

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION DESIGNATING ONE FINAL SITE CANDIDATE AND AUTHORIZING
CHAIRMAN TO SIGN SITE ACQUISITION DOCUMENTS PURSUANT TO THE
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; and,

WHEREAS, on March 17, 2009 the County entered into a Stadium Lease and Use Agreement the Royals as the Definitive Agreement described in the aforementioned Memorandum of Understanding; and,

WHEREAS, on April 21, 2009, pursuant to Sections 1.65 and 5.1 of said Stadium Lease and Use Agreement, the County identified three separate parcels as Final Site Candidates and authorized County representatives to proceed with the activities described in Sections 1.65 and 5.1 of the aforementioned Stadium Lease and Use Agreement as are necessary to identify a final site, and negotiate final Site Acquisition Documents for further approval by this Board; and,

WHEREAS, Site Acquisition Documents, as defined in Section 1.56 of the aforementioned Stadium Lease and Use Agreement have been prepared for the site known as Schewe Farm, and a copy of said Site Acquisition Document is attached hereto, known at the Real Estate Transfer Agreement; and,

WHEREAS, after receiving public comment, the reports of the County's professional consultants, and upon good-faith discussion with the Royals, it is the decision of this board that the execution of the attached Site Acquisition Document known as the Real Estate Transfer Agreement is in the best interests of the citizens of Sarpy County.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the attached Site Acquisition Document known as the Real Estate Transfer Agreement, made pursuant to the Stadium Lease and Use Agreement with the Omaha Royals Limited Partnership, is hereby approved, and that the Chair and Clerk are hereby authorized to execute said Site Acquisition Document known as the Real Estate Transfer Agreement on behalf of Sarpy County, Nebraska.

BE IT FURTHER RESOLVED that the Chair, County Administrator, County Fiscal Administrator, and County Attorney are authorized to take such other actions as may be necessary to comply with the provisions of said Site Acquisition Documents and consummate the transaction contemplated therein, except for those actions that require the further consideration of this Board by law.

DATED this 1st day of June, 2009.

Moved by Rich Jansen, seconded by Pat Thomas, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

Don Jones

none

none

Rich Jansen

Chris Richards

Kurt H. ...

Patrick J. Thomas

Debra Houghtaling
County Clerk



ABSTAIN:

none

Approved as to form:

[Signature]

Deputy County Attorney

COUNTY OF SARPY

SCHEWE FARMS, INC.

REAL ESTATE TRANSFER AGREEMENT

THIS REAL ESTATE TRANSFER AGREEMENT (Agreement) is made and entered into as of June 1, 2009 (Effective Date) by and among the County of Sarpy, a political subdivision of the State of Nebraska (County), Schewe Farms, Inc., a Nebraska corporation (Schewe), and Spence Title Company, a Nebraska corporation (Escrow Agent).

WHEREAS, Schewe owns the parcel in Sarpy County, Nebraska generally depicted and legally described as set forth in Exhibit A attached hereto together with all improvements and appurtenances currently located upon and benefiting the same (collectively, the Property); and

WHEREAS, the Property is part of a larger mixed use development concept, with various development plans surrounding the Property contemplated and pending; and

WHEREAS, the Property is intended to be used to develop and construct a minor league baseball stadium (Stadium) which use of the Stadium 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) with uses incidental to the dominant use are also allowed. Said Stadium to be leased and occupied by the Omaha Royals (ORoyals), as tenant, under and pursuant to that certain Stadium Lease and Use Agreement, as amended, by and between County and the ORoyals dated March 17, 2009; and

WHEREAS, subsequent to the execution of this Agreement it is contemplated that the parties hereto, along with the City of Papillion (City), will work in good faith to mutually agree upon and enter into a Stadium Site Location Agreement (Site Location Agreement), which document will generally govern the overall development of the Property and the larger mixed use development area, including transfer of ownership, development plan, design concepts, and the like; and

WHEREAS, the specific location of the Stadium on the Property shall be determined in accordance with the terms of the Site Location Agreement (such property is hereby defined as the Stadium Site), the ultimate determination and transfer of the Stadium Site this Agreement shall memorialize; and

WHEREAS, Schewe desires to transfer the Stadium Site to County and County desires to receive the Stadium Site from Schewe; and

WHEREAS, subject to the terms and conditions set forth in this Agreement, Schewe shall convey fee title to the Stadium Site to County or its designee according to the covenants and obligations as further set forth in this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereto do hereby mutually covenant and agree as follows:

1. Agreement To Transfer Real Property.

(a) Schewe agrees to transfer the Stadium Site to County, and County agrees to receive from Schewe, free of any charge or cost to County and subject to and upon each and every one of the terms and conditions hereinafter set forth, the fee simple interest in and to the Stadium Site.

(b) The Property is generally depicted in Exhibit A hereto. The specific location, size and layout of the Stadium Site shall be determined in accordance with the Site Location Agreement, and, once determined, the legal description thereof shall be attached hereto as Exhibit B.

(c) In the event County does not commence construction of the Stadium on the Stadium Site on or before a date which is two (2) years from the Closing Date, then County shall reconvey the Stadium Site to Schewe, free and clear of any and all liens, encumbrances, special assessments and other restrictions of record (except for the Permitted Exceptions) upon written request of Schewe. Construction for purposes of this subsection (c) shall mean the good faith vertical construction of the Stadium. This subsection (c) shall survive closing and may be memorialized by a document of record.

2. Donation of Property; Consideration. The parties intend and agree that the Stadium Site shall be donated without cost or charge to the County. Notwithstanding, the parties acknowledge and agree that such transfer is intended to be made as an inducement for location of the Stadium as a part of the larger contemplated mixed use development on the Property, and therefor, transfer is made in consideration of such, the receipt and sufficiency of which is hereby acknowledged by Schewe, and which shall be consideration for entry into the terms, provisions, conditions and agreements hereof.

3. Inspection Period; Permitted Exceptions.

3.1 Inspection Period. Within fifteen (15) days of the selection of the Stadium Site, Schewe shall deliver to County copies of all third-party reports and governmental agreements in its possession, if any, respecting the Stadium Site, including specifically any environmental studies, assessments or audits and any engineering reports, as well as any and all illustrations in Schewe's possession evidencing the location of utility lines surrounding or adjacent to the Stadium Site. Additionally, from and after three (3) months of the Effective Date (the Inspection Period), County and its agents shall have unrestricted access to the Stadium Site to perform whatever investigations, tests and

inspections County deems appropriate. During such time, County shall negotiate in good faith any required Sources & Uses Agreement, Interlocal Agreements or other documents applicable to its intended development of the Stadium Site (collectively, City Agreements) in accordance with the Site Location Agreement. County agrees to defend, indemnify and hold harmless Schewe from any damages or liability to persons or property that might arise from such entry and inspections, and County agrees to repair at its sole cost and expense any damage caused to the Stadium Site arising from such inspections. Prior to the expiration of the Inspection Period, County shall have the right to terminate this Agreement if County determines that, (i) the development of the Stadium Site is not feasible, or (ii) the Stadium Site is unsuitable for County's use, all in County's sole discretion. In the event of such termination, County shall have no further liability hereunder without any additional release from Schewe being necessary.

3.2 Permitted Exceptions. Within fifteen (15) days of the determination of the Stadium Site, Schewe shall cause Escrow Agent to deliver a title insurance commitment (the Title Commitment) proposing to insure County's fee simple ownership of the Stadium Site for the reasonable fair market value thereof. In the event that County shall object in writing to Schewe within fifteen (15) days after receipt of the Title Commitment to any matters disclosed in the Title Commitment (each, a Defect, or collectively, the Defects), Schewe shall notify County, within ten (10) days of its receipt of written notice from County of the Defect(s) of its decision to either, (i) correct such Defect, in which event County's duty to close shall be subject to Schewe's cure of such Defect, or (ii) elect not to correct such Defect. If Schewe selects option (ii) above, then County may, at its sole option, within thirty (30) days of its receipt of such notice from Schewe, terminate this Agreement without any additional release from Schewe being necessary. All exceptions appearing in the Commitment which County does not object to or which Schewe refuses to cure shall be considered "Permitted Exceptions" as that term is used in this Agreement. Notwithstanding the forgoing, and except for any special assessments previously levied by the City, Schewe shall, at its sole cost and expense, release on or before the Closing Date all deeds of trust, mortgages, construction or mechanic's liens or other monetary liens against or affecting the Stadium Site, if any.

3.3 Design & Development Approval. Design and development of the Property and the Stadium Site shall occur and be governed by and under the terms and conditions of the Site Location Agreement to be mutually agreed upon and entered into by the County, City and Schewe, of which this Agreement shall be a component. This Agreement shall be construed in conjunction with the Site Location Agreement. In the event of any conflicts or contradictions therebetween, the terms of the Site Location Agreement shall govern.

4. Closing.

4.1 Scheduling.

(a) The parties shall work cooperatively to schedule the closing of the transfer of the Stadium Site (Closing) on a mutually agreeable date (Closing Date)

that is generally tax advantageous to Schewe; provided, however, that in no event shall the Closing Date be after January 4, 2010. In connection therewith, as soon as reasonably practicably after entering in this Agreement Schewe shall execute the Deed (as hereafter defined) for the transfer of the Stadium Site and irrevocably deposit same with the Escrow Agent for filing at the agreed-upon time, the filing of which shall be subject to the closing conditions set forth in Section 5 hereof.

(b) Notwithstanding anything to the contrary in subparagraph (a) above, in the event it is determined that the transfer of the Stadium Site must occur sooner than was originally anticipated pursuant to subparagraph (a) above, which determination shall be made by the County in its sole discretion acting upon the direction of its bond underwriter and/or counsel, then the County and Schewe shall work together in good faith to enter into a short-term lease or similar arrangement to provide the County with the required control of the Stadium Site while preserving Schewe's desire for January 2010 Closing Date. If the parties are not able to mutually agree upon such a lease or similar arrangement, then the County shall have the right to instruct the Escrow Agent to cause the Deed to be filed immediately upon receipt of written instruction to do so from the County. To that end, the County shall have the right to seek specific performance to enforce Schewe's obligation to make the transfer of the Stadium Site.

4.2 Method. The Closing shall occur by way of escrow with each party depositing in advance all executed documents it is obligated by this Agreement to deliver at Closing with Escrow Agent and instructing Escrow Agent to release such documents and perform the Closing in accordance with such party's written instructions.

5. Conditions to Closing.

(a) Schewe shall not be obligated to proceed with Closing until all of the following conditions have been waived by Schewe or satisfied:

(i) County shall have executed and delivered to the Escrow Agent all affidavits and resolutions and such further documents, including without limitation a mutually agreeable Subdivision Agreement, as reasonably may be required in order to close the transaction contemplated hereby;

(ii) The Site Location Agreement shall have been mutually agreed upon and entered into by and among, the County, City and Schewe and shall be in full force and effect; and

(iii) Schewe shall have received final plat approval and completion of any and all mutually acceptable Subdivision Agreements, Development Agreements, Interlocal Agreements, Stadium Site Location Agreement as reasonably required for its proposed mixed-use development concept from all applicable governmental and zoning authorities including, without limitation, the City of Papillion, Sarpy County and Papio Natural Resources District.

(b) County shall not be obligated to proceed with Closing until all of the following conditions have been waived by County or satisfied:

(i) Schewe shall have executed, acknowledged and delivered to Escrow Agent for recording at Closing a special warranty deed conveying fee title to the Stadium Site to County or its designee, subject only to the Permitted Exceptions, together with a customary owner affidavit sufficient to permit the deletion of the standard exceptions to the Title Policy (as hereafter defined);

(ii) Schewe shall have executed and delivered to Escrow Agent all affidavits and governing resolutions and such further documents, including without limitation a mutually agreeable Subdivision Agreement, as reasonably may be required in order to close the transaction contemplated hereby and obtain the Title Policy;

(iii) All agreements and conditions required to be performed or complied with by Schewe prior to or at the time of Closing in connection with the Closing shall have been duly performed or complied with by Schewe prior to or at such time and all representations, warranties and covenants of Schewe set forth herein shall be true and correct as of the Closing Date;

(iv) The Site Location Agreement shall have been mutually agreed upon and entered into by and among, the County, City and Schewe and shall be in full force and effect;

(v) The Property shall have been graded by Schewe pursuant to the terms of the Site Location Agreement to be entered into by and among, the County, City and Schewe; and

(iii) Schewe shall have received final plat approval and completion of any and all mutually acceptable Subdivision Agreements, Development Agreements, Interlocal Agreements, Stadium Site Location Agreement as reasonably required for its proposed mixed-use development concept from all applicable governmental and zoning authorities including, without limitation, the City of Papillion, Sarpy County and Papio Natural Resources District.

(c) In the event that the conditions set forth in Section 5(a) above are not satisfied or waived on or before the Closing Date, Schewe may terminate this Agreement. In the event the conditions set forth in Section 5(b) above are not satisfied or waived on or before the Closing Date, County may terminate this Agreement. Upon any such termination, the parties shall be released from all obligations hereunder, except those set forth in Section 10 hereof.

6. **Transaction Costs and Prorations.** Except as otherwise agreed under the Site Location Agreement, the costs of Closing shall be the responsibility of the County, including cost of the Title Policy, escrow charges, documentary stamp tax, and recording costs. Notwithstanding, real estate taxes applicable to the Stadium Site which become delinquent in the year of Closing shall be paid solely by Schewe.

7. **Representations and Warranties of County.** County represents and warrants to Schewe that the County has all requisite power and authority to acquire the Stadium Site, to enter into and perform this Agreement and to carry out the transactions contemplated hereby, including full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by County pursuant hereto. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of County are and shall be duly authorized to sign the same on County's behalf and to bind County thereto. This Agreement and all documents to be executed pursuant hereto by County are and shall be binding upon and enforceable against County in accordance with their respective terms.

8. **Representations and Warranties of Schewe.** Schewe represents and warrants to County as follows:

8.1 **Authorization.** Schewe has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Schewe pursuant hereto;

8.2 **Compliance with Other Instruments.** The execution, delivery and performance by Schewe of this Agreement will not violate, or constitute a default under, any provision of any other document by which Schewe or any of its property is bound;

8.3 **Absence of Breaches or Defaults.** Schewe is not, and the authorization, execution, delivery and performance of this Agreement and the documents, instruments and agreements provided for herein will not result in any breach or default under any other document, instrument or agreement to which Schewe is a party or by which the Schewe or the Property or Stadium Site is subject to or bound. To the best of Schewe's knowledge, the authorization, execution, delivery and performance of this Agreement and the documents, instruments and agreements provided for herein will not violate any applicable law, statute, regulation, rule, ordinance, code, rule or order;

8.4 **Title.** Schewe owns the Property and the Stadium Site in fee simple absolute, free of any liens, claims or encumbrances except for liens, claims and encumbrances of record;

8.5 **Litigation.** To the best of Schewe's knowledge, there are no claims, causes of action or other litigation or proceedings pending or threatened with respect to, (i) Schewe which would materially interfere with the consummation of the transaction hereunder, or (ii) Schewe's ownership, operation or the condition of the Property, the

Stadium Site or any part thereof, except for claims that are fully insured and as to which the insurer has accepted defense without reservation;

8.6 Environmental Condition. To the best of Schewe's knowledge, the Property and the Stadium Site is in compliance with all Environmental Laws. For purposes of this Section, "Environmental Laws" means any existing federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, regulating hazardous materials, regulated substances or underground fuel storage tanks; and

8.7 Special Assessments. To the best of Schewe's knowledge, the Stadium Site is not currently subject to any special assessments (except those special assessments currently of record).

All representations, warranties and indemnities contained in this Agreement shall survive the Closing and the expiration or other termination of this Agreement for a period of two (2) years. In the event any representation or warranty herein is proven to be untrue, inaccurate or invalid, the party making said representation or warranty shall be obligated to indemnify the other party for any costs or expenses related thereto. Except for any representations, agreements and obligations made by Schewe in this Agreement, and except as otherwise may be set forth in the Site Location Agreement, County is receiving the Stadium Site "as is" and "where is" and with all faults and defects, latent or otherwise, and that Schewe is making no representations or warranties, either expressed or implied, by operation of law or otherwise, with respect to the quality, physical condition or value of the Stadium Site, or the Stadium Site's habitability, suitability, merchantability or fitness for a particular purpose.

9. Casualty and Condemnation. Notwithstanding anything herein to the contrary, from and after the date hereof to the Closing Date, Schewe is considered the owner of the Stadium Site for all purposes and shall be entitled to receive all insurance proceeds and/or condemnation awards that may become payable with respect thereto. Any and all risks associated with ownership of the Stadium Site shall be borne by Schewe from the date hereof until Closing. If the Stadium Site or any portion thereof is damaged or condemned (or conveyed in lieu thereof) prior to the Closing Date, County may, at its election, (i) terminate and cancel this Agreement and Schewe and County shall be relieved and discharged of any further liability or obligation under this Agreement, except as otherwise expressly set forth herein, or (ii) proceed to Closing and receive all insurance proceeds and condemnation awards otherwise payable to Schewe.

10. Breach; Remedies.

(a) If Schewe shall default in the performance of its obligations under this Agreement, County may pursue any remedies available for such breach at law or in equity, including, if appropriate, reimbursement for monies which then have been paid by the County to the ORoyals. In the event that Schewe shall default in the performance of its obligations under this Agreement subsequent to County's satisfaction of all of the conditions to Closing to be performed by County pursuant to

the terms of this Agreement and any other duties of County under this Agreement, County may request and receive the remedy of specifically enforcing this Agreement, to which remedy Schewe hereby consents in such event.

(b) If County shall default in the performance of its obligations under this Agreement, Schewe may terminate this Agreement and may seek all remedies available such breach at law or in equity. In the event of such termination, County shall deliver to Schewe all due diligence materials and all other work product in County's possession relating to the County's review of the Property, at no cost to Schewe and shall take all actions necessary to ensure the release and delivery of such materials in the possession of third parties employed by or agents of County to Schewe.

11. Miscellaneous Provisions.

11.1 Amendment. The provisions of this Agreement shall not be amended, waived or modified except by written instrument, signed by the parties hereto.

11.2 Headings. All sections and descriptive headings of this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

11.3 Entire Agreement. Except as set forth in Section 3.3 hereof, this Agreement constitutes the entire understanding between the parties with respect to the Stadium Site and supersedes and replaces all previous agreements and understandings between the parties with respect thereto.

11.4 Commission. Schewe shall be solely responsible for any and all commissions, broker's fees or other similar fees related to this transaction and agrees to indemnify and protect County from and against the same.

11.5 Notices. All notices, requests, demands and other communications pertaining to this Agreement shall be as set forth in the Site Location Agreement.

11.6 Waiver. The waiver of any party of any breach or default by any other party under any of the terms of this Agreement shall not be deemed to be, nor shall the same constitute, a waiver of any subsequent breach or default on the part of any other party.

11.7 Assignment. County may, in its sole discretion, assign its rights or obligations hereunder with Schewe's consent, which consent shall not be unreasonably withheld.

11.8 Escrow Instructions. This Agreement shall be used as instructions to the Escrow Agent as escrow agent, which may attach hereto its standard conditions of acceptance of escrow; provided, however, that in the event of any inconsistency

between such standard conditions of acceptance and the terms of this Agreement, the terms of this Agreement shall prevail.

11.9 Limitation of Damages. Under no circumstances shall either party be liable for incidental, indirect, consequential or similar damages, whether such damages are claimed under a theory of tort or contract or otherwise.

11.10 Governing Law. This Agreement shall be construed and enforced pursuant to the laws of the State of Nebraska.

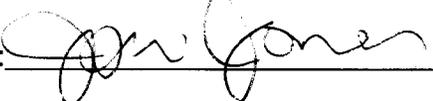
11.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

[Remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

COUNTY:

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

By: 

Name: Joni Jones

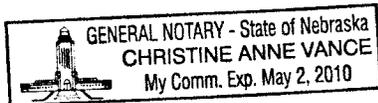
Its: Chairman

STATE OF Nebraska

COUNTY OF Sarpy

)
) ss.
)

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




Notary Public

SCHEWE:

SCHEWE FARMS, INC., a Nebraska corporation,

By: Margaret K. Langpaul

Name: Margaret K. Langpaul

Its: President

STATE OF IOWA

COUNTY OF POLK

)
) ss.
)

Subscribed and sworn to before me this 31st day of May, 2009.



Chris Langpaul
Notary Public

COUNTY OF SARPY

SCHEWE FARMS, INC.

REAL ESTATE TRANSFER AGREEMENT

Exhibit A

Description of Property

The East Half (EV,) of Section 30, Township 14 North, Range 12 East of the 6th P.M., in Sarpy County, Nebraska, EXCEPT that part thereof described as follows:

Beginning at the Southeast corner of said Southeast Quarter; thence Westerly, a distance of 2,646.66 feet, along the Southerly line of said Quarter Section, to the Southwest corner of said Quarter Section; thence Northerly, deflecting $90^{\circ} 12'54''$ right, along the Westerly line of said Quarter Section, for a distance of 229.10 feet; thence Easterly, deflecting $85^{\circ} 50'00''$ right, a distance of 252.56 feet; thence continuing Easterly, deflecting $09^{\circ} 37'18''$ right, a distance of 903.55 feet; thence continuing Easterly, deflecting *Or* $42'23''$ left, a distance of 998.62 feet; thence continuing Easterly, deflecting $01^{\circ} 35'42''$ right, a distance of 450.00 feet; thence Northeasterly, deflecting $63^{\circ} 45'23''$ left, a distance of 111.49 feet, to a point on the Easterly line of said Quarter Section; thence Southerly, deflecting $154^{\circ} 32'39''$ right, along the said Easterly line of said Quarter Section, for a distance of 296.58 feet, to the Point of Beginning;

Subject to statutory road right-of-way.

COUNTY OF SARPY

SCHEWE FARMS, INC.

REAL ESTATE TRANSFER AGREEMENT

Exhibit B

Description of Stadium Site

[To Be Determined.]