

**LEASE AGREEMENT**  
**BETWEEN**  
**LOUISVILLE ARENA AUTHORITY, INC.**  
**AND**  
**UNIVERSITY OF LOUISVILLE ATHLETIC**  
**ASSOCIATION, INC.**

**DATED JULY 3, 2008**

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into and effective as of July 3, 2008, by and between: (i) LOUISVILLE ARENA AUTHORITY, INC., a Kentucky non-profit, non-stock corporation (the "Landlord"), and (ii) UNIVERSITY OF LOUISVILLE ATHLETIC ASSOCIATION, INC., a Kentucky non-profit, non-stock corporation (the "Tenant") (collectively, the "Parties" and individually, a "Party").

### RECITALS:

Landlord desires to lease the "Leased Premises," as hereinafter defined, to Tenant, and Tenant desires to lease the Leased Premises from Landlord, upon the terms and conditions contained in this Lease.

### AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

**1. DEFINITIONS.** The following terms as used in this Lease will have the following meanings:

*"Act of Bankruptcy"* shall have the meaning set out in Article 22.

*"Annual Net Payment"* means the amount by which the greater of Landlord Payables or Tenant Payables as determined on the date of calculation of the Annual Net Payment as provided in Section 7.1(j) exceeds the lesser of Landlord Payables or Tenant Payables as determined on such date.

*"Arena"* means the Arena to be constructed by Landlord at the Arena Site in compliance with Section 3.2(b).

*"Arena Bond Documents"* means the Assignments, the Bond Indenture, the Loan Agreement, the Mortgage and Security Agreement, the Official Statement, the Project Certificate, the Purchase Contract and the Tax Regulatory Agreement, all as defined in Article I of the Bond Indenture.

*"Arena Bonds"* means the Bonds, as defined in Article I of the Bond Indenture.

*"Arena Bowl"* means all parts of the interior of the Arena from which the basketball playing surface of the Arena is visible.

*"Arena Seating"* means the Non-Premium Seating, the Premium Seating, and the seating within the Private Suites and the Party Suites. The areas and locations of the Arena Seating are indicated on and described in the Drawings and Specifications.

*"Arena Site"* means the real property in Louisville, Kentucky located within the block bounded by South Second Street, South Third Street, River Road, and Main Street.

*"Basketball Game"* means any basketball game played in the Arena by either the men's or women's Basketball Team.

*"Basketball Season"* means each University regular basketball season during the Term, beginning with the first game played by either the men's or women's Basketball Team in the season and ending with the last game played by either the men's or women's Basketball Team in the season. For purposes of this definition, "game" includes conference, non-conference and exhibition games.

*"Basketball Space"* means the following:

(1) A basketball playing surface, with all customary related items including, without limitation, state-of-the-art goals, scoreboard and scorers table, and a top quality public address system. Neither the basketball playing surface nor the other items specified in the previous sentence will contain any commercial or non-University logos except as permitted for University-sponsored Signage as provided in this Lease, or as required by the NCAA for an NCAA Event. The sight-lines from all Arena Seating to the basketball playing surface (taking into account both the distance from the seats to the center court and the angle of view) will be better than the existing sight-lines at Freedom Hall.

(2) One additional practice court area, which will be part of the Arena staging area.

(3) Four donor hospitality areas (rooms) with total space of approximately 32,000 square feet. Each area (room) will be built out, finished and furnished by Landlord. Tenant will have the right to decorate each area (room), to allow each area (room) to be unique, provided that all such decoration by Tenant shall be within the fit-up allowance in the budget to be agreed upon and consistent with the Construction Contract.

(4) Dedicated locker rooms for each of the Basketball Teams.

(5) Separate training rooms for men and for women.

(6) Separate offices for men's coaches and women's coaches.

(7) Visiting locker rooms, in locations and having total space to meet the requirements of the NCAA for hosting post-season basketball tournament games.

(8) Media work, hospitality and interview space having separate areas that are suitable for the following purposes and that have the following minimum square footage: work room, 2,500 sq. ft.; press box area, 10,000 sq. ft.; studio and production area, 2,000 sq. ft.; dining area for press, 1,500 sq. ft.; and interview room, 1,000 sq. ft.

*"Basketball Team"* means, as the context requires, either the University's men's basketball team or the University's women's basketball team, and *"Basketball Teams"* means the University's men's and women's basketball teams.

*"Bond Indenture"* means the Bond Trust Indenture between KEDFA and U.S. Bank National Association, as Bond Trustee, dated as of July 1, 2008.

*"Bond Insurer"* shall have the meaning set out in Article I of the Bond Indenture.

*"Bond Trustee"* shall have the meaning set out in Article I of the Bond Indenture.

*"Code"* means the Internal Revenue Code of 1986, as amended, and the Treasury regulations promulgated thereunder.

*"Commencement Date"* means July 3, 2008.

*"Commercially Reasonable Efforts"* means a diligent, reasonable and good faith effort by a Party to accomplish an objective, but does not require its accomplishment. Such degree of effort will take into account unanticipated events and the exigencies of continuing business, but does not require that events or exigencies be overcome at all costs. It only requires that commercially reasonable efforts be exercised within a reasonable time to overcome any hurdles and accomplish the objective, allowing the Party to give reasonable consideration to its own business interests.

*"Confidential Information"* shall have the meaning set out in Section 36.

*"Construction Contract"* means the Agreement for Construction Manager at Risk between Landlord and M.A. Mortenson Company dated as of August 20, 2007, as amended.

*"Construction Contract Documents"* means the Contract Documents, as defined in Section 3.01(b) of the Construction Contract.

*"Defaulting Party"* shall have the meaning set out in Section 22.

*"Delay Notice"* shall have the meaning set out in Section 3.3(b)(2).

*"Disclosing Party"* shall have the meaning set out in Section 36.

*"Drawings and Specifications"* shall have the meaning set out in Section 3.01(a) of the Construction Contract.

*"Dispute"* shall have the meaning set out in Section 33.

*"Event of Default"* shall have the meaning set out in Section 22.

*"Excluded Amount"* shall have the meaning set out in Section 46(e).

*"Fair Board – Tenant Lease"* shall have the meaning set out in Section 32.

*"Force Majeure Event"* means any unusually inclement weather, strikes, lock-outs, labor troubles, inability to procure materials which could not have been reasonably anticipated and avoided by the Performing Party, failure of power, restrictive governmental laws or regulations, act of God, fire, earthquake, flood, explosion, terrorism, action of the elements, war (declared or undeclared), police action, invasion, insurrection, riot, mob violence, sabotage, the act, a failure to act or default of the Receiving Party that could not have been reasonably anticipated by the Performing Party, or other causes beyond the Performing Party's reasonable control.

*"Game Day"* means any day on which a Basketball Game to be played in the Arena has been scheduled by Tenant, on its final approved men's and women's basketball schedules for each Basketball Season from the Big East Conference (or other conference which Tenant may join during the Term), and on its final men's and women's non-conference basketball schedules for each Basketball Season (including any exhibition games).

*"Gift Shop"* shall mean the retail store within the Arena, the area and location of which is indicated on and described in the Drawings and Specifications.

*"Indemnatee"* shall have the meaning set out in Section 35.

*"Indemnitor"* shall have the meaning set out in Section 35.

*"KEDFA"* means the Kentucky Economic Development Finance Authority.

*"KSFB"* means the Kentucky State Fair Board.

*"KSFB Agreement"* means the Amended and Restated Operations Management Agreement between Landlord and KSFB dated as of April 24, 2008, a copy of which is attached to and made a part of this Lease as **Exhibit A**.

*"Landlord"* means the Louisville Arena Authority, Inc.

*"Landlord Payables"* means the sum of all accrued amounts owed by Landlord to Tenant at any time under any provision of this Lease except Section 5.1(b).

*"Landlord Signage Revenue"* shall have the meaning set out in Section 7.1(g)(2).

*"Landlord Video Board Revenue"* shall have the meaning set out in Section 7.1(g)(3).

*"Lease"* means this Lease Agreement between Landlord and Tenant.

*"Leased Premises"* means the Basketball Space and the Arena Seating.

*"Loss"* shall have the meaning set out in Section 35.

*"Metro Louisville"* means the Louisville/Jefferson County Metro Government.

*"Mortgage and Security Agreement"* shall have the meaning set out in Article I of the Bond Indenture.



*"Mortgagee"* means the Bond Trustee, in its capacity as mortgagee under the Mortgage and Security Agreement.

*"MOU"* means the Memorandum of Understanding between Landlord and Tenant dated as of August 22, 2006.

*"Naming Rights"* shall mean any rights sold, leased or licensed by Landlord or its agent to one or more sponsors relating to the name of the Arena or the name of any part of the Arena.

*"Naming Rights Sponsor"* shall mean any purchaser, lessee or licensee of Naming Rights. A Naming Rights Sponsor for a part of the Arena may be described publicly as a Founding Partner or a Founder.

*"NCAA"* means the National Collegiate Athletic Association.

*"NCAA Event"* means any athletic event in the Arena that is part of a postseason competition controlled, directed and supervised by the NCAA for the purpose of determining an NCAA national champion or an NCAA division champion for any sport.

*"Net Premium Seating Revenue"* shall have the meaning set out in Section 7.1(d)(1).

*"Net Private Suite Revenue"* shall have the meaning set out in Section 6.2.

*"Non-Premium Seating"* means seating within the Arena Bowl when configured for a Basketball Game for approximately 17,850 persons (without press or standing room only filled) in seats that are not Premium Seating. Non-Premium Seating does not include Side-Court VIP Seating or seats within the Private Suites and the Party Suites.

*"Other Party"* shall have the meaning set out in Section 39.

*"Oversight Committee"* shall have the meaning set out in Section 33.

*"PARC"* means the Parking Authority of River City, Inc.

*"PARC Agreement"* means (i) the Memorandum of Understanding between PARC and Landlord dated as of May 21, 20007, as amended by the First Amendment to Memorandum of Understanding between PARC and Landlord dated as of March 12, 2008, and (ii) the Agreement for Purchase and Sale of Real Estate between PARC and Landlord dated the date hereof, copies of which are attached to and made a part of this Lease as **Exhibit B**.

*"PARC Commitment Letter"* means the letter agreement between PARC and Landlord dated the date hereof, a copy of which is attached to and made a part of this Lease as **Exhibit C**.

*"Parking Facility"* means the parking garage within the Arena, the area and location of which is indicated on and described in the Drawings and Specifications.

*"Parking Facility Operating Agreement"* means the Garage Operating Agreement among PARC, Landlord and Tenant dated the date hereof, a copy of which is attached to and made a part of this Lease as **Exhibit D**.

*"Party Suite"* means each of the four private corner suites within the Arena, the areas and locations of which are indicated on and described in the Drawings and Specifications. The Party Suites are not included within the Private Suites.

*"Performing Party"* shall have the meaning set out in Section 39.

*"Permanent Signage"* means any Signage that is constructed of durable materials, is affixed to any part of the Arena, and is expected to remain in place continuously for an indefinite period of time. Permanent Signage does not include University-sponsored Event Signage.

*"PILOT agreement"* means any agreement or arrangement under which a person or entity makes a voluntary payment in lieu of taxes to a government agency or taxing district.

*"PILOT amount"* means any amount paid under a PILOT agreement.

*"Play Obligations"* shall have the meaning set out in Section 3.3(a).

*"Play Obligations Conditions"* shall have the meaning set out in Section 3.3(a).

*"Practice Day"* means (i) the day before and the day after each Game Day, and (ii) any additional day for which Tenant requests the use of the Leased Premises for practice time, provided that at the time Tenant makes the request for the additional day Landlord has not previously booked or contracted for the use of the Leased Premises by another event on that day.

*"Premium Seating"* means the following seating within the Arena Bowl, the areas and locations of which are indicated on and described in the Drawings and Specifications: (i) approximately 2,054 side-court club seats (including disabled seating), (ii) approximately 800 mezzanine club seats (including disabled seating), and (iii) 304 loge seats with a configuration of 70 loge boxes that include 62 boxes with four seats each and eight boxes with six seats each. Premium Seating does not include Side-Court VIP Seating or seats within the Private Suites and the Party Suites.

*"Priority Use Period"* means the period commencing on October 1 of each year (or such earlier date in the year on which the NCAA permits collegiate basketball games (including exhibition games) to be played) and ending on the date in the following year on which the post-season men's and women's basketball tournament games sponsored by the NCAA are concluded.

*"Private Suite"* means each of the 71 private suites within the Arena, the areas and locations of which are indicated on and described in the Drawings and Specifications. The Private Suites do not include the Party Suites.

*"Receiving Party"* shall have the meaning set out in Section 39.

*"Riverside Agreement"* means the Riverside Parking Facilities Agreement to be entered into by Riverside Parking, Inc. and Landlord, a copy of the current draft of which is attached to and made a part of this Lease as **Exhibit E**.

*"Side-Court VIP Seating"* shall have the meaning set out in Section 7.1(e).

*"Signage"* shall mean any space, board or other object located inside, outside, on or about the Arena that is or can be inscribed with words, characters or other information, whether such space, board or object is fixed or mobile, permanent or temporary, or electronic or otherwise. Without limitation of the foregoing, Signage shall include external LED marquees and/or videoboards, LED displays on the internal videoboards, any other interior signs or displays, exterior signs, fixed panels on the main scoreboard, auxiliary scoreboard signage, shot clock advertising panels, LED ring signage and electronic ribbon-board fascia, DLP (currently known as dorna) signage and other dorna-type signage, basketball goal post padding, playing surface logos, basketball court end lines, team entry cover signage, and any other signage in, on or about the Arena façade, tunnels, concourse, restaurant and concession areas, lobby, facility entries/exits, restrooms, portal entry/exits into seating, and concourse displays (including, but not limited to, displays of products such as automobile and truck displays).

*"Sponsor"* means any person or entity that makes a payment or provides other value in exchange for a Sponsorship.

*"Sponsorship"* means any agreement or arrangement for the use or acknowledgement of the name, logo or products of a Sponsor's trade or business in or on the Arena or at an Arena event.

*"Stadium"* shall have the meaning set out in Section 46.

*"Stadium Bonds"* shall have the meaning set out in Section 46.

*"Stadium Financing Agreement"* shall have the meaning set out in Section 46.

*"Substantial Completion"* shall have the meaning set out in Section 4.01 of the Construction Contract.

*"Tax-Exempt Bonds"* shall mean the 2008A Bonds, as defined in Article II of the Bond Indenture, and any other Arena Bonds issued under the Bond Indenture the interest on which is excluded from gross income for federal income tax purposes.

*"Tenant"* shall mean the University of Louisville Athletic Association, Inc.

*"Tenant Payables"* means the sum of all accrued amounts owed by Tenant to Landlord at any time under any provision of this Lease except Section 8(b).

*"Term"* shall have the meaning set out in Section 3.1(a).

*"ULAA Arena Obligations"* shall have the meaning set out in Section 46.

*"ULAA Arena Revenues"* shall have the meaning set out in Section 46.

*"University"* means the University of Louisville.

*"University-sponsored Event"* means any athletic, academic or related activity that is sponsored and solely arranged by either Tenant or the University, including, without limitation, Basketball Games, other athletic games or events, University graduations, student performances, and the like. For purposes of this definition, an event shall be considered sponsored and arranged by Tenant or the University only if the event has been approved in advance by (i) in the case of an athletic event, an administrator in the Athletic Office of the University at the level of Associate Director or above, and (ii) in the case of any other event, an administrator of the University at the level of Vice President or above or a faculty member at the level of Department Head or above. For purposes of this definition, an NCAA Event is not a University-sponsored Event.

*"University-sponsored Event Signage"* shall mean Signage that is sold, leased or licensed by Tenant or its agent to one or more sponsors for use only during a University-sponsored Event. University-sponsored Event Signage shall include, but shall not be limited to, any and all courtside signage (including, but not limited to, scorer's table, press row side, and baseline signage), video walls, shot clock advertising panels, LED ring signage and electronic ribbon-board fascia signage, seats on the bench(es), goal posts, and any other Signage agreed upon by Landlord and Tenant. University-sponsored Event Signage does not include, and shall not cover, any Permanent Signage.

*"University-sponsored Event Sponsorship"* shall mean any agreement or arrangement between Tenant and a Sponsor to provide recognition to the Sponsor during a University-sponsored Event, such as the use or acknowledgement or display of the Sponsor's name or logo or products in a half-time show or product giveaway, or any other form or manner of use or acknowledgement or display that does not constitute University-sponsored Event Signage.

*"Utilities"* shall have the meaning set out in Section 12.

**2. LEASE OF LEASED PREMISES.** Landlord leases to Tenant, and Tenant leases from Landlord, upon the conditions and agreements set forth in this Lease, the Leased Premises. Tenant shall also have, as appurtenant to the Leased Premises, the nonexclusive right in common with others to use and to permit Tenant's patrons and guests to use all spaces and facilities in and around the Arena that are not part of the Leased Premises, for the purpose of entry in and exit from the Leased Premises and for all other reasonable purposes that are necessary for the use and enjoyment of the Leased Premises by Tenant and its patrons and guests.

**3. TERM; ARENA CONSTRUCTION, SPECIFICATIONS AND BRANDING; TENANT'S PLAY OBLIGATIONS.**

**3.1 Term.**

(a) *Term.* The term of this Lease (the "Term") shall commence on the Commencement Date and shall terminate on September 30, 2044, subject to Sections 22(b), 25 and 26.

(b) *Extension.* Upon the termination of the Term, the Parties may extend the Term upon mutual agreement to the terms and conditions of such extension.

### **3.2 Arena Construction, Specifications and Branding**

(a) *Construction.* Landlord will proceed diligently without undue delay to construct the Arena upon the Arena Site. Tenant will be entitled to full disclosure of, and participation in, the process of designing and constructing the Arena, including, without limitation, the right to receive notice of, and have representatives present at, substantive meetings and briefings. Tenant will participate in the Arena's design, construction bid document and construction oversight phases, and will review and approve each of the monthly reports prepared by Landlord's project manager. As of the Commencement Date, Tenant acknowledges that full participation has occurred.

(b) *Specifications.* The Arena will include at least the following areas, each of which will be designed and constructed in accordance with the Drawings and Specifications and the Construction Documents:

- (1) The Basketball Space;
- (2) The Arena Seating;
- (3) The Gift Shop; and
- (4) The Parking Facility.

(c) *Branding.* The Arena will contain in appropriate locations "branding" for the University's athletic programs, including, without limitation, the Basketball Teams. Tenant will approve all colors, logos, marks, Signage and banners used by Landlord inside and outside the Arena. Landlord will make the ultimate decision(s) with regard to the name or identification of the Arena or any part thereof, but (i) Tenant will have the right to approve any name or identification used for the Arena or any part thereof, including the colors, logos, marks, Signage and banners used in connection with the name or identification, which approval will not be unreasonably withheld or delayed by Tenant, (ii) Landlord and Tenant will mutually agree to the number and location of all Signage or other means of identification which are placed inside or outside the Arena in connection with the sale, lease or license of Naming Rights, (iii) Landlord may grant Naming Rights for the base lines at the ends of the basketball court, subject to Tenant's approval as provided in clause (i) above, but not the side lines, and (iv) until changed by Tenant in its sole discretion, the basketball court will be named "The Denny Crum Court." Subject to Sections 7.1(g)(2) and (3), Landlord will retain all revenue arising from the sale, lease or license of Naming Rights. Landlord will not take any action that is inconsistent with the "branding" of the Arena for the University's athletic programs. Without limitation of the foregoing, (i) in lieu of the basketball museum that was anticipated in the MOU, Landlord and

Tenant will mutually agree on the placement of University basketball memorabilia in appropriate locations throughout the Arena as part of the overall design theme of the Arena (all such memorabilia shall be selected by Tenant and shall remain the property of Tenant), (ii) Landlord will permit Tenant to display historical banners in the Arena that recognize the historical accomplishments of the University's teams, individuals, and conference affiliation, which historical banners will be displayed at all times, including all events other than University-sponsored Events, and (iii) under no circumstances will any of the University colors, logos, marks, Signage, banners or scorers table be covered or removed when any event other than a University-sponsored Event is held in the Arena, except when (A) the required configuration of the floor and/or other elements of the Arena for such event will make it commercially impracticable to hold such event without covering or temporarily removing any such item (e.g., covering the floor and removing the scorers table for an indoor soccer game or ice event), or (B) the NCAA requires such covering or removal for an NCAA Event. Any other covering or removal will require the advance written approval of Tenant.

*(d) Mutual Licenses.* Landlord shall cause to be included in any Naming Rights Sponsorship agreement for the Arena a grant to Tenant, for the period of the Term, of a non-exclusive, irrevocable (subject to customary termination provisions for breach, etc.), royalty-free, worldwide, fully-paid up right and license to use the Arena name and identification, solely for the purpose of promoting the University and its athletic or academic programs or functions that use the Arena during the Term. Landlord grants to Tenant, for the period of the Term, a non-exclusive, irrevocable (subject to customary termination provisions for breach, etc.), royalty-free, worldwide, fully-paid up right and license to use any accurate symbolic representation of the Arena, solely for the purpose of promoting the University and its athletic or academic programs or functions that use the Arena during the Term. As used in the preceding sentence, "symbolic representation" means any two-dimensional or three-dimensional replica, model, artistic or photographic rendering or other visual representation of the Arena or any portion thereof. Tenant grants to Landlord, for the period of the Term, a non-exclusive, irrevocable (subject to customary termination provisions for breach, etc.), royalty-free, worldwide, fully-paid up right and license to use the name of the University and Tenant, solely for the purpose of promoting the Arena during the Term.

### ***3.3 Tenant's Play Obligations.***

*(a) Conditions to Tenant's Play Obligations.* Notwithstanding the provision in Section 3.1(a) for the commencement of this Lease on the Commencement Date, the obligation of Tenant to play Basketball Games in the Arena and to perform all other obligations relating to the playing of Basketball Games (collectively, the "Play Obligations") will be subject to Landlord's satisfaction of the following conditions (collectively, the "Play Obligations Conditions").

*(1)* The Arena shall have been designed and constructed by Landlord in compliance with Section 3.2(b), and Landlord's principal architect shall have issued a certificate establishing the Substantial Completion of the Arena; and

(2) Landlord shall have obtained for Tenant and its patrons the rights to use the parking spaces described in Section 8(b), on the terms and conditions set forth therein.

**(b) Commencement of Tenant's Play Obligations.** The date on which the Play Obligations shall commence shall be determined as follows:

(1) If Landlord has not given a Delay Notice, as defined below, and if the Play Obligations Conditions have been satisfied by Landlord on or before September 1, 2010, then the Play Obligations shall commence on November 1, 2010, or such earlier date in 2010 on which the NCAA permits collegiate basketball games (including exhibition games) to be played.

(2) Landlord may give written notice to Tenant on or before September 1, 2009, that Landlord will not be able, despite the exercise of reasonable diligence, to satisfy the Play Obligations Conditions on or before September 1, 2010 (a "Delay Notice").

(3) If Landlord has given a Delay Notice, and if the Play Obligations Conditions have been satisfied by Landlord on or before September 1, 2011, then the Play Obligations shall commence on November 1, 2011, or such earlier date in 2011 on which the NCAA permits collegiate basketball games (including exhibition games) to be played.

(4) If the Play Obligations Conditions have not been satisfied on or before September 1, 2011, then (i) the Play Obligations shall commence on the earliest date after the Play Obligations Conditions have been satisfied on which Tenant reasonably can commence the Play Obligations under all circumstances then existing, after consultation and negotiation with Landlord, and (ii) Landlord will use its best efforts to prevent, or compensate Tenant for, any adverse financial consequences to Tenant arising from the unavailability of the Arena to Tenant during the period from September 1, 2011 until the date on which the Play Obligations Conditions have been satisfied. Landlord may satisfy its best efforts obligations under the preceding sentence (i) by obtaining from KSFB for the benefit of Tenant a complete or partial forbearance of Tenant's lease payment obligations to KSFB under Tenant's lease of Freedom Hall, and (ii) if Landlord is not able to obtain such forbearance or if Tenant suffers any such adverse financial consequences despite Landlord's obtaining such forbearance, by making a payment to Tenant in an amount that will compensate Tenant for such adverse financial consequences, but in no event shall the payment be less than \$1.5 million. The payment to Tenant described in the preceding sentence shall be made by Landlord within 60 days after Tenant commences the Play Obligations, and may be made by Landlord from any available source of funds, including, but not limited to, any delay damages paid to Landlord under the Construction Contract, any environmental damages paid to Landlord by Louisville Gas and Electric Company, or any funds that can be paid by Landlord from the Arena's operating budget, subject to Landlord's obligations under the Bond Documents. For purposes of this Section 3.3(b)(4), "adverse financial consequences to Tenant" may include, but are not limited to, costs incurred by Tenant in

connection with rescheduling or relocating Basketball Games, and loss of the revenue projected by Tenant from playing Basketball Games in the Arena.

#### **4. USE OF LEASED PREMISES; TIMES OF USE AND SCHEDULING PRIORITY**

**4.1 Use of Leased Premises.** The Leased Premises shall be used by Tenant solely for University-sponsored Events, and other uses incidental thereto. Tenant shall not use the Leased Premises for any other purpose and Landlord shall not make the Leased Premises available to Tenant for any other purpose. If Tenant uses the Leased Premises for any other purpose, then Tenant shall pay to Landlord the greater of all the gross proceeds derived from such use or the minimum Arena event rent of \$5,000 per event and, in addition, Landlord may pursue all other remedies available at law or in equity against Tenant, except that Landlord shall not have the right to terminate this Lease because of a breach of this provision. Tenant shall (i) comply with all laws, ordinances and regulations of any governmental agency or entity, (ii) comply with all reasonable rules and regulations of Landlord with respect to the use of the Arena that do not conflict with any provision of this Lease, and (iii) secure any and all needed permits and licenses as may be required to comply with the same. Specifically, Tenant agrees that (i) all copyright, trademark and service mark material to be used by Tenant will be duly licensed or authorized by the copyright, trademark or service mark owners or their representatives, (ii) it will abide by applicable local and Kentucky laws, ordinances and regulations dealing with the control of alcoholic beverages, and will advise the licensees of Private Suites and Tenant's guests and patrons in the Party Suites of the same, and (iii) if Tenant uses laser light equipment or pyrotechnics, or like features, it will be manufactured and operated in compliance with applicable federal laws and regulations, and all relevant information requested by Landlord regarding the same will be supplied to Landlord.

#### **4.2 Times of Use and Scheduling Priority.**

**(a) Basketball "Home Games."** During each Basketball Season, Tenant shall play in the Arena all of the "home games" of both Basketball Teams. For purposes of the preceding sentence, a "home game" is any regular season or exhibition game in which one of the Basketball Teams is designated as the "home team" for NCAA recordkeeping and/or compliance purposes, excluding any game played outside Jefferson County, Kentucky in a facility which is a neutral site for both playing teams but where one of the two playing teams nevertheless must be designated as a "home team" for such purposes.

**(b) Priority Use Periods.** During each annual Priority Use Period, Tenant will have priority to use the Leased Premises for Basketball Games and for practices of the Basketball Teams and visiting teams. Tenant's priority to use the Leased Premises during a Priority Use Period will include the following:

**(1)** Tenant will use Commercially Reasonable Efforts to submit the final approved conference schedules for the Basketball Teams to Landlord on or before September 15<sup>th</sup> of each year. Tenant will submit its non-conference schedules (including any exhibition games), home and away, for the Basketball Teams as soon as those schedules are finalized by Tenant. Upon the finalization of both the conference and non-conference schedules, Landlord may contract for the use of the Arena for other



Arena events on days that are not Game Days. However, Landlord will not permit any other Arena event to preempt or materially interfere with Tenant's use of the Arena for Basketball Games during a Priority Use Period. Tenant will have the exclusive right to use the Arena on Game Days, except that the donor areas (rooms) may be rented by Landlord to others during any time other than the period that begins three hours before and ends three hours after the game or other athletic event. In addition, Tenant reserves the right to use all or part of the Arena for any other University basketball-related event during a Priority Use Period in addition to scheduled Basketball Games, provided however that, if Tenant elects to schedule such days after submission of the final conference and non-conference schedules as described above, Tenant may only reserve the Arena if, as of the date of the request, Landlord has not already contracted for the use of the Arena on such days. Except as otherwise provided in this Section 4.2, Landlord will have the exclusive right to use the Arena (including the Leased Premises) on all dates that are not Game Days. The foregoing does not grant to Landlord any right (excepting access necessary and appropriate from an operations perspective) to use the locker rooms, training rooms or coaches' offices at any time. Landlord may use the practice court area for NCAA purposes or other purposes, if approved in advance in each case by Tenant in writing.

(2) Landlord will make Commercially Reasonable Efforts not to book or contract with others the use of the Arena (including the portions of the Arena not included in the Leased Premises) on any Practice Day; however, a failure by Landlord to avoid booking or contracting with others for Arena use on any Practice Day shall not constitute an Event of Default by Landlord. Tenant will have the right to use the portion of the Leased Premises that is necessary for practice time (for one of the Basketball Teams and/or a visiting team) on each Practice Day, subject to the preceding sentence.

(3) Tenant will advise Landlord of the dates on which Tenant or the University desires to use the Arena for any University-sponsored Event other than a Basketball Game or practice, as far in advance of the date of each event as is practicable. Landlord will use Commercially Reasonable Efforts to make the Arena available for use by Tenant or the University on each requested date, subject to prior scheduling of the Arena by other users on any such date that is not within a Priority Use Period, and taking into account Tenant's priority use rights on any such date that is within a Priority Use Period. Notwithstanding the foregoing, the University and Landlord may negotiate and enter into one or more separate agreements for the use of the Arena by the University for events sponsored by the University. Any such agreement may provide for the use of the Arena by the University on a yearly, monthly, daily, or event-by-event basis. In any such case, the event will in all respects be subject to and governed by the provisions of such separate agreement, and not by the provisions of this Lease applicable to University-sponsored Events.

(4) Notwithstanding the provisions in Section 4.2(b)(1), Landlord will use Commercially Reasonable Efforts to accommodate Tenant and the television networks, if the television networks request scheduling changes which will result in a change in the date of any Game Day.

## 5. PRIVATE SUITES AND PARTY SUITES.

### 5.1 *Private Suites.*

(a) *Tenant's Reserved Private Suites.* Except as provided in Section 5.1(b), Tenant shall have the exclusive use and control of the Private Suites at all times during the Term. Two of the Private Suites will be reserved for use by the Office of the President of the University and the Office of the Athletic Director of the University. No rent or license fee will be charged by Tenant for the two reserved Private Suites. The location of each of the two reserved Private Suites will be determined by Tenant.

(b) *Landlord's Reserved Private Suites.* Six of the remaining Private Suites (and, at Tenant's option, other Private Suites in addition to the foregoing six Private Suites) shall be reserved for use by Landlord for marketing to Arena sponsors. Landlord may, at its option, either sublicense such reserved Private Suites to third parties and collect sublicense fees from the third parties in amounts determined by Landlord in its discretion, or grant to third parties the right to use such reserved Private Suites at no cost. In either such event, Landlord will reimburse Tenant for the then-current license fees for all such reserved Private Suites used by Landlord, and Landlord will also purchase men's basketball season tickets for all seats in such reserved Private Suites. Tenant will send invoices to Landlord for the license fees and the tickets, and Landlord will pay each invoice within 30 days after receipt. The location of each of the six reserved Private Suites, and any additional Private Suites that may be reserved for use by Landlord at Tenant's option, will be determined by Tenant after consultation with Landlord. Notwithstanding the foregoing, Landlord may elect not to use one or more of the six reserved Private Suites during any Basketball Season, and in such event (i) Landlord will give written notice of such election to Tenant at least 45 days before the beginning of such Basketball Season, (ii) Landlord will release such Private Suite(s) to Tenant for the duration of such Basketball Season, (iii) Landlord will not be obligated to pay license fees or purchase men's basketball season tickets for the seats in such Private Suite(s) during such Basketball Season, and (iv) Tenant will then have the exclusive right to market, license, and assign such Private Suite(s) during such Basketball Season in the same manner as the other Private Suites described in this Section 5.1.

(c) *Private Suite License Fees.* Private Suite license fees will be determined by Tenant before suites are licensed, after consultation by Tenant with Landlord. Subject to Section 5.1(b), Tenant shall have the exclusive right to market, license, and assign the Private Suites to all individuals or entities, including Landlord, and all revenue generated in connection therewith shall be retained by Tenant. As of the Commencement Date, Landlord and Tenant have agreed that the initial annual license fee for the Private Suites shall be not less than \$75,000 per Private Suite per year. The Private Suites shall be licensed for terms of not less than five years, subject to the next sentence, and Tenant shall evaluate and consult with Landlord thereon, and adjust the annual license fee for the Private Suites periodically (but not less often than every five years). In order to stabilize cash flow receipts, the terms of the Private Suite licenses will be staggered by shortening the initial terms of certain Private Suite licenses, to be followed with suggested five-year renewal periods thereafter.

**(d) Private Suite Licensee Obligations and Rights.** Each Private Suite licensee (including Landlord, in the case of the Private Suites described in Section 5.1(b)) will be required by Tenant to purchase season tickets for all seats in the Private Suite for men's Basketball Games. Each Private Suite licensee (but not including Landlord, in the case of the Private Suites described in Section 5.1(b)) will receive from Tenant five complimentary parking spaces for use at each men's Basketball Game, either in the Parking Facility, or in another garage or surface lot, as provided in Section 8(b). The parking spaces described in the preceding sentence will be obtained by Landlord, and Tenant will pay Landlord for the cost thereof, as provided in Section 8(b). Tenant shall not require Private Suite licensees to purchase tickets, and shall not guarantee parking, for any other Arena event.

**(e) Use of Private Suites for University-sponsored Events.** Each Private Suite includes either 12, 14, 15 or 24 seats located immediately in front of the respective Private Suite, and either four, five or eight stools inside the Suite. With respect to any University-sponsored Event with respect to which the applicable Private Suite licensee (including Landlord, as applicable) is required or has elected to purchase tickets, the cost of tickets for all of the foregoing seats and stools (other than any complimentary tickets, as described in Section 6.1(d)) will be assessed by Tenant to Landlord, in the case of the reserved Private Suites described in Section 5.1(b), and to the Private Suite licensee, in the case of the remaining Private Suites. In addition, each Private Suite licensee may be permitted to purchase (from Tenant in the case of a University-sponsored Event, and from Landlord in the case of any other Arena event) up to eight additional "standing room only" tickets per Private Suite for an Arena event, but such purchases shall be permitted on an event-by-event basis in the sole discretion of Tenant or Landlord, as applicable.

**(f) Use of Private Suites for Other Arena Events.** Each Private Suite licensee shall have the right of first refusal to purchase tickets for the use of such Private Suite for any event to be held in the Arena other than an NCAA Event. Landlord and Tenant will use Commercially Reasonable Efforts to allow the Private Suite licensees (including Landlord, in the case of the Private Suites licensed to Landlord under Section 5.1(b)) to obtain tickets for the use of their respective Private Suites during NCAA Events. If the licensee of a Private Suite declines or is not permitted to purchase tickets for an event in the Arena, the Private Suite will remain closed, but tickets for the seats located immediately in front of the Private Suite as described in Section 5.1(e) may be sold to the general public; provided, access to these seats will not be through the Private Suite. The preceding sentence will also apply to the two Private Suites reserved for use by Tenant under Section 5.1(a).

**(g) Alterations, Additions, Repairs and Custodian Service to Private Suites.** All improvements and any fixtures which under Kentucky law became part of the real estate once made to the Private Suites shall become the sole property of Landlord. All Signage, alterations, additions, improvements, repairs or decorations to the Private Suites made by Tenant or any licensee shall be made pursuant to plans and specifications which shall be subject to Landlord's prior written approval, which will not be unreasonably withheld or delayed. Landlord shall provide custodial services to the Private Suites at no charge to Tenant or its licensees. Landlord shall pay for all electricity, water, (basic, not premium) cable or satellite television service, and Internet service used in the Private Suites.

**(h) Maintenance and Repair of Private Suites.** Landlord shall maintain the structural portions of the Private Suites, including the improvements made by Landlord, and the heating, ventilating and air conditioning system. Landlord shall provide such other maintenance and repair to the Private Suites so as to keep and maintain them in good condition and repair.

## **5.2 Party Suites.**

**(a) General Provisions.** Tenant shall have the nonexclusive use and control of the Party Suites during the Term, as provided in this Section 5.2. Except as provided in this Section 5.2, Tenant shall not have any right to use or license the Party Suites. Landlord shall decorate the Party Suites, but all decoration shall be consistent with the "branding" of the Arena for the University's athletic programs as provided in Section 3.2(c). Tenant shall not make any alterations, additions, improvements, repairs or decorations to the Party Suites. Landlord shall provide custodial services to the Party Suites at no charge to Tenant. Landlord shall maintain all portions of the Party Suites, and the heating, ventilating and air conditioning system, and shall provide all necessary maintenance and repair to the Party Suites so as to keep and maintain them in good condition and repair. Landlord shall pay for all electricity, water, (basic, not premium) cable or television service, and Internet service used in the Party Suites.

**(b) Use of Party Suites for Basketball Games.** For each Basketball Game played in the Arena, one of the Party Suites (to be selected by Tenant) will be reserved for the exclusive use of Landlord. For each such Basketball Game, Tenant will provide to Landlord up to 60 tickets for the persons who use such reserved Party Suite, at no cost to Landlord. The tickets provided to Landlord under the preceding sentence will not be counted as part of the 700 complimentary tickets described in Section 6.1(d). For each Basketball Game played in the Arena, the three remaining Party Suites will be reserved for the exclusive use of Tenant. At Tenant's sole option, Tenant may either permit its patrons and guests for Basketball Games to use such reserved Party Suites at no charge, or may charge a rental fee (in which case, Tenant will not be required to pay to Landlord any portion of the rental fee). At Tenant's sole option, the persons who use such reserved Party Suites for Basketball Games will either receive complimentary tickets (in which case, any such complimentary tickets will be counted as part of the 700 complimentary tickets described in Section 6.1(d)), or will be required to purchase tickets (in which case, the revenue received by Tenant from such ticket sales will be "gross admissions receipts" for purposes of Sections 6.1(a) and 6.1(b)).

**(c) Use of Party Suites for Other Events.** For each event held in the Arena that is not a Basketball Game or an NCAA Event, all four Party Suites will be reserved for the exclusive use of Landlord, on such terms and conditions as Landlord may choose in its sole discretion. For each NCAA Event, three of the Party Suites will be reserved for the exclusive use of Landlord, on such terms and conditions as Landlord may choose in its sole discretion, and one of the Party Suites (to be selected by Tenant) will be reserved for the exclusive use of Tenant, at no charge to Tenant. At Tenant's sole option, Tenant may either permit its patrons and guests for the NCAA Event to use such reserved Party Suite at no charge, or may charge a rental fee (in which case, Tenant will not be required to pay to Landlord any portion of the rental fee).

**5.3 Taxes Relating to Private Suites and Party Suites.** Tenant or its licensees will pay all sales, use and ad valorem taxes, assessments, license fees, PILOT amounts, and other charges, if any, levied or assessed on the Private Suites and the Party Suites, Tenant's leasehold interest in the Private Suites and the Party Suites, the personal property of Tenant or its licensees' use of or right to use the Private Suites and the Party Suites, as notified to Tenant by Landlord from time to time. Tenant will have the right to contest the applicability or amount of any such tax or other amount by appropriate proceedings; however, Tenant shall make such payments in full within 30 days after receiving notice from Landlord, subject to reimbursement following contest proceedings, if applicable.

## **6. RENT**

**6.1 Arena Event Rent.** Tenant will pay rent to Landlord for each University-sponsored Event held in the Arena, as follows:

**(a) Men's Basketball Games.** For each men's Basketball Game, Tenant will pay to Landlord the greater of (i) 10% of gross admissions receipts received by Tenant from the sale of tickets, after deducting any collected sales tax and any other tax or ticket surcharge imposed upon and collected from the customer, or (ii) the minimum Arena event rental of \$10,000 per ticketed men's Basketball Game, and subject to the additional provisions in Section 6.1(d).

**(b) Women's Basketball Games.** For each women's Basketball Game, Tenant will pay to Landlord the greater of (i) 5% of gross admissions receipts received by Tenant from the sale of tickets, after deducting any collected sales tax and any other tax or ticket surcharge imposed upon and collected from the customer, or (ii) the minimum Arena event rental of \$5,000 per any ticketed event other than a men's Basketball Game, and subject to the additional provisions in Section 6.1(d). In the event both Basketball Teams play on the same day, Tenant's rent obligations shall be independent and cumulative unless the involved games are played or scheduled as a "double-header," for which Landlord will collect only one rent payment, calculated under Section 6.1(a).

**(c) Other University-sponsored Events.** For any other University-sponsored Event held in the Arena for which Tenant or the University charges admission to the event, Tenant will pay to Landlord the greater of (i) 5% of gross admissions receipts received by Tenant or the University from the sale of tickets to the event, after deducting any collected sales tax and any other tax or ticket surcharge imposed upon and collected from the customer, or (ii) the minimum Arena event rental of \$5,000 per event, and subject to the additional provisions in Section 6.1(d). For any other University-sponsored Event held in the Arena for which Tenant or the University does not charge admission to the event, Tenant will pay to Landlord the minimum Arena event rental of \$5,000 per event.

**(d) Complimentary Tickets.** For any University-sponsored Event held in the Arena for which Tenant or the University charges admission to the event, the following additional provisions shall apply: Tenant or the University will not pay the percentages of gross admission receipts stated above on the value of any ticket that is distributed on a complimentary basis or on the amount of the discount on any ticket that is distributed on a discounted basis (i.e.,

only the amount actually charged for a discounted ticket shall be included in gross admission receipts), as described in the next three sentences. Tenant or the University may give away or discount a certain number of tickets to any Basketball Game or other University-sponsored Event, including, but not limited to (i) tickets given or sold on a discounted basis to charities, students in elementary and secondary schools and University students, (ii) complimentary tickets given to coaches, visiting teams and members of the press, and (iii) tickets given to the various departments in the University. In the case of men's Basketball Games, the total number of nonpaying admissions, excluding complimentary or discounted student admissions, is estimated to be 670 per game, but in no case will it exceed 700 per game without the prior written approval of Landlord, which will not be unreasonably withheld or delayed; provided, any complimentary tickets that are provided by Tenant to Landlord for use in Landlord's reserved Party Suite described in Section 5.2(b) will not be counted against such limit of 700 nonpaying admissions per men's Basketball Game. In the case of other University-sponsored Events, including, but not limited, to women's Basketball Games and other varsity athletic events, the number of nonpaying admissions will be determined by Tenant or the University, in its sole discretion. The number of complimentary and discounted tickets for each University-sponsored Event, and the total amount of all discounts, will be reported to Landlord by Tenant as provided in Section 6.3.

**(e) Season Tickets.** Season tickets for athletic games played in the Arena will be sold to the public at the published price and to the University's faculty, staff, Lettermen's Club members and students at a discounted price. For the purposes of determining the gross admission receipts on the sale of season tickets, Tenant will multiply the number of season tickets actually sold for each season by the price received by the Tenant for each season ticket sold. The revenue received by Tenant from the sale of season tickets will be prorated over the number of games played in the Arena during the season.

**6.2 Private Suite Rent.** Tenant will pay to Landlord as rent for the Private Suites during each year of the Term an amount equal to 12% of the Net Private Suite Revenue, which will be paid by Tenant to Landlord on an annual basis after the completion of each Basketball Season, but not later than each April 30 during the Term and subject to the account settlement provisions in Section 7.1(j). "Net Private Suite Revenue" means the total annual license fees paid to Tenant by the licensees of the Private Suites, after deducting (i) any collected sales tax and any other tax or ticket surcharge imposed upon and collected from the licensee, and (ii) the amount that Tenant pays to Landlord under Section 8(b) for providing up to five parking spaces to each Private Suite licensee, excluding for these purposes the two reserved Private Suites described in Section 5.1(a). "Net Private Suite Revenue" does not include (i) the revenue generated by the sale of tickets to Private Suite licensees, and (ii) the payments to the Cardinal Athletic Fund described in Section 7.1(d)(2).

**6.3 Accounting and Payment.** Within 30 days following each ticketed University-sponsored Event, Tenant shall supply to Landlord a box office statement in a format to be mutually agreed by Landlord and Tenant, listing the amount of tickets printed, sold, unsold, prices (including complimentary and discounted admissions), gross admissions receipts, and such pertinent information as Landlord may from time to time revise and request that is necessary for a final tabulating and accounting of all tickets sold and unsold for each ticketed event. Tenant agrees to save all stub counts of reserved seats by ticket takers and all unsold and unused tickets for each game until 90 days after the end of the related sports season or event, as

the case may be. At all reasonable times Landlord shall have the right to inspect or audit such books, stub counts, unsold tickets and such other records of Tenant as may be necessary in order to verify the amount of rent to be paid hereunder. All rent payments due from Tenant to Landlord under Section 6.1 shall be paid no later than April 30 during each year of the Term, subject to the account settlement provisions in Section 7.1(j).

## **7. ADDITIONAL PROCEEDS FROM ARENA.**

**7.1 Division of Proceeds Between Landlord and Tenant.** Landlord shall be entitled to the entire amount of all other proceeds, except gross admissions receipts collected by the University or Tenant, which in any way arise from Tenant's use of the Arena, including, but not limited to, all contractual obligations, any parking revenues from the Parking Facility or otherwise, check rooms and the selling of concessions and catering, except as provided in the following Sections 7.1(a) through 7.1(k):

**(a) Programs and Program Advertisements.** Tenant will have the exclusive right to sell programs and program advertisements at University-sponsored Events in the Arena. All proceeds derived from the sale of programs and program advertisements will be retained by Tenant. All proceeds from the sale of any novelty items or other merchandise at University-sponsored Events in the Arena will be shared by Tenant and Landlord as provided in Section 7.1(c).

**(b) Concessions and Catering.** Landlord will pay to Tenant at the time provided in Section 7.1(j) 50% of all payments it receives from third-party concession and catering sales at all University-sponsored Events. If Landlord at any time operates its own concessions and/or catering at any University-sponsored Event, Landlord will pay to Tenant 25% of the gross proceeds received by Landlord from such sales. For purposes of the foregoing, "concession and catering sales" will include food and alcohol sales at all concession stands, catering provided to the Private Suites and the Party Suites, catering to donor rooms, catering to club seating areas, and all payments received by Landlord (including without limitation lease payments and/or percentage rental based on food and alcohol sales) from any restaurant(s) within the Arena; provided, (i) if any non-University-sponsored Event is held in the Arena on the same day as a University-sponsored Event, Landlord will pay the foregoing percentage of third-party payments or gross proceeds (as applicable) to Tenant only with respect to concession and catering sales made during the period that begins three hours before and ends three hours after the University-sponsored Event, and (ii) if no other event is held in the Arena on the same day as a University-sponsored Event, Landlord will pay the percentage of third-party payments or gross proceeds (as applicable) to Tenant as stated above in this Section 7.1(b).

**(c) Gift Shop.** The University, its colors, themes, etc., will be the central theme for the Gift Shop. Landlord and Tenant will agree on the products to be sold in or from the Gift Shop, which products will include, but not be limited to, all University-licensed products, shoe and/or apparel products to be purchased from the then-approved University provider, and any other Louisville or Commonwealth-recognized event or licensed product such as Kentucky Derby, Kentucky Derby Festival, Louisville Slugger, etc. The Gift Shop will be allowed to market and sell novelty items and other merchandise (including the products described in the preceding sentence) for all events held in the Arena (including sales from parts of the Arena

outside the Gift Shop) unless prohibited by the Sponsor of the particular event. For all University-sponsored Events, the products to be sold in any part of the Arena outside the Gift Shop, as well as the location(s) from which any such products will be sold, will be mutually agreed by Tenant and Landlord. Landlord will pay to Tenant at the time provided in Section 7.1(j) 50% of all rental/commission payments received by Landlord in connection with the Gift Shop and its operations. Landlord also will pay to Tenant at the time provided in Section 7.1(j) 50% of any additional merchandise revenue received by Landlord from any source other than the Gift Shop, including without limitation the sale of merchandise at concerts, NCAA Events, ice shows, or other non-University-sponsored Events; provided, if any portion of Tenant's share of such revenue would in the opinion of Tenant's outside tax counsel constitute "unrelated business income" (as defined in Section 513(a) of the Code) when received by Tenant, then (i) such portion of Tenant's share of such revenue will not be paid to Tenant by Landlord, and (ii) Landlord and Tenant will immediately negotiate in good faith and agree upon an alternative source of revenue from the operations of the Arena to be shared between Landlord and Tenant in such a manner as will provide to Tenant the same economic benefit as Tenant would have received from the merchandise revenue sharing under this Section 7.1(c).

***(d) Premium Seating.***

(1) Tenant will establish license fees for all Premium Seating (with Landlord's prior written approval, which will not be unreasonably withheld or delayed), and Tenant will market, license, and assign all Premium Seating. The cost of tickets for the Premium Seating will be in addition to the license fees for the Premium Seating. The patrons that license Premium Seating will have a right of first refusal to purchase (unless their seats are not available for purchase because of event staging, at which point the best available same class ticket shall be made available) from Landlord or Tenant, as applicable, tickets for all events at the Arena other than NCAA Events during the terms of their respective licenses. Tenant will retain all revenue generated from the licensing of all Premium Seating and the sale by Tenant of tickets to the Premium Seating licensees for University-sponsored Events. In order to stabilize cash flow for the benefit of Landlord, Tenant may stagger the initial licenses, with suggested five-year renewals thereafter. Tenant will pay to Landlord during each year of the Term 12% of all Net Premium Seating Revenue, which will be paid by Tenant to Landlord on an annual basis not later than each April 30 during the Term, subject to the account settlement provisions in Section 7.1(j). "Net Premium Seating Revenue" means the license fees for Premium Seating received by Tenant, after deducting (i) any applicable sales tax and any other tax or ticket surcharge imposed upon, and collected from, the customer, and (ii) the cost to Tenant of providing or securing parking for Premium Seating licensees in accordance with Section 8(b). "Net Premium Seating Revenue" does not include (i) the revenue generated by the sale of tickets to Premium Seating licensees, and (ii) the payments to the Cardinal Athletic Fund described in Section 7.1(d)(2).

(2) Landlord understands that Tenant may elect to require the licensees of Private Suites and/or the licensees of Premium Seating and/or other season ticket holders to make payments to the Cardinal Athletic Fund, in addition to the above license fees and ticket costs, as a condition to obtaining and/or renewing a license to use a Private Suite or Premium Seating and/or purchasing season tickets. These payments to the Cardinal



Athletic Fund will not be shared with Landlord, will not be deemed to be part of the license fees and ticket costs paid by such licensees and season ticket holders for purposes of this Lease, and will not be counted as gross admissions receipts for purposes of Sections 6.1(a) and 6.1(b). Landlord acknowledges that Tenant's current licensees and some season ticket holders currently make such payments and that nothing in this Lease is intended to change the status of such payments for tax purposes.

*(e) Side-Court VIP Seating.* Tenant may place temporary VIP seating on the sides of the basketball court ("Side-Court VIP Seating") during Basketball Games. Tenant will market, sell and assign all Side-Court VIP seating, and all revenues generated in connection therewith will be retained by Tenant and will not be counted as gross admissions receipts for purposes of Sections 6.1(a) and 6.1(b). Tenant may permit the persons who purchase Side-Court VIP Seating to attend Basketball Games in consideration for such purchase, without requiring them to purchase season or individual game tickets.

*(f) Ticket Surcharge.* Landlord will assess a \$2 surcharge per ticket sold (which will not be increased during the Term) on all men's Basketball Games (but not any other University-sponsored Event, including but not limited to women's Basketball Games and other varsity athletic events). The \$2 surcharge will not be assessed against the complimentary and discounted tickets described in Section 6.1(d). In the case of season tickets, the \$2 surcharge will be assessed separately on each game during the season. With Tenant's written consent, and if permitted by the NCAA, Landlord may assess a per-ticket surcharge on any NCAA Event. All amounts collected from any surcharge on tickets to an NCAA Event will be retained by Landlord. If any additional ticket surcharge or user fee is imposed by ordinance or other governmental agency, Tenant will collect such surcharge from the ticket purchaser and pay the entire amount of such surcharge to the assessing governmental agency, as required by applicable law, or, if applicable, to Landlord if Landlord is obligated to remit such amounts to the assessing governmental entity.

*(g) Signage and Sponsorship.*

*(1)* Landlord and Tenant have marketed and sold, and will continue during the Term to market and sell, Signage in the Arena. Only those University Sponsors identified by Tenant as being a sponsor at Freedom Hall as of the Commencement Date will be given a first right of refusal to purchase Signage in the Arena. Landlord will at all times keep Tenant informed of the types and locations of all existing and proposed Signage. Landlord will provide to Tenant copies of Landlord's proposed rate cards for each type of Signage, and Landlord and Tenant will mutually agree upon the rates to be charged for each type of Signage. Landlord and Tenant will mutually agree upon all other terms, placement, and Sponsors for all Signage to be placed inside and outside the Arena and in the Gift Shop. Tenant will receive 10% of the Permanent Signage inventory inside and outside the Arena for use by Tenant, in locations to be agreed upon by Tenant and Landlord, and the revenues generated from this Signage will not be shared with Landlord. The term "Permanent Signage inventory" as used in the preceding sentence will include Daktronics-type "black boxes," if any, placed in the Arena. Tenant acknowledges that Landlord may grant to an agent (and has currently granted to LASEP, LLC) the exclusive right to market and sell on behalf of Landlord the portion of the

Signage which Landlord has the right to market and sell under this Lease, and Landlord acknowledges that Tenant may grant to an agent the exclusive right to market and sell on behalf of Tenant the portion of the Signage which Tenant has the right to market and sell under this Lease. Each of Landlord and Tenant will, and will cause its agent to, cooperate with the other Party's agent in all matters involving Signage. Landlord will not authorize or permit Landlord's agent to exercise any rights regarding Tenant's reserved Signage or Sponsorship rights that Tenant has granted to Tenant's agent.

(2) Landlord will pay to Tenant at the time provided in Section 7.1(j) 50% of all revenue received by Landlord from the sale of Signage inside and outside the Arena (excluding, however, (i) any Signage inside or outside the Arena that is part of the 10% of the Permanent Signage reserved for Tenant as provided in Section 7.1(g)(1), as to which Tenant will have the exclusive right to market, sell and retain 100% of the revenue, and (ii) the video boards outside the Arena, as to which Tenant's share of the revenue will be governed by Section 7.1(g)(3)). In the case of any Signage inside or outside the Arena that is used to acknowledge a Naming Rights Sponsor, Landlord and Tenant will mutually allocate a reasonable portion of the total amounts paid by such Naming Rights Sponsor to revenue received by Landlord from the sale of Signage for purposes of the preceding sentence. If any such Signage that is used to acknowledge a Naming Rights Sponsor is comparable to any Signage that is used by a Sponsor who is not a Naming Rights Sponsor, Landlord and Tenant shall base such allocation on the amount of revenue received by Landlord for the comparable Signage. All revenue received by Landlord from the sale of Signage as described in this Section 7.1(g)(2) shall be referred to as "Landlord Signage Revenue."

(3) Landlord will pay to Tenant at the time provided in Section 7.1(j) 33.3% of the revenue received by Landlord from the sale of inventory on all video boards outside the Arena (excluding, however, any video board inventory outside the Arena that is part of the 10% of the Permanent Signage reserved for Tenant as provided in Section 7.1(g)(1), as to which Tenant will have the exclusive right to market, sell and retain 100% of the revenue). In the case of any video board inventory outside the Arena that is used to acknowledge a Naming Rights Sponsor, Landlord and Tenant will mutually allocate a reasonable portion of the total amounts paid by such Naming Rights Sponsor to revenue received by Landlord from the sale of video board inventory for purposes of the preceding sentence. If any such video board inventory that is used to acknowledge a Naming Rights Sponsor is comparable to any video board inventory that is used by a Sponsor who is not a Naming Rights Sponsor, Landlord and Tenant shall base such allocation on the amount of revenue received by Landlord for the comparable video board inventory. All revenue received by Landlord from the sale of video board inventory as described in this Section 7.1(g)(3) shall be referred to as "Landlord Video Board Revenue."

(4) Notwithstanding Sections 7.1(g)(2) and 7.1(g)(3), Tenant will have the exclusive right to market, sell and retain 100% of the revenue received from University-sponsored Event Signage and University-sponsored Event Sponsorships, provided, however, that (i) Tenant shall not cover any of the 90% of the Permanent Signage inventory that is reserved for Landlord as provided in Section 7.1(g)(1) during any

University-sponsored Event, and (ii) Tenant will allow Landlord to use the LED fascia Signage of Tenant at University-sponsored Events, for the purpose of acknowledging the Naming Rights Sponsor of the name of the Arena, and Landlord and Tenant may also agree that the other Naming Rights Sponsors may be acknowledged on the LED fascia Signage; the frequency and length of all such acknowledgements will be mutually acceptable to Landlord and Tenant.

(5) Subject to the last sentence of this Section 7.1(g)(5), Landlord agrees that Landlord's marketing and sale of all Signage and video board inventory under Sections 7.1(g)(2) and (3) shall be structured to facilitate and enable all Landlord Signage Revenue and Landlord Video Board Revenue to be characterized as "qualified sponsorship payments" under Section §513(i) of the Code and Treas. Reg. §1.513-4. Unless otherwise permitted by Section §513(i) of the Code or Treas. Reg. §1.513-4, the marketing and sale of all Signage shall be made under arrangements where there is no contractual arrangement or expectation that the Sponsor will receive any substantial return benefit other than the use or acknowledgment of the name and logo (or product lines) of the Sponsor's trade or business. Such use or acknowledgment may include (i) exclusive Sponsorship arrangements, (ii) logos and slogans that do not contain qualitative or comparative descriptions of the Sponsor's products, services, facilities or company, (iii) a list of the Sponsor's locations, telephone numbers, or Internet address, (iv) value-neutral descriptions, including displays or visual depictions, of the Sponsor's product-line or services, or (iv) the Sponsor's brand or trade names and product or service listings, but shall not include any "advertising" (as defined by Treas. Reg. §1.513-4(c)(v)) including any message containing qualitative or comparative language, price information or other indications of savings or value, endorsement, or other inducement to purchase, sell or use the Sponsor's products or services. All Signage shall contain the notation "Proud Sponsor of the Louisville Arena" or other similar qualifying text. Notwithstanding the foregoing, the restrictions in this Section 7.1(g)(5) shall not apply to any Signage or video board inventory that is placed or any Sponsorship activity that takes place solely within any portion of the Arena that is not financed with Tax-Exempt Bonds.

(6) Subject to the last sentence of this Section 7.1(g)(6), Tenant agrees that the marketing and sale of any Signage and Sponsorships sold by Tenant under Sections 7.1(g)(1) and (g)(4) shall be structured to facilitate and enable all revenues derived from the sale of such Signage and Sponsorships to be characterized as "qualified sponsorship payments" under Section §513(i) of the Code and Treas. Reg. §1.513-4. Unless otherwise permitted by Section §513(i) of the Code or Treas. Reg. §1.513-4, the marketing and sale of all Signage and Sponsorships shall be made under arrangements where there is no arrangement or expectation that the Sponsor will receive any substantial return benefit other than the use or acknowledgment of the name and logo (or product lines) of the Sponsor's trade or business. Such use or acknowledgment may include (i) exclusive Sponsorship arrangements, (ii) logos and slogans that do not contain qualitative or comparative descriptions of the Sponsor's products, services, facilities or company, (iii) a list of the Sponsor's locations, telephone numbers, or Internet address, (iv) value-neutral descriptions, including displays or visual depictions, of the Sponsor's product-line or services, or (iv) the Sponsor's brand or trade names and product or service listings, but

shall not include any "advertising" (as defined by Treas. Reg. §1.513-4(c)(v)) including any message containing qualitative or comparative language, price information or other indications of savings or value, endorsement, or other inducement to purchase, sell or use the Sponsor's products or services. Notwithstanding the foregoing, the restrictions in this Section 7.1(g)(6) shall not apply to any Signage or video board inventory that is placed or any Sponsorship activity that takes place solely within any portion of the Arena that is not financed with Tax-Exempt Bonds.

**(h) Television, Radio and Other Rights.** Tenant will have the exclusive right to sell or license the television, radio, motion picture, Internet or other rights to the broadcasting, filming or other recording of all Basketball Games and any other University-sponsored Events held in the Arena, and to retain all revenue from such sale or license of rights. Tenant understands that Landlord may require the payment by such broadcasters to Landlord of hook-up or other fees as a condition to their use of the Arena for broadcasting purposes; all such amounts received by Landlord shall be the exclusive property of Landlord. Notwithstanding any such agreement between Landlord and any broadcaster, Tenant will negotiate separately with each broadcaster regarding the terms and conditions of Tenant's sale or license of broadcasting rights to a Basketball Game or other University-sponsored Event to the broadcaster.

**(i) Accounting and Recordkeeping.** Landlord shall periodically supply to Tenant statements listing (i) all third-party payments or gross proceeds received by Landlord from concession and catering sales, as provided in Section 7.1(b); (ii) all rental/commission payments received by Landlord in connection with the Gift Shop and any additional revenue received by Landlord from other merchandise sales as provided in Section 7.1(c); and (iii) all Landlord Signage Revenue and Landlord Video Board Revenue as provided in Section 7.1(g). In the case of any payments, net proceeds or revenue paid to Landlord by a third party concessionaire or operator, the statement will be supplied to Tenant within 20 days after Landlord receives from the third party the data that is necessary for Landlord to make a final tabulation and accounting of the same to Tenant. In the case of payments, gross or net proceeds or revenue received by Landlord from its own operations, the statement will be supplied to Tenant within 20 days after the end of the month during which Landlord received the same. Landlord shall maintain books and records which show its receipt of all such payments, proceeds and revenue. Landlord shall also maintain books and records documenting Landlord's compliance with Landlord's "qualified sponsorship payment" commitment set out in Section 7.1(g)(5), and will also maintain books and records in a form reasonably satisfactory to Tenant documenting that there are sufficient revenues related to Tenant's exempt purposes as necessary to satisfy the allocation provisions of Section 7.2. At all reasonable times, Tenant shall have the right to inspect or audit the books and records of Landlord described in this Section 7.1(i), and the books and records of any agent, contractor or licensee who makes any payment to Landlord described in this Section 7.1, as may be necessary in order to verify the amounts paid to Landlord by any such agent or contractor and the amounts to be paid by Landlord to Tenant under this Section 7.1.

**(j) Payment.** In lieu of Landlord and Tenant making multiple periodic payments of the amounts that are owed to each other under this Lease, all Landlord Payables and all Tenant Payables shall be paid solely through calculation and payment of the Annual Net Payment as provided in this Section 7.1(j). No portion of the Landlord Payables or Tenant

Payables shall be due or payable except at the time and in the amount provided in this Section 7.1(j). The Annual Net Payment shall be calculated mutually by Landlord and Tenant not later than April 20 of each year during the Term and shall be based on all Landlord Payables and all Tenant Payables accrued through the date of calculation. Within 10 days after the date on which Landlord and Tenant have mutually determined the Landlord Payables and the Tenant Payables, but not later than April 30, Landlord or Tenant, as the case may be, will pay to the other Party the amount of the Annual Net Payment. Notwithstanding the previous sentence, if any provision in any of the Bond Documents requires that all or part of any Annual Net Payment that is due from Tenant to Landlord must be paid by Tenant to the Bond Trustee, Landlord will advise Tenant of the amount to be paid to the Bond Trustee and the payment instructions at the time that the Annual Net Payment is calculated.

**(k) Offset, Recoupment and Security Interests.** Notwithstanding the express intention of the Parties that no part of the Landlord Payables or the Tenant Payables shall be due or payable other than as a factor in the calculation of the Annual Net Payment, the Parties desire to grant certain mutual security interests and rights of offset and recoupment in the event it is determined at any time that Landlord has a property interest in the Tenant Payables or that Tenant has a property interest in the Landlord Payables (in either such case, other than as a factor in the determination of the Annual Net Payment). (A) Tenant hereby grants to Landlord the right to offset and recoup (i) any amounts that Tenant may owe to Landlord under the provisions of this Lease against (ii) any amount that Tenant (or any person or entity holding or exercising the rights of Tenant) seeks to collect from Landlord on account of or relating to the Landlord Payables or the amounts owed by Landlord to Tenant under Section 5.1(b). Further, Tenant grants a security interest to Landlord in all of the rights and interests that Tenant may be determined to have in and to the Landlord Payables and the amounts owed by Landlord to Tenant under Section 5.1(b), to secure all obligations owed to Landlord on account of or relating to the Tenant Payables and the amounts owed by Tenant to Landlord under Section 8(b). (B) Landlord hereby grants to Tenant the right to offset and recoup (i) any amounts that Landlord may owe to Tenant under the provisions of this Lease against (ii) any amount that Landlord (or any person or entity holding or exercising the rights of Landlord) seeks to collect from Tenant on account of or relating to the Tenant Payables or the amounts owed by Tenant to Landlord under Section 8(b). Further, Landlord grants a security interest to Tenant in all of the rights and interests that Landlord may be determined to have in and to the Tenant Payables and the amounts owed by Tenant to Landlord under Section 8(b), to secure all obligations owed to Tenant on account of or relating to the Landlord Payables and the amounts owed by Landlord to Tenant under Section 5.1(b).

**7.2 Certain Tax Allocations.** Pursuant to the provisions of Section 7.1(b) and Section 7.1(c), and as more particularly described in those provisions, certain payments to be made by Landlord to Tenant will be measured by revenue received by Landlord. While the calculation of Tenant's share of revenue will in those instances be based on Landlord's total revenue, any such total revenues are expected to include substantial revenues that will be related to Tenant's exempt purposes under §501(c)(3) of the Code; however, it is possible that some revenues that will be generated by Landlord may, if allocated to Tenant, be considered unrelated to Tenant's exempt purposes under §501(c)(3) of the Code and/or may be characterized as "unrelated business income" (as defined in §513 of the Code) to the extent such revenues would

be deemed to arise from a trade of business conducted by Tenant. In connection with payments made by Landlord to Tenant under Section 7.1(b) and Section 7.1(c), Landlord will allocate to Tenant, for each calendar year, income of a character that is considered to be related to Tenant's exempt purposes under §501(c)(3) of the Code in an amount equal to the lesser of (a) the total payment made by Landlord to Tenant under Section 7.1(b) or Section 7.1(c), as the case may be, and (b) the amount of such related income, it being understood by the Parties that such income will be properly allocable to Tenant because it will be generated directly as a result of Tenant's tax-exempt activities conducted within the Arena. If there is not sufficient related income in any calendar year to make an allocation equal to the annual payment amount otherwise due to Tenant for that calendar year, Landlord shall next allocate to Tenant "qualified sponsorship payments", if any, as defined in §513(i)(2) of the Code, within the revenues used to measure Tenant's share in an amount equal to the amount by which the annual payment amount due Tenant for that calendar year exceeds the allocation of related income for that year. Notwithstanding the above, Landlord's failure to generate or allocate sufficient related income or qualified sponsorship payments to Tenant to satisfy the foregoing allocation provision will not reduce Landlord's payment obligations as set out in Section 7.1(b) or the final sentence of Section 7.1(c).

## **8. PARKING.**

*(a) Parking Facility.* The Parking Facility will be constructed by Landlord as provided in the PARC Agreement. Parking in the Parking Facility for University-sponsored Events will be provided by PARC under the terms of the Parking Facility Operating Agreement. For each University-sponsored Event, the Parking Facility will be open and staffed, including, without limitation, appropriate security and on-street and in-garage traffic control, at a time and in a manner that is appropriate to handle the anticipated number of parkers. As provided in the Parking Facility Operating Agreement, the timing and appropriateness of such staffing will be evaluated annually by PARC, Landlord and Tenant. All Arena-related parking revenue from the operation of the Parking Facility will be retained by PARC and/or Landlord.

*(b) Parking for University Men's Basketball Games.* Landlord will provide or cause to be provided to Tenant parking for all men's Basketball Games played in the Arena at a rate of \$10.00 per parking space per game (if a double-header only one such charge shall be imposed), which amount will not increase throughout the first 10 years of the Term, for at least 3,000 parking spaces in the Parking Facility and/or in garages or lots located not more than one city block (in the case of the parking spaces for the licensees of the Private Suites) and two city blocks (in the case of all other persons) in any direction from the boundaries of the Arena. At the end of the first 10 years of the Term, Landlord and Tenant will renegotiate the parking rate. Tenant may allocate the 3,000 spaces among Tenant's licensees, patrons, guests, donors and sponsors in Tenant's sole discretion. The location of each of the 3,000 parking spaces will be identified to Tenant, by specific garage or lot, prior to July 1, 2010 and each July 1 thereafter, so that Tenant will be able to assign a specific parking space in a specific garage or lot to each of the Private Suite licensees, and a space in a specific garage or lot to each of the Premium Seating licensees and season ticket purchasers, who will use such parking spaces during each Basketball Season. Notwithstanding the account settlement provisions in Section 7.1(j), Tenant will pay Landlord for the right to use such parking spaces in one annual installment, due on or before each November 1. Landlord will provide to Tenant, within a reasonable time prior to the due date of the annual installment, an invoice that will identify the names and locations of the

garages and/or lots and the number of spaces in each garage and/or lot covered by the invoice, and will contain a breakdown of the total invoice amount that is attributable to each garage and/or lot. Notwithstanding the foregoing, Tenant will not be required to purchase parking for any events at the Arena other than men's Basketball Games. The rights of Tenant to the use of parking spaces in the Parking Facility and in other garages and lots as described in this Section 8(b) shall take precedence over any other agreement in which Landlord or PARC has committed to provide the use of parking spaces to any other person or entity. Any material breach of Landlord's obligations under this Section 8(b) (whether the breach arises from a failure to obtain parking spaces from Riverside under Section 8(c) or from PARC under Section 8(d), or both) shall constitute an Event of Default by Landlord.

**(c) Riverside Agreement.** To fulfill the parking commitments in Section 8(b), Landlord and Riverside will enter into the Riverside Agreement. The Riverside Agreement will provide that Riverside and other owners of parking facilities are obligated to provide to Landlord at least 2,740 parking spaces in garages located near the Arena for all men's Basketball Games during the 2010-2011 through 2014-2015 Basketball Seasons. Landlord will require Riverside to insure that (1) such garages will be open and staffed, including, without limitation, appropriate security and on-street and in-garage traffic control, at a time and in a manner that is adequate to handle the anticipated number of parkers, (2) all of the parking spaces that will be provided under the Riverside Agreement will be available not later than 5:00 p.m. on the day of any game that is played at night, and (3) entry into the garages by game patrons will be achieved by their presentation of a prepaid bar-coded ticket that will be provided to them in advance, and exit from the garages by game patrons will be on a "gates up" basis. The timing and adequacy of such staffing will be evaluated annually by Landlord, Tenant and Riverside. The Riverside Agreement may be extended by Riverside and Landlord for an additional period that will cover the 2015-2016 through 2019-2020 Basketball Seasons, but an extension is not guaranteed. Some of the parking spaces that will be provided under the Riverside Agreement will be located in parking facilities owned by companies other than Riverside, and such other companies will be permitted to withdraw their parking facilities from the Riverside Agreement on one year's notice. Tenant will be a third party beneficiary of the Riverside Agreement.

**(d) PARC Commitment Letter.** To provide a back-up to the Riverside Parking Agreement, PARC has made a commitment to Landlord as set forth in the PARC Commitment Letter. The PARC Commitment Letter states that PARC will provide at least 2,740 parking spaces for the 2015-2016 through 2019-2020 Basketball Seasons in accordance with the terms set forth above, if the Riverside Agreement is not extended to include such additional five-year period. In addition, the PARC Commitment Letter states that at any time during the 2010-2011 through 2019-2020 Basketball Seasons that the Riverside Agreement is in effect and Riverside is not able to provide to Landlord all of the spaces agreed upon in the Riverside Agreement because of the withdrawal of some of the parking facilities or any other unforeseen event, PARC will provide in accordance with the terms set forth above the number of spaces that Riverside is not able to provide.

**(e) Complimentary Parking in Parking Facility.** In addition to the paid parking described above, Tenant will receive 400 complimentary parking passes in the Parking Facility for each men's and women's Basketball Game. The complimentary passes described in the preceding sentence include 100 annual parking passes which will permit Tenant's

administrative staff, basketball staff, basketball support staff and players to have so-called "in-and-out access" to the Parking Facility on a daily basis, in addition to parking for the games. Tenant may allocate the 400 complimentary spaces among Tenant's licensees, patrons, guests, donors, sponsors, staff and players in Tenant's sole discretion. The rights of Tenant to the use of the 400 complimentary parking spaces described in this Section 8(e) shall take precedence over any other agreement in which Landlord has committed to provide the use of parking spaces to any other person or entity.

**(f) Additional Paid Parking in Parking Facility.** In addition to the paid parking spaces, complimentary parking passes, and annual parking passes described above, Tenant will have the option to purchase for each men's and women's Basketball Game, at the rate of \$10.00 per parking space during the first 10 years of the Term, and at a mutually renegotiated rate thereafter, (i) 260 additional parking spaces, and (ii) all or part of any other parking spaces that may be offered by Landlord from the parking spaces that remain available in the Parking Facility after all such paid parking spaces, complimentary parking passes, and annual parking passes have been allocated. Unless Tenant notifies Landlord otherwise not later than 45 days before any Basketball Season, Tenant will require all of such remaining spaces for each men's Basketball Game during each Basketball Season. Tenant will notify Landlord not later than 15 days before each women's Basketball Season of the number of additional paid parking spaces that Tenant will require for each women's Basketball Game during the Basketball Season.

**(g) Additional Parking Provisions.** Landlord will provide adequate free parking for media vehicles (e.g., television trucks, satellite uplink trucks, and other vehicles which are necessary for furthering a first class broadcast of a University-sponsored Event) at the rear of the Arena complex off River Road (or another equally suitable location if the River Road area is not available for any reason, including any Force Majeure Event), to permit the media to conduct media coverage of games and other events. If Tenant desires additional media parking on surface parking lots near the Arena, Landlord will use Commercially Reasonable Efforts to obtain such media parking space at a reasonable cost to Tenant.

## **9. SUBLET OR ASSIGNMENT.**

**(a) By Tenant.** Tenant will not assign this Lease or sublease the Leased Premises in whole or in part (including, without limitation, any assignment of Tenant's right to use or license the Private Suites, the Party Suites or the Premium Seating) without Landlord's prior written consent; provided, (i) Tenant may assign this Lease or sublease the entire Leased Premises to any corporation or entity affiliated with and controlled by the University which is a government unit (as such term is used in §150 of the Code) or an organization described in §501(c)(3) of the Code and which succeeds to Tenant's mission regarding University athletics, so long as the successor/assignee is of a financial standing equal to or greater than Tenant, or to the University, in either case provided that, prior to such assignment, Landlord has obtained at Tenant's cost an opinion of nationally recognized bond counsel reasonably acceptable to Landlord to the effect that such assignment does not adversely affect the tax exemption of any Tax-Exempt Bonds financing or refinancing the Arena, and (ii) this provision will not be violated by Tenant's licensing of Private Suites and Premium Seating as provided in this Lease.



**(b) By Landlord.** Landlord will not assign this Lease in whole or in part without Tenant's written consent; provided, Landlord may without the prior consent of Tenant assign and mortgage Landlord's right, title and interest under this Lease to applicable parties to secure mortgage loans, bonds or other indebtedness or the refinancing thereof incurred by Landlord with respect to the development, construction and operation of the Arena. The reasonableness of Tenant in exercising its right of approval with respect to any assignments that require Tenant approval under the first sentence of this Section 9(b) shall be determined according to whether a proposed assignee has the financial capability (which shall be deemed satisfied if the proposed assignee has at least the financial capability, assets or financing contemplated on the part of Landlord as of the Commencement Date) and business experience to properly operate the Arena pursuant to this Lease. It shall be a condition of any assignment that requires Tenant approval under the first sentence of this Section 9(b) that Landlord furnish Tenant with written notice of such assignment together with an executed counterpart of an instrument under which the assignee directly and unconditionally assumes all of Landlord's obligations under this Lease. Upon the assignee's acceptance of any assignment that requires Tenant approval under the first sentence of this Section 9(b), Landlord shall be released from any further liability and obligations hereunder accruing after the date of such assignment and such consent by Tenant, provided that such assignment shall not act as a release of any liability or obligation which arose, was required to be performed and was an event of default by Landlord prior to the date of such assignment or as a release from any liability as to any future consequence or event which occurs as a result of any action or omission of Landlord prior to the effective date of such assignment to the extent such future liability is not assumed by the assignee.

**10. MANAGEMENT AND STAFFING.** Landlord shall cause the Arena to be managed and maintained by KSFB in the manner provided in the KSFB Agreement. All personnel required to properly staff University-sponsored Events such as ticket sellers, ticket takers, guards, ushers, stage hands and any other personnel (excluding personnel required to staff the Parking Facility and other garages/lots, as described in Section 8, and personnel required for traffic control), will be paid by Tenant. All security personnel hired by Tenant must be familiar with the physical layout, emergency procedures, and any other applicable procedures adopted by Landlord or KSFB for the Arena. The staffing of the Arena for all University-sponsored Events will be arranged by Tenant or the University in accordance with the University's then-current procurement guidelines. Tenant must submit a staffing deployment plan to KSFB for its review and approval, which will not be unreasonably withheld or delayed, at least 30 days in advance of each Basketball Season to permit KSFB to verify the number of personnel required to ensure appropriate security and first aid for persons attending Basketball Games and other University-sponsored Events in the Arena. Except as specified in this Lease and the staffing deployment plan, all decisions regarding the staffing of any University-sponsored Event will be in the sole discretion of the University and Tenant. Any costs imposed by state or local governments in connection with the provision of extra police, traffic control, fire protection, directional signage and other similar governmental services for any event held in the Arena will be paid by Landlord, or by the governments themselves. Officials of Landlord and its designated employees or agents working in their official capacity shall have free access to the Leased Premises during all times and events covered in this Lease, and Tenant, at its own expense, will furnish to Landlord any credentials required for such officials, employees and agents.

**11. TAXES.** In addition to those amounts payable by Tenant as provided in Section 5.3, Landlord shall pay all real estate ad valorem taxes, assessments, and other charges, if any (including PILOT amounts), levied or assessed on the Arena or any part thereof, and Tenant, as notified by Landlord from time to time, shall pay all taxes, assessments, license fees and other charges, if any (including PILOT amounts), with respect to, or arising out of, Tenant's use of the Arena, including, but not limited to, taxes on its leasehold interest or personal property located in the Arena. Tenant shall have the right to contest the applicability or amount of any such tax or other amount by appropriate proceedings; however, Tenant shall make such payments in full within 30 days after receiving notice from Landlord, subject to reimbursement following contest proceedings, if applicable.

**12. OPERATION OF THE LEASED PREMISES.**

*(a) Provision of Utilities.* On any day on which a University-sponsored Event is held in the Arena, Landlord shall provide heat, air-conditioning, electricity, and water (the "Utilities") to the Leased Premises from existing facilities and equipment in the Arena. On Game Days and Practice Days, during Basketball Game hours or basketball practice hours, as the case may be, Landlord shall maintain the indoor temperature of the Leased Premises so that it does not exceed 78° Fahrenheit or 15° Fahrenheit less than the outside temperature, whichever is higher, and Landlord shall maintain the heating in the Leased Premises so that the temperature is not lower than 65° Fahrenheit. For any other University-sponsored Event, the indoor temperature shall be maintained at a level that is comfortable to patrons and guests attending the event and appropriate for the occasion. In addition, Landlord agrees to provide garbage removal services to the Leased Premises at Landlord's expense.

*(b) Payment for Utilities.* The Utilities shall be paid for:

(1) By Landlord on Game Days;

(2) By Tenant on Practice Days, based on an hourly rate to be mutually agreed by Landlord and Tenant, to reimburse Landlord for the cost of the Utilities, as additional rent; and

(3) By Landlord on any day on which any University-sponsored Event other than a Basketball Game or practice is held in the Arena.

*(c) Other Operating Costs.* Landlord, at Landlord's sole expense, shall pay for all costs incurred in preparing the Arena, including the Leased Premises, for use by the applicable sports team (or other user in the case of other University-sponsored Events), including, without limitation, the laying and removing of the practice floor and goals of the Leased Premises. Any additional facilities or equipment requested by Tenant for the purpose of furnishing additional Utilities shall be subject to the advance written approval of Landlord. If Landlord approves the installation of such facilities and equipment, Tenant shall pay for the installation, construction, and cost thereof.

*(d) Other Operating Requirements.* Landlord shall provide, at its sole cost, a public address system in the Leased Premises, during game hours on each Game Day. No ice

will be in place during any University-sponsored Event. Landlord will provide custodian service to the Arena, including the Leased Premises, except Tenant, at its cost, will provide custodian service to the home team's training rooms, locker rooms, and coaches' offices.

**13. TELEVISION AND CABLE RIGHTS.** Landlord will provide, at its cost, (basic, not premium) cable or satellite television service and Internet service to the Private Suites, the Party Suites, the media work spaces, and other areas of the Leased Premises as mutually agreed by Tenant and Landlord (to include, at minimum, the coaches' offices and locker rooms).

**14. MAINTENANCE, ALTERATIONS, ADDITIONS, REPAIRS AND RENOVATION.**

*(a) Maintenance.* Landlord will keep, maintain and repair all parts of the Arena, including the Leased Premises, in good order and condition throughout the Term in the manner required under the KSFB Agreement. Without limitation of the foregoing, Landlord shall provide normal maintenance to the locker rooms so as to maintain them in good condition. Any change in the location of the home team's locker room is subject to the advance written approval of Tenant.

*(b) Alterations, Additions and Repairs.* If material in size or scope, all alterations, additions, decorations and repairs to the Leased Premises by Tenant, if any, must be approved in advance in writing by Landlord and, if approved, will be constructed in accordance with plans and specifications approved in advance in writing by Landlord. Without limitation of the preceding sentence, Landlord will not make any permanent changes or other alterations, additions or improvements to any part of the Basketball Space without the prior consent of Tenant.

*(c) Periodic Meetings.* The President and Chairman of Landlord, or his/her designee, and the Athletic Director of Tenant, or his/her designee, shall meet not less than annually, or more frequently if requested by either Party to review the Basketball Space, the Arena Seating, the Private Suites, and the Party Suites and the general utility and revenue enhancing functions of the Arena and shall mutually agree in writing upon items for improvement, maintenance and repair in order to maintain their mutual expectations for the status and reputation of the Arena. No such improvements or expansion shall take place except upon mutual agreement of Landlord and Tenant.

*(d) Renovation.* Without limitation of Section 14(c), Tenant and Landlord will, prior to the expiration of the 15th year of the Term (or at such earlier or later time as may be mutually agreed by Tenant and Landlord), meet to discuss whether the Arena, including the Leased Premises, should be renovated.

**15. CATERING AND CONCESSIONS.** Landlord shall have the exclusive right and control to provide catering and concession service to the Leased Premises (including, without limitation, the Private Suites and the Party Suites) at all times during the Term. Tenant shall buy all food and beverage items used in the Leased Premises from Landlord's then approved caterers, if any, or the concessionaire. If Tenant or its licensees desire to have an event catered, Tenant or its licensee shall use the Landlord's concessionaire or, if Landlord then does not use a single concessionaire, a caterer selected from one of those caterers listed on any list of Landlord's then-

approved caterers. Landlord will provide to Tenant a copy of any contract between Landlord and a caterer or concessionaire at least 90 days prior to the contract's effective date. Landlord agrees that no such contract will contain any provisions that would prevent the full use and enjoyment of the Leased Premises by Tenant and its patrons and guests as provided in this Lease, except for the restrictions and limitations in this Section 15.

**16. LIENS.** Tenant shall defend, indemnify and save Landlord and the Leased Premises harmless from and against any and all liens, claims or demands by reason of construction of any improvements by Tenant, its contractors or its Private Suite licensees. If any such mechanic's or other lien is filed against Landlord or the Leased Premises, Tenant shall at its own cost and expense cause the same to be discharged of record or bonded within 30 days after written notice from Landlord to Tenant of the filing thereof. All work shall be done in conformity with all applicable ordinances, statutes, laws and regulations.

**17. NCAA EVENTS.** Tenant will, and will cause the University to, support fully the efforts of Landlord in pursuing for the Arena all NCAA Events that will be mutually beneficial to Landlord and Tenant. Tenant may propose specific NCAA Events to be pursued by Landlord for the Arena. Landlord may accept or decline any such proposal, except that Landlord will pursue in good faith any NCAA Event in women's basketball or women's volleyball that is proposed by Tenant. Tenant will cause the University (i) to serve as sponsor for all NCAA Events obtained by Landlord, and (ii) not to commit to sponsor any NCAA Event without prior consultation with Landlord. Any NCAA Event in the Arena will be hosted or sponsored only by the University. No other college, university or conference will be permitted to host or sponsor an NCAA Event in the Arena. Landlord and Tenant will mutually agree on a budget for each NCAA Event, and will jointly submit the budget to the NCAA. The budget for each NCAA Event will be the budget as approved by the NCAA. When an NCAA Event is held in the Arena, Landlord will (i) sell or cause to be sold all tickets to the event, (ii) be solely responsible for staffing the Arena for the event, and (iii) receive any honorarium allowed by NCAA rules that otherwise would be paid by the NCAA to Tenant. Landlord will assume all financial risks associated with hosting any NCAA Event in the Arena, but Tenant will share equally with Landlord in the net revenues, if any, generated by the event. For purposes of the preceding sentence, "net revenues" means the gross revenues received by Landlord from the NCAA Event (including, without limitation, Landlord's receipts from parking, concessions, catering, programs and program advertisements, any temporary Sponsorship revenue that is permitted by the NCAA and is attributable solely to the NCAA Event, any handling fee or commission on NCAA ticket sales that is permitted by the NCAA, and the NCAA honorarium), less the expenses of Landlord that are attributable solely to the NCAA Event and are authorized in the NCAA-approved budget. The foregoing calculation of net revenues will not include the receipts or revenues of Landlord from the NCAA Event that are divided between Landlord and Tenant under another provision of this Lease (Gift Shop rental/commission payments and merchandise revenues under Section 7.1(c), Landlord Signage Revenue under Section 7.1(g)(2), and Landlord Video Board Revenue under Section 7.1(g)(3)). Notwithstanding any other provision in this Lease, Landlord and Tenant will, and Tenant will cause the University to, comply at all times with all applicable NCAA specifications relating to hosting each NCAA Event, including without limitation the provision of complimentary parking, the temporary covering of University logos, the NCAA prohibition of free admission to an NCAA Event, and the like.

**18. LIABILITY INSURANCE.** Tenant shall maintain commercial general liability insurance on the Leased Premises insuring against injury or death to any person or persons, or damage to any property, with liability limits of \$20,000,000 per occurrence and in the annual aggregate (which may be satisfied through a combination of primary and excess insurance), insuring against all liability of Tenant, its representatives and employees arising out of and in connection with Tenant's use or occupancy of the Arena. Tenant shall also maintain automobile liability, workers compensation and employer's liability insurance (if not insured under the commercial general liability policy) in accordance with industry practice and applicable laws. Such liability insurance shall specifically insure the performance by Tenant of the indemnity agreements contained in Sections 19 and 35. Such policies shall include Landlord and the Bond Trustee as additional named insureds and shall provide Landlord with notice of cancellation 30 days prior to such cancellation (10 days for non-payment of premium). Tenant shall furnish Landlord a certificate evidencing that Tenant has secured such insurance. To the extent allowed by their respective insurers, Landlord and Tenant, and all persons claiming under them, hereby mutually release, discharge and waive their entire right of recovery against the other from all claims and liabilities arising from or caused by any hazard, loss or damage covered by insurance on the Leased Premises, regardless of the cause of damage or loss, but only to the extent of the actual insurance proceeds received by the respective Party.

**19. INDEMNITY.** All personal property belonging to Tenant or to any other person which is brought upon or otherwise located in or on the Arena shall be at the sole risk of Tenant or such other person. Tenant shall to the extent permitted by applicable law and subject to Section 35(b), defend, indemnify and hold Landlord harmless from any loss, liability, expense or claim from damage to person or property, including all attorney's fees, in connection with Tenant's use of the Arena, including without limitation, the claims of any employee of Tenant and the claims of any person attending the games or practices except that Tenant shall not be responsible for the negligence of Landlord or Landlord's employees, or latent defects in the Arena, or any default by Landlord in the performance of any of its obligations hereunder. Tenant, at Landlord's request, shall defend any suit or suits at Tenant's own expense and pay all judgments with respect to any such claim. If the Arena, or any portion of the Arena, is damaged by any act, default or negligence of Tenant, its agents, employees, licensees, patrons, customers, guests or assigns, then Tenant shall pay to Landlord upon demand such sum as shall be necessary to restore the Arena to its condition prior to such damage. Tenant assumes full responsibility for the character, acts and conduct of all persons admitted by Tenant or the University to the Arena or to any portion thereof.

**20. SURRENDER AND TERMINATION.** Upon the expiration of the Term or any other termination of this Lease, Tenant shall, at its cost and at Landlord's sole option, remove all, or part of, the improvements made by Tenant to any part of the Leased Premises, and restore such part of the Leased Premises to the condition it was in immediately prior to such removal, ordinary wear and tear excepted. Notwithstanding the foregoing or any other provision in this Lease to the contrary, if at any time during the Term Tenant shall cease to be an organization described in §501(c)(3) of the Code, then without notice or any other action by Landlord or Tenant, (i) this Lease shall terminate immediately with respect to Tenant, and (ii) upon such termination this Lease shall be assigned, at the University's option, either to any corporation or entity affiliated with and controlled by the University which is either a governmental unit (as

such term is defined in §150 of the Code) or an organization described in §501(c)(3) of the Code and which succeeds to Tenant's mission regarding University athletics, so long as the successor/assignee is of a financial standing equal to or greater than Tenant, or to the University, provided that, prior to such assignment, Landlord has obtained at Tenant's cost an opinion of nationally recognized bond counsel of Landlord's choosing to the effect that such assignment does not adversely effect the tax exemption of any Tax-Exempt Bonds financing or refinancing the Arena. Any such assignment shall be deemed to have taken effect simultaneously with the termination of this Lease with respect to Tenant.

**21. NOTICES.** Any notice required or permitted to be given by either Party to the other under this Lease shall be in writing and shall be deemed to have been sufficiently given by the Party when personally delivered or deposited by the Party in a United States Post Office, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows or to such other address or addresses as either Party may from time to time advise the other in writing:

*(a)* If from Tenant to Landlord:

Louisville Arena Authority, Inc.  
Attn: Chairman  
221 South Fourth Street  
P.O. Box 21179  
Louisville, Kentucky 40221-0179

With a copy to:

Mark F. Sommer, Esq.  
Greenebaum Doll & McDonald PLLC  
3500 National City Tower  
101 South Fifth Street  
Louisville, KY 40202

*(b)* If from Landlord to Tenant:

University of Louisville Athletic Association, Inc.  
Athletic Business Office  
Student Activities Center  
University of Louisville  
Louisville, Kentucky 40292  
Attn: Director of Athletics

And

University of Louisville  
Office of the President  
Louisville, Kentucky 40292

With copy to:

University Counsel's Office  
University of Louisville  
206 Grawmeyer Hall  
Louisville, Kentucky 40292

## 22. DEFAULT.

*(a) Events of Default.* The occurrence of any one or more of the following events by a Party (the "Defaulting Party") shall constitute an "Event of Default" by the Defaulting Party:

(1) The Defaulting Party's failure to pay when due any rental or other sum of money payable under this Lease, and such failure is not cured within 30 days after written notice to the Defaulting Party by the other Party (the "Non-Defaulting Party");

(2) The Defaulting Party's failure to perform any other of the material terms, covenants or agreements contained in this Lease to be performed by the Defaulting Party if not remedied within 30 days after receipt by the Defaulting Party of written notice from the Non-Defaulting Party, or if such default cannot be remedied within such period, the Defaulting Party does not within 30 days after receipt of written notice commence such act or acts as are necessary to remedy the default and does not thereafter complete such act or acts within a reasonable time;

(3) There is an Act of Bankruptcy (as defined below) with respect to the Defaulting Party; or

(4) The Defaulting Party (in the case of Landlord only) commits a material breach of Section 8(b).

*(b) Rights and Remedies.* Upon the occurrence and during the continuation of any Event of Default by the Defaulting Party, and subject to complying with the dispute resolution provisions of Article 33 of this Lease, the Non-Defaulting Party shall have the following rights and remedies, it being understood that, notwithstanding anything to the contrary in this Lease, the Non-Defaulting Party (except in the event of a material breach by Landlord of its obligations under Section 8(b)) shall have not any right to terminate this Lease as a result of an Event of Default by the Defaulting Party:

(1) To exercise, if applicable, its right of setoff against the Defaulting Party as provided in Section 7.1(k); and/or

(2) To institute any and all proceedings or claims permitted by law or equity to recover all unpaid sums and amounts then due and payable by the Defaulting Party under this Lease, and any and all amounts necessary to compensate the Non-Defaulting Party for all damage proximately caused by the Defaulting Party's failure to perform its obligations under this Lease; and/or

(3) To institute any and all proceedings or claims permitted by law or equity to compel specific performance with respect to the Defaulting Party's obligations under this Lease and one or more actions to seek and obtain a temporary restraining order, together with such other temporary, preliminary and permanent injunctive or other equitable relief, from any court of competent jurisdiction capable of issuing or granting such relief, to compel the Defaulting Party to comply with or refrain or cease from breaching or violating the terms, covenants and conditions of this Lease.

(4) Notwithstanding anything contained in this Lease to the contrary, if a court of competent jurisdiction has determined pursuant to a final non-appealable order that an Event of Default by the Defaulting Party has occurred under this Lease and the Event of Default is continuing under this Lease, the Non-Defaulting Party shall have the right, in addition to any other rights it may have under this Lease, to cure the Event of Default on behalf of the Defaulting Party, and the Defaulting Party shall reimburse the Non-Defaulting Party upon demand for any sums paid or costs incurred by the Non-Defaulting Party in curing the Event of Default, including interest thereon at the legal rate, and reasonable attorneys' fees and other legal expenses.

**(c) Act of Bankruptcy.** "Act of Bankruptcy" as used in this Article 22 means, with respect to any Party, that (i) such Party shall have commenced a voluntary case under the Bankruptcy Code or under any other insolvency act or law, state or federal, now or hereafter existing, applied for or consented to the appointment of, or taking of possession by, a receiver, trustee, assignee, custodian or liquidator of all or a substantial part of its assets; (ii) such Party shall have made a general assignment for the benefit of creditors; (iii) such Party shall have been adjudicated bankrupt, or shall have filed a petition or an answer seeking an arrangement with creditors; (iv) such Party shall have taken advantage of any insolvency law, or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding; (v) an order, judgment or decree for relief shall have been entered in an involuntary case against such Party, without the application, approval or consent of such Party, by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for such Party or for a substantial part of any of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days; or (vi) an involuntary petition in bankruptcy against such Party shall have continued undismissed for 90 days after the filing thereof.

**(d) Tenant's Bankruptcy Rights.** In addition to and without limitation of the other provisions in this Section 22, if there is an Act of Bankruptcy with respect to Landlord, Landlord agrees to the following (which are material inducements to Tenant entering into this Lease): (i) that this Lease is an executory contract and that Tenant has the right to assume it; (ii) that this Lease does not constitute a fraudulent transfer; (iii) that any plan of reorganization shall not impair any of Tenant's rights and/or Landlord's obligations under this Lease, and that Tenant



shall be included as a protected party under any injunctions or exculpation provisions that may be contained in any such plan of reorganization; (iv) that Landlord shall oppose any and all efforts to defeat the enforceability of this Lease; and (v) that Landlord will not contest Tenant's right to remain as tenant of the Leased Premises for the remainder of the Term and any extension provided in this Lease, and Tenant's right to offset against Tenant's rental payments any damages caused to Tenant by any nonperformance of Landlord's obligations under this Lease.

*(e) Landlord's Bankruptcy Rights.* In addition to and without limitation of the other provisions in this Section 22, if there is an Act of Bankruptcy with respect to Tenant, Tenant agrees to the following (which are material inducements to Landlord entering into this Lease): (i) that this Lease is an executory contract and that Landlord has the right to assume it; (ii) that this Lease does not constitute a fraudulent transfer; (iii) that any plan of reorganization shall not impair any of Landlord's rights and/or Tenant's obligations under this Lease, and that Landlord shall be included as a protected party under any injunctions or exculpation provisions that may be contained in any such plan of reorganization; (iv) that Tenant shall oppose any and all efforts to defeat the enforceability of this Lease; and (v) that Tenant will not contest Tenant's obligation to remain as tenant of the Leased Premises for the remainder of the Term and any extension provided in this Lease, and Landlord's right to offset against amounts owed by Tenant to Landlord any damages caused to Landlord by any nonperformance of Tenant's obligations under this Lease.

**23. NON-WAIVERS.** Failure of Landlord or Tenant to complain of any act or omission on the part of the other Party no matter how long the same may continue, shall not be deemed to be a waiver by said Party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by Landlord or Tenant of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account.

**24. INSPECTION.** Landlord and the Landlord's agents shall have the right, at all times, to enter upon the Leased Premises for the purpose of inspecting it or making repairs which Landlord may deem necessary for the preservation of the Leased Premises.

**25. EMINENT DOMAIN.**

*(a) Entire Arena.* If during the Term the entire Arena shall be taken by the exercise of the power of eminent domain by any public authority or private entity, then at either Landlord's or Tenant's election this Lease shall terminate as of the date title to the Arena vests in such condemning authority. Subject to the rights of the Bond Insurer and the Bond Trustee, that portion of the award attributable to the improvements made by Tenant on the Leased Premises, if any, shall be paid to Tenant and Tenant shall be entitled to make an application to the condemner to recover its loss of business, relocation and moving expenses and the cost of removal of trade stock and fixtures. Landlord shall be entitled to all other compensation paid or award granted.

*(b) Part of Arena.* If during the Term less than the entire Arena shall be taken by the exercise of the power of eminent domain by any public authority or private entity, and the portion so taken does not render the entire Leased Premises untenable in whole or in

substantial part, then Landlord may, at its option and subject to any applicable provisions in the Bond Documents, terminate this Lease as of the date title to that portion of the Arena vests in the condemning authority or elect to maintain this Lease in full force and effect in which case, subject to the rights of the Bond Insurer and the Bond Trustee, Landlord shall repair same using all reasonable speed to the condition that existed prior to such damage or destruction. The award for this portion of the Arena so taken shall be allocated as set forth above. The lease for that portion of the Leased Premises so taken shall terminate on the date title vests in the condemning authority.

## **26. DAMAGE OR DESTRUCTION.**

*(a) Leased Premises Untenantable.* If any or all of the Arena shall be destroyed or damaged by any cause so as to render the Leased Premises untenantable in whole or in substantial part and repairs to the Arena cannot be completed within 180 days, or a reasonable time thereafter, then Landlord or Tenant may terminate this Lease with respect to the untenantable portion of the Leased Premises upon 60 days' written notice to the other Party. If Landlord or Tenant decides to terminate this Lease with respect to such portion, then this Lease shall terminate with respect to such portion as of the date either Party gives notice of its election. If Landlord and Tenant decide not to terminate this Lease, then to the extent of insurance proceeds received by Landlord and subject to the rights of the Bond Insurer and the Bond Trustee, Landlord shall repair same using all reasonable speed to the condition as existed prior to such damage or destruction.

*(b) Leased Premises Not Untenantable.* If any or all of the Arena is damaged or destroyed by any cause but the Leased Premises are not rendered untenantable in whole or in substantial part, then to the extent of any insurance proceeds received by Landlord and subject to the rights of the Bond Insurer and the Bond Trustee, Landlord shall repair the damaged or destroyed part of the Arena within 180 days, or a reasonable time thereafter, to the condition as existed prior to such destruction or damage and all payments under this Lease shall be adjusted in an equitable manner during the period of repair or restoration.

*(c) Private Suites and Premium Seating.* Tenant will include in the licenses for the Private Suites and Premium Seating a provision that, if Tenant's rent for the Leased Premises is abated during any period of repair or restoration, the inability of Tenant to use the Arena during such period will not abate the obligation of the Private Suite and Premium Seating licensees to make license payments to Tenant, but the term of their license will be extended by a period equal to the period of repair or restoration.

**27. POSSESSION AND QUIET ENJOYMENT.** For all of the dates and times covered by the Term, Landlord shall deliver to Tenant the actual unimpeded and exclusive possession of the Leased Premises free and clear of all other leases, rental commitments, tenancies, agreements, franchises or other encumbrances except those agreements referred to in this Lease including, but not limited to, concession and catering agreements.

**28. MODIFICATION.** No modification or variation of any provision of this Lease shall be effective unless the modification or variation is written and signed by both Landlord and Tenant.

**29. ILLEGALITY.** The unenforceability, invalidity or illegality of any provision of this Lease shall not render the other provisions of this Lease unenforceable, invalid or illegal, and the Parties will negotiate in good faith to substitute a valid and enforceable provision that reflects the intent and has the economic substance of the invalid or unenforceable provision.

**30. ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between the Parties and supersedes all prior statements or agreements, including, without limitation, the MOU. This Lease creates only the relationship of landlord and tenant between the Parties, and nothing in this Lease shall impose upon either Party any powers, obligations or restrictions not expressed herein.

**31. BINDING EFFECT AND GOVERNING LAW.** This Lease is binding upon Landlord and Tenant, their successors and permitted assigns. This Lease shall be governed by the laws of the Commonwealth of Kentucky.

**32. CURRENT TENANT LEASE.** Landlord acknowledges that (i) Tenant currently is a Party to a lease agreement (the "Fair Board-Tenant Lease") with KSFB under which Tenant leases basketball areas and private suites within Freedom Hall and an Athletic Building; and (ii) the Arena does not contain space that Tenant can use for the same purposes as the Athletic Building, and Tenant and KSFB therefore have agreed to the terms of a new lease agreement for the Athletic Building alone, to be effective upon the termination of the Fair Board-Tenant Lease. Landlord agrees that if KSFB does not permit Tenant to retain Tenant's current lease of the Athletic Building, without penalty or additional cost to Tenant throughout the Term, then in such event Landlord will procure for lease by Tenant a suitable facility near the University's Belknap Campus that will have substantially the same space as the Athletic Building for lease payments that will be substantially the same as Tenant's lease payments for the Athletic Building as provided in the exhibits to the Fair Board-Tenant Lease and the separate Athletic Building Lease Agreement described above. Without limitation of the foregoing, Landlord shall defend, indemnify and hold Tenant harmless from any loss, liability, expense or claim arising from or based upon the obligations imposed by Part I, Subpart G, Section 1, paragraph 001 of House Bill 380 enacted in the 2006 Regular Session of the Kentucky General Assembly.

**33. DISPUTE RESOLUTION OVERSIGHT COMMITTEE.** Landlord and Tenant will form a Landlord/Tenant Arena Lease Oversight Committee (the "Oversight Committee") with at least four members (an equal number of representatives from each of Tenant and Landlord), with assistance from necessary advisors. The Oversight Committee will monitor the implementation of this Lease. The Oversight Committee will seek to resolve issues in an efficient manner and on a timely basis. The Oversight Committee will meet at least once each calendar quarter. Any claim, dispute, or controversy arising out of or relating to the interpretation, application, or enforcement of this Lease and any alleged breach thereof ("Dispute") may, unless otherwise provided, promptly be submitted to the Oversight Committee for resolution. The Oversight Committee will consider all available documents and evidence regarding the Dispute, including interviews of the involved employees if necessary, and will attempt to resolve the Dispute by agreement of all of its members.

**(a) Chairs of the Board.** If the Oversight Committee is unable to resolve a Dispute within 20 days after the Dispute is submitted to it, the Dispute will be submitted to the

Chairs of the Board of Tenant and Landlord. Each Chair may conduct such investigation as he or she considers appropriate, including interviews with one or more members of the Oversight Committee. The Chairs will attempt to resolve the Dispute as promptly as practicable.

*(b) Mediation.* If the Chairs of the Board are unable to resolve the Dispute within 10 days after the Dispute is submitted to them, the Dispute will be submitted to non-binding mediation conducted by a neutral mediator. Each of Tenant and Landlord will propose a suitable mediator, and Tenant and Landlord will attempt to agree on the selection of the mediator. If Tenant and Landlord are unable to agree, either Tenant or Landlord may apply to an appropriate and mutually agreeable mediation service provider for appointment of a mediator. The costs of the mediation will be shared equally by Tenant and Landlord.

*(c) Information Requests.* All reasonable requests for information made by one Party to another Party in aid of each of the dispute resolution processes described above, including access to the relevant records of any Party, will be honored. All discussions among or with the members of the Oversight Committee, the Chairs of the Board and the mediator will be treated as compromise and settlement negotiations. Nothing said or disclosed, and no document produced, during any such dispute resolution process that is not otherwise independently discoverable will be offered or received as evidence or used as impeachment or for any other purpose in any arbitration or litigation.

*(d) Litigation.* If any Dispute is not resolved by the mediation process above within 60 days after the date on which the Dispute was submitted to mediation, either Party may file a lawsuit against the other Party.

*(e) Injunctive Relief.* Notwithstanding the provisions for negotiation and mediation during the time periods provided above, any Party may file a lawsuit to obtain injunctive relief for any breach of the obligations of any other Party if the breach would cause the non-breaching Party to suffer immediate and irreparable injury, loss or damage during such time periods, or the acts of the breaching Party would cause a negotiated or mediated resolution to be ineffectual or impossible. Any lawsuit must be filed in accordance with Section 34.

**34. JURISDICTION; SERVICE OF PROCESS.** Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Lease may be brought against any of the Parties in the courts of the Commonwealth, in Jefferson County, or, if it has or can acquire jurisdiction, in the United States District Court for the Western District of Kentucky, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

### **35. INDEMNIFICATION.**

*(a)* Each Party (the "Indemnitor") shall to the extent permitted by applicable law indemnify, defend and hold harmless the other Party (the "Indemnitee") from and against any and all claims, demands, actions, suits, causes of action, damages and expenses (including, but not limited to, expenses of investigation, settlement, litigation and attorney's fees incurred in connection therewith) (collectively, a "Loss") arising out of or resulting from (i) the breach by the Indemnitor of any representation or warranty made or given by the Indemnitor herein or any

other term or condition therein to be performed by the Indemnitor, or (ii) the negligence or willful misconduct of the Indemnitor, its agents or employees. The indemnification obligations stated in this Lease shall survive the expiration or termination of this Lease. Each Party hereby waives all consequential damage rights against the other.

(b) Promptly after and in any event within 30 days after receipt by the Indemnitee of notice from the Indemnitor or from a third party that a Loss has actually been incurred or that facts have been discovered which make it probable that a Loss will be incurred, the Indemnitee will give written notice to the Indemnitor describing such Loss or facts in reasonable detail. Notwithstanding the preceding sentence, the failure of the Indemnitee to give such notice on a timely basis will not constitute a waiver of the Indemnitee's right to be indemnified, unless the Indemnitor was materially prejudiced by such failure. With respect to claims by third parties, the Indemnitor will have the right, at its option, to compromise or defend, by its own counsel, any such matter involving the asserted liability of the Indemnitee as to which the Indemnitor will have acknowledged its obligation to indemnify the Party seeking indemnification; provided, that counsel for the Indemnitor must be approved by the Indemnitee, whose approval will not be unreasonably withheld; and provided further, that the Indemnitor will not, without the consent of the Indemnitee, consent to the entry of any judgment or enter into any settlement that does not include the giving by the claimant or plaintiff of an absolute and complete release of the Indemnitee from and against all liability with respect to such claim for litigation; and provided further, that the Indemnitor shall not be permitted to settle any claim without the consent of the Indemnitee if the terms of the settlement would have an adverse effect on the Indemnitee or its business or assets. If the Indemnitor agrees in writing to undertake to compromise or defend any such asserted liability, the Indemnitor will promptly notify the Indemnitee of its intention to do so, and the Indemnitee agrees to cooperate fully at the expense of the Indemnitor with the Indemnitor and its counsel in the compromise of, or defense against, any such asserted liability. The Indemnitee will have the right to retain counsel to participate in the defense of any such asserted liability but will bear the fees and expenses of such counsel unless (i) the Indemnitor has specifically authorized in writing the retention of such counsel or (ii) the Parties to the suit or proceeding arising in connection with such asserted liability include the Indemnitee and the Indemnitee has been advised by counsel that one or more legal defenses may be available to it which may not be available to the Indemnitor, in which case the Indemnitor will be responsible for the legal expenses arising from the retention of counsel for the Indemnitee in such suit or proceeding.

**36. NONDISCLOSURE OF CONFIDENTIAL INFORMATION.** The Parties understand that in carrying out their obligations under this Lease, each Party may share confidential and proprietary information with the other Party. Except as and to the extent required by the Kentucky Open Records Act, KRS 61.870, *et seq.*, and any other applicable law, each Party (the "Receiving Party") will not disclose or use, and will direct its representatives not to disclose or use to the detriment of the other Party (the "Disclosing Party"), any Confidential Information (as defined below) with respect to the Disclosing Party furnished, or to be furnished by the Disclosing Party or its representatives to the Receiving Party or its representatives at any time or in any manner, other than use by the Receiving Party in connection with the negotiation or implementation of this Lease. For purposes of this Section 36, "Confidential Information" means any information about the Disclosing Party stamped "confidential" or identified in writing as such to the

Receiving Party by the Disclosing Party promptly following its disclosure, unless (a) such information is already known to the Receiving Party or its representatives or to others not bound by a duty of confidentiality at the time of its disclosure or such information becomes publicly available through no fault of the Receiving Party or its representatives; (b) the disclosure of such information is necessary or appropriate in making any public filing or obtaining any third party consent or approval required for the consummation of this Lease; or (c) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings. Upon the written request of the Disclosing Party, the Receiving Party will promptly return to the Disclosing Party or destroy any Confidential Information in its possession and certify in writing to the Disclosing Party that it has done so. If any Party receives a request for documents or information of another Party pursuant to the Kentucky Open Records Act or otherwise, the Party receiving the request will immediately notify the other Party of such request so that the other Party will have an opportunity to institute an action to prevent the release of some or all of such documents or information.

**37. ARTICLE AND SECTION HEADINGS AND CAPTIONS.** The Article and Section headings and captions in this Lease are for convenience of reference only and shall not affect the construction of the terms and provisions hereof.

**38. TIME OF THE ESSENCE; MUTUAL EXTENSION; DILIGENT PERFORMANCE.** Time shall be of the essence with respect to the duties and obligations imposed on the Parties hereto. Where any time for performance or otherwise is set forth herein, such time may be extended by mutual agreement of Landlord and Tenant. With respect to any duty or obligation imposed on a Party to this Lease, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such Party to commence and perform the same in a diligent manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of performance thereof.

**39. FORCE MAJEURE.** If any Party (the "Performing Party") shall be delayed, hindered in or prevented from the performance of any act, other than payment of money, required hereunder to or for the benefit of any other Party (the "Other Party") by reason of any Force Majeure Event, then (a) the Performing Party will give prompt notice to the Other Party of the threatened or actual occurrence of the Force Majeure Event as soon as the Performing Party acquires such knowledge, (b) the Performing Party will use its best efforts to minimize the duration and consequences to the Other Party of any failure of or delay in performance caused by the Force Majeure Event, (c) any failure of or delay in performance caused by the Force Majeure Event will not be a breach of this Lease, and (d) the performance of such act by the Performing Party shall be extended for a period equivalent to the period of such delay.

**40. NO THIRD PARTY BENEFICIARIES; NO PARTNERSHIP OR JOINT VENTURE CREATED.** Each of the Parties hereto agrees that nothing contained in this Lease shall be deemed or construed by any of them, or by any third party, as creating any relationship of third party beneficiary, principal and agent, general partnership or joint venture or any other association or relationship between or among Tenant and Landlord. The terms and provisions of this Lease are solely for the benefit of each of the Parties hereto, their successors and permitted assigns, and shall not benefit in any manner any person not a Party to this Lease. Notwithstanding this Section 40, (i) Tenant may be an express third-party beneficiary of the PARC Agreement, the

KSFB Agreement, the Riverside Agreement, and the agreements described in Section 47, to the extent provided therein, and (ii) the Bond Trustee or Bond Insurer may enforce the covenant of Tenant in Section 46(c), to the extent provided therein.

**41. NO ABROGATION OF LEGAL REQUIREMENTS.** Nothing contained herein shall be construed to permit any Party to violate any applicable law, regulation or code.

**42. COUNTERPARTS.** This Lease may be executed in two or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute one and the same instrument. For this purpose, a signature sent by a Party or signatory and received by other Parties or signatories by facsimile transmission shall have full force and the same effect as an original signature.

**43. NO PRESUMPTION OF AUTHORSHIP.** Landlord and Tenant each have participated jointly in the negotiation and drafting of this Lease, with the advice of their respective counsel. If any provision of this Lease is ambiguous or presents a question of interpretation, the Parties intend that any mediator, arbitrator or court shall apply no presumption or burden of proof favoring or disfavoring any Party based upon authorship of this Lease, but instead shall interpret each provision of this Lease as jointly drafted by both Parties through their respective counsel.

**44. CUMULATIVE REMEDIES.** No remedy referred to in this Lease is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to in this Lease or otherwise available under law, in equity or under this Lease.

**45. RECORDING OF LEASE.** If Landlord, the Bond Insurer, and/or the Bond Trustee determines, directly or in conjunction with professional advisors, that recording this Lease in the Jefferson County, Kentucky Clerk's Office would facilitate or better the overall financing of the Arena, this Lease shall be recorded by Landlord at such time.

**46. STADIUM FINANCING PROVISIONS.**

*(a) Stadium Financing Agreement.* Landlord acknowledges that Tenant has entered into a Financing Agreement, dated as of January 1, 1997 (the "Stadium Financing Agreement"), with the Metro Government (as successor to the County of Jefferson, Kentucky), in connection with the issuance of revenue bonds (the "Stadium Bonds") to finance the acquisition, construction and installation of a sports stadium, associated training facilities and related facilities (collectively, the "Stadium"), currently used by the University. The Stadium Bonds mature on March 1, 2018 and currently are outstanding in the aggregate principal amount of about \$11.5 million. Under the Stadium Financing Agreement, Tenant has agreed to the following provisions:

*(1)* Tenant has agreed to make payments with respect to debt service on the Stadium Bonds, which obligation is stated in the Stadium Financing Agreement to "constitute a general obligation of [Tenant] and a first and prior lien upon the income, revenues and moneys of [Tenant]." [section 3.03 thereof]

(2) Tenant has pledged, as security for the performance of its obligations under the Stadium Financing Agreement, "its Gross Revenues and all funds and accounts of [Tenant]." [section 3.02 thereof] "Gross Revenues" are defined to mean "all moneys and revenues collected or received by [Tenant], including, but not by way of limitation, except as hereinafter expressly provided, all charges, ticket sales, revenues of every description, television, radio and news media receipts, royalties, fees, commissions, concession revenues and governmental payments, excepting only donations and grants received by [Tenant] for specified and limited purposes." [section 1.01 thereof]

(3) Tenant has further agreed that, so long as the Stadium Financing Agreement remains in full force and effect, "it will not contractually commit its income and revenues in any respect, unless the same is made expressly subordinate and inferior to this [Stadium] Financing Agreement" and "all income and revenues, direct and indirect, related to University athletic activities shall be received, administered and applied by [Tenant] for, inter alia, the funding of [Tenant's] financial obligations and duties under this [Stadium] Financing Agreement, on a primary, first lien basis." [article V thereof].

(b) "Gross Revenues" as defined in the Stadium Financing Agreement include the revenues that Tenant will receive from persons other than Landlord under sections 5.1, 7.1(a), 7.1(d), 7.1(e), 7.1(g)(4) and 7.1(h) of this Lease and from Landlord under sections 7.1(b), 7.1(c), 7.1(g)(2) and 7.1(g)(3) of this Lease (collectively, the "ULAA Arena Revenues"). Tenant will use a portion of the ULAA Arena Revenues to fulfill its rental payment obligations to Landlord under sections 6.1, 6.2 and 7.1(d) of this Lease and (if required by the occurrence of certain events) to fulfill its contingent obligations to Landlord under sections 4.1, 5.3, 11, 16, 19 and 35 or otherwise of this Lease (collectively, such rental payment obligations and such contingent obligations are the "ULAA Arena Obligations"). Landlord acknowledges that Tenant's obligation to make payment of the ULAA Arena Obligations, at least to the extent that such payments will be derived from moneys which constitute Gross Revenues under the Stadium Financing Agreement, will therefore be subject to Tenant's obligations under the Stadium Financing Agreement.

(c) *Tenant's Covenant.* Tenant hereby covenants and agrees that, except as provided in the Stadium Financing Agreement and as otherwise provided below, it shall not pledge or permit to be pledged any of its moneys or other revenues, whether or not constituting "Gross Revenues" under the Stadium Financing Agreement, to secure any indebtedness or other obligations of Tenant on a basis which is senior to Tenant's obligations with respect to the ULAA Arena Obligations. Tenant further acknowledges that this covenant is intended to be for the benefit of the parties to the Arena Bond Documents, including the holders of the Arena Bonds, and may be enforced by the Bond Trustee or the Bond Insurer.

(d) *New Stadium Bonds.* In the event that Tenant determines either to refund the outstanding Stadium Bonds and/or construct additional improvements to the Stadium, in either case financed or refinanced by new and/or additional Stadium Bonds (the "New Stadium Bonds"), Tenant agrees that any agreement that provides for a pledge of its moneys or other revenues for the benefit of the holders of the New Stadium Bonds (i) may contain a pledge of all or any part of such moneys or revenues for the benefit of such holders on a basis that is superior



to Tenant's obligations with respect to the ULAA Arena Obligations, except that the portion of such moneys or revenues that is equal to the Excluded Amount (as defined in Section 46(e) below) shall be excluded from any such superior pledge for the express purpose of enabling Tenant to make payment of the ULAA Arena Obligations, and (ii) may contain a pledge of the Excluded Amount for the benefit of such holders only on a basis that is subordinate to Tenant's obligations with respect to the ULAA Arena Obligations.

**(e) Excluded Amount.** On the date on which Tenant's Play Obligations commence under Section 3.3(b), the Excluded Amount shall be \$2 million. On each date after such date that an increase in the annual license fee charged by Tenant for the Private Suites or for any category of the Premium Seating becomes effective, the Excluded Amount shall be increased by a percentage equal to the percentage increase in the total annual license fees to be received by Tenant for all Private Suites and Premium Seating that will be attributable to such increase for the Private Suites or such category of Premium Seating. Tenant will, at the time each such increase becomes effective, provide to Landlord information with regard to the amount of the increase and the effect of the increase on Tenant's total annual license fees. The impact on the Excluded Amount of any increase in the annual license fee for the Private Suites and each category of Premium Seating shall be calculated separately. For example, if Tenant increases the annual license fee for the Private Suites, the Excluded Amount shall be increased on the effective date of such increase by the percentage increase in the total annual license fees to be received by Tenant for all Private Suites and Premium Seating that will be attributable only to such increase in the annual license fee for the Private Suites. If Tenant, either at the same time or at a different time, increases the annual license fee for the side-court club seats, the mezzanine club seats or the loge seats, the Excluded Amount shall be increased in the same manner by a separate calculation. Each such increase in the Excluded Amount shall be cumulative of all previous such increases in the Excluded Amount.

**47. RIGHT OF TENANT.** So long as this Lease is in effect, Landlord shall maintain in full force and effect an agreement with the Mortgagee (which agreement shall run in favor of the Tenant as third party beneficiary) that (i) if the interest of Landlord in this Lease is acquired by the Mortgagee and Tenant is not then in default under this Lease, then (a) Tenant's occupancy and possession of the Leased Premises and Tenant's rights and privileges under this Lease shall not be disturbed, diminished or interfered with by the Mortgagee during the Term (or any extensions or renewals thereof or substitutions therefor), (b) the Mortgagee will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under this Lease because of any default under the Mortgage and Security Agreement, and (c) this Lease shall continue in full force and effect and shall not be terminated except in accordance with the terms of this Lease; and (ii) if the Mortgagee acquires title to the Arena by reason of foreclosure or foreclosure sale or the enforcement of its mortgage or by a conveyance in lieu thereof, or as a result of any other means, and Tenant is not then in default under this Lease, then (a) before the Mortgagee may solicit or consider any unsolicited offers to purchase the Arena, Tenant will have a period of 90 days after the date on which the Mortgagee acquires title to the Arena to give notice to the Mortgagee that it will purchase the Arena at the price that is sufficient to retire or provide for the retirement of all then outstanding Arena Bonds (by redemption, defeasance or otherwise) and sufficient to pay in full all other Parity Obligations (as defined in the Bond Indenture) including any amounts owed to any Swap Provider (as defined in

the Bond Indenture) under any Swap (as defined in the Bond Indenture), and if Tenant gives such notice the purchase of the Arena at such price will be closed as soon as practicable but in no event later than 180 days after the date of Tenant's notice, and (b) if Tenant does not give such notice within such 90-day period, and the Mortgagee thereafter receives a bona fide offer to purchase the Arena, the Mortgagee will deliver a copy of the offer to Tenant, and Tenant may within a period of 90 days after receipt of the copy of the offer give notice to the Mortgagee that it will purchase the Arena on the terms and at the price set forth in the offer, and if Tenant gives such notice the purchase of the Arena on such terms and at such price will be closed as soon as is practicable but in no event later than 180 days after the date of Tenant's notice.

#### 48. REPRESENTATIONS AND COVENANTS.

*(a) Representations and Covenants of Tenant.* Tenant represents and covenants to Landlord as follows:

(1) Tenant is a non-stock, non-profit corporation established and validly existing under the laws of the Commonwealth of Kentucky with the power and authority to enter into this Lease.

(2) Tenant (a) is an organization described in §501(c)(3) of the Code, and is not presently a "private foundation" as such term is defined under §509(a) of the Code; (b) has received correspondence or other notifications from the Internal Revenue Service to that effect, and such correspondence or other notifications have not been modified, limited or revoked; (c) the facts and circumstances which formed the basis of such correspondence or other notifications as represented to the Internal Revenue Service continue to exist and no other material facts or circumstances have arisen of which it is aware which adversely affects the validity of such correspondence or other notifications; and (d) is exempt from federal income taxes under §501(a) of the Code. Tenant will preserve and maintain such tax-exempt status so long as (1) it remains the tenant under this Lease and (2) any portion or amount of the Tax-Exempt Bonds remain outstanding.

(3) Tenant covenants that all of its use of the Arena as described in this Lease (a) will be in compliance with its exempt purposes under §501(c)(3) of the Code, and (b) will not constitute an unrelated trade or business, determined by applying §513(a) of the Code. The covenants in the foregoing sentence will not apply to Tenant's use of portions of the Arena which are not financed with Tax-Exempt Bonds, which portions are described in **Exhibit F** attached to and made a part of this Lease. Tenant may place Signage, video board and similar recognition located in the Arena to the extent such recognition gives rise to "qualified sponsorship payments" as defined in §513(i) of the Code. If, in the event of a Federal tax law change (or new interpretation of existing Federal tax law), any activities of Tenant formerly not treated as unrelated trade or business use of the Arena by Tenant are or reasonably may be so classified, Tenant and Landlord will use Commercially Reasonable Efforts to permit such activities, including by amendment of this Lease, but only to the extent such activities will not cause any Tax-Exempt Bonds to lose their status as such.

(4) Tenant understands that its use of the Arena pursuant to this Lease as described in this Section 48 is relevant to the compliance by Landlord and KEDFA with certain tax covenants applicable to "qualified 501(c)(3) bonds" to be contained in certain agreements and certificates that will be included in the Arena Bond Documents. To this end, Tenant agrees to use Commercially Reasonable Efforts to cooperate with Landlord and KEDFA to ensure such compliance at all times.

(5) Tenant agrees that Landlord may include Tenant's name, Tenant's publicly available financial statements, and a factual summary of Tenant's athletic programs in the Official Statement for the Arena Bonds.

**(b) Representations and Covenants of Landlord.** Landlord represents and covenants to Tenant as follows:

(1) Landlord is a non-stock, non-profit corporation established and validly existing under the laws of the Commonwealth of Kentucky with the power and authority to enter into this Lease.

(2) To the best knowledge of Landlord, there exists no current violation of any federal, state, regional or local hazardous waste, "impact" or similar laws, statutes, ordinances, codes or regulations of any kind or nature whatsoever in connection with the development of the Arena.

(3) Tenant has made certain covenants in Section 48(a)(3) of this Lease regarding its use of the Arena. Landlord will not take any action, or permit any action to be taken on its behalf, that would cause Tenant to be in violation of such covenants. Further, Landlord will not cause or permit any portion of the Arena listed in Exhibit F to become financed with Tax-Exempt Bonds without Tenant's written consent.

**(c) Mutual Representations and Covenants.** Each Party represents and covenants to the other Party as follows:

(1) The execution and delivery of this Lease, and the performance or observance by the representing Party of the terms and conditions thereof, have been approved by all necessary actions as required by applicable law and do not and will not violate any provisions of the representing Party's Articles of Incorporation or Bylaws, or any statute, law, ordinance, code, rule or regulation applicable to the representing Party, respectively.

(2) The consummation of the transaction contemplated hereby and the performance of the obligations of the representing Party under and by virtue of this Lease shall not result in any breach of, or constitute a default under, any material contract, agreement, lease, indenture, bond, note, loan or credit agreement to which the representing Party is a party or by which it is bound.

(4) There are no actions, suits or proceedings pending or threatened against the representing Party which would, if adversely determined, affect the representing Party's ability to enter into this Lease.

(5) The representing Party has engaged no broker or finder in connection with the negotiation of this Lease, and it will to the extent permitted by applicable law indemnify and hold the other Party harmless against any claims for fees for such services by any person or firm claiming under or through the representing Party. The representing Party shall bear its own expenses and costs for legal, accounting and administrative services in connection with the negotiation of this Lease, and the consummation of the transactions contemplated hereby, except as mutually agreed by the Parties.

(6) (i) The person executing this Lease on behalf of the representing Party is duly authorized by the Party to sign and execute this Lease on its behalf, (ii) this Lease is a valid and binding obligation of the representing Party and enforceable in accordance with its terms, and (iii) it is the intention of the representing Party that it shall be binding and legally enforceable in accordance with its terms.

IN WITNESS WHEREOF, the Parties have entered into this Lease as of the date first written above, but actually on the dates set forth below.

LOUISVILLE ARENA AUTHORITY, INC.

By:



Name: W. James Host

Title: Chairman

Date:

("Landlord")

UNIVERSITY OF LOUISVILLE ATHLETIC  
ASSOCIATION, INC.

By:



Name: James R. Ramsey

Title: Chairman and President

Date:



("Tenant")

(3) The representing Party has not, in this Lease, or in any schedule, exhibit, document or certificate delivered in accordance with the terms hereof, made any untrue statement of a material fact or failed to state a material fact.

(4) There are no actions, suits or proceedings pending or threatened against the representing Party which would, if adversely determined, affect the representing Party's ability to enter into this Lease.

(5) The representing Party has engaged no broker or finder in connection with the negotiation of this Lease, and it will to the extent permitted by applicable law indemnify and hold the other Party harmless against any claims for fees for such services by any person or firm claiming under or through the representing Party. The representing Party shall bear its own expenses and costs for legal, accounting and administrative services in connection with the negotiation of this Lease, and the consummation of the transactions contemplated hereby, except as mutually agreed by the Parties.

(6) (i) The person executing this Lease on behalf of the representing Party is duly authorized by the Party to sign and execute this Lease on its behalf, (ii) this Lease is a valid and binding obligation of the representing Party and enforceable in accordance with its terms, and (iii) it is the intention of the representing Party that it shall be binding and legally enforceable in accordance with its terms.

IN WITNESS WHEREOF, the Parties have entered into this Lease as of the date first written above, but actually on the dates set forth below.

LOUISVILLE ARENA AUTHORITY, INC.

UNIVERSITY OF LOUISVILLE ATHLETIC  
ASSOCIATION, INC.

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

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

Name: W. James Host

Name: James R. Ramsey

Title: Chairman

Title: Chairman and President

Date: \_\_\_\_\_

Date: 7/11/2008 \_\_\_\_\_

("Landlord")

("Tenant")

**EXHIBIT A**  
**KSFB AGREEMENT**

**EXHIBIT B**  
**PARC AGREEMENT**

**EXHIBIT C**  
**PARC COMMITMENT LETTER**



**EXHIBIT D**

**PARKING FACILITY OPERATING AGREEMENT**

**EXHIBIT E**  
**RIVERSIDE AGREEMENT**

## **EXHIBIT F**

### **PORTIONS OF ARENA NOT FINANCED WITH TAX-EXEMPT BONDS**

The following portions of the Arena will not be financed by Tax-Exempt Bonds and, accordingly, will not be subject to the restrictions on use set forth in Sections 7.1(g)(5) and (6) of this Lease:

- (a) The 71 Private Suites, the four Party Suites, the 60 loge boxes, and the associated lounges and facilities and allocated common areas;
- (b) Exterior video boards;
- (c) Interior central scoreboard and LED fascia display ring;
- (d) Concession, food service and restaurant areas; and
- (e) Retail/Gift Shop/novelty stand areas;

all as shown in Attachment B to the Project Certificate (as defined in the Bond Indenture).

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