

## PROPERTY ACCESS AND MAINTENANCE AGREEMENT FOR THE TRAILS

THIS PROPERTY ACCESS AND MAINTENANCE AGREEMENT FOR THE TRAILS (the "Agreement") is made as of July 10, 2013, by and among RCP, LLC, a Kansas limited liability company ("RCP"), the CITY OF LAWRENCE, KANSAS, a municipal corporation organized and existing under the laws of the State of Kansas (the "City") and BLISS SPORTS, LC, a Kansas limited liability company ("Bliss Sports") and KANSAS ATHLETICS, INC., a Kansas non-profit corporation ("KAI").

WITNESSETH:

WHEREAS, RCP, the City, Bliss Sports and Bliss Sports II, LC, a Kansas limited liability company (the "Bliss Sports II") are parties to a certain Rock Chalk Park Development Agreement dated July 10, 2013 (the "Development Agreement") concerning the development of certain improvements on a tract of approximately eighty-nine (89) acres of real property located at the northwest intersection of Rock Chalk Drive and George Williams Way which is more fully described on Exhibit A attached hereto (which is referred to herein and in the Development Agreement as the "Property");

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

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

WHEREAS, as permitted in the Ground Lease, Bliss Sports and KAI have entered into a certain Amended and Restated Lease Agreement dated as of February 12, 2013 pursuant to which KAI has certain rights to use the Stadium Site and the Stadium Facilities on the terms set forth therein but subject to the terms and conditions of the Ground Lease;

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

WHEREAS, pursuant to the Development Agreement, approximately five (5) linear miles of running and walking trails (the "Trails") which collectively constitute a portion of the "Infrastructure

Improvements” (as that term is defined in the Development Agreement) will be constructed on the Recreation Center Site, the Stadium Site and the Existing City Tract (collectively, the “Trails”);

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

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

1. Access. During the Easement Term the parties hereby grant to each other and to the public a non-exclusive easement to the Trails in order to allow the public and each of the parties and their tenants, subtenants, contractors, vendors, invitees, employees and licensees to have rights of ingress, egress and use on, over and across the Trails during the Easement Term for customary use as a walking and running trail.
2. Routine Maintenance. During the Easement Term, once the Trails are installed, KAI shall cause the Trails to be repaired and maintained, including without limitation the making of all surface and subsurface repairs and maintenance, seal coating and removal of trash, rubbish and other refuse, if any, so as to maintain such Trails in good condition, reasonable wear and tear excepted, in a professional manner that is reasonably acceptable to each of the parties. The cost of the maintenance shall be split evenly between the City and KAI.
3. Reconstruction. If during the Easement Term, the party designated in Section 2 as being responsible for performing the routine repairs and maintenance of the Trails shall reasonably determine that some or all of such Trails need to be completely replaced, or need repairs beyond normal repairs, then such party will notify the other parties to this Agreement and shall provide a written estimate of the costs of such reconstruction or major repairs. Unless the parties otherwise agree in writing, KAI shall complete or cause such replacement or major repairs in a timely manner and the costs of such major replacement or renovation shall be split evenly between the City and KAI.
4. Intentional or Negligent Acts. Notwithstanding anything to the contrary in this Agreement, but subject to Section 10, each party hereto shall be solely responsible for the repair of any and all damage to the Trails caused by any intentional or negligent act or omission of its subtenants, agents, employees, business invitees and licensees.
5. Defaults. An “Event of Default” or “default” shall mean, wherever used in this Agreement, any failure by one or more of the parties hereto to observe and perform any covenant, condition or agreement in this Agreement on its part to be observed or performed and the lapse of a period of 60 days after written notice, specifying such failure and requesting that it be remedied, given to such party by the other party, provided, that if such default cannot be fully remedied within such 60-day period, but can reasonably be expected to be fully remedied, such default shall not constitute an Event of Default if the defaulting party shall within a reasonable period of receipt of such notice commence the curing of such default and shall thereafter prosecute and complete the same with due diligence and dispatch.
6. Remedies. If there is an Event of Default by a party, the other non-defaulting parties hereunder shall each be entitled to all rights and remedies at law or in equity, including specific performance and injunctive or other equitable relief, notwithstanding availability of an adequate remedy at law. The prevailing party in any action to enforce this Agreement shall recover as part of its costs,

reasonable attorneys' fees and court costs and interest on funds expended by the prevailing party to cure such default by another party.

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

8. Easement Term. For purposes of this Agreement "Easement Term" shall mean the period from the date hereof until the soonest to occur of: (a) the expiration or sooner termination of the Ground Lease; (b) the sooner to occur of (i) City failing to build a Recreation Center on the Recreation Center Site within two (2) years of the date of this Agreement or, if the City causes one to be built but fails to operate the same or any other improvements thereon primarily as a recreational facility open to the general public for a period of twelve (12) consecutive months (exclusive of up to six (6) months following a casualty event affecting a substantial portion of any such Recreation Center); or (c) the execution by the parties hereto or their respective successors and assigns and recording in the office of the Register of Deeds of Douglas County, Kansas of an agreement terminating this Agreement. Once the Easement Term has expired under the preceding sentence any party to this Agreement may execute and record a notice that the Easement Term has expired and thereafter this Agreement will have no further force or effect.

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

10. Not an Agent of RCP. None of the City, Bliss Sports, KAI or their respective designees, contractors, employees or agents will be an agent of RCP for the purpose of making any improvements on the portions of the Property owned by RCP and the terms and provisions of the Ground Lease shall supersede and be binding upon Bliss Sports and its successors, assigns, tenants, subtenants, designees, contractors employees and agents notwithstanding anything that could be construed to the contrary in this Agreement. Notwithstanding anything to the contrary in this Agreement, including without limitation Section 4, unless hereafter agreed in writing by RCP, neither RCP nor any real or personal property of RCP will be liable for any of the costs and expenses of performing any of the maintenance, repair, reconstruction, installation and other services and materials provided for in this Agreement.

11. Miscellaneous.

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

To Bliss Sports:

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

To the City:

City Manager  
City of Lawrence  
6 E. 6<sup>th</sup> Street  
Lawrence, KS 66044

With copies to:

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

With copies to:

City Attorney  
City of Lawrence  
6 E. 6<sup>th</sup> Street  
Lawrence, KS 66044

and

To KAI:

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

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

To RCP:

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

With copies to:

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

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

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

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

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

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

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

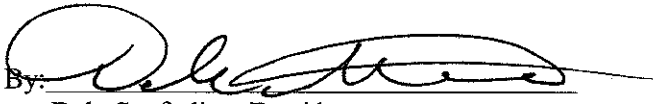
(g) Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

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

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

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

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

By:   
Dale Seuferling, President

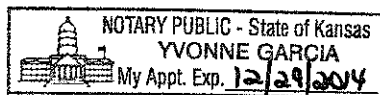
#### ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF DOUGLAS        )

BE IT REMEMBERED, that on this 30 day of July, 2013, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Dale Seuferling as the President of The Kansas University Endowment Association, a Kansas non profit corporation, as the sole member of RCP, LLC, a Kansas limited liability company, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed the within instrument on behalf of said corporation in its capacity as member of such limited liability company, and such officer duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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

[SEAL]



  
Notary Public

My commission expires \_\_\_\_\_.

(Seal)



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

By: \_\_\_\_\_

Name: Michael Dever

Title: Mayor

ATTEST:

\_\_\_\_\_  
Name: Jonathan M. Douglass

Title: City Clerk

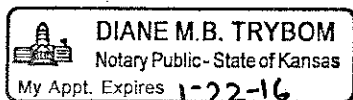
**ACKNOWLEDGMENT**

STATE OF KANSAS                    )  
  ) SS.  
COUNTY OF DOUGLAS            )

BE IT REMEMBERED that on this 22<sup>ND</sup> day of July, 2013, before me, a notary public in and for said county and state, came Michael Dever, Mayor of the City of Lawrence, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and Jonathan M. Douglass, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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

[SEAL]

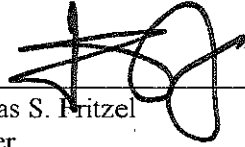


\_\_\_\_\_  
Notary Public

My commission expires 1-22-16.

BLISS SPORTS, LC,  
a Kansas limited liability company

By: \_\_\_\_\_  
Name: Thomas S. Fritzel  
Title: Manager



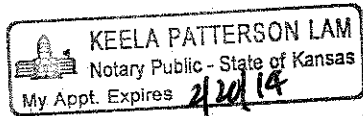
ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF DOUGLAS        )

BE IT REMEMBERED, that on this 1st day of July, 2013, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Thomas S. Fritzel; the Manager of Bliss Sports, LC, a Kansas limited liability company, who are personally known to me to be such Manager, and who are personally known to me to be the same persons who executed the within instrument on behalf of said limited liability company, and such Manager duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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

[SEAL]



\_\_\_\_\_  
Keela Patterson Lam  
Notary Public

My commission expires 2/20/14



KANSAS ATHLETICS, INC.  
a Kansas non-profit corporation

By: [Signature]  
Name: Sheahon Zenger  
Title: Director of Athletics

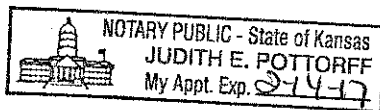
ACKNOWLEDGMENT

STATE OF KANSAS            )  
                                      ) SS.  
COUNTY OF DOUGLAS        )

BE IT REMEMBERED, that on this 27<sup>th</sup> day of ~~July~~<sup>June</sup>, 2013, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Sheahon Zenger, the Director of Athletics of Kansas Athletics, Inc., a Kansas non-profit corporation, who are personally known to me to be such Director of Athletics, and who are personally known to me to be the same persons who executed the within instrument on behalf of said corporation, and such Director of Athletics duly acknowledged the execution of the same to be the act and deed of said corporation.

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

[SEAL]



[Signature]  
Notary Public

My commission expires 2-14-17

EXHIBIT A

LEGAL DESCRIPTION OF ROCK CHALK PARK

Lots 1 and 2, Rock Chalk Park Addition No. 1, in the City of Lawrence,  
Douglas County, Kansas.

EXHIBIT B

LEGAL DESCRIPTION OF RECREATION CENTER SITE

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

## EXHIBIT C

### LEGAL DESCRIPTION OF STADIUM SITE

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

## EXHIBIT D

### LEGAL DESCRIPTION OF EXISTING CITY TRACT

A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 12 SOUTH, RANGE 19 EAST OF THE 6TH P.M. IN DOUGLAS COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER CORNER OF SAID SECTION 29;  
THENCE ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 29S. 2°01'10"E. (BEING AND ASSUMED BEARING) 377.18 FEET;  
THENCE S. 66°27'53"W. 735.30 FEET;  
THENCE N. 79°27'52"W. 120.73 FEET;  
THENCE ON A (NON-TANGENT) CURVE TO THE LEFT WITH A RADIUS OF 250.00 FEET AN ARC LENGTH OF 606.36 FEET (CHORD OF SAID CURVE BEARS: S. 42°26'34"W. 468.29 FEET);  
THENCE S. 5°32'15"W. 56.74 FEET;  
THENCE S. 36°50'52"W. 105.91 FEET;  
THENCE N. 34°08'16"W. 136.57 FEET;  
THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 280.00 FEET AN ARC LENGTH OF 462.36 FEET (CHORD OF SAID CURVE BEARS: N. 81°26'37"W. 411.59 FEET);  
THENCE S. 51°15'03"W. 122.85 FEET;  
THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 380.00 FEET AN ARC LENGTH OF 376.43 FEET (CHORD OF SAID CURVE BEARS: S. 22°52'20"W. 361.22 FEET);  
THENCE S. 5°30'23"E. 284.93 FEET;  
THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 170.00 FEET AN ARC LENGTH OF 66.68 FEET (CHORD OF SAID CURVE BEARS: S. 5°43'52"W. 66.26 FEET);  
THENCE S. 16°58'06"W. 93.30 FEET;  
THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 380.00 FEET AN ARC LENGTH OF 563.28 FEET (CHORD OF SAID CURVE BEARS: S. 25°29'49"E. 513.11 FEET);  
THENCE S. 22°02'16"W. 30.33 FEET;  
THENCE N. 65°51'23"W. 378.00 FEET;  
THENCE S. 46°11'49"W. 319.98 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF SAID KANSAS HIGHWAY 10;  
THENCE ALONG THE EAST RIGHT-OF-WAY LINE OF SAID KANSAS HIGHWAY 10 THE FOLLOWING TWO COURSES (1) N. 0°20'30"E. 263.98 FEET; THENCE (2) N. 33°18'53"W. 267.75 FEET;  
THENCE N. 36°58'42"E. 111.44 FEET;  
THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 280.00 FEET AN ARC LENGTH OF 358.69 FEET (CHORD OF SAID CURVE BEARS: N. 20°16'45"E. 334.66 FEET);  
THENCE N. 16°25'12"W. 229.08 FEET;  
THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 120.00 FEET AN ARC LENGTH OF 30.99 FEET (CHORD OF SAID CURVE BEARS: N. 9°01'15"W. 30.91 FEET);  
THENCE N. 1°37'19"W. 400.20 FEET;  
THENCE N. 15°06'45"E. 83.31 FEET;  
THENCE N. 61°56'31"E. 113.77 FEET;  
THENCE N. 46°35'43"E. 494.32 FEET;  
THENCE N. 41°23'13"W. 382.92 FEET;  
THENCE N. 1°20'42 "W. 28.41 FEET TO A POINT ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 29;  
THENCE ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 29 N. 88°08'58"E. 2048.06 FEET TO THE POINT OF BEGINNING, CONTAINING 45.695 ACRES.