to cure any noncompliance with any Environmental Law, be solely responsible for any violation by it, its employees or agents of any Environmental Laws, take all necessary action to clean-up, eliminate or contain any environmental contamination, including contamination caused by any previous owner of the Project or the Project Site, and pay in full all costs and expenses associated with such action.

Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits. The Issuer agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Tenant, and the Issuer will fully cooperate with the Tenant in any effort by the Tenant to avail itself of any such depreciation, investment tax credit or other tax benefits.

Section 10.7. Tenant to Maintain its Corporate Existence. The Tenant agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture,

Tenant will not dissolve or otherwise dispose of all or substantially all of its interests in the Project; provided, however, that the Tenant may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation (i.e., a Kansas limited liability company incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations to consolidate with or merge into it, or may sell or otherwise transfer to another domestic corporation all or substantially all of its interests in the Project as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporation expressly assumes in writing all the obligations of the Tenant contained in this Lease; and, further provided, that the surviving, resulting or transferee corporation, as the case may be, has a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least equal to or greater than that of the Tenant immediately prior to said consolidation, merger or transfer. The term “net worth”, as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Tenant and all of its subsidiaries. In any such consolidation, merger or transfer the Tenant shall comply with the provisions of **Section 10.1** hereof to the extent applicable.

Section 10.8. Security Interests. At the written request of the Owner of the Bonds, the Issuer and the Tenant agree to enter into all instruments (including financing statements and statements of continuation) necessary for perfection of and continuance of the perfection of the security interests of the Issuer and the Trustee in the Project. Upon the written instructions of the Owner of the Bonds, the Trustee shall file, at the expense of the Subtenant during the term of the Sublease and if the Sublease has then expired or terminated then, subject to **Section 12.4**, of the Tenant or a Tenant’s Delegee then designated by Tenant, all instruments the Owner of the Bonds shall deem necessary to be filed and shall continue or cause to be continued the liens of such instruments for so long as the Bonds shall be Outstanding. The Issuer and the Tenant shall cooperate with the Trustee in this regard by executing such continuation statements and providing such information as the Trustee may require to renew such liens. The Trustee shall, at the expense of the Subtenant during the term of the Sublease and if the Sublease has then expired or terminated then, subject to **Section 12.4**, of the Tenant or a Tenant’s Delegee then designated by Tenant, maintain a file showing a description of all Project Equipment, said file to be compiled from the certificates furnished to the Trustee pursuant to **Section 4.4** and **Section 8.2** hereof.

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1. Option to Purchase the Project. The Tenant shall have, and is hereby granted, the option to purchase the Project at any time, prior to the expiration of the Lease Term upon payment in full of all Bonds then Outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture. To exercise such option the Tenant shall give written notice to the Issuer and to the Trustee, if any, of the Bonds as shall then be unpaid or provision for their payment shall not have been made in accordance with the provisions of the Indenture, and shall specify therein the date of closing such purchase, which date shall be not less than 30 nor more than 180 days from the date such notice is mailed, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture the Tenant shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. The purchase price payable by the Tenant in the event of its exercise of the option granted in this Section shall be the sum of the following:

(a) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all the then Outstanding Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus

(b) an amount of money equal to the Trustee's and the Paying Agent's agreed to and reasonable fees and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus

(c) an amount of money equal to the Issuer's costs, expenses, including reasonable attorney's fees, related to conveying the Project to the Tenant; plus

(d) the sum of \$100.

Section 11.2. Conveyance of the Project. At the closing of the purchase of the Project pursuant to this Article, the Issuer will upon receipt of the purchase price deliver to the Tenant the following:

(a) If the Indenture shall not at the time have been satisfied in full, a release from the Trustee of the Project from the lien and/or security interest of the Indenture.

(b) Documents conveying to the Tenant legal title to the Project, as it then exists by special warranty deed, subject to the following: (1) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the Issuer; (2) those liens and encumbrances created by the Tenant or to the creation or suffering of which the Tenant consented; (3) those liens and encumbrances resulting from the failure of the Tenant to perform or observe any of the agreement on its part contained in this Lease; (4) Permitted Encumbrances other than the Indenture and this Lease; and (5) if the Project or any part thereof is being condemned, the rights and title of any condemning authority.

Section 11.3. Relative Position of Option and Indenture. The options and obligation to purchase the Project granted to the Tenant in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Tenant is in default under this Lease, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option and further provided that all options herein granted shall terminate upon the termination of this Lease.

Section 11.4. Obligation to Purchase the Project. The Tenant hereby agrees to purchase, and the Issuer hereby agrees to sell, the Project for the sum of \$100 at the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof and all other fees, charges and expenses having been made in accordance with the provisions of the Indenture, this Lease and all other documents entered into with respect to the Bonds.

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. 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” or “default” under this Lease:

(a) Default in the due and punctual payment of Basic Rent for a period of ninety (90) days following written notice to the Tenant by the Issuer or the Trustee or default in the due and punctual payment Additional Rent for a period of ninety (90) days following written notice to the Tenant by the Issuer or the Trustee; or

(b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Tenant’s part to be observed or performed, and such default shall continue for ninety (90) days after the Issuer or the Trustee has given the Tenant written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that (1) the Tenant or at its option a Tenant’s Delegee has commenced such cure within said ninety (90) day period, and (2) the Tenant or such a Tenant’s Delegee diligently prosecutes such cure to completion); or

(c) The Tenant shall: (1) admit in writing its inability to pay its debts as they become due; or (2) file a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or file a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consent to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or shall fail to have the appointment of any trustee, receiver or liquidator made without the Tenant’s consent or acquiescence, vacated or set aside; or (5) be finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) be subject to any proceeding, or suffer the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, shall not be dismissed, vacated, denied, set aside or stayed within 60 days after the day of entry or commencement; or (7) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(d) The Tenant shall vacate or abandon the Project, or shall have been ejected from the Project or any portion thereof by reason of a defect in title to the Project, and the same shall remain uncared for and unoccupied for a period of ninety (90) days; or

(e) The occurrence and continuance of an “Event of Default” by the Tenant under the Performance Agreement following any applicable notice and grace period provided therein.

Section 12.2. Remedies on Default. If any Event of Default referred to in **Section 12.1** hereof shall have occurred and be continuing, then the Issuer may at the Issuer's election (subject, however, to **Section 12.4** and any restrictions against acceleration of the maturity of the Bonds or termination of this Lease in the Indenture), then or at any time thereafter, and while such Event of Default shall continue, take any one or more of the following actions:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable, as provided in the Indenture;

(b) give the Tenant written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than ninety (90) days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Tenant's rights to possession of the Project (except any as assignee of Permitted Lender under the Intercreditor Agreement) shall cease and this Lease shall thereupon be terminated, and the Issuer may re-enter and take possession of the Project; or

(c) without terminating this Lease, re-enter the Project to take possession thereof pursuant to legal proceedings or pursuant to any notice provided for by law, and having elected to re-enter or take possession of the Project without terminating this Lease, the Issuer shall use reasonable diligence to relet the Project, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as the Issuer may deem advisable, with the right to make alterations and repairs to the Project, and no such re-entry or taking of possession of the Project by the Issuer shall be construed as an election on the Issuer's part to terminate this Lease, and no such re-entry or taking of possession by the Issuer shall relieve the Tenant of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or any of its other obligations under this Lease, all of which shall survive such re-entry or taking of possession, and the Tenant shall continue to pay the Basic Rent and Additional Rent provided for in this Lease until the end of this Lease Term, whether or not the Project shall have been relet, less the net revenues, if any, of any reletting of the Project after deducting all of the Issuer's reasonable expenses in or in connection with such reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation for reletting; provided, however, that Tenant's obligations are subject to **Section 12.4**. Said net revenues of any reletting shall be deposited in the Bond Fund. Having elected to re-enter or take possession of the Project without terminating this Lease, the Issuer may (subject, however, to any restrictions against termination of this Lease in the Indenture), by notice to the Tenant given at any time thereafter following an Event of Default, elect to terminate this Lease on a date to be specified in such notice, which date shall be not earlier than ninety (90) days after re-entry under (c) above, and if all defaults shall not have then been cured, on the date so specified this Lease shall thereupon be terminated. If in accordance with any of the foregoing provisions of this Article the Issuer shall have the right to elect to re-enter and take possession of the Project, the Issuer may enter and expel the Tenant and those claiming through or under the Tenant and remove the property and effects of both or either (forcibly if necessary) without being guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenant. The Issuer may take whatever action at law or in equity which may appear necessary or desirable to collect rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Tenant under this Lease.

Section 12.3. Survival of Obligations. The Tenant covenants and agrees with the Issuer and Bondowners that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Tenant shall continue to pay the Basic Rent and Additional

Rent and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease; provided, however, that Tenant's obligations are subject to **Section 12.4** and upon the payment of all Basic Rent and Additional Rent required under **Article V** hereof, and upon the satisfaction and discharge of the Indenture under **Section 1301** thereof, the Tenant's obligation under this Lease shall thereupon cease and terminate in full.

Section 12.4. Non-Recourse Nature of Tenant's, Subtenant's and KAI's Obligations.

Notwithstanding anything to the contrary in this Lease or in any other document executed in connection with the Bonds, including without limitation the Indenture and the Performance Agreement, Tenant's, Subtenant's and KAI's obligations under the Lease and such documents shall not be personal obligations of Tenant, Subtenant or KAI 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 Lease or such other documents as against Tenant's, Subtenant's and KAI's right, title and interest in the Project, and no other property or assets of the Tenant, Subtenant or KAI, or their respective partners or principals, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedures for the satisfaction of any such judgment (or other judicial process). Nothing herein shall release Subtenant or any party related to Subtenant from any liability they otherwise would have to Tenant under the Sublease, any Intercreditor Agreement or any loan documents in which Tenant now has or hereafter acquires any interest pursuant to the Intercreditor Agreement, another written agreement or the operation of law. Nothing herein shall release Subtenant or KAI from any liability that either may otherwise have to the other under the Facility Agreements, another written agreement or the operation of law.

Section 12.5. Performance of the Tenant's Obligations by the Issuer.

If the Tenant shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the Issuer, or the Trustee in the Issuer's name, may (but shall not be obligated so to do) upon the continuance of such failure on the Tenant's part for ninety (90) days after written notice of such failure is given the Tenant by the Issuer or the Trustee, and without waiving or releasing the Tenant from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the Issuer or the Trustee and all necessary incidental reasonable costs and expenses (including, without limitation, interest at the Trustee's prime rate plus 2% and attorney's fees and expenses) incurred by the Issuer or the Trustee in performing such obligations shall be deemed Additional Rent and shall be paid to the Issuer or the Trustee on demand, and if not so paid by the Tenant, the Issuer or the Trustee shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the Tenant in the payment of Basic Rent.

Section 12.6. Rights and Remedies Cumulative.

The rights and remedies reserved by the Issuer and the Tenant hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. Subject to **Section 12.4**, the Issuer and the Tenant shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 12.7. Waiver of Breach.

No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Tenant of any covenant, agreement or undertaking by the Tenant, the Issuer or the Trustee

may nevertheless accept from the Tenant any payment or payments hereunder without in any way waiving the Issuer's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the Tenant which were in existence at the time such payment or payments were accepted by the Issuer or the Trustee.

Section 12.8. Notice of Defaults Under Section 12.1; Opportunity of Tenant to Cure Defaults.

(a) Anything herein to the contrary notwithstanding, no default specified in **Section 12.1(c)** through **(e)** shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given by the Issuer, the Trustee or by the Owners of 25% in aggregate principal amount of all Bonds Outstanding to the Tenant and the Tenant shall have had ninety (90) days after receipt of such notice to correct said default or cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within such period; provided, however, if any such default shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Tenant within such period and diligently pursued until the default is corrected.

(b) Anything herein to the contrary notwithstanding, no default specified in **Section 12.1(b)** shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given (i) at any time the Tenant is the Owner of 100% in aggregate principal amount of all Bonds Outstanding, by the Owner of 100% in aggregate principal amount of all Bonds Outstanding, and (ii) at any time the Tenant is not the Owner of 100% in aggregate principal amount of all Bonds Outstanding, the Issuer, the Trustee or by the Owners of 25% in aggregate principal amount of all Bonds Outstanding, to the Tenant and the Tenant shall have had ninety (90) days after receipt of such notice to correct said default or cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within such period; provided, however, if any such default shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Tenant within such period and diligently pursued until the default is corrected.

(c) With regard to any alleged default concerning which notice is given to the Tenant under the provisions of this Section, the Issuer hereby grants the Tenant full authority for account of the Issuer to perform any covenant or obligation, the nonperformance of which is alleged in said notice to constitute a default, in the name and stead of the Issuer, with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts in order to remedy such default.

Section 12.9. Trustee's Exercise of the Issuer's Remedies. Whenever any Event of Default shall have occurred and be continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the Issuer under this Article, upon notice as required of the Issuer unless the Issuer has already given the required notice. In addition, subject to **Section 12.4** the Trustee shall have available to it all of the remedies prescribed by the Indenture.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) Without limiting Issuer's consents to the Sublease and the Amended and Restate Lease and the Permitted Encumbrances stated hereinabove, the Tenant shall have the right to assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof, with the written consent of the Issuer, for any lawful purpose under the Act. With respect to any assignment, the Tenant shall comply with the following conditions:

(1) Such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;

(2) Such assignment shall include the entire then unexpired term of this Lease;

(3) A duplicate original of such assignment shall be delivered to the Issuer and the Trustee within ten (10) days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease on the part of the Tenant to be performed and observed;

(4) At the time of any such assignment there shall be no damage or destruction to the Project which has not been repaired, restored and replaced in accordance with the provisions of this Lease, unless any funds then held by the Tenant for the purposes of such repair, restoration and replacement are simultaneously transferred to the assignee.

Upon the satisfaction of the conditions set forth herein, the assignor shall be relieved of all further liability occurring on and after the effective date of such assignment, provided that such assignment shall not relieve the assignor of its obligations pursuant to **Sections 7.5** and **10.5**. The consent of the Issuer to any assignment, transfer, encumbrance or disposition described in this subsection (a) shall not be unreasonably withheld or delayed.

(b) Without limiting Issuer's consents to the Sublease and the Amended and Restate Lease and the Permitted Encumbrances stated hereinabove, the Tenant shall have the right, with the written consent of the Issuer and notice to the Trustee, to sublet all of the Project to a single entity for any lawful purpose under the Act. The Tenant shall have the right, without the consent of the Issuer, to sublet any part of the Project to more than one entity in the ordinary course of its business for any lawful purpose under the Act. Except where specifically provided elsewhere in this Lease as to Subtenant's obligations hereunder, no sublease of the Project shall release or discharge the Tenant from its primary liability for the payment of the Basic Rent and Additional Rent hereunder and the performance of each and all of the covenants and agreements herein contained, and its duties and obligations under this Lease shall continue as if no such sublease had been made. The Tenant shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the Issuer and the Trustee a true and correct copy of each such sublease other than the Sublease or the Amended and Restated Lease. Any such sublease may provide, at the Tenant's option, that the Issuer's consent shall not be required in respect of any further subletting thereunder if such further subletting is for a similar purpose as the original sublease and is for a purpose permissible under the Act.

Any consent of the Issuer required by this subsection (b) shall not be unreasonably withheld or delayed.

Notwithstanding any other provision of the Lease, the Indenture or any related documents to the contrary, (i) the Sublease and (ii) the Amended and Restated Lease Agreement dated February 12, 2013 between Subtenant and Kansas Athletics, Inc., are hereby approved and consented to by the Issuer.

Section 13.2. Assignment of Revenues by Issuer. The Issuer shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the Trustee pursuant to the Indenture as security for payment of the principal of, interest and premium, if any, on the Bonds and the Tenant hereby consents to such pledge and assignment.

Section 13.3. Prohibition Against Fee Mortgage of Project. The Issuer shall not mortgage its fee interest in the Project, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

Section 13.4. Restrictions on Sale or Encumbrance of Project by Issuer. During this Lease Term, the Issuer agrees that, except to secure the Bonds to be issued pursuant to the Indenture, it will not sell, assign, encumber, mortgage, transfer or convey the Project or any interest therein.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of Bonds and prior to the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (i) mailed by registered or certified mail, postage prepaid, or (ii) 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
6 East 6th Street
Lawrence, Kansas 66044
Attention: Clerk

(b) To the Tenant:

RCP, LLC
c/o 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 Trustee:

BOKF, NA
4600 Madison Avenue, Suite 800
Kansas City, MO 64112
Attention: Ken Dotson

(d) 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

(e) To KAI

Kansas Athletics, Inc.
1651 Naismith Drive

Lawrence, Kansas 66049
Attention: Director of Athletics

With a copy to:

Kansas Athletics, Inc.
1651 Naismith Drive
Lawrence, Kansas 66049
Attention: Corporate Counsel

(e) To the Permitted Lender

Emprise Bank
1211 Wakarusa Drive
Lawrence, KS 66049
Attention: Cynthia J. Yulich

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Tenant to the other shall also be given to the Trustee. The Issuer, the Tenant and the Trustee 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.

Section 15.2. Issuer Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the Issuer shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the Issuer shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules.

Section 15.3. Net Lease. The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the Issuer and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same become due and payable, and (c) that if after the principal of and interest on the Bonds and all fees, expenses and costs incident to the payment of the Bonds have been paid in full the Trustee or the Issuer holds unexpended funds received in accordance with the terms hereof such unexpended funds shall, after payment therefrom of all sums then due and owing by the Tenant under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Tenant, except that if the Sublease is still in effect and not in default, such amounts shall be paid to the Subtenant.

Section 15.4. No Pecuniary Liability. No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon the general credit or taxing powers of the City of Lawrence, Kansas or the State of

Kansas. Such limitation shall not apply to any liability or charge directly resulting from the Issuer's breach of any provision, covenant or agreement contained herein.

Section 15.5. Governing Law. This Lease shall be construed in accordance with and governed by the laws of Kansas.

Section 15.6. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the Issuer and the Tenant and their respective successors and assigns.

Section 15.7. Severability. If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 15.8. Execution in Counterparts. This Lease 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 15.9. Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 15.10. Satisfaction of Tenant's Obligations. Any obligation of the Tenant under this Lease, including, but not limited to, the obligations of the Tenant to pay Basic Rent, Additional Rent and to maintain insurance pursuant to **Article VII**, may be performed by a member of the Tenant, a Tenant's Delegee or Subtenant, and such performance by a member of the Tenant, a Tenant's Delegee or the Subtenant shall be treated as though the obligation were performed by the Tenant.

Section 15.11. Subtenant Assumption of Tenant Obligations and KAI Assumption of Subtenant Obligations. So long as the Sublease is in effect, Subtenant will construct the Project, pay all amounts and perform all other obligations that otherwise would be Tenant's under the terms of this Lease. Notwithstanding anything in this Lease or the Indenture to the contrary, with respect to any indemnification obligation and with respect to any Event of Default, the Issuer's and Trustee's sole recourse shall be against the Subtenant. Nothing in this Lease shall be deemed to modify the Sublease, the Intercreditor Agreement or any other written agreement as between Tenant and Subtenant which will, as between Tenant and Subtenant, supersede the provisions of this Lease. Nothing in this Lease is deemed to modify the Facility Agreements or other written agreement between Subtenant and KAI which will, as between Subtenant and KAI, supersede the provisions of this Lease. As between Subtenant and KAI, during the term of the Amended and Restated Lease, each shall have those rights and shall be responsible to perform those obligations as set forth in this Lease that are consistent with such parties' rights and obligations under the Facility Agreements; provided, however, that KAI shall not be responsible for any obligations under this Lease that do not accrue during the term of the Amended and Restated Lease. For example, Subtenant shall be responsible for the construction of the Project and the payment of Project Costs and Basic Rent. KAI shall be responsible for maintaining the Project, paying for utilities, carrying insurance (after construction of the Project), restoring the Project following a casualty or condemnation, and the right to make modifications and alterations to the Project. The Issuer and Tenant agree to accept such performance from either Subtenant or KAI. Subtenant and KAI agree to cooperate in good faith as

necessary to obtain the consent of the Issuer or Tenant to any actions to be taken under this Lease by either Subtenant or KAI which requires the consent of either the Issuer or Tenant. Subtenant and KAI shall defend and indemnify the other for any liability incurred by the other associated with the failure of the responsible party to perform its obligations hereunder.

Section 15.12. Rights of Permitted Lender. The Sublease authorizes the Subtenant to incur indebtedness to finance the construction of the Project (“**Permitted Indebtedness**”) and to enter into a leasehold mortgage or collateral assignment of the Sublease (“**Sublease Leasehold Mortgage**”) to secure the Permitted Indebtedness, in each case subject to the consent of the Tenant and other conditions specified in the Sublease, including an intercreditor agreement in form and substance satisfactory to the Tenant between the Tenant and the holder of the Sublease Leasehold Mortgage (“**Permitted Lender**”). The Subtenant is the Purchaser of the Bonds. Concurrently with the issuance of the Bonds, the Subtenant will execute a Bond Pledge Agreement (“**Bond Pledge Agreement**”) in favor of the Permitted Lender, pursuant to which the Bonds will be pledged and delivered to the Permitted Lender as additional security for the Permitted Indebtedness. Prior to or concurrently with the issuance of the Bonds, the Tenant and the Permitted Lender shall enter into the Intercreditor Agreement pursuant to which the Tenant shall have the right to acquire the right and interest of the Permitted Lender in the Permitted Indebtedness in certain circumstances, including the Sublease Leasehold Mortgage, the Bond Pledge Agreement and the Bonds. Notwithstanding anything in this Lease or the Indenture to the contrary, as long as all or any part of the Permitted Indebtedness is outstanding, Permitted Lender and its assigns (including Tenant if Tenant acquires such rights per said Intercreditor Agreement) shall be deemed to be the Owner of the Bonds for all purposes following the occurrence of an Event of Default, including having the right to receive notice of, consent to, direct or control any actions, restrictions, rights, remedies, waivers or acceleration pursuant to any provision of this Lease or the Indenture.

IN WITNESS WHEREOF, the parties hereto have caused this Lease 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

By: _____
Mayor

(Seal)

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

KANSAS ATHLETICS, INC., a
Kansas non-profit corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

PROJECT SITE

EXHIBIT B

PROJECT IMPROVEMENTS

All buildings, structures, improvements and fixtures located on or to be acquired or purchased for the construction, improvement, equipping or remodeling of the Project Site pursuant to **Article IV** hereof and paid for in whole or in part from the proceeds of Bonds and all additions, alterations, modifications and improvements thereof made pursuant to this Lease.

EXHIBIT C

PROJECT EQUIPMENT

All items of machinery, equipment and parts or other personal property installed or acquired or to be acquired for installation in the Project Improvements or elsewhere on the Project Site, or for use in connection with the Tenant's business, pursuant to **Article IV** hereof and paid for in whole or in part from the proceeds of Bonds and all replacements thereof and substitutions therefor made pursuant to this Lease.

EXHIBIT D

[FORM OF REQUISITION CERTIFICATE]

Requisition No. _____

Date: _____

REQUISITION CERTIFICATE

TO: BOKF, NA, AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF OCTOBER 1, 2013, BETWEEN THE CITY OF LAWRENCE, KANSAS, AND THE TRUSTEE, AND LEASE AGREEMENT DATED AS OF OCTOBER 1, 2013, BETWEEN THE CITY OF LAWRENCE, KANSAS, KANSAS, AND RCP, LLC

The undersigned hereby requests that a total of \$_____ be paid for Project Costs (as defined in said Lease) in such amounts, to such payees and for such purposes as set forth on **Schedule 1** attached hereto.

I hereby state and certify that: (i) the amounts requested are or were necessary and appropriate in connection with the acquisition, purchase, construction, improving, equipping or remodeling of the Project, have been properly incurred and are a proper charge against the Project Fund, and have been paid by or are justly due to the persons whose names and addresses are stated above, and have not been the basis of any previous requisition from the Project Fund; (ii) as of this date, except for the amounts referred to above, there are no, to the best of my knowledge, outstanding statements which are due and payable for labor, wages, materials, supplies or services in connection with the acquisition, purchase, construction, improving, equipping or remodeling of said buildings and improvements which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof; and (iii) no part of the several amounts paid or due as stated above has been or is being made the basis for the withdrawal of any moneys from the Project Fund in any previous or pending application for payment made pursuant to said Lease.

For any payee which is the Tenant the undersigned hereby instructs the Trustee to make such payment by electronic transfer to the following account: _____, ABA No. _____, Credit Account No. _____ (Bliss Sports, LC).

BLISS SPORTS, LC, a Kansas limited liability company

By: _____
Thomas S. Fritzel, Manager

[ADD APPROVAL SIGNATURES FOR TENANT AND PERMITTED LENDER]

SCHEDULE 1 TO REQUISITION CERTIFICATE

Amount

Payee and Address

Description

\$ _____