vii. Stadium or Equipment Defacement. If the Stadium or any portion of it shall be damaged by the act, omission, default or negligence of WSSU, upon receipt of proof of cost, WSSU shall pay the City the cost of repairing and restoring the Stadium to its condition as of the commencement of the Event during which such damage occurred. Such payment shall be made by WSSU within 30 business days of receipt of an itemized bill outlining the damage and cost of repair or restoration.

8. Construction, Maintenance, and Operation of and Custodial Services for the Field House.

a. The City and WSSU hereby agree that in order to construct, maintain, repair and operate the Field House and Stadium, as applicable, and to effectuate the purposes of this Lease, they will each make, execute, acknowledge and transmit any and all contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be necessary or proper, all for the construction, acquisition, installation, equipping, maintenance, repair and operation, as applicable, of the Field House and Stadium. Construction, acquisition, installation and equipping of the Field House shall be in accordance with the construction documents approved by the City and WSSU, subject to reasonable change orders or any other reasonable changes approved by the City and WSSU.

b. The City shall construct the Field House in substantial compliance with the specifications of WSSU as described in plans, specifications and the Construction Drawings which have been reviewed and approved by the City and WSSU - these plans being herein incorporated by reference.

c. The City and WSSU hereby acknowledge and declare that the City is primarily responsible for the operation and maintenance of the Field House during the term of the Lease. The City shall repair, maintain and operate the Field House in such a manner that it may be safely occupied in reasonable comfort. WSSU and the City mutually share in the responsibility to provide custodial services for the Field House. WSSU shall designate in writing to the City's Coliseum Director the level of custodial services it desires for the Field House. Should WSSU believe that the Field House, or a portion thereof, requires cleaning or some custodial service in addition to those services designated as the City's responsibility, WSSU shall assume responsibility for the additional cleaning or service. WSSU may assume some or all of the custodial services at any time during the term of the Lease by providing written notice to the City's Coliseum Director of its intent to do so and by receiving the Coliseum Director's written consent, which shall not be unreasonably withheld, to allow WSSU to assume the requested custodial services. In the event that the City is not satisfied with the level of custodial service being provided by WSSU, in the City's sole discretion, the City may augment those services or reclaim those services, in which case, WSSU shall be billed and shall make payments pursuant to paragraph 2.a.ii.1.

d. In the event that the City provides custodial services for the Field House, WSSU shall promptly report by the most expedient mode of communication to the City any condition known to it which requires cleaning, maintenance or repair and which may cause a personal injury or damage to property. This notice shall be followed by a written statement of the risk. City shall promptly respond to such notice from WSSU. If immediate action is required to remedy a condition that may lead to personal injury or property damage and WSSU is aware of this condition, WSSU shall take immediate action necessary to alleviate the risk of personal injury or property damage and shall report such action to the City as soon as possible. Subject to limits imposed by law, WSSU and the City are each liable for their respective negligent or willful acts or omissions.

e. Unless necessary to prevent personal injury or property damage, WSSU shall not undertake the repair or maintenance of any portion of or any operational system of the Field House, such as electrical, plumbing or hvac, without first receiving written permission from the City to do so.

f. City shall be responsible to clean, maintain and repair the Stadium. WSSU shall be responsible to clean, maintain and repair all fixtures, appliances, equipment, furniture, partitions, decorations and informational and communication systems that WSSU has placed or installed in the Stadium. Maintenance shall include cutting the grass and maintaining the sprinkler system.

9. Damage, Destruction and Condemnation; Use of Net Proceeds.

a. Damage, Destruction or Condemnation. If (1) the Field House, Stadium or any portion thereof is destroyed, or is damaged by fire or other casualty; or (2) title to or the use of all or any portion of the Field House or Stadium is lost or impaired by reason of a condemnation action, WSSU shall remain obligated to pay the Field House and Stadium Rentals, subject to the provisions of subparagraph 6.c., below.

b. Obligation of City to Repair and Replace the Field House or Stadium. The City shall cause the Net Proceeds of any insurance policies, performance bonds, condemnation awards, or Net Proceeds received as a consequence of default under a construction contract, as they relate to the Field House, and made available by reason of any occurrence described in subparagraph 5.a. above, to be applied to the prompt repair, restoration, modification, improvement or replacement of the Field House or Stadium, subject to subparagraph 6.c., below. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds is the property of the City, subject to this Lease.

c. Insufficiency of Net Proceeds; Discharge of the Obligation of City to Repair the Field House or Stadium. If the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Field House or Stadium as required under subparagraph 6.b., above, the City and WSSU shall proceed under any of the following options:

i. The City may complete the work and pay any cost in excess of the amount of the Net Proceeds upon WSSU's agreement, subject to all governmental approvals, to pay a portion of the cost in excess of the Net Proceeds, such portion being at least an amount equal to the total construction cost to rebuild multiplied by the ratio of the Construction Debt to the total construction cost to have originally built the Field House pursuant to this Lease; or

ii. Should WSSU refuse to contribute the portion outlined in subparagraph 6.c.i., above, the City may terminate this Lease and redesign the Field House to be rebuilt, repaired, restored, modified, improved or replaced in such a way that the Net Proceeds covers the full cost thereof, in which case, WSSU shall remain obligated to pay the Field House Construction Debt.

iii. Within 180 days of the occurrence of an event specified in subparagraph 6.a., above, and the agreement entered into pursuant to subparagraph 6.c.i., above, the City shall commence the repair, restoration, modification, improvement or replacement of the Field House or Stadium. For purposes of this Section, *"commence"* includes the retention of an architect or engineer in anticipation of repair, restoration, modification, improvement or replacement of the Field House.

d. Notwithstanding anything contained herein to the contrary, if title to and use of the Field House or Stadium is taken under power of eminent domain by any governmental authority, WSSU shall cause the Net Proceeds it receives from such condemnation to be credited against the Construction Debt. If WSSU's Net Proceeds are insufficient to pay the Construction Debt, WSSU shall remain obligated to pay the Construction Debt.

e. Cooperation of City and WSSU. The City and WSSU shall cooperate fully in filing any proof of loss with respect to any insurance policy covering the events described herein.

10. Environmental Covenants. With regards to the Stadium and the Field House, the City and WSSU agree to be bound as follows:

a. WSSU shall carry on the business and operations at the Field House and the Stadium to comply in all material respects, and will remain in material compliance, with all applicable Federal, state, regional, county or local laws, statutes, rules, regulations or ordinances, concerning the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 *et seq.*, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901 *et seq.*, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §11001 *et seq.*, and the Clean Air Act of 1975, 42 U.S.C. §4321, and all rules, regulations and guidance documents promulgated or published thereunder, and any state, regional, county or local statute, law, rule, regulation or ordinance relating to the environment relating (1) to releases, discharges, emissions or disposals to air, water, land or groundwater, (2) to the withdrawal or use of groundwater, (3) to the use, handling or disposal of polycholorinated biphenyls (PCB's), asbestos or urea formaldehyde, (4) to the treatment, storage, disposal or management of hazardous substances including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof, and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the Field House or the property adjacent to or surrounding the Field House and the site thereof, (5) to the exposure of persons to toxic, hazardous, or other controlled, prohibited or regulated substances, or (6) the transportation, storage, disposal, management or release of gaseous or liquid substances, and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

b. WSSU shall prevent the imposition of any liens or encumbrances against the Field House and the Stadium or the sites thereof for the costs of any response, removal, or remedial action or clean up of hazardous substances, which were caused or allowed to be caused by WSSU.

c. WSSU covenants and agrees that it will not conduct or allow to be conducted any business, operations or activity at the Field House and the Stadium, or employ or use the Field House or Stadium, to manufacture, treat, store (except with respect to storage, in the ordinary operation of the Field House), or dispose of any hazardous substance (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof), or any other substance which is prohibited, controlled or regulated under applicable law, or which poses a threat or nuisance to safety, health or the environment, including, without limitation, any business, operation or activity which would bring WSSU, the Field House, the Stadium or the sites thereof, within the ambit of, or otherwise violate, the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901 *et seq.*, or cause, or allow to be caused, a release or threat of release, of a non-deminimus quantity of hazardous substances on the Field House, the Stadium or the sites thereof as defined by, and within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 *et seq.*, or any similar state, county, regional or local statute providing for financial responsibility for cleanup for the release or threatened release of substances provided for thereunder.

d. WSSU covenants and agrees that it shall take all appropriate response action, including any removal and remedial action, in the event of a release, emission, discharge, disposal or discovery of hazardous substances in, on, under or about the Field House or Stadium and the sites thereof, which were

caused by WSSU, so as to (1) remain in compliance with (c) above, and (2) keep the Field House, the Stadium and the sites thereof free from, and unaffected by, hazardous substances; provided, however, that to the extent that it is determined that such release, emission, discharge or disposal of hazardous substances in, on, under or about the Field House, the Stadium and the sites thereof, occurred before WSSU took possession of the Field House, the Stadium and site thereof under the terms of this Lease, then the City shall take all reasonable and appropriate response action, including any removal and remedial action.

e. WSSU shall, as soon as practical and in any event within 15 days, notify the City of any notice, letter, citation, order, warning, complaint, inquiry, claim or demand that: (1) WSSU has violated, or is about to violate, any federal, state, regional, county or local environmental, health or safety statute, law, rule, regulation, ordinance, judgment or order; (2) there has been a release, or there is a threat of release, of hazardous substances (including, without limitation, petroleum, its by-products, crude oil or any fraction thereof) from any of the Field House, the Stadium or the site thereof; (3) WSSU may be or is liable, in whole or in part, for the costs or cleaning up, remediating, removing or responding to a release of hazardous substances (including, without limitation, petroleum, its by-products, crude oil or any fraction thereof); or (4) the Field House, the Stadium or the site thereof are subject to a lien in favor of any governmental entity for any environmental law, rule or regulation arising from or costs incurred by such governmental entity in response to a release of a hazardous substance (including, without limitation, petroleum, its by-products, crude oil or any fraction thereof).

f. WSSU hereby grants to the City, its agents, attorneys, employees, consultants and contractors, an irrevocable license and authorization to enter upon and inspect the Field House and the Stadium, and perform such tests, including without limitation, subsurface testing, soils and groundwater testing, and other tests which may physically invade the Field House and the Stadium, as the City, in its sole discretion, determines is necessary to protect the Field House, the Stadium and the site thereof.

g. WSSU agrees not to do any act or permit to exist any condition that would subject the City and the officers, employees and agents of each to any claims, losses, liabilities, damages (whether special, consequential or otherwise), settlements, penalties, interest and expenses arising out of or resulting from or by reason of any and all present or future liabilities or obligations under any current federal, state or local law (including common law), and regulations, orders and decrees relating to pollution control, environmental protection, health, welfare, public safety, personal injury, property damage or any other type of claim relating to the Field House or to the Stadium, with respect to: (1) the handling, storage, use, transportation or disposal of any hazardous substance in or from the Field House or Stadium; (2) the handling, storage, use, transportation or disposal (whether or not known to WSSU) of any hazardous substance, which hazardous substances were a product, by-product or otherwise resulted from operations conducted in the Field House or Stadium; or (3) any intentional or unintentional emission, discharge or release (whether or not known to WSSU) of any hazardous substance into or upon the air, surface water, ground water or land or any manufacturing, processing, distribution, use, treatment, disposal, transport or handling of such hazardous substance. The provisions of this paragraph will survive the termination of this Lease.

11. WSSU agrees:

a. Not to sublet or to assign any portion of the Field House or Stadium without the City's written consent;

b. To permit the City's authorized agents to enter the Stadium and Field House for inspection and repair of both;

c. Not to keep animals in the Field House or Stadium, except for WSSU's mascot, seeing eye dogs or service dogs or as otherwise consistent with the Americans with Disabilities Act;

d. To the extent allowed by North Carolina law, to pay for damage attributable to the negligence or intentional act of WSSU;

e. To abide by the laws of the State of North Carolina and its political subdivisions and by the regulations reasonably adopted by the City for its lessees;

f. To neither rename the Stadium or Field House nor to name or dedicate any portion of either without the City's permission, which shall be granted or denied in accordance with its facilities naming policy;

g. To maintain the following insurance:

i. Regarding Automobile Liability Insurance, the State is self-insured and provides $500,000 liability coverage per person and $5,000,000 per incident for bodily injury and property damage, covering owned, non-owned, hired vehicles and trailers used in connection with this Lease. The State shall require any contractor or agent of the State that comes on or about the Stadium to provide Automobile Liability Insurance covering owned, non-owned, hired vehicles and trailers, that shall provide bodily injury and property damages limits of not less then $1,000,000 combined single limit/aggregate.

ii. As applicable, Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than $100,000 for each occurrence. In the event the WSSU hires a contractor to perform any work at the Field House or Stadium, in accordance with the terms contained herein, WSSU shall require the contractor and the contractor's subcontractors to provide similar Worker's Compensation for all employees to be engaged in such work. This Agreement shall be void and of no effect unless WSSU shall secure and keep in effect during the term of this Agreement the contractor's compliance with the provisions of the Worker's Compensation laws of the State of North Carolina.

iii. WSSU shall furnish the City's Risk Administrator, Department of Risk Management, certificates of insurance for all of the insurance coverages described herein within ten (10) days after this Agreement is ratified and certified copies of any amendments and/or renewals to the policies which occur thereafter. At least thirty (30) days written notice shall be given to the City prior to any cancellation, modification or non-renewal of any insurance required under this Agreement.

12. Compliance with Requirements. WSSU and the City shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the Field House and Stadium or any portion thereof (or be diligently and in good faith contesting such orders), and all current and future requirements of all insurance companies writing policies covering the Field House or Stadium or any portion thereof.

13. Taxes and Other Governmental Charges.

a. If the Field House or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, WSSU shall, while this Lease is in effect, pay NINETY-ONE and ONE-HALF PERCENT (91.5%) of the amount of all such taxes, assessments and governmental charges then due as Additional Rentals. The City shall pay the remaining

EIGHT and ONE-HALF PERCENT (8.5%). With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, WSSU is obligated to provide for Additional Rentals only for such installments as are required to be paid while this Lease is in effect. Neither the City nor WSSU shall allow any liens for taxes, assessments or governmental charges with respect to the Field House or any portion thereof to become delinquent including, without limitation, any taxes levied on the Field House or any portion thereof which, if not paid, will become a charge on the rentals and receipts from the Field House or any portion thereof, or any interest therein, including the interest of the City, or the rentals and revenues derived therefrom or hereunder).

b. WSSU may, at the expense and in the name of WSSU, in good faith contest any such taxes, assessments, and other charges and, if any such contest occurs, may permit the taxes, assessments, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the City or its assignees shall notify WSSU that, in the opinion of the City Attorney, by nonpayment of any such items the security with respect to the Field House will be materially endangered or the Field House or any portion thereof will be subject to loss or forfeiture, or the City will be subject to liability, in which event such taxes, assessments, or other charges shall be paid forthwith (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such taxes, assessments, utility or other charges).

14. Title to the Field House; Limitations on Encumbrances

a. Title to the Field House. Except personal property purchased by WSSU at its own expense and not permanently attached to the Field House or Stadium, title to the Field House, Stadium and any and all additions and modifications to or replacements of any portion of the Field House or Stadium will be held in the name of the City, subject only to Permitted Encumbrances, notwithstanding (a) the occurrence of one or more Events of Default as defined in paragraph 13 herein; (b) the occurrence of any event of damage, destruction, condemnation or construction defect or title defect, as provided in paragraph 5 herein; or (c) the violation by the City of any provision of this Lease.

b. Neither the State nor WSSU has any right, title or interest in the Field House or Stadium or any to additions, modifications or replacements of any portion of the Field House or Stadium, except as expressly set forth in this Lease.

c. No Encumbrance, Mortgage or Pledge of Field House. The City and WSSU shall not permit any mechanic's or other lien, except Permitted Encumbrances, to remain against the Field House or Stadium; provided that if WSSU first notifies the City, WSSU may in good faith contest any mechanic's or other lien filed or perfected against either, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the City notifies WSSU that by nonpayment of any such items the City's title to or use of either will be materially endangered, or either or any part thereof will likely be subject to loss or forfeiture, in which event WSSU shall either (a) cause the lien to be discharged as contemplated in N.C.G.S. Chapter 44A-16(5) or (6), or (b) promptly pay and cause to be satisfied and discharged all such unpaid items (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such items). The City will cooperate fully with WSSU in any such contest, on the request and at the expense of WSSU. Neither the City nor, except as provided above, WSSU, shall directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Field House or Stadium, except Permitted Encumbrances. WSSU shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it shall have created, incurred or suffered to exist. The City shall promptly, at its own expense, take such action as may be necessary to

duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it shall have created, incurred or suffered to exist.

15. Restrictions on Sale of the Field House. The City agrees that it will not directly or indirectly sell, assign, transfer or convey the Field House, Stadium or any portion thereof while this Lease is in effect without the written consent of WSSU, such consent not to be unreasonably withheld.

16. Events of Default and Remedies

a. Events of Default Defined. The following are *"Events of Default"* under this Lease and the term *"Default"* means, whenever it is used in this Lease, any one or more of the following events:

i. Failure by WSSU to pay any Base or Additional Rental at the time specified in the Lease.

ii. Failure by WSSU to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to WSSU by the City unless the City agrees in writing to an extension of such time before its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the City will not unreasonably withhold its consent to an extension of time if corrective action is instituted by WSSU within the applicable period and diligently pursued until such failure is corrected.

iii. The provisions of subsection 13.a.ii., above, are subject to the following limitation: if by reason of *Force Majeure* the City or WSSU are unable in whole or in part to carry out any of their respective agreements contained herein, neither are in default during the continuance of such inability. Both agree, however, to remedy with all reasonable dispatch the cause or causes preventing either from carrying out its agreement, provided that the settlement of strikes and other employee-related disturbances is entirely within their respective discretions neither is required to make settlement of strikes, lockouts and other employee-related disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment would be unfavorable to either.

b Remedies on Default. When an Event of Default referred to in subparagraph 13.a., above, has happened and is continuing, the City, may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of WSSU made under this Lease.

c. No Remedy Exclusive. No remedy herein conferred on City is intended to be exclusive, and every such remedy is cumulative and in addition to every other remedy given hereunder and every remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing on any default impairs any such right or power and any such right or power may be exercised from time to time and as often as may be deemed expedient.

d. Waivers. If any agreement contained herein is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

e. Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. The City and WSSU agree, to the extent permitted by law, that in the case of a termination of this Lease, neither the City nor WSSU nor any one claiming through or under either of them shall or will set up claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of the Lease; and the City and WSSU, for themselves

and all who may at any time claim through or under either of them, each hereby waives, to the full extent that it may lawfully do so, the benefit of all such laws.

17. Upon termination of this Lease Agreement, WSSU will peaceably surrender the Leased Premises in as good order and condition as when received, reasonable use and wear and tear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which The City is responsible pursuant to this Lease Agreement, excepted.

18. The City agrees that WSSU, upon keeping and performing the covenants and agreements herein contained, shall at all times during the existence of this Lease Agreement peaceably and quietly have, hold, and enjoy its portion of the Field House free from the adverse claims of any person.

19. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification of any provision hereof and no cancellation or surrender thereof shall be valid unless in writing and signed and agreed to by both parties.

20. Any hold over after the expiration of the said Term or any extension thereof, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either party shall give not less than fifteen days written notice to terminate the tenancy.

21. All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail certified and postage prepaid and addressed as follows: To the City at: City of Winston-Salem, North Carolina, P.O. Box 2511, Winston-Salem, North Carolina 27102 Attn: Chief Financial Officer and WSSU at: Winston-Salem State University, 103 Blair Hall, CB 19536, Winston-Salem, North Carolina 27110-0001, Attn: Vice Chancellor for Finance and Administration. All payments to be made by WSSU to the City shall be made to the City at City of Winston-Salem, North Carolina, 101 N. Main Street, Winston-Salem, North Carolina 27101 Attn: Chief Financial Officer. Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

22. Subject to paragraph 23 below, WSSU acknowledges, understands and agrees to the following:

a. The City has agreed to construct a Field House that exceeds the City's needs to fulfill WSSU's need for athletic administration office space, athletic training facilities and locker room facilities;

b. To finance construction of a Field House that exceeds the City's needs, the City intends to carry out a Certificate of Participation (COP) financing and shall rely on WSSU's promise to make the Field House Base Rental payments until WSSU's portion of the Construction Debt is paid in full;

c. The location and design of the Field House severely limits, if not entirely eliminates, the possibility of finding another tenant should WSSU terminate this Lease Agreement;

d. Therefore, should the Field House be constructed in substantial compliance with the specifications of the State as described in plans, specifications and the Construction Drawings referenced in paragraph 6 above, and should WSSU terminate this Lease Agreement for any reason whatsoever, before or after the Commencement Date and before WSSU repays, in full, the Construction Costs, WSSU shall remain obligated to pay, in full, the Construction Costs according to the schedule attached until such

time that the City is able to relet the Field House, after making reasonable efforts to do so. This provision shall survive a termination of this Lease Agreement.

e. Other than the contingencies set out in paragraph 23 and 24, below, WSSU's obligations set out herein are absolute and unconditional.

23. Notwithstanding anything to the contrary in this Lease, the parties to this Lease agree and understand that the continuation of this Lease for the term set forth herein, or any extension or renewal thereof, is dependent upon and subject to the availability of funds for this purpose to WSSU. If the revenues from Student Debt Service Fees and Vending Receipts at WSSU are not sufficient to make Field House Rental payments hereunder, WSSU may terminate this Lease as it applies to the Field House with no further liability to the City.

24. Notwithstanding anything to the contrary in this Lease, the parties to this Lease agree and understand that the continuation of this Lease for the term set forth herein, or any extension or renewal thereof, is dependent upon and subject to the availability of funds for this purpose to WSSU. If the revenues from Total Gross Ticket Sales or Athletic Receipts are not sufficient to make Stadium Rental payments hereunder, WSSU may terminate this Lease as it applies to the Stadium with no further liability to the City.

25. The State is an immune sovereign and is not ordinarily subject to suit. However, the State has enacted the North Carolina Tort Claims Act (the *"Act"*), pursuant to which the State may be liable for the torts of its officers and employees, within the terms of the Act. Accordingly, as between the City and WSSU, WSSU will be primarily liable for any claims within the coverage of the Act. Concerning general liability, the State claims sovereign immunity and therefore cannot be sued without its permission. However, by statute (Chapter 143, Article 31), the State has waived its sovereign immunity as provided in the Act (up to a limit of $500,000.00). The North Carolina Industrial Commission is constituted a court for the purpose of hearing and passing upon tort claims against departments, institutions or agencies under the Act.

26. If any provision of this Lease be held to be void, invalid, illegal or unenforceable under any law or regulation, such void, invalid, illegal or unenforceable provision shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City and WSSU and this Lease shall be considered as if such void, invalid, illegal or unenforceable provision had never been included in these documents.

27. **Amendments, Changes and Modifications.** Except as otherwise provided in this Lease, this Lease may not be effectively amended, changed, modified or altered without the written consent of the City and WSSU.

28. **Net Lease.** The Lease is to be construed to be a *"net lease,"* and WSSU shall pay absolutely net while this Lease is in effect, the Base Rentals, Additional Rentals and all other payments required hereunder and thereunder, free of any deductions, and without abatement, deduction or setoff.

29. **Merger of Estate.** Notwithstanding anything to the contrary contained herein, the leasehold estate demised under the provisions of this Lease shall not merge with the fee interest of the City thereunder.

30. **Payments Due on Holidays.** If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, is not a business day, such payment will be made or act performed or right exercised on the next day which is a business day.

31. **Severability.** If any provision of this Lease, other than the requirement of WSSU to pay the Field House Base Rentals and the requirement of the City to provide quiet enjoyment of the Field House, is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

32. **Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which is an original and all of which constitutes but one and the same instrument.

33. **Applicable Law.** This Lease is governed by and is to be construed in accordance with the laws of the State and any actions brought by either party to enforce any provision of this Lease shall be brought in the Forsyth County General Court of Justice, Superior Court Division.

34. **Captions.** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

35. **Americans with Disabilities Act.** As applicable, both City and WSSU shall comply with the applicable provisions of the Americans with Disabilities Act (ADA) and all rules and regulations promulgated thereunder.

36. **Equal Opportunity.** As applicable in connection with the use and occupancy of the Field House and Stadium, the City and WSSU agree to comply with the applicable provisions of State and Federal Equal Opportunity Statutes and Regulation.

37. **OSHA Compliance.** As applicable, the City and WSSU shall comply with the State of North Carolina Occupational/Safety and Health Act and the Occupational Safety and Health Act of 1970, Public Law 91-956.

IN TESTIMONY WHEREOF, this Lease Agreement has been executed by the parties hereto, in duplicate originals, as of the date first above written.

(Intentionally Left Blank. Signature Page to Follow.)

STATE OF NORTH CAROLINA

(SEAL)

Michael F. Easley, Governor

ATTEST:

Elaine F. Marshall, Secretary of State

APPROVED AS TO FORM:

Special Deputy ~~Asst.~~ Att. General

WINSTON-SALEM STATE UNIVERSITY

(SEAL)

Dr. Michelle Howard-Vital, Interim Chancellor

APPROVED AS TO FORM:

Beverly Mitchell, University Counsel

ATTEST:

(SEAL)

COUNCIL OF THE CITY OF WINSTON-SALEM NORTH CAROLINA

Renee Henderson, City Secretary

CITY OF WINSTON-SALEM,

Lee D. Garrity, City Manager

This instrument has been preaudited in the manner required by the Local Government and Fiscal Control Act.

Approved as to form and legality.

This 31 day of August, 2006

Ann Jones, Budget Director

This 1 day of September, 2006

Ronald G. Seeber, City Attorney

STATE OF NORTH CAROLINA
COUNTY OF ~~FORSYTH~~ Wake

I, Linda J. Duckworth, a Notary Public in and for the above said County and State of North Carolina, do hereby certify that ELAINE F. MARSHALL, Secretary of State of North Carolina, personally came before me this date and acknowledged that she is Secretary of State of North Carolina, and that by authority duly given and as an act of the State, the foregoing instrument was signed in its name by MICHAEL F. EASLEY Governor of the State of North Carolina, sealed with the Great Seal of the State of North Carolina, and attested by herself as Secretary of State of North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the 30th day of August, 2006.

[Affix Notarial Seal Here]

Linda J. Duckworth
Notary Public

"OFFICIAL SEAL"
Notary Public, North Carolina
County of Johnston
Linda J. Duckworth

My Commission Expires:
6-22-2008

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

I, Candace R. Stowe, a Notary Public in and for Forsyth County, North Carolina, do hereby certify that **Renee Henderson**, City Secretary for Winston-Salem, North Carolina, personally came before me this day and acknowledged that she is the City's Secretary and that by authority duly given and as the act of the City, the foregoing Memorandum of Lease was signed in its name by Lee D. Garrity, City Manager, sealed and attested by herself as City Secretary.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the 6 day of September, 2006.

[Seal]

Candace R. Stowe
Notary Public

OFFICIAL SEAL
Notary Public, North Carolina
COUNTY OF FORSYTH
CANDACE R. STOWE
My Comm. Exp. 4-30-08

My Commission Expires: April 30, 2008