

## **NAMING RIGHTS AGREEMENT**

This Naming Rights Agreement (the "Agreement") is effective this 1<sup>st</sup> day of August, 2015, by and between SCHEELS ALL SPORTS, an employee-owned, privately held business with its corporate office located at 4450 15th Ave. S, Fargo, ND 58103 and its Overland Park, Kansas store located at 6503 West 135th St. Overland Park, KS 66223 (hereinafter "Scheels") and the CITY OF OVERLAND PARK, KANSAS, a Kansas municipal corporation with its City Hall offices located at 8500 Santa Fe Drive, Overland Park, KS 66212 (hereinafter the "City"). Throughout this Agreement Scheels and the City may be collectively referred to as the "parties".

### **RECITALS**

WHEREAS, the City owns and operates certain real property and facilities currently known as the Overland Park Soccer Complex, located at 13700 Switzer Road, Overland Park, Kansas 66221 (the "Facility"); and

WHEREAS, the Facility consists of, in part, 12 tournament-quality synthetic turf fields, lighted fields for night use, a multi-purpose building (fieldhouse), concession areas (cafes), scoreboards, signage and other amenities; and

WHEREAS, the parties desire to enter into a naming rights agreement pursuant to which the City will grant Scheels the exclusive naming rights with respect to the Facility in return for certain benefits set forth below.

NOW THEREFORE, in consideration of the foregoing premises and mutual covenants herein contained, the parties hereby agree as follows:

### **ARTICLE I. TERM AND TERMINATION**

- 1.01 **Term.** The initial term ("Term") of this Agreement shall be five (5) years, commencing on August 1, 2015 and ending on July 31, 2020, unless otherwise terminated in accordance with the terms and provisions contained herein. At the end of said initial Term, this Agreement shall automatically renew for an additional five (5) year Term unless either party notifies the other party by no later than August 1, 2019 that the party does not intend to renew this Agreement beyond the initial Term.
- 1.02 **Termination for Default.** Upon occurrence of an event of default, the non-defaulting party shall have the right to terminate this Agreement upon thirty (30) days' notice, subject to the cure provisions described in Section 10.01(a) and (e); provided, that the City shall have the right to terminate this Agreement immediately upon an event of default specified in Section 10.01 (b), (c) or (d).
- 1.03 **City Termination for Convenience.** The City may without reason or without cause terminate this Agreement at any time. The City shall notify Scheels at least one hundred and twenty (120) days prior to the termination date if it decides to terminate the Agreement pursuant to this Section 1.03. In the event termination for convenience is effected by the City, the City will return to Scheels a pro rata portion of the money which has been paid to the City for the then-current fiscal year as described in Section 4.02 but for which Scheels has not received the pro rata portion of the corporate exposure as described in this Agreement. Upon the effective date of a termination

notice pursuant to this Section 1.03, Scheels shall remove its equipment and property, if any, from the Facility, and the City shall, at the City's expense, remove the Name and/or Logo (as defined herein) and related signage and labeling from the Facility.

- 1.04 Termination. At the end of the Term, or upon earlier termination of this Agreement in accordance with the terms herein, the rights and privileges granted under this Agreement shall immediately terminate, and the parties shall terminate the use of Sponsor Marks (as defined in Section 3.01) in connection with any licensed goods and/or services. Notwithstanding the foregoing, however, the City shall have a period of twelve (12) months after the date of termination to utilize the Sponsor Marks in order to make necessary physical changes to the Facility and its components, and to phase out the use of the advertising and other materials in stock which contain or display the Sponsor Marks. Unless termination occurs pursuant to Section 1.03 or as a result of a City default subject to Article 10, Scheels shall be responsible for all costs associated with removing the Name and/or Logo and related signage and labeling from the Facility and replacing it with a new name/logo and related signage ("Signage Costs"). Upon Scheels' request, the City shall furnish reasonable written documentation of all Signage Costs.
- 1.05 Transition. Except in the event of a Scheels termination by reason of uncured breach hereof by the City, Scheels agrees that, following termination hereof for any reason, it will reasonably cooperate with the City in its efforts to transition to a new or replacement naming rights sponsor, provided such cooperation shall not entail material financial cost to Scheels.
- 1.06 Disposal of Property After Termination. Any and all property belonging to Scheels, which may be found on the premises of the Facility after termination or expiration of the Agreement, and which is not timely removed by Scheels, may be handled, removed or stored by the City at the risk and expense of Scheels.

## ARTICLE 2. NAME OF FACILITY

- 2.01 Name of Facility. The parties agree that the Facility shall be named "**Scheels Overland Park Soccer Complex**" (the "Name"), subject to any changes which may be mutually agreed upon in writing by the parties. The Facility will continue to be so named for the Term of this Agreement unless Scheels renames the Facility in the manner provided herein (subject to and requiring the advance written consent of the City), or until the Agreement is terminated in accordance with the provisions of this Agreement. Such naming rights, during the Term, are exclusive to Scheels. Unless approved by Scheels, during the Term of this Agreement, the City shall not accept permanent advertising at the Facility from a company whose primary business competes directly with Scheels (as detailed further in Section 7.01), except as otherwise provided herein. Notwithstanding, the parties acknowledge and agree that: (1) to the extent the City has existing sponsorship agreements with competitors of Scheels, such agreements shall be allowed to continue for the remainder of their current terms; and (2) this restriction shall not apply to or prevent tournament organizers or their sponsors from selling merchandise during or in relation to tournaments held at the Facility. During the term of this Agreement, Scheels shall have the right to use the Name in connection with the sale, advertisement and promotion of Scheels and/or any of its products and services.

- 2.02 “City” References to Facility. Except as provided herein, during the Term of this Agreement, the City, when making reference to the Facility, shall make commercially reasonable efforts to use the Name and no other. The Name shall appear on external and internal signage on the building as well as on other materials or objects that refer to the Facility, including promotional materials, employee uniforms, and the like, all as more specifically set forth in Article 5. However, isolated or inadvertent references that fail to include the correct or entire Name shall not be deemed a violation of this Agreement.
- 2.03 References by Others. The City will make commercially reasonable efforts to ensure that the Facility is referred to by its Name, and shall cooperate with Scheels’ efforts to do the same.

### **ARTICLE 3. USE OF NAME AND TRADEMARKS**

- 3.01 Enforcement. All trademarks, service marks, and trade names and all logos or commercial or advertising symbols used in conjunction with or associated with the Name (the “Sponsor Marks”) shall be mutually agreed upon, in writing, prior to use by either party in interstate or intrastate commerce by either party and prior to application for registration thereof by Scheels. Scheels shall at its sole cost and expense, obtain, and thereafter maintain, protection for all rights in the Sponsor Marks, such enforcement to be conducted at the sole discretion of Scheels. The expense of any such protection and enforcement, including legal proceedings related thereto, shall be paid solely by Scheels, and all recoveries from any lawsuit or settlement shall go to Scheels. The parties agree that Scheels will develop, at Scheels’ expense, a logo (the “Logo”) associated with the Facility, which Logo, like all other Sponsor Marks, shall be subject to the approval of the City. Scheels shall provide the City with copies of all correspondence (regardless of form or media) sent or received by Scheels in connection with the prosecution and maintenance of all registrations, if any, of the Sponsor Marks. The City agrees to use commercially reasonable efforts to notify Scheels of any use of terms or marks of which the City has actual knowledge and which the City believes, in good faith, may infringe upon the Sponsor Marks. The City further agrees reasonably to cooperate with Scheels, at the request and expense of Scheels, in any lawsuit or other dispute involving a claim of infringement of the Sponsor Marks.
- 3.02 Grant of License. Scheels hereby grants to the City, a restricted, non-exclusive and non-transferable (except as specifically herein otherwise provided) license to use the Sponsor Marks for purposes of identifying the Facility and promoting the City or third party sponsored events and activities at or in the Facility. It is understood and agreed that third parties using the Facility and/or promoting activities at or in the Facility (“Third-Party Users”) may use the Sponsor Marks in announcements, promotional materials and advertisements about such use and/or activities. Scheels further grants to the City a restricted, non-exclusive and non-transferable (except as specifically herein otherwise provided) license to use any trademarks, trade names, and logos as may in the future be used to describe the connection with the Facility for purposes of identifying the Facility and promoting the Facility, the City, or Third-Party User events and activities at the Facility. It is understood and agreed that Third-Parties Users may use any trademarks, trade names, and logos as may in the future be used to describe the connection with the Facility in announcements, promotional materials and advertisements about such use and/or activities. It is further understood and agreed that Third-Party Users are not subject to any restriction on or prohibition against use of terms, marks, logos or commercial or advertising symbols of persons,

firms, corporations or other entities that offer goods and/or services that are competitive with those of Scheels. The City acknowledges that the Sponsor Marks and all goodwill associated therewith are, and shall remain, the sole property of Scheels and that no rights are conferred upon the City with respect to the Sponsor Marks except as specifically set forth herein. The City may not acquire or claim any title to the Sponsor Marks adverse to Scheels by virtue of the license granted herein or through the City's use of the Sponsor Marks, all uses or claims to ownership by the City of the Sponsor Marks inuring solely to the benefit of Scheels. The City agrees not to challenge the validity of the Sponsor Marks or to set up any claim to the Sponsor Marks which is adverse to Scheels.

Scheels acknowledges that the use of the term "Overland Park" in the Name, and in the Logo or the other Sponsor Marks, is for the purpose of identifying the location of the Facility, and that no rights are conferred upon Scheels to use the name of the City, other than as a part of the Name and as a part of the Logo or the other Sponsor Marks, in connection with the sale, advertisement and promotion of Scheels and/or any of its products and services. Furthermore, nothing contained in this Agreement shall grant, or be construed as granting, any license by the City to Scheels to use the logo of the City or the City's existing logo of the Facility for any purposes. Any use of the logo of the City or the City's existing logo of the Facility by Scheels shall require the written agreement of the City and grant of a license to Scheels. The parties understand and agree that the City's existing logo of the Facility is not the herein-defined Logo, and that either party may use the Logo, once approved by the City, as provided in this Agreement.

- 3.03 Merchandise Revenues. Scheels shall retain all revenues derived from merchandise with the Name, Logo and Sponsor Marks sold within Scheels' Overland Park store or through Scheels' Overland Park web site. All other revenues derived from merchandise sold with the Name, Logo and Sponsor Marks shall be retained by the City; provided, however, the City may assign such right to tournament organizers selling merchandise in relation to tournaments held at the Facility.
- 3.04 Usage Post-Termination. Except as otherwise provided herein, at termination of this Agreement, the City will not identify itself as a licensee of or otherwise associated with Scheels or use for any purpose any Sponsor Marks or other commercial symbol that indicates a connection or association with Scheels. Notwithstanding Scheels' ownership rights in and to the Sponsor Marks, following the Term, Scheels agrees to cease all use of the Name and the Sponsor Marks and to any and all registrations thereof and pending applications for registration thereof to become canceled or go abandoned, as applicable. Scheels shall have no residual rights in or to the Name or any of the Sponsor Marks, the goodwill associated therewith or symbolized thereby being deemed to have vanished with the end of the Term.

#### **ARTICLE 4. NAMING RIGHTS FEES**

- 4.01 Base Fee. Scheels agrees to pay to the City the sum of six hundred twenty five thousand dollars (\$625,000.00) for the rights granted hereunder for the initial five-year Term of this Agreement. Scheels shall also pay all initial signage costs as provided in Section 4.02.

Prior to the commencement of a second five-year Term (as provided for in Section 1.01), the parties will meet and agree upon an escalator of the Base Fee for the rights granted hereunder during the second five-year Term.

4.02 Payment Schedule. An initial payment of one hundred twenty-five thousand dollars (\$125,000.00) shall be paid no later than August 1, 2015. The remaining five hundred thousand dollars (\$500,000.00) shall be made in annual payments of one hundred twenty-five thousand dollars (\$125,000.00) each, with each annual payment to be paid on or before August 1 of each year of the Term. In addition, Scheels agrees to pay all initial signage costs. Scheels shall remit payment to the City within sixty (60) days of receiving documentation outlining signage fabrication and/or installation costs.

Prior to the commencement of a second five-year Term (as provided for in Section 1.01), the parties will meet and agree upon an updated payment schedule for the rights granted hereunder during the second five-year Term.

4.03 Late Payments. If Scheels fails timely to pay any payment charge or fee as provided for in this Agreement, interest shall automatically accrue and become payable at the rate of one and one-half (1½ %) percent per month or portion of the month.

#### **ARTICLE 5. SIGNAGE, MEDIA, AND NAME AND LOGO PLACEMENT**

5.01 Placement of Signage, Name and Logo. The Name and/or Logo shall be displayed as selected by Scheels and as mutually agreed by the parties. Exhibit 1 shows preapproved design guideline options for placement of the Name and Logo on the signs and other items outlined on Exhibit 1, and Scheels shall have an exclusive right to the placements on signs and other items outlined on Exhibit 1 through December 1, 2015. Any deviation from the design guideline options outlined on Exhibit 1 shall require mutual agreement of the parties. On or before December 1, 2015, Scheels will send a letter to the City identifying each option from Exhibit 1 that Scheels will utilize. (If necessary, the parties will then finalize any additional details outlining the actual placement of the Name and Logo on signs and other items identified.) The City shall have the right to sell any remaining inventory not selected by Scheels on or before December 1, 2015, at the City's established rate card.

5.02 Employee Uniforms. The uniforms of the Facility staff shall bear the Name and/or Logo. Scheels shall provide, at Scheels' expense up to \$4,000, the initial Facility staff uniforms bearing the Name and/or Logo. The City shall be responsible for the cost of all future and supplemental Facility staff uniforms; provided, however, Scheels will provide the City with an ongoing discount (at Scheels' cost) for the purchase of the same. In the event Scheels changes the Name and/or Logo in the manner provided in this Agreement (subject to and requiring the advance written consent of the City), Scheels shall provide, at Scheels' expense, any new Facility staff uniforms necessary as a result of the new Name and/or Logo.

5.03 Initial Design Expenses. Scheels shall be responsible for any and all costs of designing the Facility's Name and Logo, plus any subsequent changes in the Facility's Name or Logo.

5.04 Cost of Signage. Scheels shall be responsible for the initial fabrication and installation cost of the signage to be provided hereunder, as described in Section 4.02. The City shall be responsible for the cost of the subsequent maintenance of the signage after installation; provided that any damage to the signage caused by Scheels will be repaired at the expense of Scheels. Scheels may change the content of the signage at its own expense upon receipt of City approval pursuant to Section 2.01 (which work will be performed by the City and billed to Scheels at actual cost).

Any damage to the signage caused by any party other than Scheels will be promptly repaired by the City at its own expense.

- 5.05 City Web Site. The Name and/or Logo shall be prominently displayed on the Facility's web page on the City's web site. The Name and/or Logo shall be capable of being hyperlinked to a URL at Scheels' Overland Park web site, subject in all respects to City approval.
- 5.06 Publicity. The City will coordinate publicity efforts with Scheels as it relates to the Facility. Publicity efforts shall include, but are not limited to, newsletter, e-news, social media, speeches and pictures.

**ARTICLE 6. OTHER MARKETING/ADVERTISING/PROMOTIONAL RIGHTS**

- 6.01 On-site sampling. Scheels shall have the opportunity to conduct on-site sampling or product information distribution, specific dates, times and type of sampling or product information distribution to be determined upon mutual agreement of the parties. Except as may be otherwise agreed upon by the parties, sales of merchandise at the Facility by Scheels are prohibited.
- 6.02 In-Store Promotion. Scheels shall have the opportunity to develop in-store retail promotions or develop other promotional campaigns in association with the Facility.
- 6.03 Substitute Inventory. The parties understand that many of the provisions of this Agreement will require cooperation and negotiation on an on-going basis, and also for a term extending over many years. The parties agree to use their best efforts to negotiate substitute and alternative promotions, signage and/or rights of equal or comparable value if any existing or planned promotions, signage or right is no longer possible or desirable. In each such case, the City will suggest an alternative to Scheels. If the parties cannot agree on an alternative promotion, sign or right, the dispute resolution provisions of Article 11 will apply.

**ARTICLE 7. ADVERTISING/SPONSORSHIP OF FACILITY BY OTHER ENTITIES**

- 7.01 Exclusivity. Except as provided herein, the City shall not during the Term grant any new advertising/sponsorship rights to the Facility to any entity whose primary business competes directly with Scheels (i.e., a sporting goods retailer such as Cabelas, Bass Pro, Academy, Dicks, Sports Authority, Gary Gribbles, Soccer Master, Bike Source and Golf Galaxy). Prior to August 15, 2015, the City will provide Scheels with a list of existing Facility advertisers/sponsors and the expiration date of their current sponsorship agreements. Notwithstanding the foregoing, however, booking contracts entered into for events at the Facility, soccer and other sporting events, and/or soccer and other sporting teams, may be sponsored by entities that may compete directly with Scheels and will be allowed at the sole discretion of the City.
- 7.02 Other Contracts. Except as stated herein, the City may enter into advertising/sponsorship rights for any portion of the Facility, or for any event at the Facility, with any business or entity. The City represents and warrants that no advertising or sponsorship agreements exist as of the execution of this Agreement that would violate the terms of this Agreement.

## **ARTICLE 8. CHANGE OF NAME AND/OR LOGO**

- 8.01 Name Change. If Scheels changes its corporate name or trade names, merges into another entity that results in a name change, or sells substantially all of its assets to another entity, and the Agreement is assigned to the new entity with the consent of the City as provided herein, the City shall use the new name and logo incorporating the name and/or logo of the successor, under the terms and conditions of this Agreement. Any new Facility name and/or logo shall require the approval of the City as provided in Articles II and III. Scheels or its successor shall be responsible for all direct and indirect costs associated with the resulting name and logo change of the Facility, including without limitation all costs and expenses of reconstructing, restoring, remodeling or otherwise altering any portion of the Facility or signage of the Facility, replacing or relabeling any uniforms, concession materials, replacing letterhead, stationary or other printed materials, or replacing or relabeling any other items with the new name and logo, and all related promotional and re-branding costs.
- 8.02 Limitation. The Facility shall not utilize, and the Facility's name will not be changed to, the resulting name or logo of Scheels, if, in the reasonable judgment of the City, it would result in a name or graphic that is inconsistent with or detrimental to the reputation of the City or the Facility, or if such name or logo is contrary to the community standards of good taste. In such event, the parties shall negotiate in good-faith to determine an appropriate name or logo for the Facility. If, after ninety (90) days of good faith negotiations, the parties are unable to agree on a new or replacement name for the Facility, then the City, in its sole discretion, may terminate this Agreement.

## **ARTICLE 9. ASSIGNMENT**

- 9.01 Assignment. The rights and obligations created by this Agreement are unique to Scheels, exclusive and shall not be transferred or assigned by Scheels except by written consent of the City. In the event of an assignment by Scheels to an affiliate, parent or subsidiary which is an entity which is substantially owned or controlled by Scheels or which retains substantially similar management and directors and where such assignment is intended to accomplish an internal corporate purpose of Scheels as opposed to materially and substantially altering the underlying business nature of Scheels, the City will not unreasonably withhold its consent for such assignment.
- 9.02 Successors. This Agreement shall be binding upon any permitted successor or assignee of either party, whether by merger, sales of assets, dissolution or reorganization or otherwise. Any attempted assignment by Scheels, whether by merger, sales of assets, dissolution or reorganization or otherwise, in violation of Section 9.01 hereof shall constitute an event of default under this Agreement entitling City to furnish to Scheels a notice of termination, as provided for in Section 1.02 hereof, except that Scheels shall have no right to cure such event of default.

## **ARTICLE 10. DEFAULT; REMEDIES**

- 10.01 Default. A default shall be deemed to have occurred hereunder if:
- (a) Scheels fails to make a payment required under this Agreement and such default continues for a period of thirty (30) days after the date it is due.

- (b) The filing by or against Scheels of any petitions in bankruptcy.
- (c) The occurrence of any act or omission on the part of Scheels that deprives it of the rights, powers, licenses, permits, and authorizations necessary for the lawful and proper conduct and operation of its business.
- (d) Scheels engages in conduct which brings Scheels into public disrepute, contempt, scandal or ridicule or which reflects unfavorably on the reputation of Scheels.
- (e) Either party fails to perform or observe any material term, covenant, condition or provision of this Agreement; and such breach continues for a period of thirty (30) days after written notice to the defaulting party; or if such breach cannot be cured reasonably within such thirty (30) day period and the defaulting party fails to commence to cure such breach within thirty (30) days after written notice or fails to proceed diligently to cure such breach within a reasonable time period thereafter.

10.02 City Remedies. The City's remedies in the event of Scheels' default shall include (but not be limited to) the right to terminate the Agreement, the right to seek specific performance of Scheels' duties under this Agreement and the right to remove, cover/or replace all signage, written and other references to Scheels and/or the Name. In addition, Scheels shall be responsible for all costs associated with removing the Name and/or Logo and related signage and labeling from the Facility and replacing it with a new name/logo and related signage ("Signage Costs"). Upon Scheels' request, the City shall furnish reasonable written documentation of all Signage Costs.

10.03 Scheels Remedies. Scheels' remedies in the event of the City's default shall include (but not be limited to) discontinuing payment until the default has been cured, and the right to seek specific performance of the City's duties under this Agreement. Scheels shall have the right to terminate this Agreement, without liability, in the event the City sells the Facility to an unrelated third party and Scheels provides advance written notice that in its reasonable judgment, such transfer will materially impair the value of the Sponsor Marks and that such Right of Termination will be exercised within sixty (60) days following the effective date of any such transfer.

10.04 Other Remedies. In the event of a breach by either party of any of the material terms, covenants, conditions or provisions hereof, the other party shall have the right to take whatever other action at law or in equity is necessary and appropriate to exercise or to cause the exercise of the rights and powers set forth herein and to enforce the performance and observance of any obligation, agreement or covenant of the allegedly defaulting party.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default of the other party.

#### **ARTICLE 11. DISPUTE RESOLUTION**

11.01 The City and Scheels agree that disputes under this Agreement should first be addressed by good faith negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it



deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, in the absence of a City default hereunder, Scheels shall proceed with the monetary payments as per the Agreement as if no dispute existed.

If mutually agreed by the parties, any dispute, controversy or claim arising out of this Agreement that cannot be settled through negotiation may be resolved by the parties trying in good faith to resolve the dispute by mediation (such mediation session may be requested by either party, and if agreed to by the other party, shall be held within the City or at such other location in the Kansas City metropolitan area as may be agreed to by the parties).

## **ARTICLE 12. INDEMNIFICATION**

- 12.01 Indemnification of City. Scheels will indemnify, defend and save harmless the City (including its officials, employees and agents) from all third-party claims, actions, damages, losses or expenses of every kind and description, including reasonable attorneys' fees and costs, made against or suffered by the City in any way because of or based upon (i) Scheels' (or its officers', directors', partners', employees', agents', representatives', tenants' or guests') negligent act, misconduct or omission; (ii) City's use of the Name, the Logo, or any of the Sponsor Marks, as permitted or authorized herein; (iii) a breach of this Agreement by Scheels; or (iv) the operation of Scheels' business.
- 12.02 Notice, Defense and Settlement; Survival. The City will give Scheels prompt written notice of any claim or suit coming within the scope of these indemnities. Upon the written request of the City, Scheels will assume the defense of any claim, demand or action against the City and will permit the City, at the City's expense, to participate in the defense of the claim. Scheels may settle any such claim, demand or action against the City, albeit only with the prior written consent of the City, and such consent may not be unreasonably withheld, conditioned or delayed.
- 12.03 Survival. The provisions of this Article shall survive termination of this Agreement.

## **ARTICLE 13. MISCELLANEOUS**

- 13.01 Non-Discrimination. Scheels agrees that:
- a. During the performance of this Agreement or any subcontract resulting thereof, Scheels, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, et seq.) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;
  - b. In all solicitations or advertisements for employees Scheels, all subcontractors and vendors shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission;
  - c. If Scheels, a subcontractor or vendor fails to comply with the manner in which Scheels, subcontractor or vendor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Scheels, subcontractor or vendor

shall be deemed to have breached this Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City;

- d. If Scheels, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Scheels, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the City;
- e. Scheels shall include the provisions of subparagraphs a through d above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

Scheels further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

- 13.02 Amendment, Modification or Alteration. No amendment, modification or alteration of the terms of this Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the parties herein.
- 13.03 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all counterparts together shall constitute but one and the same instrument.
- 13.04 Severability. All rights and duties contained in this Agreement are mutually dependent on and one cannot exist independent of another, provided that if any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, and if such holding does not affect the ability to perform and have access to the Facility as provided for herein, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.
- 13.05 Notices. All notices required to be given under this Agreement shall be given by certified or registered mail or Overnight Courier, addressed to the proper party to the following addresses, or at such other address as may be subsequently given pursuant to this Section and shall be deemed given when deposited in the Mail, postage prepaid:

If to the City:     City of Overland Park  
                          Attn: Director - Recreation Services  
                          City Hall  
                          8500 Santa Fe Drive  
                          Overland Park, KS 66212

If to Scheels: Scheels All Sports  
Attn: \_\_\_\_\_  
4450 15th Ave S  
Fargo, North Dakota 58103

- 13.06 Waiver. Any failure of either party to comply with any provision of this Agreement may only be waived expressly in writing by the other party. The waiver by either party of any default or breach by the other party of any of the provisions of this Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other party of the same or another provision of this Agreement.
- 13.07 Essence. Time is of the essence in this Agreement.
- 13.08 Bailment. Nothing herein shall be construed to create a bailment relationship between the parties concerning any property brought on the premises of the Facility by Scheels, unless such property is expressly delivered into the possession of the City and accepted by the City for such purposes.
- 13.09 Status of Parties. Unless specifically designated herein, the parties hereto shall be deemed and construed as independent contractors with respect to one another for all purposes. Nothing contained in this Agreement shall be determined to create a partnership, joint venture, principal-agent, employer-employee or similar relationship between the City and Scheels with respect to Scheels' activities conducted at the Facility pursuant to the terms of this Agreement.
- 13.10 Country/State Law. This Agreement and all matters or issues collateral hereto shall be governed and construed in accordance with the laws of the State of Kansas and County of Johnson without respect to conflicts of law principles.
- 13.11 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained in this Agreement, and it may not be amended except by a writing signed by all parties. There are no oral or written representations, agreements, understandings or circumstances which modify any of the provisions hereof. The Exhibits referenced throughout this Agreement are by this reference made a part hereof.
- 13.12 Exhibits. The Exhibits referenced herein shall be deemed a part of this Agreement as if fully set forth in the body of this Agreement.

**IN WITNESS WHEREOF, this Agreement is executed by the parties as of the day and year as indicated below.**

**CITY OF OVERLAND PARK, KANSAS**

**SCHEELS ALL SPORTS**

By: \_\_\_\_\_  
Carl Gerlach  
Mayor

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

Title: \_\_\_\_\_

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

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

ATTEST:

\_\_\_\_\_  
Marian Cook  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen B. Horner  
Senior Assistant City Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Kathryn P. Peters, Kutak Rock LLP  
Bond Counsel

## **Exhibit 1**

### **Signage, Name and Logo Placement**

The following outlines the placement of the Name and the Logo on signs and other items that has been approved by the City as of the date of this Agreement:

Monument Sign. The Name and/or Logo shall be displayed on the corner monument at the corner of 135<sup>th</sup> Street and Switzer Road. Graphics must not exceed 4'H x 8'W, will be routed out of black aluminum. Letter forms will be 1/4" thick painted (black) metal, 19"H and pin mounted to the surface.

Entrance Signs. The Name and/or Logo shall be displayed on two (2) entrance signs, at the corner of 135<sup>th</sup> Street and the other at Switzer Road, respectively. Letter forms will be 1/4" thick painted (black) metal, 19"H and welded to bottom to a metal rail.

Field House Sign (front). The Name and/or Logo shall be displayed over South entrance to building. Graphic will be five (5) feet square and pin mounted off facia of building.

Field House Sign (back). The Name and/or Logo (2 sided) shall be displayed on the West side of building. Graphic will be 10'W x 30'H (west face) and 12'W x 30'H (north face) on a white background.

Vehicular Signs. The Name and/or Logo shall be displayed on six (6) Facility vehicle directional signs (along the main drive of the Facility). Graphics will be 12"H x 12"W and applied to aluminum surface in right hand corner (double sided).

Pedestrian Sign. The Name and/or Logo shall be displayed on four (4) pedestrian signs located throughout the Facility. Logo will be 1'6" square.

Street Poles. The Name and/or Logo shall be displayed on thirteen (13) street pole banners, linking the main drive of the Facility.

Scoreboard Sign. The Name and/or Logo shall be displayed on front and back of scoreboards located on field #1. Graphics may be either color or black corporate logo, measuring no more than 2' x 12' on the front and 6' x 12' on the back.

The parties acknowledge that the back of bleachers are currently being utilized by another Facility sponsor; but Scheels will have a first right of refusal if the current sponsorship ends and is not renewed.