

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING AND AUTHORIZING CHAIR TO SIGN FIRST
AMENDMENT TO STADIUM LEASE & USE AGREEMENT WITH THE OMAHA
ROYALS LIMITED PARTNERSHIP

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, Neb. Rev. Stat. §23-2901 to 2905 (Reissue 2007), confers the power to counties, for the benefits of its citizens, to acquire facilities for social, athletic, and recreational purposes; and,

WHEREAS, on December 9, 2008, the County entered into a Memorandum of Understanding with the Omaha Royals Limited Partnership (hereinafter "Royals"), by which the County and the Royals agreed to use their best efforts to resolve issues identified in said Memorandum of Understanding in order to facilitate the establishment of a recreational and athletic facility that may be used as a stadium for minor league baseball, for social, athletic and recreational purposes, and to serve the public health and welfare, and for the general operation of government by the exercise of a power conferred by state law; and,

WHEREAS, on March 17, 2009, a Stadium Lease and Use Agreement was approved by the County with the Omaha Royals, as the Definitive Agreement described in the aforementioned Memorandum of Understanding; and,

WHEREAS, since the time of the execution of the Stadium Lease and Use Agreement, circumstances have shown that it is to the mutual benefit of the Parties that certain provisions of said Stadium Lease and Use Agreement be amended, and an addendum, titled First Amendment to the Stadium Lease & Use Agreement has been prepared to amend the Agreement accordingly.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the First Amendment to the Stadium Lease & Use Agreement with the Omaha Royals Limited Partnership is hereby approved, and that the Chair and Clerk are hereby authorized to execute said First Amendment to the Stadium Lease & Use Agreement on

Deb Houghtaling

Sarpy County Clerk

1210 Golden Gate Drive, Suite 1118
Papillion, Nebraska 68046-2895

Phone: (402) 593-2105
Fax: (402) 593-4360

Fred Uhe
Chief Deputy

July 13, 2009

David M. Hohman
Brashear LLP
711 N 108th Court
Omaha NE 68154-1714

RE: First Amendment to the Stadium Lease and Use Agreement

Action by the Sarpy County Board of Commissioners, at the meeting of June 1, 2009,
is as follows:

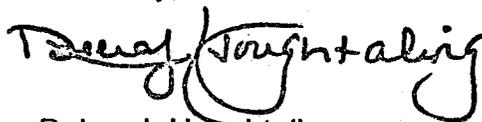
Resolution: Approve amendments to stadium lease and use agreement. (2009-127) Mark Wayne

MOTION: Resolved by Jansen, seconded by Richards, to approve the first amendment to the Stadium Lease and Use Agreement with the Omaha Royals Limited Partnership. Said agreement was approved by this Board on March 17, 2009 by Resolution #2009-058. Ayes: Hike, Jones, Richards, Thomas & Jansen. Nays: None.

Enclosed are two originals of the subject agreement which have been signed by the Chairman as authorized by the above state action. The agreements are now ready for the approval signatures; we request that upon execution an original agreement be provided for Sarpy County records.

Mail to: Sarpy County Clerk
Attn: Chris Vance
1210 Golden Gate Dr.
Papillion NE 68046-2895

Sincerely,



Debra J. Houghtaling
Sarpy County Clerk

Enclosures (2)
cv

COUNTY OF SARPY

OMAHA ROYALS LIMITED PARTNERSHIP

**FIRST AMENDMENT TO
STADIUM LEASE & USE AGREEMENT**

THIS FIRST AMENDMENT TO STADIUM LEASE & USE AGREEMENT (this "First Amendment") is made and entered into this 1st day of June, 2009 ("Effective Date"), by and among the COUNTY OF SARPY, a political subdivision of the State of Nebraska ("Sarpy County" or the "County") and OMAHA ROYALS LIMITED PARTNERSHIP, a Nebraska limited partnership (the "ORoyals").

WITNESSETH:

WHEREAS, Sarpy County and the ORoyals have entered into a Stadium Lease & Use Agreement dated as of March 17, 2009 (the "Agreement") for the public purpose of providing recreational, cultural and community development opportunities of the residents of Sarpy County, and pursuant to which the County has committed, subject to certain conditions, to build a baseball stadium in which the ORoyals would play all of their home baseball games for a twenty-five (25) year period (all capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement); and

WHEREAS, the parties have agreed to enter into the following amendment to the Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are expressly acknowledged, Sarpy County and the ORoyals, each intending to be legally bound, do hereby mutually agree as follows:

1. Use of Premises. Section 4.1 of the Agreement shall be amended by adding the following two sentences at the end of such section:

"Notwithstanding the foregoing, the dominant use of the Stadium under this Agreement shall be limited to those uses which constitute social, athletic, and recreational purposes, and public health and welfare as allowed by Neb. Rev. Stat. §23-2902 and §77-202(1)(a) (as amended). Uses incidental to the dominant use are also allowed."

2. Taxes. Section 18 of the Agreement shall be amended as follows:

(a) The second sentence of Section 18.2 of the Agreement shall be amended and restated in its entirety with the following:

“Sarpy County shall use best efforts to assure the ORoyals that no taxes, surcharges, franchise tax, impact fees, development contributions, assessments or similar charges (“impositions”) shall be levied by the County against the ORoyals in a manner that is not generally applicable to other businesses within the same taxing district.”

(b) A new Section 18.3 shall be added to the Agreement as follows:

“18.3 Notwithstanding anything in this Agreement to the contrary, the ORoyals agree that so long as the Stadium is not within the taxing authority of the City of Papillion and in lieu of a city imposed local sales tax option, the ORoyals agree to impose a 1.50% assessment on all taxable sales at that Stadium and to remit the proceeds therefrom and an accounting thereof to Sarpy County on a monthly basis to be used solely to fund debt service on the Bonds or to otherwise fund the Capital Maintenance Fund if the debt service on the Bonds has been retired. Such assessment shall terminate upon the effective date of annexation of the Stadium by the City of Papillion, with all proceeds therefrom delivered to Sarpy County until the effective date of such annexation.”

3. June 2009 Dates.

(a) Items (i) and (ii) of Section 2.3(b) of the Agreement shall be amended and restated in their entirety as follows:

“(i) Sarpy County determines in its sole discretion not to proceed with the transactions contemplated by this Agreement prior to 5:00 pm (Central Time) on July 1, 2009; provided that in the event that Sarpy County does not exercise this termination right in accordance with the terms and conditions of this Agreement by 5:00 pm (Central Time) on July 1, 2009, it shall not be entitled to thereafter terminate this Agreement pursuant to this Section 2.3(b)(i).”

“(ii) the Required Approvals are not obtained by the ORoyals prior to 5:00 pm (Central Time) on July 1, 2009; provided that Sarpy County shall not be entitled to terminate this Agreement pursuant to this Section 2.3(b)(ii) if the failure to obtain the Required Approvals is the result of a breach by Sarpy County of its obligations under Section 2.1(a).”

(b) Items (i) and (iii) of Section 2.3(c) of the Agreement shall be amended and restated in their entirety as follows:

“(i) the Required Approvals are not obtained by the ORoyals prior to 5:00 pm (Central Time) on July 1, 2009; provided that the ORoyals shall not be entitled to terminate this Agreement pursuant to this Section 2.3(c)(i) if the failure to obtain the

Required Approvals is the result of a breach by the ORoyals of its obligations under Section 2.1(a);

“(iii) Sarpy County has not entered into the Site Acquisition Documents, in accordance with Section 1.65, with the owner of the Stadium Site, by the later of: (a) 5:00 pm (Central Time) on July 1, 2009; or (b) seven (7) days after the date that Sarpy County is notified that the Required Approvals have been obtained by the ORoyals;”

(c) The third sentence of Section 5.1 of the Agreement shall be amended and restated in its entirety as follows:

“Thereafter, Sarpy County shall work expeditiously to (collectively, the “Initial Development Activities”) (i) negotiate the terms for acquiring the use of the Stadium Site with the owner thereof, whether under a long-term lease with purchase option, purchase arrangement or otherwise; (ii) execute the Site Acquisition Documents with the owner thereof by the later of: (a) 5:00 pm (Central Time) on July 1, 2009; or (b) seven (7) days after the date that Sarpy County is notified that the Required Approvals have been obtained by the ORoyals; and (iii) acquire any and all rights, permits and licenses necessary to begin developing the Stadium Site, to construct the Stadium on the Stadium Site, and to allow the ORoyals to exclusively operate and manage the Stadium. ”

(d) The third sentence of Section 6.2(c) of the Agreement shall be amended and restated in its entirety as follows:

“Following the filing of the Preliminary Offering Statement, Sarpy County shall use its reasonable best efforts to prepare and file the Final Offering Statement and market the Bonds as expeditiously as possible; provided, however, the Final Offering Statement shall be filed and the marketing of the Bonds shall be completed no later sixty (60) days after the later of: (1) the date the ORoyals receive the Required Approvals; or (2) July 1, 2009.”

(e) The first sentence of Section 7.1(c) of the Agreement shall be amended and restated in its entirety as follows:

“(c) Predevelopment Expense Contribution. Within thirty (30) days of the Effective Date, Sarpy County shall pay Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) into the Stadium Escrow, and on July 2, 2009, the ORoyals shall pay Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) into the Stadium Escrow, in each case for use in payment of predevelopment expenses incurred for the project (“Predevelopment Contribution”); provided, however, that each parties’ Predevelopment Contribution may only be used to pay one-half (1/2) of any predevelopment expenses incurred, which expenses shall include, but shall not be limited to, architectural, engineering, surveying and permitting fees, but which shall specifically not include legal fees for either party; provided, further that until the ORoyals’ Predevelopment Contribution occurs, Sarpy County’s Predevelopment Contribution shall be used to pay all such predevelopment expenses incurred, and

Sarpy County shall be entitled to receive full credit for all amounts paid against its future obligation for expenses incurred after the ORoyals' Predevelopment Contribution is made until such time as the payments made from both parties Predevelopment Contribution hereunder are equal."

(f) Section 48 of the Agreement shall be amended and restated in its entirety as follows:

"48. Exclusivity. From and after 5:01 pm (Central Time) on July 1, 2009, the parties acknowledge and agree that they shall deal exclusively with one another until such time as this Agreement is terminated or the Completion Date is achieved by the terms hereof. To that end, from and after 5:01 pm (Central Time) on July 1, 2009, the ORoyals shall promptly notify Sarpy County in the event that any contact, proposal, offer, contract, inquiry or otherwise is made, extended or communicated, either directly or indirectly, which would involve the ORoyals playing some or all of their Club Home Games at a location other than the Stadium. "

4. Counterpart Execution. This First Amendment may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

5. No Other Amendment. All references in this First Amendment and in the Agreement to "the Agreement" shall be deemed to be references to the Agreement as amended by this First Amendment. Except as set forth herein, the Agreement is unmodified and remains in full force and effect.

[The next page is the signature page.]

IN WITNESS WHEREOF, this First Amendment has been executed by a duly authorized officer of the ORoyals and a duly authorized official of Sarpy County, each of whom hereby represents and warrants that he has the full power and authority to execute this First Amendment in such capacity, all as of the day and year first above written.

COUNTY OF SARPY, a political subdivision
of the State of Nebraska

By: Joni Jones

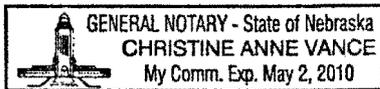
Name: Joni Jones

Its: Chairman

STATE OF Nebraska)

COUNTY OF Sarpy) ss.
)

Subscribed and sworn to before me this 1st day of June, 2009.



Christine Anne Vance
Notary Public

[SIGNATURES CONTINUED ON NEXT PAGE]

Approved as to form: [Signature]
County Attorney

OMAHA ROYALS LIMITED PARTNERSHIP,
a Nebraska limited partnership

By: *William H. Shea, Jr.*

Name: William H. Shea, Jr.

Its: Authorized Signatory

STATE OF Pennsylvania)
COUNTY OF Philadelphia) ss.

Subscribed and sworn to before me this 1 day of June, 2009.

Beverly M. Smith
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Beverly M. Smith, Notary Public
City of Philadelphia, Philadelphia County
My Commission Expires March 28, 2013
Member, Pennsylvania Association of Notaries

