

**FACILITY RIGHT OF USE AGREEMENT**

**BETWEEN**

**LEXINGTON CENTER CORPORATION**

**AND**

**UNIVERSITY OF KENTUCKY**

**DATED: FEBRUARY 7, 2018**

## FACILITY RIGHT OF USE AGREEMENT

THIS FACILITY RIGHT of USE AGREEMENT (this "Agreement") is made and entered into on February 7, 2018, but effective as of the Commencement Date, by and between **LEXINGTON CENTER CORPORATION**, a Kentucky non-profit, non-stock 501(c)(3) corporation (the "LCC"), and **UNIVERSITY OF KENTUCKY**, an educational institution and agency of the Commonwealth of Kentucky (the "University") (collectively, the "Parties" and individually, a "Party").

### **RECITALS:**

LCC desires to license the "Premises," as hereinafter defined, to University, and University desires to license the Premises from LCC, upon the terms and conditions contained in this Agreement.

### **AGREEMENT:**

Now, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, LCC and University agree as follows:

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

*"Act of Bankruptcy"* shall have the meaning set out in Article 21.3.

*"Agreement"* means this Agreement between LCC and University.

*"Annual Events"* shall mean the following University-sponsored Events that University shall conduct on an annual basis at the Premises: (a) Twenty-two (22) University men's and women's basketball games, with a minimum of sixteen (16) University men's basketball games; (b) three (3) additional University athletic events, currently designated as "Big Blue Madness", "Men's Blue/White Basketball Scrimmage" and the "Tip Off Dinner" (the "Additional Athletic Events"); and (c) three (3) additional University-sponsored Events currently designated as three commencement events (the "Commencement Events").

*"Arena"* means Rupp Arena; the mezzanine and concourse areas surrounding the Arena Bowl; the entry ways and exits to and from the Arena; the Parking Lots; and the Club Suites.

*"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 all seating within the Arena.

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

*"Basketball Season"* means each regular basketball season during the Term, beginning with the first game played by the men's basketball team in the season and ending with the last game played by the

men'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 which complies with all NCAA rules and regulations, together with all customary and NCAA compliant related items including, without limitation, goals, score and shot clocks, scoreboard and scorers tables, press tables and public address system.
2. The UK Dressing Room.
3. Existing visiting locker rooms and coaches' offices.
4. Existing media, hospitality and interview spaces.

*"Club Suites"* shall mean the four donor hospitality areas (rooms) with total aggregate space of approximately 43,000 square feet. Each Club Suite area (room) will be built out, finished and furnished by LCC pursuant to plans developed through the Commercially Reasonable Efforts of LCC and University. All costs of design, construction and furnishing of the Club Suites shall be within the \$12,000,000.00 budget to be adopted by the LCC and consistent with the Construction Contract.

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

*"Commencement Date"* means July 1, 2018.

*"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 and to recognize such impacts on the affected Party.

*"Confidential Information"* shall have the meaning set out in Section 34.

*"Construction Contract"* shall mean the contract or contracts to be entered into by LCC for the construction of the Club Suites and the upper Arena seating work.

*"Defaulting Party"* shall have the meaning set out in Section 21.

*"Disclosing Party"* shall have the meaning set out in Section 34.

*"Dispute"* shall have the meaning set out in Section 31.

*"Existing Agreement"* shall mean the current Agreement between LCC and University dated May 21, 1998, as amended by Letter Agreements dated November 7, 2000; July 31, 2001; and August 21, 2003.

*"Event of Default"* shall have the meaning set out in Section 21.

*"Exclusive UK Areas"* shall mean the following areas: UK Dressing Room and Exclusive UK Club Suite.

*"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 court or administrative orders, 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 is played in the Arena.

*"LCC"* means Lexington Center Corporation.

*"LOI"* means the Letter of Intent between LCC and University dated as of December 15, 2016.

*"Naming Rights"* shall mean any rights sold, leased or licensed to one sponsor relating to the name of the Lexington Center complex or the name of the Lexington Convention Center.

*"Naming Rights Sponsor"* shall have the definition set forth in Section 7.3.

*"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.

*"Non-Defaulting Party"* shall have the meaning set out in Section 21.

*"Oversight Committee"* shall have the meaning set out in Section 31.

*"Parking Lots"* means the parking lots owned by LCC within the vicinity of the Arena (currently, the lot located between High Street and Maxwell Street and the parking lot known as the Manchester Street lot, subject to relocation or modification at LCC's discretion).

*"Performing Party"* shall have the meaning set out in Section 37.

*"Practice Day"* means any additional day for which University requests the use of the Premises for practice time, provided that at the time University makes the request for a Practice Day LCC has not previously booked or contracted for the use of the Premises by another event on that day.

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

*"Receiving Party"* shall have the meaning set out in Section 34.

"*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.

"*Term*" shall have the meaning set out in Section 3.

"*University*" or "*UK*" means the University of Kentucky.

"*UK Dressing Room*" means the dressing room area including all team spaces (i.e. locker room, coaches' offices, lounge space, dining area, training room, aqua therapy spaces, showers and restrooms recently renovated and currently used by the University men's basketball team) and associated storage space commonly known and designated as the UK Dressing Room.

"*University Payables*" means the sum of all accrued amounts owed by University to LCC at any time under any provision of this Agreement.

"*University-sponsored Event*" means any athletic, academic or related activity that is sponsored and arranged by University and held at the Premises, including, without limitation, the Annual Events. For purposes of this definition, an event shall be considered sponsored and arranged by University only if the event is an Annual Event or is an event that has been approved in advance by (i) in the case of an athletic event, the Athletic Director of the University or his designee, and (ii) in the case of any other event, an administrator of the University at the level of Vice President or above.

"*Utilities*" shall have the meaning set out in Section 10.

"*Venue-Media Rights Agreement*" shall mean that Venue-Media Rights Agreement between LCC and RASEP, LLC, dated April 12, 2011, as amended.

"*Year*" means the period of time during each year of the Term from July 1 through June 30 of the following year.

## **2. RIGHT OF USE OF PREMISES.**

For each University-sponsored Event, LCC licenses to University, and University licenses from LCC, upon the conditions and agreements set forth in this Agreement, the Premises. University shall also have, as appurtenant to the Premises, the nonexclusive right in common with others to use and to permit University's patrons and guests to use the spaces and Premises in and around the Arena that are not part of the Premises, for the purpose of entry into and exit from the Premises and for all other reasonable purposes that are necessary for the use and enjoyment of the Premises by University and its patrons and guests.

Notwithstanding the use of the term "license" in this Agreement, neither party shall have the right to revoke or terminate this Agreement, except as otherwise provided for in this Agreement.

The University acknowledges that LCC may undertake certain renovations and modifications to the Convention Center and/or other facilities owned and operated by LCC ("Renovation Work"). Such Renovation Work may temporarily interfere with the University's and its patrons' and guests'

normal ingress and egress to and from the Premises during University-Sponsored Events. LCC shall make Commercially Reasonable Efforts to minimize the interference and interruptions caused by the Renovation Work.

**3. TERM.**

The term of this Agreement (the "Term") shall commence on the Commencement Date and shall remain in effect for fifteen (15) years terminating on June 30, 2033.

**4. USE OF PREMISES; TIMES OF USE AND SCHEDULING OF UNIVERSITY-SPONSORED EVENTS**

**4.1 Use of Premises.** During its use and occupancy of the Premises in connection with a University-sponsored Event, University shall (i) comply with all laws, ordinances and regulations of any governmental agency or entity applicable to the Premises or University's use of same; (ii) comply with all reasonable rules and regulations of LCC with respect to the use of the Premises that do not conflict with any provision of this Agreement, and (iii) be responsible for securing any and all needed permits, licenses and authorizations as may be required to comply with the same. Specifically, but without limitation, University agrees that (i) all copyright, trademark and service mark material to be used by University will be duly licensed or authorized by the copyright, trademark or service mark owners or their representatives and, (ii) it will be in compliance with all applicable local and Kentucky laws, ordinances and regulations dealing with the control and distribution of alcoholic beverages, and will be responsible for University's guests' and patrons' compliance with same.

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

(a) During each Basketball Season, University shall play in the Arena a minimum of twenty-two (22) men's and women's Basketball Games, including a minimum of sixteen (16) men's Basketball Games.

(b) The University, subject to the following provisions, shall have the first choice of dates for using the Premises during the time period beginning November 1 of each Year through the end of the SEC conference season of that Year. University will use Commercially Reasonable Efforts to submit the final approved conference schedules for the men's basketball team to LCC on or before August 1 of each Year, or the release of the men's basketball conference schedule, whichever is later. University will submit its non-conference schedules (including any exhibition games), home and away, for the men's basketball team as soon as those schedules are finalized by University. At that time, University shall also notify LCC of the proposed dates for the women's basketball games, the Additional Athletic Events and the Commencement Events to be held at the Premises. Subject to LCC's prior contractual commitments to use the Premises, for which the University has received at least eighteen (18) months advance notice, and upon the finalization of the dates for the Annual Events, LCC may contract for the use of the Premises for other events on days that are not Annual Event dates. University will have the right to use and occupy the Premises on each Annual Event date for Basketball Games for a seven (7) hour period, being the three (3) hours prior to a Basketball Game tip-off and the four (4) hours following tip-off ("Use Period"). University will also have the right to use and occupy the Premises on Annual Events dates for Commencement Events. Currently the University is allowed to begin setting up for Commencement (two ceremonies on one day in December and four ceremonies on two days in May) two working days prior through one working day after the Commencement Event dates. If any schedule changes are needed, the University and LCC agree to work in good faith on

mutually agreeable schedule changes. Except as otherwise provided in this Section 4.2, LCC will have the exclusive right to use the Premises during all times other than the Use Period on Annual Event dates and on all dates that are not Annual Event dates.

(c) Subject to availability of the Arena, University may conduct a minimum of twenty-two (22) private practice sessions for UK team or UK team opponents (“Practice Sessions”) each Year at no additional cost to University beyond the Base Payment and other charges described herein. The Practice Sessions will be scheduled by mutual agreement of the parties, exercising good faith.

(d) University shall have the exclusive occupancy and use of the UK Dressing Room and Exclusive UK Club Suite, subject to LCC’s right to conduct inspections, periodic security checks and other routine activities relating to the Premises. The University’s access to the UK Dressing Room may be reasonably restricted during non-University-sponsored Events. It is understood that occasional access to Exclusive UK Areas shall not be considered Annual Events or University Sponsored Events and access will not be unreasonably withheld by LCC. For these purposes, UK may only be billed for direct expenses incurred by LCC.

(e) Subject to the payment of the additional Payment described on Section 6.2, and subject to availability, University and LCC, pursuant to Commercially Reasonable Efforts, may schedule additional University-sponsored Events at the Premises.

(f) It shall be the responsibility of the University to print, sell and distribute, at its sole expense, all tickets for any University-sponsored Event.

(g) Notwithstanding the provisions in Section 4.2(b), LCC will use Commercially Reasonable Efforts to accommodate University and the television networks, if the television networks request scheduling changes which will result in a change in the date or time of any Game Day.

**4.3 Exclusivity.** The University shall have the exclusive right to present collegiate basketball at the Premises during the Term. Notwithstanding the foregoing, LCC shall have the right to lease or license the Premises for the conduct of NCAA, NAIA or other collegiate conference tournaments, subject to the University’s consent, which consent shall not be unreasonably withheld.

## **5. CLUB SUITES.**

**5.1 Construction of Club Suites.** Pursuant to the plans and budget of the Construction Contract, the LCC shall construct the Club Suites and deliver same in a move-in condition, including installation of all furniture, fixtures and equipment. Other than the Exclusive UK Club Suite, any renovation or refurbishing of the Club Suites shall be the responsibility of the LCC. Any renovation or refurbishing of the Exclusive UK Club Suite shall be the sole responsibility of University. The timing of the design and completion of the construction of the Club Suites shall be dependent on other construction occurring within the Premises and the Convention Center. Each party agrees to act in good faith with regard to the anticipated costs of the construction and the construction schedule.

Until one or more of the Club Suites identified as Club Suites A, B and D (the “Critical Suites”) is delivered to the University in accordance with Section 5.1, the annual Base Payment under Section 6.1 hereof shall be reduced to \$300,000.00. At such time as one or more of the Critical Suites is delivered to the University, the Base Payment will increase by a pro-rata amount of the variance between \$300,000.00 and the then applicable Base Payment. The pro-rata amount increase will be tied to the capacity of the Critical Suites. For illustration, in the event the Club Suites that are delivered represent fifty (50%) percent patron capacity of the Critical Suites, the Base Payment shall be \$1,100,000.00. Commencing on the date on which all three (3) of the Critical Suites are delivered in accordance with Section 5.1, the University will pay the Base Payment, as same is increased in accordance with Section 6.1.

**5.2 University's Use of Club Suites.** Except as provided in this Section 5.2, after delivery of the Club Suites as described in Section 5.1, University shall have the exclusive use and control of the four (4) Club Suites during the Term for all Annual Events. One of the Club Suites will be reserved for the exclusive use by the University (the “Exclusive UK Club Suite”) and shall not be used at any time by any person or entity other than at the direction of the University. University shall control all marketing rights within the Club Suites, including, but not limited to the naming of the Club Suites. University shall, subject to applicable laws and regulations, and except for the catering rights in Club Suite C, have exclusive use and control (including catering rights, inclusive of food, alcoholic and non-alcoholic beverages) of the Club Suites during all Annual Events. The catering in Club Suite C shall be provided by the Hyatt Hotel or, if UK desires that the food and beverages provided to Suite C are limited to typical concession stand carry-out food and beverages which are sold in the Arena/Convention Center/Mall Property, then by LCC.

LCC shall receive eight (8) complimentary tickets, which cannot be used promotionally or sold, to each of the three (3) non-Exclusive Club Suites for each Annual Event, (excluding the Exclusive UK Club Suite). LCC shall have use of the non-Exclusive Club Suites at all times other than during Annual Events or during any additional University-sponsored Events scheduled in accordance with Section 4.2(e). The Exclusive UK Club Suite shall only be available for use by University during Annual Events or other University-sponsored Events scheduled in accordance with Section 4.2(e). University, subject to availability and to prior scheduling with the LCC, may use the Exclusive UK Club Suite for events other than University-sponsored Events. Use of the Exclusive UK Club Suite shall be at no additional charge. However, services provided by LCC such as, but not limited to, security and set up, will be billed to UK at the then-current market rate charged by LCC to other users of LCC’s facilities. LCC shall maintain the non-Exclusive Hospitality Suites in first class condition throughout the Term. University shall be solely responsible for the upkeep and maintenance of the Exclusive UK Club Suite not to include any major building systems i.e. HVAC, fire alarm system and utilities, etc.

**5.3 Alterations, Additions, Repairs and Custodian Service to Club Suites.** All improvements and any fixtures which under Kentucky law become part of the real estate once made to the Club Suites shall become the sole property of LCC. All alterations, additions, improvements, repairs or decorations to the Club Suites made by University shall be made pursuant to plans and specifications which shall be subject to LCC's prior written approval, which will not be unreasonably withheld or delayed. LCC shall provide custodial services to the Club Suites following all Annual Events at no charge to University. LCC shall pay for all electricity, water, cable (inclusive of ESPN/SEC cable package) or satellite television service, and internet service used in the Club Suites.



## **6. PAYMENT AND OTHER FINANCIAL TERMS OF AGREEMENT**

University will pay Payment to LCC as follows:

**6.1 Payment for Annual Events.** Subject to Section 5.1, for the twenty-eight (28) Annual Events, University will pay to LCC the sum of \$1,900,000.00 (“Base Payment”) each Year, inclusive of any per ticket bond or other fee required to be collected by LCC in connection with events held at the Arena. The Base Payment, less \$300,000.00, shall increase by 2.4% each Year and the increased amount shall become the new Base Payment each Year. University shall pay \$600,000.00 of the Base Payment on or before September 30 of each Agreement Year, with the balance payable in two (2) equal installments, the first installment being due and owing on December 31 of each Agreement Year and the final installment being due and owing on June 30 of that Agreement Year.

**6.2 Additional University-sponsored Event Payment.** In addition to the twenty-eight (28) Annual Events, University, subject to the availability of the Premises, may request dates to conduct additional University-sponsored Events at the Premises. If agreed to by LCC, the Payment for each such additional date shall be based on the per game rate paid by University during the last Year of the Existing Agreement term, increased each Year at an annual rate of 2.4%. The Payment for any additional dates scheduled pursuant to this Section 6.2 shall be due and owing within thirty (30) days following the date of such additional event.

## **7. ADDITIONAL REVENUES DURING UNIVERSITY-SPONSORED EVENTS.**

**7.1 Programs, Novelties/Merchandise.** University will have the exclusive right to sell programs, novelties and merchandise within the Premises during University-sponsored Events. University and LCC shall mutually agree upon locations for programs, novelties and merchandise to be sold. University will pay to LCC, simultaneously with the delivery of the monthly statement described in Section 7.4, an amount equal to fifteen (15%) percent of the gross revenues less sales taxes of all sales of programs, novelties and merchandise sold by University or its subcontractors.

**7.2 Concessions.** Subject to Section 5.2 relating to the sale of food and drink within the Club Suites, LCC shall control the operation and staffing of all food and beverage concessions at any University-sponsored Event, and shall retain all revenues from said concession sales. LCC and University shall cooperate in good faith to maintain and improve the fan experience with regard to concessions, including providing product pricing, quality and service at the concession areas which is consistent with other like venues in the SEC or other conference of which University is a member.

If at any time during the Term of the Agreement, University, at its sole discretion, agrees that alcohol beverages may be sold by LCC at University-sponsored Events through LCC’s concessions, then University and LCC agree to negotiate in good faith with regard to an appropriate division of revenues from the sale of alcoholic beverages at University-sponsored Events.

Notwithstanding the foregoing, at such time as LCC’s existing exclusive non-alcoholic beverage pouring rights contract and any exclusive food vendor contract expires, University, subject to LCC’s approval, which shall not unreasonably be withheld (and as part of its Facility-Media Rights), shall control the selection of the exclusive pouring rights vendor associated with the sale of non-alcoholic beverages within the Premises and the selection of any exclusive food vendors within the Premises. As the

operator of the concessions, LCC shall have the right to review and approve the wholesale prices paid for food and non-alcoholic drink sold by the exclusive vendors at concession areas within the Premises. If a situation develops whereby the non-University-sponsored Event sponsor requirements or other conditions connected with a non-University-sponsored Event held in Rupp Arena create conflicts with University's non-alcoholic beverage pouring rights sponsor, University's exclusive food sponsors or University's Facility-Media Rights, University and LCC will make Commercially Reasonable Efforts to resolve such conflict. University shall not prevent LCC from hosting such non-University-sponsored Event, nor shall LCC's meeting such requirements be considered a default under the Agreement.

**7.3 Facility-Media Rights.** As used herein, the term "Facility-Media Rights" shall mean the exclusive sales and marketing rights currently held by LCC, with exceptions as set forth herein, to existing or new on-site permanent signage at or within the Premises; temporary signage and other promotional and Sponsorship rights for University-sponsored Events, and all other events not specifically excluded herein at or within the Premises; University-sponsored Events hospitality (other than concessions described in 7.2; at University-sponsored Events impact marketing (such as product or sampling displays that do not interfere with normal pedestrian traffic-flow or otherwise pose a safety hazard in the reasonable determination of LCC); and any other at University-sponsored Event Sponsor-related or promotional rights to programs, products and signage, including sideline signage rights, at the Premises that are hereafter described or that may be subsequently agreed to by the parties. For the consideration of an annual payment of \$4,750,000 ("Media Rights Fee,") LCC exclusively grants unto University the Facility-Media Rights. During any Agreement Year that the annual gross revenues from the sales or marketing of the Facility-Media Rights exceed \$7,250,000.00 ("Threshold Amount"), LCC shall receive 25% of the Facility-Media Rights revenues which exceed the Threshold Amount (the "Additional Media Rights Fee"). The Media Rights Fee shall be paid in two (2) equal installments, the first installment being due and owing on December 31 of each Agreement Year and the second installment being due and owing on June 30 of that Agreement Year. The Additional Media Rights Fee, if any, shall be paid within ninety (90) days following the end of the Agreement Year in which it was earned.

In addition to the Facility-Media Rights as described above, LCC grants unto the University the right to license or market the naming of LCC's complex or facility that includes the Lexington Convention Center (excluding Triangle Park and the Opera House) (the "LCC Facilities"). The terms and conditions of the naming rights agreement, including the identity of the Naming Rights Sponsor, shall be subject to LCC's prior approval, which approval may be withheld by LCC, in which case the University shall have the remedy described in the following paragraph. The Naming Rights Sponsor's name may be incorporated into signage on and within the LCC Facilities, including the Arena (including advertising on menu boards within the concession stands or concession kiosk areas for Naming Rights Sponsor's branded products, in addition to LCC's advertising of products sold within said areas). Notwithstanding the foregoing, LCC reserves approval rights regarding such signage, which approval shall not be unreasonably withheld as to interior signage and within LCC's reasonable discretion as to the size and location of any Naming Rights Sponsor signage on the exterior of the LCC Facilities. Further, notwithstanding anything herein to the contrary, the parties agree that the current name of the Arena – "Rupp Arena" – shall not be changed, although the name "Rupp Arena" may be associated with or combined with the name of the LCC Facilities, such as "Rupp Arena at ABC Center".

The University shall pay LCC for this right to license the naming rights to the LCC Facilities the sum of \$750,000.00 annually ("Naming Rights Fee"). The Naming Rights Fee shall be due and payable during the Agreement Year in which LCC obtains a Certificate of Occupancy for the expanded Lexington Convention Center being constructed pursuant to the Renovation Work ("C.O."). The project's current schedule contemplates the naming rights payment starting in the 2020-2021 Agreement Year. Notwithstanding the foregoing, in the event the University presents a commercially reasonable naming rights agreement to LCC for its approval and LCC fails to grant its approval, the University shall have no obligation to pay the Naming Rights Fee. The University shall have until the date which is no later than one hundred eighty (180) days following the date on which LCC obtains the C.O., to present a commercially reasonable proposal. If LCC fails to grant its approval of a naming rights agreement on or before one hundred eighty (180) days following the date on which LCC obtains the C.O., the University's right and obligation to market the Naming Rights to the LCC Facilities shall immediately terminate and shall revert to the sole ownership and control of LCC.

At such time as the initial Naming Rights Fee becomes payable, the Naming Rights shall become a part of and included in the Facility-Media Rights and the University's gross revenues from the marketing of the Naming Rights shall be included in the gross revenues derived from the marketing of the Facility-Media Rights. In addition, the Naming Rights Fee shall be added to and incorporated as part of the Media Rights Fee, resulting in the annual Media Rights Fee being \$5,500,000.00 and the Threshold Amount being \$8,000,000.00.

Notwithstanding the foregoing, LCC retains control of the temporary signage, digital media and other Sponsorship and promotional rights for events sponsored by the Kentucky High School Athletics Association, or the successor thereto, LCC agrees that these retained media rights for this event shall only be marketed by LCC personnel (or by the non-University-sponsored Event Sponsor) and shall not be handled by third-party contractors on behalf of LCC. Further, as a result of non-University-sponsored Event Sponsor requirements, performer requirements or other conditions connected with a non-University-sponsored Event held in the Arena, LCC may (a) allow for the display of advertising or promotional materials at the non-University-sponsored Event; and/or (b) suspend or stop the display of any of the Facility-Media Rights which are temporary signage or digital media during the non-University-sponsored Event. LCC shall so notify University of such requirements or conditions. University shall not prevent LCC from hosting such non-University-sponsored Events under these circumstances, nor shall LCC's meeting such requirements be considered a default under the Agreement.

LCC shall use its best efforts to cause its current media rights holder to terminate all advertising/signage/promotional/Sponsorship contracts already executed which have terms that extend beyond the existing Venue-Media Rights Agreement expiration date. However, no new Sponsorships will be sold which extend beyond the term of the Existing Agreement. Furthermore, LCC will provide details associated with such contracts and, to assure a smooth transition, provide access to all event sponsorship logs, programs, etc. during the transition Year. In addition, LCC will make best efforts to assure that the current rights holder works in good faith through the transition to make sure that all sponsors and advertisers are provided the information necessary to service the sponsors.

It is understood that LCC shall retain control of all media rights relating to (a) Triangle Park and the Opera House; (b) changes to the playing floor of the Arena for all non-

University-sponsored Events; and (c) all social media and internet rights associated with non-University-sponsored Events. It is further understood that the exterior walls of LCC's properties may be used by LCC for the promotion of events held at the Premises or other LCC-owned properties. University agrees that, during the University-sponsored Events, University will promote, through video signage and audio public announcements, upcoming events to be held at the Premises or other LCC-owned properties; such promotion shall be based on availability and shall be reasonably consistent with promotions currently in place within the Arena for upcoming events to be held at the Premises or other LCC-owned properties as of the date of the LOI.

Except as otherwise provided herein, University shall be responsible for the costs and expenses relative to the graphics on any electronic signage or permanent signage including changes thereto, and on any temporary signage. All expenses, costs and charges relating to the upkeep and maintenance of the video boards, electronic and permanent signage, message boards, public address systems and all other equipment related thereto (collectively, the "Equipment") shall be the responsibility of LCC. LCC shall make reasonable efforts to maintain, repair and, if necessary, replace, the Equipment so that it is in good working order and fully functional for its intended purposes before, during and after all University-sponsored Events at the Premises.

**7.4 Accounting and Recordkeeping.** University shall, within thirty (30) days following the end of each month, supply to LCC statements listing (i) all gross revenues received by University, or University's subcontractors, in connection with sales of Game Day programs or of novelties, merchandise or other items at the University-sponsored Event; and (ii) all gross revenues from University's sale or marketing of the Facility-Media Rights as provided in Section 7.3. University shall maintain accurate books and records which show its (or its subcontractors') receipt of all such payments, proceeds and revenue. At all reasonable times, LCC shall have the right to inspect or audit the books and records of University described in this Section 7.4, and the books and records of any agent, contractor or licensee who makes any payment to University described in this Section 7, as may be necessary in order to verify the amounts paid to University or such agent or contractor and the amounts to be paid by University to LCC under this Section 7.

## **8. PARKING.**

All parking controlled by LCC within the Parking Lots that is not required by LCC in order to fulfill LCC's existing obligations to provide parking (Hyatt Regency-related parking, LCC employee and director parking, etc., the location of which dedicated parking shall be at the sole discretion and control of LCC) ("Available Parking") shall be made available for purchase annually (for a lump amount based on market rates for comparable parking spaces in the area) by University for University-sponsored Events ("Parking Charge"). The parties shall cooperate in good faith and shall use their best efforts to determine LCC's and University's respective parking allocations for University-sponsored Events, but once allocated to University, University may allocate its parking as it deems appropriate. The Parking Charge shall be paid annually in advance, on or before December 1st of each Year. LCC shall be responsible for providing the customary number of personnel for the management and operation of the parking during University-sponsored Events. Any additional personnel (beyond the customary number provided by LCC) which are required to manage the parking system utilized by the University during University-sponsored Events, shall be paid for by University at the rates provided for in Section 15.

**9. SUBLET OR ASSIGNMENT.**

University will not assign this Agreement or subcontract the Premises in whole or in part without first providing LCC with a copy of the assignment or subcontract agreement and obtaining LCC's prior written consent. Any attempted assignment without consent shall be void. Notwithstanding the foregoing, University may use third-party partners, vendors and contractors with regard to the Club Suites, Facility-Media Rights and programs, novelties/merchandising rights, following notice to LCC. Any such arrangement or contract with a third party shall not relieve University of its obligations under this Agreement, including payment of any sums when due hereunder.

**10. OPERATION OF THE PREMISES.**

**10.1 Provision of Utilities.** On any day on which a University-sponsored Event is held in the Arena, LCC shall provide heat, air-conditioning, electricity, and water (the "Utilities") to the Premises. For any University-sponsored Event (other than Practice Sessions), 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, LCC agrees to provide garbage removal and custodial services to the Premises at LCC's expense.

**10.2 Other Operating Costs.** LCC, at LCC's sole expense, shall pay for all costs incurred in preparing the 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 playing floor and erection of the goals and other basketball-related equipment and Premises within the Arena and Basketball Space.

**11. MAINTENANCE AND REPAIRS**

**11.1 Maintenance.** LCC will keep, maintain and repair all parts of the Premises, in good order and condition throughout the Term. Without limitation of the foregoing, LCC shall provide normal maintenance to the Basketball Space so as to maintain same in good condition.

**11.2 Periodic Meetings.** The President and Chairman of LCC, or his/her respective designee, and the Athletic Director of University, 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 Club Suites and the general 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 LCC and University.

**12. INTENTIONALLY OMITTED.**

**13. RIGHT TO PURCHASE TICKETS.**

**13.1 Additional Purchase Rights of LCC.** For each University-sponsored Event, and any NCAA Event held in the Arena for which University receives an allocation of tickets, LCC shall have the right to purchase nine (9) pairs (side-by-side) of additional seats ("Additional Seats") (eighteen (18) Additional Seats in all) in lower arena locations in addition to and comparable to the current fifty-six (56) existing seat locations allocated to LCC in the Existing Agreement. For

avoidance of doubt, the total number of lower arena seats allocated to LCC pursuant to this paragraph 13.01 of this Agreement shall be seventy-four (74). Notwithstanding the above, two pairs (side by side) of such Additional Seats shall be located in the first or second row of the east end zone seating currently used by the press, with specific seat locations at Section FL 22, Row AAA, Seats 5, 6, 7 and 8. The cost for said Additional Seats shall be the face value of the ticket, without required contribution, seat license fees or other surcharge amounts. Tickets to all University-sponsored Events shall be for the exclusive use of LCC. No re-sale, marketing or promotional use of such tickets will be made.

**13.2 Purchase Rights of the University.** University shall have the right to purchase from LCC, at face value, plus any premiums added by Event sponsors, ten (10) pairs (side by side) of tickets to any ticketed non-University-sponsored Event held at the Arena. For each such ticketed non-University-sponsored Event held at the Arena, the LCC shall provide University with reasonable notice of the date of each such non-University-sponsored Event and the University shall notify LCC, the quantity of tickets which the University desires to purchase (up to ten (10) pairs). The University's ticket reservations must be communicated to LCC no later than the date which is the earlier of (a) the thirtieth (30<sup>th</sup>) day following LCC's notice to the University of the date of the event, or (b) fifteen (15) days prior to the event. University shall maintain a payment card number with LCC to which all tickets purchased by University under this Section may be charged. The parties will make Commercially Reasonable Efforts to establish a procedure for the reservation of and delivery of the tickets purchased by the University, which procedure shall include the University's designation and appointment of an authorized University representative for reserving tickets under this Section 13.2.

**13.3 Additional Available Seating Allocation.** Due to recent renovations to the "press row" seating arrangements within the Arena, additional seating has become available. Except as otherwise stated below, during any University-sponsored Event, University shall have the exclusive right to the seating within the East-side press row area which is accessed at the Section 211 or 216 vomitories. LCC shall retain without charge seven (7) seats in such East-side press row area for the sole use of LCC staff and technicians. Should technical or other Arena related operational changes initiated by UK or its Media Rights partner, require LCC to deploy additional staff and technicians, LCC and the University will work in good faith to accommodate, at no cost to LCC, any additional seating required for the said additional staff and technicians. The University shall allocate any and all existing or additional seating created during the term of this Agreement without additional compensation to LCC. The University with no additional compensation to LCC shall allocate any and all existing or additional seating created during the term of this Agreement without additional compensation to LCC.

## **14. UPPER ARENA SEAT REPLACEMENT**

**14.1 Bench Seat Replacement.** Pursuant to the plans and budget of the Construction Contract, LCC shall remove all bench seats and replace same with chair-back seats within Sections 228 through 234 and Sections 211 through 217 in the upper portion of the Arena ("Upper Arena Construction"). It is anticipated that the installation of chair-back seats in substitution of the bench seats shall result in fewer seats in the upper portion of the Arena in order to comply with architectural requirements and applicable building codes and other laws and regulations.

LCC shall budget and shall be obligated to expend at least the sum of \$3,000,000.00 to pay for the design and completion of said Upper Arena Construction. Any amount spent in excess of the \$3,000,000.00 shall be the sole responsibility of LCC.

**15. SUPPORT PERSONNEL, MATERIALS AND EQUIPMENT.**

LCC agrees to provide personnel, materials, equipment and services which LCC may require at each University-sponsored Event and Practice Session and University shall pay LCC its cost of personnel (1.5 x gross wages) plus LCC's customary charges for materials, equipment and services, which charges shall not exceed the charges for the same or similar materials, equipment and services provided to any other tenant or customer of LCC. A schedule of request for such personnel and material shall be delivered by University to LCC on or before September 1 of each Year. In the event LCC is requested to provide services or materials on a date that has not been scheduled by University, University shall pay LCC for same at a rate of 1.5 times LCC's actual costs for same. Payment for the materials and services provided pursuant to this Section 15 shall be due and owing within thirty (30) days following the date of each event.

**16. ESTABLISHED RULES AND REGULATIONS.**

University recognizes that LCC, during its normal operations at the Premises, will establish certain reasonable rules and regulations applicable to all users thereof. Accordingly, University agrees that it will use its best efforts to cause its servants, agents, employees, licensees, patrons and guests to abide by such reasonable rules and regulations as are established by LCC from time-to-time. Notwithstanding the foregoing, University shall have control of the Premises for all University-sponsored Events and shall provide and supervise and be responsible for the actions of the University, its employees and its agents in order to exercise such control.

**17. INSURANCE.**

**17.1 Insurance.** University shall, at its sole cost and expense, procure and maintain the following types and limits of insurance, containing the additional insured endorsements and cancellation clause set forth herein. At a minimum, said insurance coverage of the University shall be in effect from 12:01 a.m. on the first day of the Term of the Agreement through the end of the Term. University shall deliver certificates of insurance evidencing the following coverage and endorsements on or before November 1<sup>st</sup> each year.

(a) Commercial General Liability Policy with broad form coverage in the occurrence form providing coverage against claims for bodily injury or death, property damage, personal injury liability and advertising liability occurring in or upon or resulting from University's use or occupancy of the Premises. Such insurance shall be primary for the acts and omissions of the University, its employees and its agents and not require contribution from any of the additional Insureds' other insurance coverages, and shall afford immediate defense and indemnification, as additional insureds, to LCC to the limit of not less than TEN MILLION AND NO/100 (\$10,000,000.00) DOLLARS each occurrence;

(b) Automobile Liability Insurance (broad form coverage) with limits of not less than THREE MILLION AND NO/100 (\$3,000,000.00) DOLLARS for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance

shall cover liability arising out of the acts and omissions of the University, its employees and its agents for the University's use of vehicles in connection with this Agreement, including owned, leased, hired, borrowed and/or non-owned autos, as each may be applicable;

(c) Worker's Compensation Insurance as required by law; and

(d) Educator's Legal Liability (E&O), with a limit of FIVE MILLION AND NO/100 (\$5,000,000.00) DOLLARS per each occurrence, with broad form coverage in the occurrence form providing coverage against claims for injury or property damage resulting from University or its subcontractors' actions undertaken pursuant to the rights granted University hereunder. Such insurance shall be primary for the acts and omissions of the University, its employees and its agents.

All insurance policies provided by University in satisfaction of this Section 17, other than Worker's Compensation Insurance and Professional Liability insurance, shall include the following additional insured endorsement language:

LEXINGTON CENTER CORPORATION, LEXINGTON  
FAYETTE URBAN COUNTY GOVERNMENT AND THEIR  
OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES ARE  
NAMED AS ADDITIONAL INSURED. ("ADDITIONAL  
INSUREDS")

These insurance policies must be with insurers licensed in the Commonwealth of Kentucky and with a minimum AM Best Rating of A- Financial Strength VII. All of these required policies must include a Waiver of Subrogation in favor of the Additional Insureds and provide coverage to the Additional Insureds on a primary and non-contributory basis. With respect to the required commercial general liability coverages and the automobile liability coverages, each can be combined with self-insurance and/or excess/umbrella coverages that meet the minimum limits. To the extent that LCC has concerns about a particular certificate of insurance, LCC, upon request, may inspect relevant policy documents at the University's offices. However, if LCC exercises this option, LCC shall agree not to disclose any material details of the policy documents. Disclosure of such material details by LCC shall be considered a material breach of the Agreement.

Should any of the above-described policies be cancelled before the expiration date thereof, University will promptly provide written notice to LCC as soon as University becomes aware of the cancellation. If requested by LCC, University shall immediately obtain substitute insurance, and evidenced by an appropriate certificate, within ten (10) days of the cancellation, but in no event later than the move-in date. Failure to comply with the insurance requirements herein shall be considered a material breach of the Agreement.

The parties agree and understand that the specified coverage or limits of insurance in no way limit the liability of University for the acts and omissions of the University, its employees, or agents. University shall maintain, with respect to each such policy or agreement, evidence of such insurance coverage and endorsement required by the Agreement.

(e) The insurance describes above covers the acts and omissions of the University, its agents, and employees. It does not apply to the acts and omissions of LCC personnel or other



persons who may be working during the event. To cover the acts and omissions of LCC personnel and others that are not covered by the insurance described above, LCC will acquire appropriate policies. To defray the costs of LCC's additional insurance, the University will pay an offset amount each Year. The offset amount will be thirty thousand dollars (\$30,00.00) in the First Year and will increase by 2.4% in each additional year.

**18. INTENTIONALLY OMITTED.**

**19. SURRENDER AND TERMINATION.**

Upon the expiration of the Term or any other termination of this Agreement, University shall vacate and surrender possession of the Premises to the LCC.

**20. 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 University to LCC:

Lexington Center Corporation  
430 West Vine Street  
Lexington, Kentucky 40507  
ATTN: President William B. Owen, or his successor

(b) If from LCC to University:

University of Kentucky  
107 Main Building  
Lexington, KY 40506  
ATTN: Executive Vice-President for Finance and Administration,  
or his successor

With copy to:

University of Kentucky Athletics  
338 Lexington Avenue  
Lexington, KY 40506  
ATTN: Director of Athletics

**21. DEFAULT.**

**21.1 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:

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

(b) The Defaulting Party's failure to perform any other of the material terms, covenants or agreements contained in this Agreement 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; or

(c) There is an Act of Bankruptcy (as defined below) with respect to the Defaulting Party.

**21.2 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 Section 31 of this Agreement, the Non-Defaulting Party may pursue litigation to enforce its rights. However, under no circumstances shall the Non-Defaulting Party have any right to terminate this Agreement as a result of an Event of Default by the Defaulting Party.

**21.3 Act of Bankruptcy.** "Act of Bankruptcy" as used in this Section 21 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.

**21.4 University's Bankruptcy Rights.** In addition to and without limitation of the other provisions in this Section 21, if there is an Act of Bankruptcy with respect to LCC, LCC agrees to the following (which are material inducements to University entering into this Agreement): (i) that this Agreement is an executory contract and that the University has the right to assume it; (ii) that this Agreement does not constitute a fraudulent transfer; (iii) that any plan of reorganization shall not impair any of the University's rights and/or LCC's obligations under this Agreement, and that the University 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 LCC shall oppose any and all efforts to defeat the enforceability of this Agreement; and (v) that LCC will not contest the University's right to remain as tenant of the Premises for

the remainder of the Term and any extension provided in this Agreement, and the University's right to offset against the University's payments any damages caused to the University by any nonperformance of LCC's obligations under this Agreement.

**21.5 LCC's Bankruptcy Rights.** In addition to and without limitation of the other provisions in this Section 21, if there is an Act of Bankruptcy with respect to the University, University agrees to the following (which are material inducements to LCC entering into this Agreement): (i) that this Agreement is an executory contract and that LCC has the right to assume it; (ii) that this Agreement does not constitute a fraudulent transfer; (iii) that any plan of reorganization shall not impair any of LCC's rights and/or the University's obligations under this Agreement, and that Agreement 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 the University shall oppose any and all efforts to defeat the enforceability of this Agreement; and (v) that the University will not contest the University's obligation to remain as tenant of the Premises for the remainder of the Term and any extension provided in this Agreement, and LCC's right to offset against amounts owed by the University to LCC any damages caused to LCC by any nonperformance of the University's obligations under this Agreement.

## **22. NON-WAIVERS.**

Failure of LCC or University 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 LCC or University at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. No acceptance by LCC or University of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account.

## **23. INSPECTION.**

LCC and LCC's agents shall have the right, at all times, to enter upon the Premises for the purpose of inspecting it or confirming the University's performance of the Agreement or for any other reason which LCC may deem necessary for the preservation of the Premises.

## **24. EMINENT DOMAIN.**

**24.1 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 LCC's or University's election this Agreement shall terminate as of the date title to the Arena vests in such condemning authority. LCC shall be entitled to all compensation paid or award granted.

## **25. DAMAGE OR DESTRUCTION.**

**25.1 Premises Untenantable.** If any or all of the Arena shall be destroyed or damaged by any cause so as to render the 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 LCC or University may terminate this Agreement with respect to the untenantable portion of the Premises upon 60 days' written notice to the other Party. If LCC or University decides to

terminate this Agreement with respect to such portion, then this Agreement shall terminate with respect to such portion as of the date either Party gives notice of its election. If LCC and University decide not to terminate this Agreement, then to the extent of insurance proceeds received by LCC, LCC shall repair same using all reasonable speed to the condition as existed prior to such damage or destruction.

**25.2 Premises Not Untenantable.** If any or all of the Arena is damaged or destroyed by any cause but the Premises are not rendered untenable in whole or in substantial part, then to the extent of any insurance proceeds received by LCC, LCC 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 Agreement shall be adjusted in an equitable manner during the period of repair or restoration.

**26. POSSESSION AND QUIET ENJOYMENT.**

For all of the dates and times covered by the Term, LCC shall deliver to University possession of the Premises free and clear of all other agreements, Payment commitments, tenancies, agreements, franchises or other encumbrances except those agreements referred to in this Agreement.

**27. MODIFICATION.**

No modification or variation of any provision of this Agreement shall be effective unless the modification or variation is written and signed by both LCC and University.

**28. ILLEGALITY.**

The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions of this Agreement 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.

**29. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior statements or agreements, including, without limitation, the LOI. This Agreement establishes the relationship between LCC and University, and nothing in this Agreement shall impose upon either Party any powers, obligations or restrictions not expressed herein.

**30. BINDING EFFECT AND GOVERNING LAW.**

This Agreement is binding upon LCC and University, their successors and permitted assigns. This Agreement shall be governed by the laws of the Commonwealth of Kentucky.

**31. DISPUTE RESOLUTION OVERSIGHT COMMITTEE.**

**31.1 Oversight Committee.** LCC and University will form a LCC/University Agreement Oversight Committee (the "Oversight Committee") with at least four members (an

equal number of representatives from each of University and LCC), with assistance from necessary advisors. The Oversight Committee will monitor the implementation of this Agreement. 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 Agreement 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 the exercise of the Commercially Reasonable Efforts of all of its members.

**31.2 Mediation.** If the Oversight Committee is 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 University and LCC will propose a suitable mediator, and University and LCC will attempt to agree on the selection of the mediator. If University and LCC are unable to agree, either University or LCC 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 University and LCC.

**31.3 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, 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

**31.4 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.

**32. JURISDICTION; SERVICE OF PROCESS.**

Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the Parties in the Circuit of Franklin County of the courts of the Commonwealth,

**33. INTENTIONALLY OMITTED.**

**34. NONDISCLOSURE OF CONFIDENTIAL INFORMATION.**

The Parties understand that in carrying out their obligations under this Agreement, 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 Agreement. For purposes of this Section 34, "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 Agreement; or (c) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings. In no event shall this Agreement be deemed "Confidential Information". 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. Notwithstanding the foregoing, the Party receiving the request may rely on advice of its counsel in determining whether to comply with the request.

**35. ARTICLE AND SECTION HEADINGS AND CAPTIONS.**

The Article and Section headings and captions in this Agreement are for convenience of reference only and shall not affect the construction of the term's and provisions hereof.

**36. 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 LCC and University. With respect to any duty or obligation imposed on a Party to this Agreement, 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.

**37. 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 Agreement, and (d) the performance of such act by the Performing Party shall be extended for a period equivalent to the period of such delay.

**38. NO THIRD PARTY BENEFICIARIES; NO PARTNERSHIP OR JOINT VENTURE CREATED.**

Each of the Parties hereto agrees that nothing contained in this Agreement 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 University and LCC. The terms and provisions of this Agreement 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 Agreement.

**39. NO ABROGATION OF LEGAL REQUIREMENTS.**

Nothing contained herein shall be construed to permit any Party to violate any applicable law, regulation or code.

**40. COUNTERPARTS.**

This Agreement 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.

**41. NO PRESUMPTION OF AUTHORSHIP.**

LCC and University each have participated jointly in the negotiation and drafting of this Agreement, with the advice of their respective counsel. If any provision of this Agreement 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 Agreement, but instead shall interpret each provision of this Agreement as jointly drafted by both Parties through their respective counsel.

**42. CUMULATIVE REMEDIES.**

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

**43. REPRESENTATIONS AND COVENANTS.**

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

(a) The execution and delivery of this Agreement, 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 Charter, or any statute, law, ordinance, code, rule or regulation applicable to the representing Party, respectively.

(b) The consummation of the transaction contemplated hereby and the performance of the obligations of the representing Party under and by virtue of this Agreement 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.

(c) 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 Agreement.

(d) The representing Party has engaged no broker or finder in connection with the negotiation of this Agreement, 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 Agreement, and the consummation of the transactions contemplated hereby, except as mutually agreed by the Parties.

(e) The person executing this Agreement on behalf of the representing Party is duly authorized by the Party to sign and execute this Agreement on its behalf, (ii) this Agreement 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.

(f) The representing Party has not, in this Agreement, 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.

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

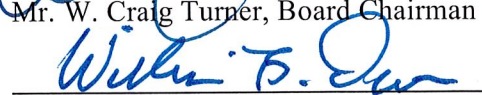
LCC:

LEXINGTON CENTER CORPORATION

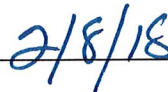
By:

  
Mr. W. Craig Turner, Board Chairman

By:

  
Mr. William B. Owen, President

Date:

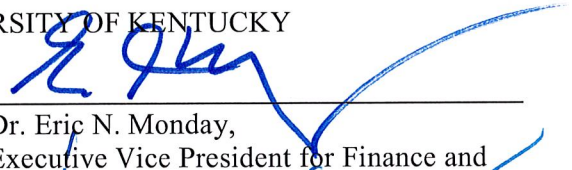




**UNIVERSITY:**

UNIVERSITY OF KENTUCKY

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

  
Dr. Eric N. Monday,  
Executive Vice President for Finance and  
Administration

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

  
Mr. Mitch Barnhart, Director of Athletics

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

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