

**BOARD OF COUNTY COMMISSIONERS**  
**SARPY COUNTY, NEBRASKA**

**RESOLUTION APPROVING AND AUTHORIZING CHAIR TO SIGN 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, a Stadium Lease and Use Agreement has been proposed with the Omaha Royals Limited Partnership, a Nebraska limited partnership, which is a result of negotiations contemplated by and which constitutes the Definitive Agreement described in the aforementioned Memorandum of Understanding; and,

WHEREAS, a public hearing was had and public comment received regarding the advisability of entering into the proposed Stadium Lease and Use Agreement; and,

WHEREAS, the facility contemplated by said Stadium Lease and Use Agreement is for social, athletic and recreational purposes, serves the public health and welfare, and is for the general operation of government by the exercise of a power conferred by state law, and is in the best interests of the citizens of Sarpy County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT 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 Stadium Lease and Use 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 Stadium Lease and Use Agreement, except for those actions that require the further consideration of this Board by law.

DATED this 17<sup>th</sup> day of March, 2009.

Moved by Pat Thomas, seconded by Rusty Hike, that the above Resolution be adopted. Carried.

YEAS:

Rusty Hike  
Pat Thomas  
Jon Jones  
Patrick J. Thomas

NAYS:

Tom Richard

ABSENT:

none

ABSTAIN:

none



Debra W. Houghtaling  
County Clerk

Approved as to form:

Mark O. A.  
Deputy County Attorney

**STADIUM LEASE & USE AGREEMENT**

By and Between

COUNTY OF SARPY

and

OMAHA ROYALS LIMITED PARTNERSHIP

Dated as of March 17, 2009

COUNTY OF SARPY

OMAHA ROYALS LIMITED PARTNERSHIP

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COUNTY OF SARPY

OMAHA ROYALS LIMITED PARTNERSHIP

**STADIUM LEASE & USE AGREEMENT**

THIS STADIUM LEASE & USE AGREEMENT (this "Agreement") is made and entered into this 17<sup>th</sup> day of March, 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, the ORoyals are the exclusive owners of and engaged in the operation of the "AAA" minor league professional baseball franchise in Omaha, Nebraska currently known as the Omaha Royals (the "Club"), under a franchise granted by the Pacific Coast League (the "League"), a member of the National Association of Professional Baseball Leagues, Inc. (the "National Association" or the "NA"), and is subject to those certain regulations and rules promulgated by the League, the NA and the Office of the Commissioner of Major League Baseball;

WHEREAS, Sarpy County and the ORoyals have entered into that certain Memorandum of Understanding dated December 9, 2008 (the "MOU");

WHEREAS, per the terms of the MOU, the ORoyals and Sarpy County have agreed to work together to develop a plan for financing, designing, developing and constructing a new baseball stadium for use by the ORoyals and the Club which will relocate to Sarpy County and play its home games at the new stadium in Sarpy County starting no later than the beginning of the 2011 season;

WHEREAS, the MOU contemplates that the ORoyals and Sarpy County will enter into this Agreement and as such this Agreement sets forth the terms and conditions under which the stadium will be financed, designed, developed and constructed and under which the ORoyals will occupy, use and manage the stadium;

WHEREAS, the parties hereto desire that this Agreement shall set forth their full and complete understanding with respect to subject matter herein contained;

WHEREAS, this Agreement is entered into by Sarpy County for the public purpose of providing recreational, cultural and community development opportunities for residents of the County;

WHEREAS, Sarpy County has investigated and determined that the terms of this Agreement reflect fair market value.

WHEREAS, the ORoyals recognize the need for the new stadium to serve as a resource and asset for the betterment of the entire Sarpy County community to the greatest extent feasible given the ORoyals' operating need therefore.

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. **Definitions.** As used herein, the following terms shall have the following meanings:

1.1 **Agreement.** The term "Agreement" shall mean this Stadium Lease & Use Agreement and all Exhibits to this Agreement.

1.2 **Annual Rent.** The term "Annual Rent" shall have the meaning set forth in Section 7 below.

1.3 **Appraised Value.** The term "Appraised Value" shall have the meaning set forth in Section 3.2 below.

1.4 **Approved Construction Documents.** The term "Approved Construction Documents" shall have the meaning set forth in Section 5.6(a) below.

1.5 **Average Yearly Naming Amount.** The term "Average Yearly Naming Amount" means an amount equal to the quotient of (a) the aggregate revenue (net of the rate card value associated with any fulfillment obligations of the ORoyals not set forth on Exhibit D and any agent or broker fees with respect to such naming rights) to be received for naming rights to the Stadium as set forth in Exhibit D pursuant to the agreement relating to such naming rights, divided by (b) the term of years over which such revenue will be received.

1.6 **Baseball Season.** The term "Baseball Season" shall mean, as to each calendar year of the Term, the regular annual period of play of professional baseball games and related activities by the Club at the Stadium from March 15 to the date on which the Club's last game is played during the applicable League season, including any and all pre-season games, regular season games, exhibition games, post-season "playoff" games, and "all-star" games, or September 15, whichever shall later occur.

1.7 **Beneficial Occupancy.** The term "Beneficial Occupancy" shall mean the date when all final regulatory and League approvals have been obtained for the Stadium, the Site and appurtenant improvements (including, without limitation, parking areas, drainage facilities, and other improvements required for operation and use of the Stadium), and evidence of such approvals (including, without limitation, a certification of completion by the Project Architect and a certificate of occupancy by the applicable municipal authority) has been delivered by the County to the ORoyals such that the Stadium can be used for its intended purpose.

1.8 **Bond Documents**. The term “Bond Documents” shall mean the documents relating to the Sarpy County, Nebraska Taxable Revenue Bonds issued for the Project.

1.9 **Bonds**. The term “Bonds” shall mean the Sarpy County, Nebraska Taxable Revenue Bonds issued for the Project.

1.10 **Budget**. The term “Budget” shall have the meaning set forth in Section 6.1(a) of this Agreement.

1.11 **Capital Contribution**. The term “Capital Contribution” shall have the meaning set forth in Section 7.1 below.

1.12 **Capital Maintenance Fund**. The term “Capital Maintenance Fund” shall have the meaning set forth in Section 15.1 of this Agreement.

1.13 **Capital Maintenance and Repairs**. The term “Capital Maintenance and Repairs” shall have such meaning as described in Section 13 of this Agreement.

1.14 **Claims**. The term “Claims” shall have the meaning set forth in Section 20.1 of this Agreement.

1.15 **Club**. The term “Club” shall have the meaning given in the introductory paragraph of this Agreement.

1.16 **Club Home Game**. The term “Club Home Game” shall mean all professional minor league baseball games played at the Stadium involving the Club or its players as a participant, including without limitation all pre-season games, regular season games, exhibition games, post-season “playoff” games, and “all-star” games.

1.17 **Completion Date**. The term “Completion Date” shall mean the date the Stadium is delivered to the ORoyals for Beneficial Occupancy.

1.18 **County**. The term “County” shall have the meaning given in the introductory paragraph of this Agreement.

1.19 **County Events**. The term “County Event” shall have the meaning set forth in Section 4.3 of this Agreement.

1.20 **Construction Management Agreement**. The term “Construction Management Agreement” shall have the meaning set forth in Section 5.2 of this Agreement.

1.21 **CPI**. The term “CPI” shall mean the Consumer Price Index for the Midwest Region (All Items) for All Urban Consumers, (1982-84=100) (CPI-U) as measured by the United States Department of Labor Bureau of Labor Statistics. If the CPI is discontinued or replaced, then Sarpy County and the ORoyals shall mutually agree to substitute a reasonably equivalent other index which shall accomplish the same result of reflecting general consumer price changes in the United States Midwest economy.

1.22 [Reserved].

1.23 **Deferred Items**. The term “Deferred Items” shall have the meaning set forth in Section 5.7 of this Agreement.

1.24 **Effective Date**. The term “Effective Date” shall have the meaning given in the introductory paragraph of this Agreement.

1.25 **Emergency**. The term “Emergency” shall mean a condition which (1) involves a danger to public health or safety, (2) is likely to result in immediate, substantial damage to the Stadium or the Site or (3) is sudden and immediate and if not quickly cured would have a material impact on the ORoyals’ ability to use and operate the Stadium.

1.26 **Facilities Criteria**. The term “Facilities Criteria” shall mean the design specifications for the Stadium Improvements which shall be prepared pursuant to the Mutual Approval Process in consultation with the Project Architect based upon the Stadium Cost Amount, the operative components of which shall be six thousand (6,000) fixed seats, fifteen (15) Suites and berm seating. After being finalized, the Facilities Criteria shall be detailed in a written document which shall then be attached to this Agreement as Exhibit A.

1.27 **Final Bid**. The term “Final Bid” shall have the meaning set forth in Section 5.6(a) of this Agreement.

1.28 **Financial Advisor**. The term “Financial Advisor” shall mean a consultant with expertise in the bond financing of facilities similar to the Stadium, retained by Sarpy County as its advisor with respect to such.

1.29 **Force Majeure Event**. The term “Force Majeure Event” means any of the following events which prevents, restricts or interferes with the performance of any obligations under this Agreement (other than the payment of amounts owed hereunder) by a party hereto: Acts of God, labor strikes, lock outs or other industrial disturbances during the development or construction of the Stadium, acts of public enemies, civil disturbances, riots, epidemics, landslides, earthquakes, fires, floods, washouts, unusually severe weather conditions, litigation, or any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency, department or official.

1.30 **FF&E**. The term “FF&E” shall have the meaning set forth in Section 7.2 of this Agreement.

1.31 **General Contractor**. The term “General Contractor” shall have the meaning set forth in Section 5.4 of this Agreement.

1.32 **Initial Development Activities**. The term “Initial Development Activities” shall have the meaning set forth in Section 5.1 of this Agreement.

1.33 **League**. The term “League” shall have the meaning given in the introductory paragraph of this Agreement.

1.34 **Lease Year**. The term "Lease Year" shall mean each period of twelve (12) consecutive calendar months during the Term, with the first Lease Year commencing on the first day of April next succeeding the Completion Date and with successive Lease Years commencing on successive anniversaries of the first day of the first Lease Year. A "Partial Lease Year" means if the Completion Date is a date other than April 1, then the period from the Completion Date to the first day of the first Lease Year. Unless otherwise expressly provided for herein, all terms and conditions herein shall apply the same to a Partial Lease Year as to a Lease Year; provided, however, that all payments and other financial obligations shall be apportioned or prorated pursuant to Section 43 hereof.

1.35 **Market Bondable Amount**. The term "Market Bondable Amount" shall mean the total sum derived by multiplying the Pledged Funds by the Project Bond Multiplier.

1.36 **Maximum Project Budget Amount**. The term "Maximum Project Budget Amount" shall mean Twenty Six Million and 00/100 Dollars (\$26,000,000.00); provided, however, that if the Market Bondable Amount exceeds the Maximum Project Budget Amount, then Sarpy County, in its sole discretion, may elect to raise the Maximum Project Budget Amount to an amount not to exceed the Market Bondable Amount.

1.37 **MOU**. The term "MOU" shall have the meaning given in the introductory paragraph of this Agreement.

1.38 **Mutual Approval Process**. The term "Mutual Approval Process" shall mean the process by which Sarpy County and the ORoyals collaboratively, cooperatively and in good faith discuss, input to and mutually make joint decisions hereunder; provided, however, that in the event the parties cannot agree upon a joint decision hereunder after full discussion thereof, then in such event the decision of Sarpy County shall control; provided that such decision by Sarpy County is (i) commercially reasonable, (ii) consistent with any industry guidelines, recognized qualifications or expertise applicable to the subject matter to which such decision relates, and (iii) consistent with applicable standards promulgated by the Office of the Commissioner of Baseball, the National Association and the League .

1.39 [Reserved].

1.40 **National Association** or **NA**. The term "National Association" or "NA" shall have the meaning given in the introductory paragraph of this Agreement.

1.41 **ORoyals**. The term "ORoyals" shall have the meaning given in the introductory paragraph of this Agreement.

1.42 **ORoyals Event**. The term "ORoyals Event" shall mean any and all events authorized, promoted and/or staged by the ORoyals at the Stadium as provided hereunder which are not Club Home Games or County Events, including the ORoyals' rental of the Stadium for use by third parties.

1.43 **ORoyals Naming Fee**. The term "ORoyals Naming Fee" shall have the meaning set forth in Section 9.2(b) below.

1.44 **Pledged Funds.** The term “Pledged Funds” shall mean all monies paid by the ORoyals hereunder plus those sources of funds pledged by the County as security for the Bonds.

1.45 **Predevelopment Contribution.** The term “Predevelopment Contribution” shall have the meaning set forth in Section 7.1(c) below.

1.46 **Project.** The term “Project” shall have the meaning set forth in Section 6.1 below.

1.47 **Project Bond Multiplier.** The term “Project Bond Multiplier” shall mean the figure determined by the Financial Advisor to be the appropriate ratio of the Pledged Funds to a Market Bondable Amount, based on its best estimate of the market conditions for the type of municipal bonds for a term of 25 years to be issued for the Stadium at the time of anticipated issuance thereof.

1.48 **Professional Baseball Agreement.** The term “Professional Baseball Agreement” means that currently applicable Professional Baseball Agreement between Major League Baseball and the NA.

1.49 **Project Architect.** The term “Project Architect” shall have the meaning set forth in Section 5.4 of this Agreement.

1.50 **Project Manager.** The term “Project Manager” shall have the meaning set forth in Section 5.4 of this Agreement.

1.51 **Purchase Right.** The term “Purchase Right” shall have the meaning set forth in Section 3.2 below.

1.52 **Required Approvals.** The term “Required Approvals” shall have the meaning set forth in Section 2.1(b) of this Agreement.

1.53 **Sarpy County.** The term “Sarpy County” shall have the meaning given in the introductory paragraph of this Agreement.

1.54 **Sarpy Naming Fee.** The term “Sarpy Naming Fee” shall have the meaning set forth in Section 9.2(a) of this Agreement.

1.55 **Schematic Design Documents.** The term “Schematic Design Documents” shall have the meaning set forth in Section 5.5(a) of this Agreement.

1.56 **Site Acquisition Documents.** The term “Site Acquisition Documents” shall mean the documents to be entered into between Sarpy County and the owner of the land where the Stadium Site is to be located pursuant to which Sarpy County shall be entitled to use said land, whether under a long-term lease with purchase option, outright purchase or other appropriate arrangement.

1.57 **Site Plan.** The “Site Plan” shall mean the site plan for the Stadium Site when same becomes available as approved pursuant to the Mutual Approval Process. After

being finalized, the Site Plan shall be set forth in a written document, which shall then be attached to this Agreement as Exhibit E.

1.58 **Stadium**. The term "Stadium" shall mean collectively the Stadium Improvements and the Stadium Site, as the same may from time to time be expanded or modified.

1.59 [Reserved].

1.60 **Stadium Cost Amount**. The term "Stadium Cost Amount" shall mean Twenty Million Three Hundred Twenty-Nine Thousand Two Hundred Sixty-Eight and 00/100 Dollars (\$20,329,268.00), which is the maximum amount agreed upon for construction of the Stadium Improvements.

1.61 **Stadium Escrow**. The term "Stadium Escrow" shall have the meaning set forth in Section 6.5 of this Agreement.

1.62 **Stadium Improvements**. The term "Stadium Improvements" shall mean the playing field and all permanent improvements, appurtenances, additions, alterations, fixtures, equipment and installations situated, constructed, provided or added upon the Stadium Site at any time including, without limitation, playing field, interior bowl seating, berm seating, concourses, restrooms, press box, Club offices, Suite areas, concessions areas, clubhouses/locker rooms, administrative offices, storage areas, batting cages, tunnels, bullpen pitching mounds, pitcher warm-up areas, and ticket offices, exterior grounds and parking areas.

1.63 [Reserved].

1.64 **Stadium Operations and Routine Maintenance**. The term "Stadium Operations and Routine Maintenance" shall have the meaning set forth in Section 12.2 of this Agreement.

1.65 **Stadium Site**. The term "Stadium Site" shall initially mean no more than three (3) separate parcels of land situated in Sarpy County identified by the parties pursuant to Section 5.1 hereof as the potential site for the Stadium ("Final Site Candidates"). In order to negotiate the most advantageous terms, the ORoyals acknowledge and agree that Sarpy County shall in good faith engage in the Initial Development Activities from and after April 22, 2009 with regard to all of the Final Site Candidates and shall keep the ORoyals timely apprised of the status thereof. Thereafter, once the Initial Development Activities have progressed to the point that one (1) of the Final Site Candidates has been determined by Sarpy County and the ORoyals to be the most mutually advantageous location for the Stadium, Sarpy County shall then proceed to enter into the Site Acquisition Documents with the owner thereof. Once the Site Acquisition Documents have been executed, the tract of land to which they apply shall thereafter be referred to hereunder as the "Stadium Site." When available, the legal description of the Stadium Site shall be attached hereto as Exhibit B.

1.66 Suites. The term "Suites" shall mean all suites, skyboxes, or other separate inventory of seating or game viewing areas at the Stadium.

1.67 Term. "Term" shall have the meaning set forth in Section 2.2 of this Agreement.

1.68 Tickets. The term "Tickets" shall have the meaning given to such term in the rules and regulations of the National Association.

## 2. Closing; Term and Termination.

2.1 Baseball Approvals. This Agreement is effective and enforceable immediately upon execution by all parties hereto; provided, however, the provisions set forth herein with respect to the ORoyals lease of the Stadium shall not close or otherwise be enforceable against either party hereto unless and until the Required Approvals (as defined below) have been obtained.

(a) Rule 54 Approval. The ORoyals and the County represent that they have notified the Office of the Commissioner of Major League Baseball, the President of the National Association and the League President of the League of the proposed transaction set forth herein, and have provided to all three a detailed written description of the proposed transaction together with any non-binding memorandum of understanding or letter of intent. The ORoyals and the County shall within ten (10) days of execution of this Agreement apply to the President of the National Association for approval of the transaction in accordance with and pursuant to the applicable provisions of the National Association Agreement, Professional Baseball Agreement and the Major League Rules. Such approval is recognized by ORoyals and the County to be in the sole and absolute discretion of the President of the National Association. The parties shall fully cooperate in all reasonable respects in seeking such approval, including, but not limited to, the timely filing of all documents and information required of the parties by the National Association and/or the Office of the Commissioner of Baseball in connection with such application. Each party covenants that all information contained in documents or statements provided by or on behalf of it to the National Association or the Office of the Commissioner of Baseball shall be true, complete and correct in all material respects and, to the knowledge of each party, shall not contain any untrue or misleading information.

(b) Conditions. The provisions set forth herein with respect to the ORoyals lease of the Stadium shall not be effective or otherwise be enforceable against either party hereto unless and until the President of the National Association, after consultation with the Office of the Commissioner of Baseball, in each case in its sole and absolute discretion, shall have approved the transaction under the applicable standards and requirements of the National Association Agreement, the Professional Baseball Agreement and the Major League Rules, as may be amended from time to time, and the Office of the Commissioner of Baseball shall have reviewed the decision of the President of the National Association and, in accordance with the provisions of the Major League Rules, not have disapproved or reversed the

decision of the President of the National Association (collectively, the "Required Approvals").

2.2 Lease Term. Subject to the terms and conditions hereof, Sarpy County leases the Stadium to the ORoyals for the term ("Term") which shall commence on the Completion Date and shall continue for twenty-five (25) consecutive years, and expire on December 31 of the year in which the twenty-fifth (25th) full Baseball Season following the Completion Date is concluded, unless otherwise sooner terminated as provided for in this Agreement. Upon determination of the Completion Date, the parties shall execute a supplement to this Agreement setting forth the first and last day of the Term and shall execute and record an appropriate supplement to the memorandum of this Agreement provided for by Section 28 of this Agreement.

2.3 Termination.

(a) Either party shall have the right to terminate this Agreement, including following the Completion Date in accordance with Section 26 and seek monetary damages in the event of a material breach by the other party hereto of the terms or conditions of this Agreement; provided the non-breaching party has provided written notice of the alleged breach to the other party and provided such defaulting party has not cured such breach within thirty (30) days of receipt of written notice thereof, provided, however, for such non-monetary defaults that cannot be cured within thirty (30) days, the defaulting party shall have a reasonable period of time to cure such default provided that such party commences to cure the default during the thirty (30) day period. Alternatively, in lieu of electing termination hereunder, once a party is deemed to be in default hereunder, the non-breaching party shall be entitled to: (i) seek monetary damages from the defaulting party; and/or (ii) cure such default on behalf of the defaulting party and bill the defaulting party for all costs incurred to effectuate said cure.

(b) Additionally, Sarpy County shall have the right to terminate this Agreement in the event that:

(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 June 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 June 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 June 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);

(iii) the aggregate proceeds received by the County from the sale of the Bonds is less than the amount of proceeds proposed to be received by the

County for such sale set forth in the Budget or, alternatively, Sarpy County determines in advance of said sale that the market for the sale of the Bonds would be insufficient to generate the proceeds expected, which determination shall be confirmed by an opinion rendered by the Financial Advisor and delivered to the ORoyals; or

(iv) Sarpy County and the ORoyals are not able to agree on the identification and selection of the Stadium Site (as defined in Section 1.65) in accordance with Section 5.1 prior to 5:00 pm (Central Time) on April 22, 2009.

(c) Additionally, the ORoyals shall have the right to terminate this Agreement in the event that:

(i) the Required Approvals are not obtained by the ORoyals prior to 5:00 pm (Central Time) on June 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);

(ii) Sarpy County and the ORoyals are not able to agree on the identification and selection of the Stadium Site (as defined in Section 1.65) in accordance with Section 5.1 prior to 5:00 pm (Central Time) on April 22, 2009;

(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 June 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;

(iv) the aggregate proceeds received by the County from the sale of the Bonds is less than the amount of proceeds proposed to be received by the County for such sale set forth in the Budget and the County does not agree with the ORoyals in writing to satisfy such shortfall within five (5) days of the closing of sale of the Bonds; provided that the ORoyals shall be under no obligation to amend or modify any of the terms or conditions of this Agreement in connection with the County's attempted satisfaction of such shortfall;

(v) Sarpy County breaches any of its representations, warranties, covenants or obligations set forth in Section 6.2; provided that the ORoyals have provided written notice of the alleged breach to Sarpy County and provided Sarpy County has not cured such breach within thirty (30) days of receipt of written notice thereof; or

(vi) the Professional Baseball Agreement terminates and a similar agreement is not entered into between Major League Baseball and the National Association and no comparable or successor arrangement is implemented by Major League Baseball pursuant to which the ORoyals can continue operation in the Stadium pursuant to this Agreement.

In the event that either party desires to terminate this Agreement in accordance with Section 2.3, it shall provide written notice to the other setting forth a reasonable description of the facts and circumstances giving rise to such termination.

Notwithstanding anything to the contrary set forth herein, in the event this Agreement is terminated by Sarpy County pursuant to Section 2.3(b)(iii) or by the ORoyals pursuant to Section 2.3(c)(iv) or (v), Sarpy County shall pay to the ORoyals an amount equal to the sum of Two Million Dollars and 00/100 (\$2,000,000) plus the amount of the reasonable fees and expenses incurred by the ORoyals in connection with the performance of its obligation under this Agreement prior to the date of termination, which fees and expenses shall specifically include legal fees incurred, as well as the amount of any Predevelopment Contribution made by the ORoyals prior to the date of termination. The ORoyals shall provide supporting documentation for all fees and expenses for which it is entitled to reimbursement hereunder.

Notwithstanding anything to the contrary set forth herein, in the event this Agreement is terminated by Sarpy County pursuant to Section 2.3(b)(ii) or the ORoyals pursuant to Section 2.3(c)(i), the ORoyals shall reimburse Sarpy County for the amount of the reasonable fees and expenses incurred by Sarpy County in connection with the performance of its obligation under this Agreement prior to the date of termination, which fees and expenses shall specifically include legal fees incurred; provided, however the maximum amount required to be paid by the ORoyals in connection with such termination shall not exceed Two Hundred Fifty Thousand Dollars and 00/100 (\$250,000). Sarpy County shall provide supporting documentation for all fees and expenses for which it is entitled to reimbursement hereunder.

### **3. Ownership of the Stadium and/or the Stadium Site.**

3.1 The Stadium and the Stadium Site shall be owned in fee simple by Sarpy County, or an instrumentality thereof, and leased to the ORoyals pursuant to the terms and conditions of this Agreement and the ORoyals shall not have any ownership interest in the Stadium and/or the Stadium Site. Notwithstanding the foregoing, it is understood that if any improvement to the Stadium is owned by the ORoyals and is capable of removal at the end of the Term, then the ORoyals shall retain ownership thereof and have the right to remove and dispose of such improvement as it deems appropriate in accordance with Section 17 of this Agreement.

3.2 Subject to the obligation of Sarpy County to comply with any and all statutes currently or then applicable thereto, if any, at the end of the Term, the ORoyals shall have an option to purchase the Stadium and the Stadium Site (the "Purchase Right"), for a purchase price equal to the appraised value ("Appraised Value") of the Stadium on the last day of the Term. In the event that the ORoyals wish to exercise the Purchase Right, it shall provide written notice to the County at least one hundred eighty (180) days prior to the expiration of the Term. Should the ORoyals exercise the Purchase Right, the County shall be obligated to sell and convey the Stadium and the Stadium Site and the ORoyals shall be obligated to purchase the Stadium and the Stadium Site for the Appraised Value. The Appraised Value shall be agreed upon by the parties or, lacking such agreement, shall be determined by three (3) professional appraisers experienced in appraising professional

sports facilities, one of whom shall be appointed by Sarpy County, one of whom shall be appointed by the ORoyals and a third to be designated by the two appointed appraisers. The appraisers shall each determine the fair market value of the Stadium; and the Appraisal Value of the Stadium shall equal the average of the two closest of the three values set by the three appraisers. Each of the ORoyals and Sarpy County shall pay the cost and expenses of the appraiser they select and they shall each pay one-half of the cost and expenses of the third appraiser. Should the ORoyals fail to notify the County on or before the date that is one hundred eighty (180) days prior to the end of the Term, the County shall be free to sell and convey the Stadium and the Stadium Site without obligation or liability to the ORoyals.

#### 4. Use of Premises.

4.1 Exclusive Use. In accordance with the terms and conditions of this Agreement, the ORoyals shall have the exclusive right to use, manage, and operate the Stadium for all purposes allowable under the terms of this Agreement during the Term including, without limitation, the exclusive right to exhibit, promote, schedule and play Club Home Games in the Stadium during the Baseball Season, to authorize, promote and/or stage ORoyals Events in the Stadium and to retain all revenues derived from its operation and management of the Stadium, subject only to Sarpy County's right to stage certain County Events and to retain revenues therefrom as provided in Section 4.3, the ORoyals' financial commitments as provided in Section 7, and Sarpy County's right to receive certain naming revenues as described in Section 9.2.

4.2 All Areas. The ORoyals shall have the exclusive right to use and possess all areas of the Stadium during the Term of this Agreement. Notwithstanding the foregoing, Sarpy County and its agents and representatives shall have the right, at all times during usual business hours or at any time in the case of an Emergency, to enter into and upon any and all parts of the Stadium for the purpose of inspecting the same, carrying out any of its obligations under this Agreement, or for any other legitimate purpose related to the obligations of the parties hereto or the rights of Sarpy County under this Agreement.

#### 4.3 County Events.

(a) Notwithstanding the foregoing, the ORoyals agree to make the Stadium available to Sarpy County for County use for not less than five (5) events per year for any event authorized, promoted and/or staged by Sarpy County (including rental by Sarpy County to third parties) held at the Stadium that is not a Club Home Game or an ORoyals Event ("County Events"). The County shall be entitled to one day for each County Event and a separate day for load-in and a separate day for load-out and clean-up of the event. If a County Event is longer than one day, not including load-in and load-out days, each day of the event will count as a separate event for purposes of this Section 4.3. The ORoyals shall be entitled to require the County to load-in and load-out on the same day of the County Event if such request is consistent with recognized industry practice for such an event and it is practical to limit the event to one day.

(b) Prior to each Baseball Season, but no later than December 31 of the year preceding such Baseball Season, representatives of the parties shall meet to discuss and agree upon the dates when the County may use the Stadium, such dates and events subject to the ORoyals' prior, written approval, which approval shall not be unreasonably withheld or delayed. Sarpy County acknowledges and agrees that Club Home Games and ORoyals' Events take priority over County Events if there is a scheduling conflict. In the event Sarpy County desires to schedule an event on shorter notice, it will provide the ORoyals with written notice, and the ORoyals will consider such request for approval, which approval shall not be unreasonably withheld or delayed. In each instance, Sarpy County agrees to ensure that the Stadium is returned to its previous condition following the completion of each County Event. In addition, with regard to such County Events, the parties agree that Sarpy County shall be responsible for paying the ORoyals one hundred ten percent (110%) of all direct costs associated with such staffing, managing and operating the Stadium for each such County Event (including set-up, clean-up, utilities, and a reasonable charge for operating overhead). In addition, the parties acknowledge that the ORoyals shall have the right to retain all concessions revenues in connection with such County Events. All other revenues generated by such County Events shall be retained by Sarpy County and, after deduction for the costs or expenses in connection with the event, will be used solely to fund debt service on the Bonds or, in the event the Bonds have been paid in full, such revenues will be deposited in the Capital Maintenance Fund as set forth in Section 15 of this Agreement. Subject to the insurance requirements outlined in Section 20 of this Agreement, Sarpy County will provide and maintain, or cause to be provided and maintained by applicable third parties, appropriate insurance for such County Events to protect the ORoyals and Sarpy County against claims arising out of the County Events.

(c) In no event shall Sarpy County be permitted to use the Stadium in a manner that causes or may cause any material damage to any playing surface or any part of the Stadium (e.g., rodeos, livestock shows, tractor pulls, etc.) unless otherwise approved in writing by the ORoyals. Any damage to the Stadium or playing surface occurring during County Events, whether or not such damage is caused by Sarpy County, its designee, or someone other than the ORoyals, shall be immediately repaired by Sarpy County or a mutually-agreed contractor to the condition the Stadium was in prior to the County Event, as determined in good faith by the ORoyals and Sarpy County. Sarpy County's use of the Stadium during such County Events shall only extend to the public portions of the Stadium, the playing surface, box office, concessions, and the media areas but not to any other areas of the Stadium (e.g., ORoyals offices, etc.) unless agreed to in writing by the ORoyals.

(d) During the term hereof, and as often as applicable, Sarpy County and the ORoyals agree to mutually cooperate with Bellevue University in the submission of a bid or bids to host at the Stadium the championship baseball tournament of the National Association of Intercollegiate Athletics ("NAIA World Series"). In the event such bid or bids are successful, the ORoyals shall coordinate and manage the hosting and operation of said event at the Stadium pursuant to the

terms hereof, with the first five (5) days thereof being treated as County Events hereunder and the remaining days thereof being treated as ORoyals Events hereunder. For any and all years in which the NAIA World Series is hosted at the Stadium, Sarpy County shall not be permitted to host any other County Events unless the ORoyals expressly agree to same, which agreement may be withheld by the ORoyals in its sole and absolute discretion.

4.4 **Subletting.** Notwithstanding the rights granted hereunder, the ORoyals shall have no right to sublease all or any part neither of the Stadium or surrounding grounds, nor to permit other persons to occupy or conduct business in the Stadium or any part thereof, except as expressly permitted by this Agreement or after prior written consent of Sarpy County has been obtained.

4.5 **Compliance with Laws.** The ORoyals agree not to use the Stadium for any use or purpose in violation of any applicable law, regulation or ordinance of any lawful governmental authority having jurisdiction over the Stadium; provided that Sarpy County shall not enact any law, regulation or ordinance that is motivated by an intention to cause the ORoyals' breach of this Section 4.5. Notwithstanding anything to the contrary set forth herein, Sarpy County shall not be entitled to terminate this Agreement in accordance with Section 2.3(a) on account of the ORoyals breach of this Section 4.5 with respect to Sarpy County's enactment of a new law, regulation or ordinance that materially impacts the ORoyals in a manner that is not generally applicable to all other businesses in Sarpy County.

## 5. **Stadium Development.**

5.1 **Stadium Site.** Sarpy County and the ORoyals agree to work together to identify and select the Stadium Site as expeditiously as possible after the Effective Date but in any event no later the April 22, 2009. In identifying and selecting the Stadium Site, Sarpy County and the ORoyals shall collaboratively and in good faith discuss, input to and mutually make the decision; provided that such decision on the Stadium Site shall be (i) commercially reasonable, (ii) consistent with any industry guidelines or recognized qualifications, and (iii) consistent with applicable standards promulgated by the Office of the Commissioner of Baseball, the National Association and the League. 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 June 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. The ORoyals shall not be a party to the Site Acquisition Documents and shall have no obligation under or liability with respect to the Initial Development Activities.

5.2 **Development of Stadium.** The Stadium shall be developed by Sarpy County on the Stadium Site and Sarpy County shall be responsible for securing financing for the development of the Stadium. In accordance with the terms and conditions of the Construction Management Agreement (the "Construction Management Agreement"), Sarpy

County will engage a project manager ("Project Manager") who shall act as the County's design and development consultant for the Stadium. Under the Construction Management Agreement, the Project Manager, on behalf of the County, shall direct all work, construction and installation of the Stadium Improvements, in accordance with the Facilities Criteria, the "Schematic Design Documents" (as defined below), which shall be drafted in such detail to be sufficient to convey the architectural design of the Stadium, the "Design Development Documents" (as defined below), which shall substantially conform to the Schematic Design Documents and the Facilities Criteria, and the "Construction Documents" (as defined below), which shall substantially conform to the Design Development Documents. Notwithstanding anything to the contrary set forth in this Agreement, the ORoyals shall have no obligation under or liability with respect to the Construction Documents.

5.3 Construction Contracts. The Stadium Improvements shall be constructed pursuant to Construction Documents that shall endeavor to minimize construction risk and that are in forms, including all material terms and conditions, acceptable to both the ORoyals and Sarpy County pursuant to the Mutual Approval Process. All Construction Documents shall be awarded upon compliance with all requirements for minority hiring and competitive bidding applicable to Sarpy County. The Construction Documents will provide contractor performance requirements established pursuant to the Mutual Approval Process, including without limitation, the requirement that the General Contractor substantially complete the Stadium Improvements prior to a date no later than March 15, 2011.

5.4 Design and Construction Consultants. In accordance with the Mutual Approval Process, Sarpy County and the ORoyals shall select the project architect ("Project Architect"). Thereafter, after seeking the input of the Project Architect and the ORoyals pursuant to the Mutual Approval Process, Sarpy County shall retain the services of the project manager ("Project Manager") and the general contractor ("General Contractor") for the Stadium. To that end, and pursuant to the Mutual Approval Process, Sarpy County may elect to have the functions of the Project Manager be performed by either the Project Architect or the General Contractor. None of the Project Architect, the Project Manager or the General Contractor shall be changed or replaced by Sarpy County unless and until such change shall have complied with the Mutual Approval Process.

5.5 Design and Construction Documents.

(a) Under the Construction Management Agreement, the County shall cause the Project Architect to timely prepare and deliver Schematic Design Documents for the Stadium Improvements based upon the Stadium Cost Amount, including, but not limited to, site plans, floor plans, elevations, sections and outline specifications (the "Schematic Design Documents"). The Schematic Design Documents will be based upon the Facilities Criteria and shall be subject to the Mutual Approval Process.

(b) Under the Construction Management Agreement, the County shall cause the Project Architect to timely prepare and deliver design development documents for Stadium Improvements based upon the Stadium Cost Amount, including, but not limited to, site plans, floor plans, elevations, enlarged floor plans,

and miscellaneous details and updated outline specifications (the "Design Development Documents"). The Design Development Documents will be based upon the approved Schematic Design Documents and the Facilities Criteria and shall be subject to the Mutual Approval Process.

(c) Under the Construction Management Agreement, Sarpy County will cause the Project Architect to timely prepare and deliver complete construction documents based upon the Stadium Cost Amount, including drawings and specifications setting forth in detail all requirements for the construction of Stadium Improvements (the "Construction Documents"). The Construction Documents will be based upon the approved Design Development Documents and shall be subject to the Mutual Approval Process.

(d) No material change from a previously approved design concept shall be made by Sarpy County unless and until such change shall have complied with the Mutual Approval Process. To that end, the ORoyals shall not be responsible for any costs associated with such changes, except for change orders requested by the ORoyals which increase the Budget, the incremental cost and expense of which shall be the responsibility of the ORoyals, subject to the ORoyals written consent to same.

(e) Both Sarpy County and the ORoyals shall be permitted to meet and consult with the Project Architect, the Project Manager and the General Contractor throughout the design and construction process. Each of Sarpy County and the ORoyals, upon reasonable notice, shall meet with the Project Architect, the Project Manager and the General Contractor as often as is reasonably necessary to review each set of Schematic Design Documents, Design Development Documents and Construction Documents to facilitate the review and comment with respect to such documents. Each such party shall, by written notice to the other party hereto, designate a single individual who shall be available to meet and consult with the Project Architect, the Project Manager and the General Contractor and the other party hereto regarding matters which are the subject of this Section.

#### 5.6 Bidding; Revisions.

(a) Upon approval by Sarpy County and the ORoyals of the Construction Documents for the Stadium Improvements or a portion thereof, the Construction Documents shall be submitted by the County for bids (the "Approved Construction Documents"). Upon completion of bidding, and pursuant to the Mutual Approval Process, the County shall determine which bid represents the most favorable bid (the "Final Bid"), taking into account all relevant facts and circumstances of each bid, including, without limitation, the qualifications of the provider, the proposed completion dates, the bid amount, and the applicable Sarpy County competitive bid requirements. If the total cost of the Final Bid is less than the amount set forth in the Budget for such work, the Approved Construction Documents shall be deemed the Final Plans with respect to the Stadium Improvements. In the event that the total cost of the Final Bid exceeds the amount set forth in the Budget for such work, during the next thirty (30) calendar days, (i) Sarpy County and the

ORoyals shall endeavor pursuant to the Mutual Approval Process to revise the Approved Construction Documents to reduce the scope of the work or substitute materials or work and solicit revised bids; (ii) pursuant to the Mutual Approval Process, Sarpy County shall consider reducing bidding requirements as permitted by law to obtain additional bidders or reduced bids, or (iii) pursuant to the Mutual Approval Process, Sarpy County and the ORoyals may elect, but shall not be obligated, to increase the Budget. In the event that after the expiration of such thirty (30) calendar day period, the cost of such work continues to exceed the Budget, during the next ten (10) calendar days, (X) the parties may mutually agree to continue the process provided above, or (Y) the ORoyals and Sarpy County may mutually elect, but shall not be obligated, to increase the Budget. Upon completion of the bidding process for such work, the Approved Construction Documents (as such may be revised pursuant to this Subsection 5.6(a)), shall be deemed the Final Plans with respect to the Stadium Improvements. In the event the Budget is increased, pursuant to this Subsection 5.6(a), such increased Budget shall be deemed the new Budget for purposes of this Agreement.

(b) In the event that the ORoyals and Sarpy County are unable to mutually agree (after utilizing the procedures set forth in this Article 5) that the estimated costs to complete the Stadium Improvements will not exceed the Budget, then either the ORoyals or Sarpy County may terminate this Agreement without further obligation hereunder or responsibility to pay any sum of money to the non-terminating party, upon thirty (30) days prior written notice to the other party.

5.7 Deferred Construction Items. Notwithstanding the foregoing provisions of this Article 5 to the contrary, pursuant to the Mutual Approval Process, Sarpy County and the ORoyals may elect, prior to the completion of such portion of the Stadium Improvements, to defer the completion of certain elements of the Stadium Improvements ("Deferred Items") to a time after the Completion Date, in which event the County shall complete construction of such Deferred Items after the Completion Date in accordance with the Final Plans, at its sole cost and expense as set forth in the Budget.

## 6. Stadium and Stadium Site Financing.

6.1 Stadium Financing. Sarpy County shall be responsible for securing financing consistent to design, develop and construct the Stadium, including the cost and expense of the land for the Stadium Site, Stadium Improvements, Stadium Site preparation costs, roads, rough grading, excavation costs, hardscaping and landscaping costs and any parking area costs related to the Stadium (collectively, the "Project"), in an amount which is necessary for Sarpy County to meet all of its obligations under the terms of this Agreement, such amount not to exceed the Maximum Project Budget Amount plus an amount equal all other fees and expenses incurred in connection with the issuance and payment of the Bonds, including, without limitation, the capitalized interest obligations on the Bonds.

(a) Project Budget. Pursuant to the Mutual Approval Process, a final budget for the Project shall be prepared and approved by Sarpy County (as amended in accordance with the Agreement, the "Budget"), which Budget shall not exceed the Maximum Project Budget Amount. When finalized, such Budget to be

attached hereto and incorporated herein as Exhibit C. The Budget shall include all costs and expenses related to the design, development and construction of the Stadium including, without limitation, all costs and expenses related to the acquisition of the of the land for the Stadium Site, stadium design, Stadium Site preparation costs, roads, rough grading, excavation costs, construction of the Stadium Improvements, hardscaping and landscaping costs, construction of any parking areas on the Stadium, concession stand build out (including, without limitation, permanent fixtures such as hoods and sinks, exhaust vents, electrical hook-ups, counters, countertops, roll-down doors, plumbing and sinks and lighting), Stadium scoreboard, scoreboard support structures and Stadium control room. The County shall be solely and completely responsible for any and all cost overruns, expenses, fees and charges of any kind for the design, development, construction and furnishing of the Stadium that exceed the Budget, except for change orders requested by the ORoyals which increase the Budget, the cost and expense of which shall be the responsibility of the ORoyals, subject to the provisions of Section 5.5(d).

(b) Increase in Budget. If the Market Bondable Amount is greater than the Budget, Sarpy County may elect in its sole discretion to either: (a) increase the Budget and adjust the Design Development Documents to reflect same; (b) increase the Budget to reflect additional expense related to the Stadium Site and/or infrastructure needed therefor; or (c) retain the Budget at the same amount so as to avoid undertaking greater debt burden and/or provide greater security for the Bonds in order to improve the financing terms thereof. In the event that Sarpy County does exercise its discretion to adjust the Design Development Documents pursuant to subpart (a) of this paragraph, such adjustments shall be made pursuant to the Mutual Approval Process.

## 6.2 Bonds.

(a) Sarpy County will use its reasonable best efforts to issue the Bonds for the purposes set forth in this Agreement. The proceeds from the sale of the Bonds will be applied as provided in the Bond Documents. Sarpy County acknowledges and agrees that the aggregate amount proposed to be raised under the Bonds shall equal no less than the amount of proceeds proposed to be received by the County set forth in the Budget.

(b) Sarpy County represents and warrants to the ORoyals that it has the requisite power and authority to execute and deliver this Agreement and perform the transactions and obligations to be performed by it hereunder, including, without limitation to issue the Bonds for the purposes set forth in this Agreement. Such execution, delivery and performance by Sarpy County have been duly authorized by all necessary municipality action, including without limitation the prior approval by the Sarpy County Board of Commissioners. Neither the execution and delivery of this Agreement by Sarpy County nor the performance of the transactions and obligations to be performed by it hereunder, requires any consent or approval from any third party that has not been previously obtained by Sarpy County.

(c) As soon as practicable following the date hereof, Sarpy County shall prepare the Preliminary Offering Statement and the related Bond Documents. Sarpy County shall provide any draft of the Preliminary Offering Statement or Bond Documents to the ORoyals for its input within a reasonable time period prior to filing or execution, and shall not file any Offering Statement or sign any Bond Document to which the ORoyals reasonably object. 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) June 1, 2009. Sarpy County shall use its reasonable best efforts to respond as promptly as practicable to any comments with respect thereto, and shall notify the ORoyals promptly of the receipt of any comments.

6.3 **Sarpy County Audit Rights.** Sarpy County shall have the right, at Sarpy County's sole expense, to conduct an audit of ORoyals' financial records during each year of the term. Sarpy County shall provide ORoyals with thirty (30) days notice of its intent to conduct such an audit. In its notice, Sarpy County shall state in detail the scope and extent of the audit it intends to conduct and the financial records it will need to have provided to it by ORoyals. The audit will be conducted by an independent certified public accounting firm reasonably acceptable to ORoyals.

6.4 **Budgetary Information.** On or prior to January 15th of each Lease Year, ORoyals shall provide Sarpy County a summary budget for the upcoming Lease Year which shall include ORoyals' projections by general category of Stadium revenues and Stadium expenses for such Lease Year. From time to time during each Lease Year, ORoyals shall advise Sarpy County of any material modifications or changes to such budget which will or are reasonably expected to result in an increase or decrease in the projections for Stadium revenues or Stadium expenses of more than ten percent (10%) for such Lease Year.

6.5 **Stadium Escrow.** Pursuant to the Mutual Approval Process, a Stadium escrow account ("Stadium Escrow") shall be established by the parties as a jointly controlled account to be used as the escrow account in connection with the payment of bills and invoices related to predevelopment expenses pursuant to Section 7.1(c).

6.6 **Adjacent Facilities.** If Sarpy County shall elect to own, finance, develop or facilitate the construction by third parties of facilities, right of ways, parking, or other improvements adjacent to the Stadium, the ORoyals agree to reasonably cooperate in connection with the development of such adjacent facilities in order that same can benefit Sarpy County and the citizens thereof provided that such development does not materially impair or alter the Stadium or the Stadium Site.

## 7. **ORoyals Financial Commitments.**

7.1 **Financial Commitments.** In consideration for the right to use, operate and manage the Stadium as provided in this Agreement, the ORoyals hereby agree to make the following financial commitments to the transactions contemplated by this Agreement: (i)

a capital contribution in the amount of Two Million and 00/100 Dollars (\$2,000,000.00) (the "Capital Contribution"); (ii) annual rent payments during the Term in the amount of Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) ("Annual Rent"); (iii) a contribution in the amount of Three Hundred Fifty Thousand Dollars and 00/100 Dollars (\$350,000.00) to a portion of certain predevelopment expenses incurred for the project; and (iv) assumption of all Operations and Routine Maintenance obligations and expenses of the Stadium. The ORoyals financial commitments shall be payable in the manner and at the times set forth below.

(a) **Capital Contribution.** The ORoyals' Capital Contribution in the amount of Two Million and 00/100 Dollars (\$2,000,000.00) shall be paid to Sarpy County in two (2) equal installments each in the amount of One Million and 00/100 Dollars (\$1,000,000.00). The first installment of the Capital Contribution shall be paid by the ORoyals to the Stadium Escrow on the Completion Date. The second and final installment of ORoyals' Capital Contribution shall be paid within fifteen (15) days after the end of the second (2nd) Lease Year during the Term.

(b) **Annual Rent.** The ORoyals shall pay Sarpy County Annual Rent during the Term in the amount of Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) per year, which shall be payable by the ORoyals to Sarpy County in semi-annual installments of Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00), the first installment of which shall be due and payable on the Completion Date and the second installment of which shall be due and payable six months thereafter or on December 1, 2011, whichever is sooner. All subsequent payments of Annual Rent shall be due and payable on June 1 and December 1 of each Lease Year commencing on June 1, 2012. At the conclusion of each five (5) year period of the Term, the Annual Rent for the succeeding five (5) year period of the Term shall be adjusted based on the increase in the CPI over such preceding five (5) year period. The Annual Rent shall be multiplied by a fraction, the denominator of which shall be the CPI figure for the first month of the then concluding 5-year period of the Term and the numerator of which is the CPI figure for the final month of the then concluding 5-year period of the Term. Provided, however, in no event shall the Annual Rent for any 5-year period be less than the Annual Rent for the immediately preceding 5-year period. The Annual Rent shall be used by Sarpy County solely to fund debt service on the Bonds or otherwise to fund the Capital Maintenance Fund until the Bonds have been paid in full and the Maximum Deposit Amount reached.

(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 June 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. Once the Predevelopment Contribution is exhausted, the ORoyals shall have no further obligation to fund predevelopment expenses for the project.

(d) **Assumption of Operations and Routine Maintenance.** During the Term of the Lease, ORoyals shall pay all Operations and Routine Maintenance costs of the Stadium pursuant to the provisions of Section 12 herein below.

7.2 **ORoyals FF&E.** The ORoyals shall be responsible for all furniture, fixtures and equipment as it deems necessary for installation at the Stadium to operate the Club and to otherwise operate and manage the Stadium ("FF&E"). Such FF&E will include, without limitation, all non-permanent concessions equipment and all non-permanent furniture, fixtures and equipment for the Suites. Such FF&E will not include concession stand build out (including, without limitation, permanent fixtures such as hoods and sinks, exhaust vents, electrical hook-ups, counters, countertops, roll-down doors, plumbing and sinks and lighting which are the responsibility of Sarpy County as noted above), communications, sound, audio/video equipment and wiring, Stadium scoreboard, scoreboard support structures or Stadium control room which shall all be included in the Budget. The Stadium scoreboard, scoreboard support structure and control room shall be subject to mutually agreed upon specifications established pursuant to the Mutual Approval Process; provided, however that same shall be generally consistent with new scoreboards installed at new "AAA" stadiums.

7.3 **Fundraising.** Sarpy County, with the advice and participation of the ORoyals, shall have the right to solicit contributions for the construction of the Stadium, which contributions shall be reflected in memorial plaques, bricks, payers or similar items to be located within the Stadium provided that such items do not materially interfere with the ORoyals rights under Section 9.5.

## 8. **Completion.**

8.1 **Beneficial Occupancy Date.** The ORoyals and Sarpy County agree to use their reasonable best efforts to have the Stadium available for Beneficial Occupancy on or before March 15, 2011 (the "Commencement Date"); provided, that the Stadium shall have received all necessary approvals including, without limitation, regulatory, League, Major League Baseball, National Association and the ORoyals approval, such that the Stadium can be used for its intended purpose of the Club playing its Club Home Games at the Stadium commencing no later than April 1, 2011.

8.2 **ORoyals Remedies.** The ORoyals intend to commence playing Club Home Games at the Stadium as soon as reasonably possible, but in no event later than April 1, 2011. The ORoyals acknowledge that Sarpy County shall not be responsible for delays in the completion of the Stadium, unless such delays are caused directly by Sarpy County or its

agents. Notwithstanding the foregoing it is specifically understood by and between the parties that if, through no fault of the ORoyals or its agents, the Stadium is not available for Beneficial Occupancy on or before March 15, 2011, the ORoyals shall have the right to schedule its activities or events at another stadium until the Stadium is available for Beneficial Occupancy and the ORoyals' Annual Rent obligations pursuant to this Agreement shall be null and void during such delay. In such event, the County shall pay the ORoyals an amount equal to One Hundred Thousand and 00/100 Dollars (\$100,000.00) per week in cash or wire transfer of funds, during the period of such delay plus any fines or penalties assessed by the Office of the Commissioner, the National Association or the League as a result of such delay in Beneficial Occupancy.

9. **Revenue Streams.** Except as provided in Section 4.3 above and in Sections 9.2 and 9.6(b) below, the ORoyals shall be entitled to all revenue streams, now known or hereafter devised, in connection with the operation of the Stadium. Without limiting the foregoing, the following provisions more specifically address certain revenue streams:

9.1 **Ticket Sales.**

(a) **Event Tickets.** The ORoyals, in its sole discretion, shall set ticket prices and entry fees for all events at the Stadium other than the County Events, including, without limitation, all season tickets and Suite subleases. The ORoyals shall be entitled to receive all revenues collected by the ORoyals for all tickets sold and admissions fees charged for all such events. The ORoyals shall have the sole and exclusive jurisdiction to provide complimentary tickets and Suites and related benefits to third parties, as well as to utilize tickets, Suites and related benefits for its own business, or League and management use.

(b) **Suites.** The ORoyals may sub-lease Suites for a term not to exceed the Term of this Agreement. The ORoyals, in its sole discretion, shall set prices for the sub-lease of all Suites, including but not limited to Suites for all events at the Stadium. The ORoyals shall be entitled to receive and retain one hundred percent (100%) of all revenues from the sub-lease of such Suites. The ORoyals agree and acknowledge that all Suite sublease agreements shall contain a provision that such agreement will terminate upon the termination of this Agreement.

9.2 **Naming Rights.**

(a) The ORoyals shall have the exclusive right to sell naming rights to the Stadium, including applicable parking areas, for the period beginning on the date hereof and ending on the first anniversary of the Completion Date subject to Sarpy County's prior review and written approval of the naming rights partner and the terms of the naming rights agreement (which approval shall not be unreasonably withheld or delayed), and except as otherwise set forth herein, to retain all revenues derived from such sale. The ORoyals agree that it shall pay to Sarpy County an amount of cash (the "Sarpy Naming Fee") equal to Fifty Percent (50%) of the amount by which the Average Yearly Naming Amount exceeds Three Hundred Thousand Dollars and 00/100 (\$300,000.00), for each year during the term of the agreement related to such naming rights. The ORoyals shall pay Sarpy County the Sarpy Naming

Fee within sixty (60) days after the end of each year during the term of the agreement related to such naming rights. The ORoyals agree that the Sarpy Naming Fee payable to Sarpy County shall be a component of any naming rights arrangement relating to the Stadium during the Term.

(b) In the event the ORoyals do not sell the naming rights prior to the first anniversary of the Completion Date, then Sarpy County shall have the right to sell such Stadium naming rights, subject to the ORoyals' prior review and written approval of the naming rights partner and the terms of the naming rights agreement (which approval shall not be unreasonably withheld or delayed), and except as otherwise set forth herein, to retain all revenues derived from such sale. The County agrees that it shall pay to the ORoyals an amount of cash (the "ORoyals Naming Fee") equal to Fifty Percent (50%) of the amount by which the Average Yearly Naming Amount exceeds Three Hundred Thousand Dollars and 00/100 (\$300,000.00), for each year during the term of the agreement related to such naming rights. The County shall pay the ORoyals the ORoyals Naming Fee within sixty (60) days after the end of each year during the term of the agreement related to such naming rights. The County agrees that the ORoyals Naming Fee payable to Sarpy County shall be a component of any naming rights arrangement relating to the Stadium during the Term.

(c) The ORoyals will provide the naming rights benefits outlined on Exhibit D in connection with such naming rights arrangement and all aspects of such naming rights arrangement shall be subject to Sarpy County's and/or the ORoyals, as applicable, prior right to approve (which approval shall not be unreasonably withheld or delayed). Any benefits a naming rights partner desires beyond those listed on Exhibit D may be purchased directly by such naming rights partner from the ORoyals and such revenues shall be retained solely by the ORoyals. Sarpy County's share of naming rights revenues shall be used solely to fund debt service on the Bonds or to otherwise to fund the Capital Maintenance Fund if the debt service on the Bonds has been retired. In the event a naming rights arrangement for the Stadium expires or is otherwise terminated prior to the expiration of the Term of this Agreement, the process outlined above for selling naming rights shall control with the ORoyals having a six (6) month period to sell such naming rights and then such rights reverting to Sarpy County as outlined above. Notwithstanding anything to the contrary in this Agreement, Sarpy County shall retain all naming rights in connection with all adjacent areas which do not include the Stadium or the parking areas (collectively "FED Naming Rights"); provided; however, that in no event shall any arrangement relating to such FED Naming Rights conflict with or impair the terms of any naming rights arrangement relating to the Stadium or the parking areas, without the prior written consent of the ORoyals.

(d) Notwithstanding anything to the contrary set forth herein, and specifically excluding the FED Naming Rights, the parties acknowledge and agree that any naming rights agreement shall be subject to the prior approval of the League, the NA and the Office of the Commissioner of Major League Baseball and in

all respects shall be subject to the then current rules and regulations of the League, the NA and the Office of the Commissioner of Major League Baseball.

9.3 **Parking.** Sarpy County shall provide to the ORoyals at no cost a mutually agreed upon number of "best location" paved parking spaces (no more than seventy-five (75) and no less than fifty (50)), which spaces shall be secured and inaccessible to the general public. In addition, Sarpy County shall provide additional paved parking spaces on no less than a four-to-one (4:1) seats (including both fixed and berm) to parking spaces ratio (or such other amount as may be required per league rules or applicable laws) immediately contiguous to the Stadium entrances, all of which shall be revenue producing parking spaces for the ORoyals. The ORoyals shall manage and operate the parking areas and shall set all fees associated therewith in consultation with Sarpy County. The ORoyals shall retain all net parking revenues derived from parking fees at Club Home Games, ORoyals Events and County Events at the Stadium during the Term. The ORoyals shall be solely responsible for the cost of management and operation of the parking areas (including the cost of any liability insurance relating thereto). The ORoyals acknowledge and agree to work in good faith with Sarpy County and appropriate third party developers with respect to entering into shared parking arrangements with respect to the use of the Stadium parking areas during times when the ORoyals are not utilizing such parking. Sarpy County acknowledges that Club Home Games and ORoyals Events shall have priority.

#### 9.4 **Concessions.**

(a) **Sales.** The ORoyals or its designees shall be the exclusive concessionaires at the Stadium and shall sell, and retain all revenues from, all concession items at all events held in and at the Stadium, including, without limitation, the County Events. Such concession items shall include but shall not be limited to, in the ORoyals' sole discretion, all foods, beverages (alcoholic and non-alcoholic), scorecards, programs, yearbooks, hats, jerseys, t-shirts, souvenirs, other sports apparel and merchandise, as well as any interactive games, video games, batting or pitching cages and other entertainment oriented retail or food service items, including any event-related activities scheduled by the ORoyals. The ORoyals' rights hereunder shall include, without limitation, the exclusive right to vend concession and novelty items from permanent or portable concession units located at the Stadium. Sarpy County agrees, to the extent permitted by law, to deny any other person or entity the right to sell concessions, novelty, food, beverage, and retail items in the Stadium. The ORoyals may assign any or all of its exclusive rights to sell concessions to such qualified third parties as the ORoyals may determine subject to Sarpy County's consent, which shall not be unreasonably withheld or delayed.

(b) **Equipment.** The ORoyals shall maintain at its own cost and expense all equipment, machinery, menu boards and related facilities necessary to sell such concessions during all Stadium events; provided, however, that Sarpy County shall be responsible for providing any exhaust vents, electrical hook-ups, counters, countertops, roll-down doors, plumbing and sinks, lighting, and any similar facilities as specified in the Facilities Criteria. For avoidance of doubt, Sarpy County acknowledges that it shall not use any of such concession space, equipment,

machinery, and fixtures installed and maintained by the ORoyals without the prior written consent of the ORoyals in each instance and, if approved in writing by the ORoyals, Sarpy County shall be responsible for any repairs resulting from damage to those items listed, and shall indemnify the ORoyals from any liabilities resulting from this damage or use.

9.5 **Advertising/Signage.** The ORoyals shall have the exclusive right and shall bear the cost to erect, install or affix commercial, non-commercial, directional, identifying, and any other signage, advertising and sponsorship material, banners, and related items, both temporary and permanent, on or in the Stadium, including, without limitation, on the outfield fences, interior and exterior walls, marquee or matrix signs, light standards, entrances, exits, pavilions and other public gathering places in the Stadium, for the purpose of promoting the ORoyals, Stadium advertising, third party products and services, designating or associating certain areas of the Stadium with third party products and services, and/or decorating or otherwise enhancing the Stadium, and the ORoyals may also include such third party advertising, marketing and promotion in and on any publications (including programs and scorecards) which may be sold at the Stadium and all revenues from all sources and all events derived from such advertising, as well as all promotions or sponsorships, shall be retained by the ORoyals. The ORoyals agree that no signage and/or advertising affixed to the Stadium shall advertise, promote, contain, depict or suggest illegal activity, sexually suggestive conduct and/or obscene or pornographic materials, political candidates or causes, or otherwise be inconsistent with the best interests of the residents of the County as determined by Sarpy County.

Notwithstanding the foregoing, Sarpy County shall have the right to sell and retain all revenues generated from the sale of temporary advertising in the Stadium arising directly from County Events, including but not limited to, temporary signage, temporary advertising on the field-side scoreboard message center and video display provided; however, that in no event shall such advertising conflict with or impair the terms of any ORoyals advertising arrangement, without the prior written consent of the ORoyals. In connection therewith, the ORoyals agree that Sarpy County can use the scoreboard and temporary signage as the County deems appropriate during County Events, provided that the County shall not replace or cover existing advertising except with the consent of the ORoyals.

9.6 **Media Rights.**

(a) **ORoyals Media Rights.** The ORoyals shall have the exclusive right to exploit all radio and television broadcast, telecast, webcast, cablecast, video on demand and all other forms of media and distribution rights whatsoever of all Club Home Games and ORoyals Events which may be scheduled, promoted, and held at the Stadium during the Term of this Agreement and shall retain one hundred percent (100%) of all revenues which may be generated thereby. The ORoyals shall exercise its right to distribute such events via all forms of media at such times and in such a manner as it shall consider appropriate.

(b) **Sarpy County Media Rights.** Sarpy County shall have the exclusive right to exploit all radio and television broadcast, telecast, webcast, cablecast, video on demand and all other forms of media and distribution rights

whatsoever of all County Events which may be scheduled, promoted, and held at the Stadium during the Term of this Agreement and shall retain one hundred percent (100%) of all revenues which may be generated thereby. Sarpy County shall exercise its right to distribute such events via all forms of media at such times and in such a manner as it shall consider appropriate.

9.7 **All Other Revenues.** The ORoyals shall be entitled to any other monies or revenues generated pursuant to other revenue streams derived from the use of the Stadium not described above.

10. **Security.** The ORoyals shall be responsible for providing security sufficient to control vehicular and pedestrian traffic within the Stadium and within the Stadium parking areas during Club Home Games and ORoyals Events. The ORoyals shall, at the ORoyals expense, provide qualified security and crowd control personnel to protect the public health, safety and welfare at all Club Home Games and ORoyals Events. Sarpy County shall, at its expense, provide qualified security and crowd control personnel to protect the public health, safety and welfare at all County Events.

11. **Utilities.** The Stadium shall be furnished with hot and cold domestic water, sufficient electrical and gas capacity to operate and manage the Stadium as contemplated herein (including, without limitation, capacity for lighting and equipment for night baseball games), sewage, field and grounds irrigation and drainage systems, and telephone service and similar services. The ORoyals shall bear the monthly operating cost of all such Stadium utilities.

12. **Stadium Management and Operations.**

12.1 **Stadium Management.** Subject to Sarpy County's rights under this Agreement, the ORoyals shall be responsible for the management and all aspects of the operation of the Stadium, including the nature of the events to be held at the Stadium other than baseball. The ORoyals shall develop policies designed to: (i) assure quality control; (ii) assure that the Stadium shall be run in a way that reflects positively on Sarpy County and encourages families to attend events; and (iii) whenever feasible, provide Sarpy County based entities, both public and private, with an opportunity to bid on services to be performed at and/or for the Stadium. Such policies shall be subject to the prior review and approval of Sarpy County, which approval shall not be unreasonably withheld.

12.2 **Stadium Operations and Routine Maintenance.** Unless otherwise provided in this Agreement to the contrary, following the Completion Date the ORoyals shall, at its sole cost and expense, be responsible for all "Stadium Operations and Routine Maintenance". "Stadium Operations and Routine Maintenance" shall be defined in a commercially reasonable manner as the provision of labor and materials which are required to keep, maintain and operate the Stadium in as good order and repair as exists on the Completion Date and in compliance with all applicable laws, regulations, orders and other governmental requirements applicable to the Stadium from time to time, subject to ordinary wear and tear, damage from casualty and events of condemnation. The standard of maintenance for the Stadium shall be that which is consistent with the standard of maintenance generally found in other AAA baseball stadiums not more than five years older

or five years younger than the Stadium. Examples of Routine Maintenance include, without limitation, the following:

(a) Keep, maintain and operate the Stadium and Stadium Site in as good order and repair, including, without limitation, those items which are of a routine, regular and predictable nature given the age of the Stadium and the use to which it has been put.

(b) Hiring and paying all personnel necessary for the staging of Club Home Games, ORoyals Events and other events including, without limitation, the cleaning, grounds keeping, security guards, emergency medical service providers, ticket sellers and takers, concessions, announcers, scoreboard, parking, utilities and maintenance personnel, all other day of game/event personnel, and the salaries and benefits of all personnel whose functions are reasonably related to Stadium operations and/or maintenance.

(c) Keep the Stadium clean and free of debris at all times, including, but not limited to, interior bowl seating, restrooms, press box, Club offices, Suite areas, concessions areas, clubhouses/locker rooms, exterior grounds and parking areas, including mowing all grass on the Stadium Site and within the Stadium parking areas on an as needed basis, but not less than every two weeks, landscape maintenance, trash litter pick-up after each Stadium event, snow removal at the Stadium Site and within the Stadium parking areas on an as needed basis, and all other cleaning of the Stadium.

(d) Garbage and trash removal from the Stadium, the parking areas and other areas of the Stadium.

(e) Mow, fertilize, seed, reseed, water, and otherwise maintain the baseball playing surface in the Stadium in accordance with League standards.

(f) Prepare and line the baseball playing surface of the Stadium prior to each Club Home Game and provide such grounds keeping and other maintenance services during such events as appropriate League standards shall require.

(g) Maintain and repair all baseball equipment, including all hitting screens, tarps, batting cages, portable backstops, all other moveable on field facilities and player equipment.

(h) Regular and routine maintenance of the HVAC, plumbing, electrical, water, sewage, and field irrigation and drainage systems, and escalators and elevators, including periodic cleaning, lubricating and servicing and replacement of incidental parts.

(i) Replace light bulbs, fuses and circuit breakers as they burn out or need replacement.

(j) Repair and maintain (including, without limitation, preventative or routine maintenance that is recommended in operating manuals for Stadium equipment) all equipment related to the Stadium and concessions, retail and entertainment activities at the Stadium.

(k) Provide pest control.

(l) Winterize the Stadium each fall to prevent freezing plumbing, pipes, and equipment in and around the Stadium.

(m) Routine maintenance and repair of the scoreboard, sound system and public address system.

(n) Maintain, repair and replace video boards and television monitors.

(o) Touch-up painting.

Except with respect to its obligations in connection with the Capital Maintenance Fund as described in Section 15 below, following the Completion Date Sarpy County shall have no maintenance or repair obligations under this Agreement and Sarpy County shall have no obligation to pay any Stadium operating expenses except as set forth in Section 4.3 above.

13. Capital Maintenance and Repairs. Sarpy County shall be responsible for the costs of the "Capital Maintenance and Repairs" of the Stadium and the Stadium Site. Conversely, the ORoyals shall have no obligation or liability with respect to Capital Maintenance and Repairs. "Capital Maintenance and Repairs" shall be defined in a commercially reasonable manner and consistent with the original construction as the provision of all labor and materials which are required to repair, restore and/or replace, when necessary, all structural components, systems components or integral components or parts of the Stadium and/or the Stadium Site. Structural components include but are not limited to all foundations, footings, structural members, piers, columns, walls, roofs, ramps and steps. Systems components include but are not limited to scoreboards, heating, ventilating, air conditioning, plumbing, electrical, gas and water systems, escalators and elevators, and integral components and parts include but are not limited to parking areas and access road surface and curb repairs, parking lot and access road lighting installations (such as towers, poles, wires and conduits), and light towers. Examples of Capital Maintenance and Repairs include, without limitation, the following:

(a) Replace and/or refurbish and/or overhaul of HVAC, plumbing, electrical, water and sewerage, security (fire and theft) systems (including, without limitation, fire pumps and motors, wet and dry sprinkler distribution piping and sprinkler heads and ansul systems), and all concessions fixtures and equipment provided by Sarpy County (e.g., exhaust vents, electrical hook-ups, counters, countertops, roll-down doors, plumbing and sinks, and lighting).

(b) Repair and/or replace cracked and/or disintegrated concrete spalling, traffic coatings, broken pipes, floor drains, traps and associated piping and/or leaking roofs and/or ceilings and/or sections thereof.

(c) Replace both isolated and entire sections of seats and seat standards, filigrees and cup holders, and integral components thereof including all replacement parts.

(d) Paint and reapply all paint and/or protective materials on all surfaces of the Stadium, including, without limitation, restrooms and any other areas to which the public has access, as well as the recoating and/or repainting of all portions of the roof and exposed steel structure no more frequently than every five (5) years, application of applied sealants and coatings (waterproof and otherwise) to all concrete floors, wall panels and other surfaces no more frequently than every five (5) years, reapplication of slip-resistant materials on all walkways and surfaces no more frequently than every five (5) years, recaulking and replacement of pre-formed gaskets on all expansion joints located in the floors or in the walls no more frequently than every five (5) years.

(e) Repair and replace all walls and fencing, including the outfield wall, interior walls, and other exterior and perimeter chain link and other fencing exclusive of that portion of the fence or wall used for advertising purposes.

(f) Repair and replace scoreboard.

(g) Repairs due to electrical failures or short circuits in risers, panels, disconnects, transformers, circuit boards, main switches and overload protection and control hardware.

(h) Maintain any asphalt, gravel and other automobile and footpath surfaces on the Stadium Site on a periodic basis.

(i) A periodic structural review of the Stadium every five (5) years to ensure that the Stadium maintains its structural integrity in compliance with all applicable laws, codes and regulations.

(j) Elevator operational, safety and performance upgrades required by code changes or direction of County inspector.

(k) If necessary, replacement of carpeting, ceramic or vinyl after the tenth (10th) year of operation of the Stadium and not more than once every ten (10) years.

(l) Replace field lighting lamps and ballast per manufacturers recommendations on lamp life.

14. **Performance of Capital Maintenance and Repairs.** All Capital Maintenance and Repairs shall be scheduled and performed pursuant to the Mutual Approval Process.

Such work may be performed by the ORoyals' or County's employees or other reputable contractors and subcontractors, it being the objective of the parties that such work be completed in an economical and efficient manner, consistent with the nature and quality of the Stadium, and in accordance with all applicable federal, state and local laws, ordinances and regulations. The ORoyals shall not be responsible in any way for paying for any items involving Capital Maintenance and Repairs unless such repair is due to intentional acts or gross negligence of the ORoyals or its contractors, agents or invitees, in which event the ORoyals shall be solely responsible, at its sole cost and expense, for performing such Capital Maintenance and Repair work. Any insurance proceeds received by the ORoyals or Sarpy County with respect to a Capital Maintenance and Repair obligation shall be deposited into the Capital Maintenance Fund.

15. Capital Maintenance Fund.

15.1 Funding.

(a) Sarpy County shall establish an on-going capital maintenance fund for Capital Maintenance and Repairs for the Stadium (the "Capital Maintenance Fund"). On or prior to September 15, 2011 and on each September 15 thereafter during the Term (subject to Sections 15.1(b) and 15.4), Sarpy County shall deposit at least One Hundred Thousand and 00/100 Dollars (\$100,000.00) into the Capital Maintenance Fund; provided, however, that at no time shall the balance of the Capital Maintenance Fund exceed Five Hundred Thousand and 00/100 Dollars (\$500,000)("Maximum Deposit Amount") and provided further that the Maximum Deposit Amount shall not serve as a limit on the obligation of Sarpy County to perform all required Capital Maintenance and Repairs hereunder. During the Term the parties shall evaluate the annual commitment of Sarpy County to the Capital Maintenance Fund, based on the forecasted needs of the Stadium, including, without limitation, recommendations which may be included in the periodic structural review of the Stadium, alterations or improvements to the Stadium required to meet professional baseball standards of the League, the National Association or other governing body after the date of this Agreement. The Capital Maintenance Fund shall be maintained as a separate fund by Sarpy County and the amounts in the Capital Maintenance Fund, including all earnings on such amounts, shall be disbursed from time to time solely for the purpose of financing Capital Maintenance and Repairs at the Stadium during the Term. All disbursements of such funds shall be subject to the ORoyals and Sarpy County's prior approval (which approval shall not be unreasonably withheld or delayed). The funds in the Capital Maintenance Fund shall be managed and invested pursuant to applicable county, state and federal law and regulations. Capital Maintenance and Repairs in excess of any funds accumulated in the Capital Maintenance Fund shall remain the responsibility of Sarpy County and nothing in this subsection shall be construed to relieve Sarpy County of its obligation to pay for all mutually agreed upon Capital Maintenance and Repairs. In the event there are any monies in the Capital Maintenance Fund at the end of the Term or the earlier termination of this Agreement, provided that the Bonds have been paid off and retired, then such monies shall be returned to Sarpy County.

(b) At the conclusion of each five (5) year period of the Term, the Maximum Deposit Amount shall be adjusted based on the increase in the CPI over such preceding five (5) year period. To that end, as and if applicable, the annual contribution by Sarpy County to the Capital Maintenance Fund shall be multiplied by a fraction, the denominator of which shall be the CPI figure for the first month of the then concluding 5-year period of the Term and the numerator of which is the CPI figure for the final month of the then concluding 5-year period of the Term. The product of this increased annual contribution to the Capital Maintenance Fund shall be paid by Sarpy County to the extent the Capital Maintenance Fund is not funded to the Maximum Deposit Amount.

**15.2 Procedure for Use of Capital Maintenance Fund.** The ORoyals will submit requests for funds from the Capital Maintenance Fund to Sarpy County during the Term as necessary to undertake Capital Maintenance and Repairs for the Stadium. Upon the presentation of supporting documentation for such expenses, Sarpy County shall approve the expenditure so long as it determines in good faith that the expenditure(s) is a Capital Maintenance and Repair. If, within thirty (30) days after plans for such Capital Maintenance and Repairs have been submitted and delivered by the ORoyals to Sarpy County for such approval, Sarpy County has not given the ORoyals written notice of disapproval thereof, stating the reason for such disapproval, then the plans shall be considered approved by Sarpy County. Once the request is approved, then the Capital Maintenance and Repairs shall be completed as soon as reasonably practicable.

**15.3 Emergency.** Any Capital Maintenance and Repairs necessitated by an Emergency shall not require prior written approval of Sarpy County; provided, however, that the ORoyals shall immediately contact Sarpy County in the event of an Emergency and provide Sarpy County with all pertinent information pertaining thereto that Sarpy County may reasonably request. Sarpy County shall pay the cost and expense of any Emergency Capital Maintenance and Repairs.

**15.4 Bond Proceeds.** In its sole discretion, Sarpy County may utilize the Bonds to generate proceeds equal to the Maximum Deposit Amount ("Capital Repair Bond Proceeds"), which Capital Repair Bond Proceeds shall be deposited into the Capital Maintenance Fund and shall obviate the obligations of Sarpy County pursuant to Section 15.1(a); provided, however, that the Capital Repair Bond Proceeds shall be not be considered a component of the Budget hereunder nor shall such Capital Repair Bond Proceeds be deposited into the Capital Maintenance Fund until Sarpy County has complied with all other obligations to fund the construction of the Stadium hereunder.

## **16. ORoyals Improvements.**

**16.1 Discretionary Improvements.** After date of Beneficial Occupancy, the ORoyals shall have the right, from time to time, at its own expense, to make alterations and improvements to the Stadium, as shall be reasonably necessary or appropriate in the ORoyals' judgment, for the ORoyals conduct of its business, provided that prior to the commencement of any alteration or improvement, the ORoyals shall have provided Sarpy County with written notice of its plans and specifications and Sarpy County shall have approved such plans in writing (such approval not to be unreasonably withheld or delayed),

and further provided that such alterations or improvements do not materially affect the structure or systems or the aesthetic appearance of the Stadium or violate any applicable laws, ordinances or alterations. Such alterations or improvements shall be performed in a good and workmanlike manner. Further, any maintenance and/or repairs relating to any such alterations and/or improvements shall remain the sole responsibility of the ORoyals.

**16.2 Professional Baseball Required Improvements.** The ORoyals shall provide Sarpy County with written notice of any alterations or improvements to the Stadium required to meet professional baseball standards of the League, National Association or other governing body after the date of this Agreement and applicable to ORoyals playing at the same professional baseball classification level as the Club, and Sarpy County shall be obligated to approve, and upon such approval, make any such alterations and improvements in such reasonable time frame as is required by the applicable League in order to meet such standards, provided funds are available in the Capital Maintenance Fund.

**17. Return of Stadium.** Subject to Section 3.2, at the end of the Term or any earlier termination of this Agreement, the ORoyals agree to return the Stadium to its original or subsequently improved condition, ordinary wear and tear excepted, and to return to Sarpy County all equipment and personal property of Sarpy County in good working condition, ordinary wear and tear excepted, in each case after inspection of the Stadium, which inspection shall be made jointly by Sarpy County and the ORoyals. Promptly after such inspection at the termination of any occupancy, the ORoyals shall have the option to either (i) make any necessary repairs; or (ii) pay Sarpy County for any damages to the premises or to personal property, ordinary wear and tear excepted, except to the extent said damage was caused by the assigns, agents, affiliates, employees or officers of Sarpy County. The ORoyals shall have the right upon termination of this Agreement, within sixty (60) days thereafter, to remove from the Stadium all movable property which is not permanently affixed to the structure and which is not owned by Sarpy County, including without limitation all concession equipment and broadcasting equipment which is not permanently affixed to the structure and which is not owned by Sarpy County, provided that the ORoyals shall repair any damage caused by removal of such items to the reasonable satisfaction of Sarpy County.

**18. Taxes.**

**18.1** Sarpy County shall be responsible for the full amount of any and all real estate taxes, if any, which may be assessed or imposed upon the Stadium and/or the Stadium Site premises, land, and leasehold improvements owned by Sarpy County. Sarpy County shall indemnify the ORoyals for any tax liability for which Sarpy County is responsible hereunder, which indemnification will survive the termination of this Agreement.

**18.2** The ORoyals shall be responsible for all applicable ad valorem, possessory interest, sales or other similar taxes, assessments, licenses and charges on its operations, as well as on goods, merchandise, appliances, equipment and property owned by it and located in or about the Stadium, the Stadium Site and/or the Stadium Improvements for which an exemption is not available. 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 or their affiliates or designees that are not generally applicable to all other businesses in the County. This provision shall in no way be construed as restricting Sarpy County or the ORoyals from contesting the legality of any tax or assessment on the Stadium, the Stadium Site and/or the Stadium Improvements or the ORoyals interest therein or operation thereof. The ORoyals shall indemnify Sarpy County for any tax liability for which the ORoyals are responsible hereunder, which indemnification will survive the termination of this Agreement.

19. Operating Permits. The ORoyals shall be responsible for securing such permits, variances, and licenses as may be necessary or desirable to operate the Stadium as is contemplated by this Agreement, including without limitation applicable liquor licenses and food permits, and Sarpy County agrees to render such reasonable assistance in connection therewith as the ORoyals may request and as may be permitted under applicable law.

20. Insurance.

20.1 ORoyals Insurance. Throughout the Term of this Agreement, including any extensions thereof, the ORoyals shall provide and maintain, at its expense, the policies of insurance set forth on Exhibit F, which shall protect Sarpy County and ORoyals from any claim, damage, liability, loss or expense to persons or property (hereinafter, "Claims") caused by, resulting from, arising out of or in connection with the duties and obligations of the ORoyals pursuant to this Agreement.

All such insurance required above shall be primary and non-contributory, written by insurance companies qualified to do business in the State of Nebraska with A.M. Best ratings reasonably acceptable to County; provided, however, that with respect to any proposed insurer not so rated, the financials of such insurer or insurance pool shall be provided to Sarpy County in connection with such review and approval process. All policies, other than automobile liability and workers compensation, shall be endorsed to name Sarpy County as an Additional Insured. All insurance policies shall provide that coverage thereunder may not be materially changed, reduced or cancelled unless thirty (30) days prior written notice thereof is furnished to Sarpy County. The ORoyals shall bear all costs of all deductibles and shall remain solely and fully liable for the full amount of any Claim not compensated by insurance. Upon request, the ORoyals shall furnish to Sarpy County certificates of insurance for all of the above policies. The ORoyals hereby agrees to furnish renewal certificates throughout the term of the Agreement.

20.2 Sarpy County Insurance. Throughout the Term of this Agreement, including any extensions thereof, Sarpy County shall provide and maintain, at its expense, the policies of insurance set forth on Exhibit G, which shall protect Sarpy County and the ORoyals from any Claims caused by, resulting from, arising out of or in connection with the duties and obligations of Sarpy County pursuant to this Agreement including policies which shall protect Sarpy County and the ORoyals from any Claims caused by, resulting from, arising out of or in connection with the design and construction of the Stadium, the Site and appurtenant improvements; provided, however that with respect to the insurance policies for Claims caused by, resulting from, arising out of or in connection with the design and

construction of the Stadium, the Site and appurtenant improvements, Sarpy County shall require that the relevant Project Architect, Project Manager and General Contractor provide such insurance coverage. All such insurance required above shall be primary and non-contributory, written by insurance companies qualified to do business in the State of Nebraska with A.M. Best ratings reasonably acceptable to ORoyals; provided, however, that with respect to any proposed insurer not so rated, the financials of such insurer or insurance pool shall be provided to the ORoyals in connection with such review and approval process. All policies, other than automobile liability and workers compensation, shall be endorsed to name the ORoyals as an Additional Insured. All insurance policies shall provide that coverage thereunder may not be materially changed, reduced or cancelled unless thirty (30) days prior written notice thereof is furnished to the ORoyals. Sarpy County shall bear all costs of all deductibles and shall remain solely and fully liable for the full amount of any Claim not compensated by insurance. Upon request, Sarpy County shall furnish to the ORoyals certificates of insurance for all of the above policies. Sarpy County hereby agrees to furnish renewal certificates throughout the term of the Agreement.

**20.3 Waiver of Subrogation.** Every insurance policy carried by either party in connection with this Agreement shall include provisions denying the insurer subrogation rights against the other party to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. Accordingly, Sarpy County and the ORoyals waive all rights against each other (and against the agents, employees, representatives and/or insurers of the other) for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party (its agents, employees, and/or representatives); provided, however, that (a) this waiver of rights shall only be applicable to the extent of insurance proceeds actually paid to the parties suffering such loss or damage; and (b) this waiver of rights shall in no way diminish the indemnity obligations of Sarpy County or the ORoyals as set forth in Section 21 of this Agreement. Sarpy County and the ORoyals shall give written notice of the terms of this mutual waiver of rights to their respective insurers and shall have their insurance policies endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of this waiver of rights.

## **21. Indemnification.**

**21.1 ORoyals Indemnification Obligations.** To the fullest extent permitted by law, ORoyals shall indemnify, defend and hold harmless Sarpy County from and against any and all claims, damages, liabilities, losses or expenses, including without limitation court costs and reasonable attorneys' fees, caused by, resulting from or arising out of: (i) the failure to perform the duties and obligations of ORoyals pursuant to this Agreement; (ii) any negligent or grossly negligent action, inaction, omission or intentional misconduct by ORoyals; (iii) any conduct or activities of ORoyals which violates any applicable state or local law, rule, regulation or ordinance; and/or (iv) any misrepresentation, breach or alleged breach of any of obligations, representations or warranties contained in this Agreement by ORoyals.

**21.2 Sarpy County Indemnification Obligations.** To the fullest extent permitted by law, Sarpy County shall indemnify, defend and hold harmless ORoyals from and

against any and all claims, damages, liabilities, losses or expenses, including without limitation court costs and reasonable attorneys' fees, caused by, resulting from or arising out of: (i) the failure to perform the duties and obligations of Sarpy County pursuant to this Agreement; (ii) any negligent or grossly negligent action, inaction, omission or intentional misconduct by Sarpy County; (iii) any conduct or activities of Sarpy County which violates any applicable state or local law, rule, regulation or ordinance; and/or (iv) any misrepresentation, breach or alleged breach of any of obligations, representations or warranties contained in this Agreement by Sarpy County.

22. **Limitation of Liability.** Except for the indemnification obligations of each party set forth in Section 21 above, in no event shall any party be liable for incidental, special, consequential or punitive damages suffered by a party and each party shall in all events seek to mitigate its damages to the extent required by law; provided, however, in the event that a party incurs an indemnifiable loss as a result of a third-party claim that includes liability for any incidental, special, consequential or punitive damages, the indemnification of each party set forth in Section 21 shall include liability for such incidental, special, consequential or punitive damages.

23. **Time is of the Essence.** In all matters concerning or affecting this Agreement, time is of the essence.

24. **Quiet Use and Enjoyment.** During the Term of the ORoyals use and occupancy of the Stadium under this Agreement, the ORoyals shall have and be entitled to the quiet enjoyment with respect to the use and occupancy of the Stadium and the privileges herein granted without interruption or interference by any person including, specifically, Sarpy County, and Sarpy County shall defend the ORoyals in such peaceful and quiet use and possession against the claims of all persons claiming by, through or under Sarpy County, except to the extent that certain rights to use the Stadium, or any portion of it, may be reserved to Sarpy County for County Events in accordance with this Agreement. Except as otherwise contemplated by this Agreement, there shall be no use of personal property owned or controlled by the ORoyals without the ORoyals prior written consent.

25. **Destruction of Stadium.** If all or any significant portion of the Stadium is damaged or destroyed by fire or other casualty, Sarpy County shall repair and rebuild the Stadium with thorough diligence to a substantially similar condition as immediately before such loss or the condition required by law, whichever is greater, with such repair and rebuilding to be completed as soon as is possible giving due attention to the Baseball Season after such fire or other casualty occurs and in any event not later than twelve (12) months after such fire or other casualty occurs. If there is substantial interference with the operation of the ORoyals' activities or use of the Stadium requiring the ORoyals to temporarily use other stadium facilities, there shall be an abatement of all monies due hereunder from the ORoyals to Sarpy County for the period of such interference. It is specifically understood by and between the parties that during the period of such interference, the ORoyals shall have the right to schedule its activities or events at another stadium and the ORoyals' obligations pursuant to this Agreement shall be abated during such interruption. If the Stadium is not, cannot, or will not be restored to a substantially similar condition as immediately before such casualty or the condition required by law, whichever is the greater, within twelve (12) months after the fire or other casualty occurs,

the ORoyals or Sarpy County may void this Agreement and neither party shall have any claim whatsoever against the other party as a result thereof.

26. Condemnation.

(a) If the Stadium is taken by any State of Nebraska or United States public authority pursuant to the power of eminent domain, then this Agreement shall terminate as of the date possession is taken by the public authority and neither party shall have any claim whatsoever against the other party as a result thereof.

(b) If part of the Stadium or substantial part of the Stadium Site is taken by any State of Nebraska or United States public authority pursuant to the power of eminent domain and in the reasonable opinion of either Sarpy County or the ORoyals it is not economically feasible to continue this Agreement, either party may terminate this Agreement under the following terms and conditions:

(i) Such termination by either party shall be made by written notice to the other given not later than ninety (90) days after the date possession is taken by the public authority; and

(ii) Termination is effective thirty (30) days after such notice is given, or the date possession is taken, whichever is later.

Neither party shall have any claim whatsoever against the other party as a result thereof.

(c) If neither Sarpy County nor the ORoyals elect to terminate this Agreement, Sarpy County shall make such repairs or alterations, if any, as are required to render the remainder of the premises useable for the purpose of playing professional baseball.

(d) Notwithstanding the foregoing, the ORoyals may assert a claim against the condemning authority for disruption or relocation of the ORoyals' business or for the ORoyals' property located on the premises but not for the Stadium or Stadium Site improvements.

27. Covenants.

27.1 ORoyals Covenants. The ORoyals make the following additional covenants for the Term of this Agreement:

(a) The ORoyals shall assure that the Club maintains good standing with the League or its successor(s) and that the Club shall maintain play as a AAA baseball team; provided, however, that in the event of the dissolution of the League, or in the event of the Club's loss of membership therein through no fault of its own, the ORoyals agree to assure the use of reasonable and financially feasible means to

obtain membership in another such organization and maintain the status of, or equivalent to, a class AAA ball club;

(b) The ORoyals agree that pricing of baseball tickets, concessions and parking shall be in amounts so as to encourage and facilitate attendance by families to all baseball games in the Stadium; and

(c) During the Term, the ORoyals shall preserve in good standing its limited partnership or separate legal existence and all its rights and licenses to the extent necessary or desirable in connection with the operation of its business and affairs and to be qualified to do business in the State of Nebraska.

27.2 **Sarpy County Covenants.** Sarpy County, its successors or assigns, covenants that for the Term of this Agreement, it shall not offer any financial incentives, or assist in establishing or locating, any other professional baseball franchise within Sarpy County.

28. **Recording.** A memorandum of this Agreement reflecting the material terms hereof, including any material amendments hereto, shall be recorded in the real estate records of Sarpy County, Nebraska.

29. **Club Name.** The ORoyals specifically reserve the right to change the name of the Club upon prior written notice to and approval by Sarpy County, which approval shall not be unreasonably withheld or delayed.

30. **Notices.** Any and all notices required or permitted to be given hereunder shall be deemed given when actually received, if delivered personally, or upon receipt, if deposited with the U.S. Postal Service, first class postage prepaid, certified or registered mail, return receipt requested and addressed as follows:

(a) If to the ORoyals: Alan M. Stein  
President & CEO  
Omaha Royals Limited Partnership  
c/o Lexington Legends Baseball Club  
207 Legends Lane  
Lexington, KY 40505

With a copy to: Howard L. Meyers  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103

(b) If to Sarpy County Mark S. Wayne  
Sarpy County Administrator  
Sarpy County Administration Building  
1210 Golden Gate Drive, Suite 1126  
Papillion, NE 68046

With a copy to: Kermit A. Brashear, Esq.  
Brashear LLP  
North Old Mill  
711 No. 108th Court  
Omaha, NE 68154

31. Assignment.

(a) Except as hereafter provided, neither the ORoyals nor Sarpy County may assign, convey, or transfer this Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld or delayed.

(b) Notwithstanding the foregoing, the ORoyals interest in this Agreement may be assigned, conveyed, or transferred upon prior written notice to, but without the prior consent of, Sarpy County if the ORoyals is sold or merged, or if a majority in interest of the ORoyals or its ownership of the Club is transferred, and such sale, conveyance, or transfer is approved by the League, and a third party purchaser that is awarded the franchise of the Club or of the majority interest therein obligates itself in writing to this Agreement in exactly the same manner as the ORoyals are obligated by this Agreement, and the use of the Stadium shall remain a "AAA" baseball stadium, in which case such purchaser shall have all of the rights and obligations of the ORoyals hereunder and the ORoyals shall have no further obligations or liability hereunder; or such assignment, conveyance or transfer is made to any person, entity, or firm controlled by, controlling, or under common control of the ORoyals, and such person, entity, or firm obligates itself in writing to this Agreement in exactly the same manner as the ORoyals are obligated by this Agreement, and the use of the Stadium shall remain a "AAA" baseball stadium obligates itself hereunder.

(c) Notwithstanding the foregoing, Sarpy County's interest in this Agreement may be assigned, conveyed, or transferred upon prior written notice to, but without the prior consent of, the ORoyals to any governmental authority or authorities, and Sarpy County may pledge any sums to which Sarpy County is entitled to under this Agreement or any other interest Sarpy County has in this Agreement, in whole or in part, as security for the repayment of the Bonds.

32. Franchise Commitments. Notwithstanding any other provision of this Agreement to the contrary, the ORoyals agree as follows: (a) the ORoyals shall not enter into any contract or other agreement of any kind to transfer the ORoyals baseball franchise to a location other than the Stadium during the Term; (b) subject only to the provision of Section 8.2 hereof, the ORoyals commit to play all of its Club Home Games at the Stadium; and (c) Sarpy County shall be entitled to seek and obtain an injunction from a court of competent jurisdiction to enjoin any violation of this Section 32.

33. Binding Effect. This Agreement shall inure to the benefit of and remain fully binding upon the parties hereto and their respective successors and permitted assigns.

34. **Status of Parties.** The parties hereto shall be deemed and construed as independent contractors for all purposes and not as the agent, employee, representative, servant or partner of the other.

35. **No Waiver or Breach.** No failure of either party to insist upon exact compliance with the terms and provisions herein contained shall be deemed or construed as a waiver of any subsequent breach of this Agreement.

36. **Severability.** If any provision(s) of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect unless so construing the Agreement would produce an inequitable result.

37. **Governing Law and Jurisdiction.** This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska. The parties hereby submit to the jurisdiction of the United States District Court for the District of Nebraska or any Nebraska state court sitting in Omaha for the purposes of all legal proceedings arising out of or relating to this Agreement and the parties irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the venue of any such proceeding which is brought in such a court.

38. **Multiple Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be original and all of which shall constitute on and the same instrument.

39. **Entire Agreement.** This Agreement and the Exhibits shall constitute the entire agreement between the parties hereto with respect to the subject matter herein contained. There are no agreements or understandings between the parties hereto, whether oral or written, regarding the subject matter hereof, which have not been embodied herein or incorporated herein by reference. This Agreement may not be modified or amended, nor any of its Sections waived, except by an agreement in writing signed by the party against whom the enforcement of any such modification, amendment or waiver is sought.

40. **League, MiLB and MLB Approval.** This Agreement shall be subject to the prior and ongoing approval of the League, Minor League Baseball and Major League Baseball and in all respects shall be subject to the then current rules and regulations of the League, Minor League Baseball and Major League Baseball.

41. **Best Efforts to Complete.** The ORoyals and Sarpy County will at all times use their best efforts to complete the Stadium in the time frame set forth herein and to seek the assistance of each other where and when necessary.

42. **Force Majeure Event.** Except as otherwise herein expressly provided, if either party shall be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder, other than one for the payment of money, as a result of any Force Majeure Event, and, provided, that the party delayed, hindered or prevented from performing notifies that other party promptly, but not later than five (5) business days after any such delay, hindrance or prevention, then the performance of such covenants or obligation, other than one for the payment of money, shall be excused from the period of

such delay, hindrance or prevention and the period for the performance of such covenant or obligation shall be extended by the number of days equivalent to the number of days of the impact of such delay, hindrance or prevention. Failure to so provide the notice as to a delay will result in waivers of both excuse in performance and extension of time to perform under this Section 42 with respect to any such delay. Notwithstanding the foregoing, it is expressly understood by the parties that a strike by baseball players at the level then playing for the ORoyals is not a Force Majeure Event.

43. **Prorations.** Any apportionment or prorations related to the use of the Stadium under this Agreement shall be computed on the basis of a year containing three hundred sixty-five (365) days, consisting of twelve (12) months of the actual number of days of each.

44. **Obligations.** The obligations and undertakings of Sarpy County and the ORoyals under or in accordance with this Agreement are and shall be the obligations solely of Sarpy County and the ORoyals. No recourse shall be had, whether in contract, in tort or otherwise against any officer, director, employee, agent, member, volunteer or representative of Sarpy County or the ORoyals in his or her individual capacity on account of any obligations or undertakings of or any act or omission by Sarpy County or the ORoyals under or pursuant to this Agreement.

45. **Representations.** Each party hereto represents and warrants to the other that (i) it has all necessary right, power and authority to enter into this Agreement, and (ii) the execution and delivery of this Agreement and the performance and observance of all obligations and conditions to be performed or observed by such party have been duly authorized by all necessary action on behalf of such party.

46. **Subordination of ORoyals' Interest.**

46.1 It is understood by the Parties that Sarpy County is entering into this Agreement in anticipation of financing the construction costs and other related Sarpy County expenses through a Bond financing transaction. Sarpy County intends to enter into numerous financing documents for the purpose of issuing Bonds to fund the Stadium costs. The ORoyals agree that any interest created in this Agreement of any kind shall be subordinated and junior to any interest in bondholders, underwriters or other third parties commercially necessary for Sarpy County to issue the Bonds. The ORoyals further agree to execute and sign any agreement necessary to subordinate any interest the ORoyals may have under this Agreement for purposes of the Bond transaction.

46.2 Sarpy County agrees that the ORoyals' possession of the Stadium shall not be disturbed by bondholders, underwriters, trustees or other third parties ("Bond Parties") related to the Bond transaction during the Term of this Agreement, and Sarpy County shall not join the ORoyals in any action or proceeding for the purpose of terminating this Agreement, except upon the occurrence of a default by the ORoyals under this Agreement and the continuance of such default beyond any cure period given to the ORoyals under this Agreement.

46.3 If Bond Parties obtain possession of the Stadium, the ORoyals shall attorn to any rights of the Bond Parties acquired in accordance with the Bond Documents,

be bound to the Bond Parties in accordance with all of the provisions of this Agreement and related documents and agreements for the balance of the Term of this Agreement, and recognize Bond Parties as Sarpy County under this Agreement for the unexpired Term. Such attornment shall be effective without Bond Parties being: (i) subject to any offsets or defenses, or otherwise liable, for any prior act or omission of Sarpy County; (ii) bound by any amendment, modification, or waiver of any of the provisions of this Agreement, or by any separate agreement between Sarpy County and the ORoyals relating to the Stadium, unless any such action was taken with the prior written consent of the Bond Parties; (iii) liable for the return of any security or other deposit unless the deposit has been paid to the Bond Parties; or (iv) bound by any payment of rent or other monthly payment under this Agreement made by the ORoyals more than one (1) month in advance of the due date.

46.4 Notwithstanding any provision of this Section 46 to the contrary: (i) in no event shall the Bond Parties be permitted to modify or amend any of the terms or conditions of this Agreement or any related documents and agreements, or County's obligations hereunder or thereunder, without the express written consent of the ORoyals; and (ii) in the event that the Bond Parties obtain possession of the Stadium, the ORoyals shall be permitted to continue to occupy the Stadium and otherwise receive all benefits of the County's obligations hereunder and the Bond Parties and the ORoyals shall be bound to all of the provisions of this Agreement and related documents and agreements for the balance of the applicable term.

47. Anti-Discrimination Clause. Neither Sarpy County nor the ORoyals shall discriminate on the basis of race, color, political or religious opinion or affiliation, creed, age, physical or mental handicap, sex, marital status, ancestry or national origin in the performance of this Agreement and their respective duties and obligations hereunder. This shall apply to all parties and organizations which receive permission for the use of all or any portion of the Stadium. Sarpy County and the ORoyals shall comply with all applicable state, local and federal laws, rules, regulations, executive orders and agreements pertaining to discrimination in employment practices and affirmative action.

48. Exclusivity. From and after 5:01 pm (Central Time) on June 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 June 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.

*[Remainder of the page intentionally left blank]*

IN WITNESS WHEREOF, this Agreement 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 Agreement 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, Sarpy County Board of Commissioners

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Sarpy )

Subscribed and sworn to before me this 17<sup>th</sup> day of March, 2009.



Debra J. Houghtaling  
Notary Public

[SIGNATURES CONTINUED ON NEXT PAGE]

OMAHA ROYALS LIMITED PARTNERSHIP,  
a Nebraska limited partnership

By:

*William H. Shea, Jr.*

Name: William H. Shea, Jr.

Its: Authorized Signatory

STATE OF Pennsylvania )

) ss.

COUNTY OF Montgomery )

Subscribed and sworn to before me this 12<sup>th</sup> day of MARCH, 2009.

*Kimberley C. McGorder*

Notary Public

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

Kimberley C. McGorder, Notary Public  
Whitpain Twp., Montgomery County  
My Commission Expires April 7, 2009  
Member, Pennsylvania Association of Notaries

EXHIBIT A  
FACILITIES CRITERIA

Site	Units	Area (SF)	Allowance
<b>Parking Stalls Total</b>	2,000	-	-
Minimum Public Paved Parking Stalls	1,500	-	-
Minimum Team/Staff Paved Parking Stalls	75	-	-
RV Parking Stalls with Service	8	-	-
TV Truck Parking	-	3,000	-
<b>Seating / Spectator Facilities</b>			
Fixed Seating Lower Bowl	5,694	-	-
6 Concourse Level Private Suites (18 Seats each)	108	-	-
8 Suite Level Private Suites (12 seats each)	96	-	-
1 Field Level Dugout Suite	18	-	-
Suite Level Club Seats (Conditioned Club)	44	-	-
Suite Outdoor Party Deck	40	-	-
Sloped Grass Berm Seating	1,750	-	-
Section of Tiered Grass Seating	250	-	-
Picnic Area One (Partial Field Views)	1,000	-	-
Picnic Area Two (Field Views)	250	-	-
Picnic Area Three (Tiered Deck)	250	-	-
<b>Playing Field Facilities</b>			
Playing Field	1	-	-
Team Dugout	2	-	-
Dugout Restroom	2	-	-
Bullpen	2	-	-
Field Storage (Outdoor)	1	2,000	-
<b>Food and Retail Facilities</b>			
Concession Stand Points of Sale	35	-	-
Remote Concession Stand Points of Sale (Limited Services)	20	-	-
Left Field Outdoor Score Board Bar	1	400	-
Children's Play Area, Inflatable/ Playground Equipment	1	4,000	-
Children's Play Area, Miniature Ballpark	1	1,000	-
<b>Media Facilities</b>			
Press Box	1	1,300	-
Press Box Support	1	300	-
Cameras	1	700	-
<b>Administration Facilities</b>			
Team Office	1	5,500	-
Ticket Office	1	1,000	-
<b>Team Event Facilities</b>			
Home Club House Complex	1	6,000	-
Batting Tunnel Complex	1	4,200	-
Visitor Club House Complex	1	3,000	-
Umpire Facilities	1	400	-

**Exhibit A - Facilities Criteria**

**Service & Operations Facilities**

Ballpark Personnel  
Storage  
Loading Dock, Waste Storage, Recycling  
Ballpark Maintenance Complex  
Mechanical Space

Units	Area (SF)	Allowance
-	500	-
-	1,800	-
-	2,000	-
-	3,600	-
-	AS REQ	-

**Miscellaneous**

Outfield Scoreboard  
Highway Monument Sign & Interior Message Board  
Ballpark Signage (non-way finding)  
Suite Elevator  
Future Restaurant Building Site (current Picnic Area Two)

1	-	\$350,000
1	-	\$150,000
-	-	-
1	-	-
1	-	-

EXHIBIT B

LEGAL DESCRIPTION OF SITE

EXHIBIT C

BUDGET

## EXHIBIT D

### NAMING RIGHTS

- Signage at the Ballpark entrance, visible to all passing on the primary street, highway, roadway or interstate system leading to the Stadium.
- Signage located somewhere in a prominent location in stadium, such signage to be at least 4' x 40' feet in size or permanently painted on the field.
- Four (4) club level season seats and four (4) memberships to private VIP area.
- Two (2) VIP parking passes.
- Signage and recognition on all ballpark trashcans.
- Signage on state of the art scoreboard visibility.
- Inclusion of the logo or words "Naming Rights Sponsor" on all printed sales materials produced by the team, including, but not limited to, sales brochures, letterhead, business cards, pocket schedules, etc.
- Inclusion of the words: "Naming Rights Sponsor" on over 300,000 stadium cups annually.
- Inclusion of the words "Naming Rights Sponsor" on over 500,000 tickets printed annually for events at the ballpark.
- Logo on team website via the team's primary website.
- Access to the team's database per Milb.com rules
- The right to use name and logo.
- One (1) free baseball clinic for up to 100 of "Naming Rights Sponsor" employee's children.
- Free subscription to the team newsletter.
- One membership on the team's Advisory Committee.
- Three (3) fan interaction dates supported by public address announcements highlighting "Naming Rights Sponsor" investments and providing "Naming Rights Sponsor" the opportunity to set up a kiosk or display table in the ballpark's concourse on each fan interaction date (location and dates to be approved by team)

- Two (2) player appearances and one (1) mascot appearance at “Naming Rights Sponsor” request (subject to availability)
- Ability to provide coupons or other information throughout the season at the guest services center located in the concourse area.
- Invitation to all special team functions (i.e. Meet the Team parties, World Series Party, etc.).
- One (1) Championship ring should team win the League championship.
- Community outreach program, specifically designed to target a charitable organization selected by “Naming Rights Sponsor” for each year of agreement.
- Brick paver or similar notice of partnership in ballpark memorializing “Naming Rights Sponsor” investment.
- One (1) employee appreciation night annually with tickets to the game (based on availability).
- Half-price admission to all “Naming Rights Sponsor” employee family members to our baseball camps and academies.
- Inclusion of the logo or words “Naming Rights Sponsor” in news releases about the team and the ballpark.
- Opportunity to purchase tickets for all events at the Ballpark on the same basis as owner/management of the Team.

EXHIBIT E

SITE PLAN

## EXHIBIT F

### INSURANCE REQUIRED FOR THE OROYALS

The ORoyals shall carry and maintain in force at all times from the Completion Date and throughout Term, the following policies of insurance, and require approved sub-tenants, vendors, contractors, licensees, and concessionaires, to procure and maintain the same policies as stated in Sections 1 and 2 below during their approved contract period with the ORoyals:

1. Statutory Workers' Compensation Insurance:
  - (a) Statutory workers' compensation insurance as required by Nebraska law.
  - (b) Employers Liability:
    - Bodily Injury by Accident - \$100,000 each accident
    - Bodily Injury by Disease - \$500,000 policy limit
    - Bodily Injury by Disease - \$100,000 each employee
  
2. Comprehensive General Liability Insurance:
  - (a) \$1,000,000 limit of liability per claimant, and \$2,000,000 limit of liability per occurrence for Bodily Injury, Personal Injury and Property Damage
  - (b) \$2,000,000 limit of liability per occurrence for Liquor Law Liability (and for those licensees, franchisees and concessionaires that sell or distribute alcoholic beverages)
  - (c) \$1,000,000 limit of liability for Fire Legal Liability
  - (d) The following additional coverages must apply:
    - \* Commercial General Liability Form reasonably acceptable to Sarpy County
    - \* Premises - Operations Coverage
    - \* Additional Insured Endorsement
    - \* Concurrency of Effective Dates with Primary
    - \* Blanket Contractual Liability
    - \* Drop Down Feature
    - \* Care, Custody, and Control-Follow Form Primary
    - \* Aggregates: Where Applicable in Primary
    - \* Umbrella Policy must be as broad as the Primary Policy
    - \* Broad Form Property Damage
    - \* Fire Legal Liability
    - \* Severability of Interest
    - \* Underground, Explosion, and Collapse coverage
    - \* Personal Injury (deleting both contractual and employee exclusions)
    - \* Incidental Medical Malpractice
    - \* No Exclusion for Athletic Participation
    - \* No Exclusion for Licensees, Franchisees and Concessionaires that provide Security for Events
    - \* Products and Completed Operations

\* No Exclusion for Fireworks Events

3. Auto Liability Insurance:

- (a) \$2,000,000 limit of liability per occurrence for Bodily Injury and Property Damage
- (b) \$300,000 limit of liability per occurrence for Garagekeepers Liability (and for those licensees, franchisees and concessionaires that park vehicles or provide parking)
- (c) Comprehensive form covering all owned, non owned, leased, hired, and borrowed vehicles
- (d) Additional Insured Endorsement
- (e) Contractual Liability

4. Umbrella Liability Insurance (\$3,000,000 Limit of Liability):

- (a) The following additional coverages must apply:
  - \* Additional Insured Endorsement
  - \* Concurrency of Effective Dates with Primary
  - \* Blanket Contractual Liability
  - \* Drop Down Feature
  - \* Care, Custody, and Control—Follow Form Primary
  - \* Aggregates: Where Applicable in Primary
  - \* Umbrella Policy must be as broad as the Primary Policy
  - \* No Exclusion for Athletic Participation
  - \* No Exclusion for Licensees, Franchisees and Concessionaires that provide Security for Events
  - \* Products and Completed Operations
  - \* No Exclusion for Fireworks

5. Property Insurance against lost or damage by fire and such other risks as are included in so-called "extended coverage" endorsements for the full replacement value of the ORoyals' leasehold improvements, inventory, fixtures, equipment, signs and other personal property upon or within the Stadium. Such insurance shall be written in an amount equal to the full replacement cost of such property and shall include the Additional Insured Endorsement.

6. Business Interruption Insurance in an amount equal to two (2) year's Annual Rent. To the extent Sarpy County receives the proceeds of the Business Interruption Insurance required hereunder, the ORoyals shall be relieved of the obligation to pay Annual Rent for the period covered by the insurance proceeds.

7. Sarpy County (and any applicable Authority) should be shown as an additional insured on General Liability, Auto Liability, Umbrella Liability, Property and Business Interruption policies.

8. The cancellation provision should provide 30 days notice of cancellation or material modification.
9. The ORoyals and their approved sub-tenants, vendors, contractors, licensees, and concessionaires agree to provide complete certified copies of current insurance policy(ies) if requested by the County to verify the compliance with these insurance requirements.
10. All insurance coverages required by the ORoyals and their approved sub-tenants, vendors, contractors, licensees, and concessionaires will be primary over any insurance program carried by the County.
11. The ORoyals and their approved sub-tenants, vendors, contractors, licensees, and concessionaires shall at a minimum apply risk management practices accepted by their industry.
12. The parties shall mutually review the types and amounts of the insurance coverages required under the Agreement and mutually agree upon any commercially reasonable changes thereto every five (5) years during the Term of the Agreement.

EXHIBIT G

INSURANCE REQUIRED FOR SARPY COUNTY

Sarpy County shall carry and maintain in force at all times from the Completion Date and throughout Term, the following policies of insurance:

1. Statutory Workers' Compensation Insurance:
  - (a) Statutory workers' compensation insurance as required by Nebraska law.
  - (b) Employers Liability:
    - Bodily Injury by Accident - \$100,000 each accident
    - Bodily Injury by Disease - \$500,000 policy limit
    - Bodily Injury by Disease - \$100,000 each employee
  
2. Comprehensive General Liability Insurance:
  - (a) \$1,000,000 limit of liability per claimant, and \$2,000,000 limit of liability per occurrence for Bodily Injury, Personal Injury and Property Damage
  - (b) \$1,000,000 limit of liability for Fire Legal Liability
  - (c) The following additional coverages must apply:
  - (d) The following additional coverages must apply:
    - \* Commercial General Liability Form reasonably acceptable to ORoyals
    - \* Premises - Operations Coverage
    - \* Additional Insured Endorsement
    - \* Concurrence of Effective Dates with Primary
    - \* Blanket Contractual Liability
    - \* Drop Down Feature
    - \* Care, Custody, and Control-Follow Form Primary
    - \* Aggregates: Where Applicable in Primary
    - \* Umbrella Policy must be as broad as the Primary Policy
    - \* Broad Form Property Damage
    - \* Fire Legal Liability
    - \* Severability of Interest
    - \* Underground, Explosion, and Collapse coverage
    - \* Personal Injury (deleting both contractual and employee exclusions)
    - \* Incidental Medical Malpractice
    - \* No Exclusion for Athletic Participation
    - \* No Exclusion for Licensees, Franchisees and Concessionaires that provide Security for Events
    - \* Products and Completed Operations
    - \* No Exclusion for Fireworks Events
  
3. Umbrella Liability Insurance (\$3,000,000 Limit of Liability):

- (a) The following additional coverages must apply:
- \* Additional Insured Endorsement
  - \* Concurrency of Effective Dates with Primary
  - \* Blanket Contractual Liability
  - \* Drop Down Feature
  - \* Care, Custody, and Control-Follow Form Primary
  - \* Aggregates: Where Applicable in Primary
  - \* Umbrella Policy must be as broad as the Primary Policy
  - \* No Exclusion for Athletic Participation
  - \* No Exclusion for Licensees, Franchisees and Concessionaires that provide Security for Events
  - \* Products and Completed Operations
  - \* No Exclusion for Fireworks Events
4. Property Insurance against lost or damage by fire and such other risks as are included in so-called "extended coverage" endorsements for the full replacement value of the Stadium. Such insurance shall be written in an amount equal to the full replacement cost of such property and shall include the Additional Insured Endorsement.
5. Omaha Royals Limited Partnership should be shown as an additional insured on General Liability and Umbrella Liability policies.
6. The cancellation provision should provide 30 days notice of cancellation or material modification.
7. Sarpy County shall agree to provide complete certified copies of current insurance policy(ies) if requested by the ORoyals to verify the compliance with these insurance requirements .
8. The parties shall mutually review the types and amounts of the insurance coverages required under the Agreement and mutually agree upon any commercially reasonable changes thereto every five (5) years during the Term of the Agreement.

COUNTY OF SARPY

OMAHA ROYALS LIMITED PARTNERSHIP

**EXECUTIVE SUMMARY  
STADIUM LEASE & USE AGREEMENT**

Parties: The County of Sarpy, a political subdivision of the State of Nebraska ("Sarpy County" or "County") and the Omaha Royals Limited Partnership, a Nebraska limited partnership ("ORoyals").

Purpose: The proposed Stadium Lease & Use Agreement (the "Agreement") between Sarpy County and the ORoyals **sets forth the terms pursuant to which the parties will work together to finance, design, develop, construct and operate a new baseball stadium** ("Stadium") in Sarpy County.

Term: The **lease** portion of the Agreement **has a term of twenty-five (25) years**, commencing when the Stadium is first occupied by the ORoyals.

Stadium Ownership: The **Stadium shall be owned in fee simple by Sarpy County.**

ORoyals Payments: The **ORoyals have agreed to pay** the following amounts to Sarpy County:

- **\$350,000 for predevelopment costs** by June 1;
- **\$2,000,000 cash** contribution (payable ½ upon occupancy and ½ in Year 3);
- **\$450,000 annual rent**, which rent will be increased every five (5) years based upon the Consumer Price Index (in the event of deflation, the annual rent does not decrease); and
- Fifty Percent (50%) of any **naming rights revenue** generated from the Stadium in **excess of \$300,000** per year.

Operation & Maintenance Expense: The **ORoyals are responsible for all costs arising from operation and maintenance** of the Stadium.

Capital Repairs: **Sarpy County is responsible for all capital repairs.**

Site Selection: **By April 22, 2009, the ORoyals and the County shall mutually select up to three (3) potential sites** for the Stadium from those submitted during the County's RFP process ("Final Site Candidates"). **Thereafter**, after negotiating with each property owner and the applicable municipality, if any, to obtain the best possible "price," **the ORoyals and Sarpy County shall mutually agree upon the most mutually advantageous site** for the Stadium ("Site").

Agreement on Final Site Candidates: **If the parties cannot mutually agree on the Final Site Candidates by April 22, 2009, either side may terminate the Agreement.**

Purchase of Site: The County is required to have the Site "under contract" by June 1, 2009, but is not required to purchase the Site until bond funds have been obtained.

Maximum Cost Amounts: The parties have agreed upon a maximum amount of \$20.33M for construction of the Stadium improvements, and a maximum project budget amount of \$26M.

Additional Costs: Sarpy County is not required to exceed the maximum project budget amount except in its sole discretion, or for change orders requested by the ORoyals, the cost of which shall be the ORoyals responsibility.

Stadium Design & Construction: The Stadium will be developed and designed by Sarpy County pursuant to certain Facilities Criteria to be mutually agreed upon by the parties. The selection of a project architect, project manager, and general contractor shall be made through a mutual approval process and shall be subject to applicable County competitive bid requirements.

Completion Date: The Stadium is to be ready for beneficial occupancy by the ORoyals on or before March 15, 2011. There are substantial penalties payable to the ORoyals if the Stadium is not ready for occupancy by such date. The County intends to impose liability for construction delays on its Stadium contractors.

Sarpy Right to Terminate: Sarpy County has an unrestricted right to terminate the Agreement for any reason until June 1, 2009 without penalty. Thereafter, Sarpy County can only terminate the Agreement if:

- The ORoyals fail to obtain required approvals from various governing bodies within minor and major league baseball ("Baseball Approvals");
- The ORoyals breach the Agreement; or
- The bond financing "fails,"

ORoyals Right to Terminate: Except in the event that the Final Site Candidates cannot be agreed upon, the ORoyals have no unilateral right to terminate. The ORoyals may only terminate the Agreement if:

- Sarpy County breaches the Agreement;
- The ORoyals are unable to obtain the Baseball Approvals; or
- The bond financing "fails."

Sarpy Termination Fee: If the ORoyals terminate because the bond financing fails, Sarpy County must pay the ORoyals \$2M, plus reasonable fees and expenses incurred by the ORoyals prior to the date of termination.

ORoyals Termination Fee: If Sarpy County terminates because the ORoyals are unable to obtain the Baseball Approvals, the ORoyals would be obligated to pay Sarpy County \$250,000.

Operation of the Stadium. The ORoyals will have exclusive control of ticket sales, concessions, parking, advertising and media rights at the Stadium.

Use of Sarpy Businesses: The ORoyals must provide Sarpy County-based entities an opportunity to bid on services to be performed at or for the Stadium.

Conditions on Usage: The ORoyals must operate the Stadium such that it reflects positively on Sarpy County and in a manner which encourage attendance by families.

County Events: Sarpy County has the right to use the Stadium for not less than five (5) events per year and to receive the net non-concessions revenue therefrom after paying the ORoyals actual costs and a 10% fee. The ORoyals have agreed to cooperate with any bid Sarpy County chooses to make to host the NAIA World Series.

Additional County Events: Sarpy County has the ability to host more than five (5) events per year, provided that such events are scheduled in advance and do not conflict with events scheduled by the ORoyals.

Purchase Option: Subject to compliance with applicable laws, at the end of the Term, the ORoyals have an option to purchase the Stadium for its appraised value at such time.

Continued Rental: The Agreement does not provide the ORoyals with the ability to continue the Agreement at the end of the Term. Any extension of the Agreement would have to be mutually agreed upon.

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COUNTY OF SARPY

OMAHA ROYALS LIMITED PARTNERSHIP

STADIUM LEASE & USE AGREEMENT

**FAQ SUMMARY**

*Q: When will the first game be played in the new Sarpy County baseball stadium (Stadium)?*

*A: April 2011.*

*Q: Who will own the Stadium?*

*A: The Stadium will be owned by Sarpy County and leased to the ORoyals for 25 years pursuant to a "Stadium Use & Lease Agreement" (Agreement).*

*Q: Who will manage the Stadium?*

*A: The ORoyals will manage the Stadium consistent with standards and conditions set forth in the Agreement.*

*Q: How big will the Stadium be?*

*A: The Stadium will have 6,000 fixed seats and 15 suites. In the course of negotiations, the ORoyals agreed to a smaller configuration than the consultant originally projected. In addition, there will be berm seating similar to that found in Haymarket Park in Lincoln and other recently constructed minor league stadiums.*

*Q: Who will design the Stadium?*

A: The stadium will be designed by an architecture firm selected jointly by Sarpy County and the ORoyals. Such firm has not yet been retained.

*Q: What amenities will the Stadium have?*

A: The Stadium will have open concourses, great sight lines throughout and grass berm seating areas. Other amenities will be established once Sarpy County and the ORoyals work cooperatively with the Project Architect to determine how much each amenity will cost and how it works within the overall project budget, much like building a house.

*Q: What will the Stadium be like?*

A: Great things have been done with ballpark design nationally in recent years, much of which has been originated by Omaha architectural firms. A few examples are:

- Haymarket Park in Lincoln, NE.
- Fluor Field in Greenville, SC.
- Dell Diamond in Round Rock, TX.
- Legends Field in Tampa, FL.

Sarpy County and the ORoyals intend to use the best of whatever has been done before, as well as incorporate new ideas to make the Stadium unique.

*Q: Who will build the Stadium?*

A: Construction of the Stadium will be conducted by the general contractor submitting the lowest acceptable bid pursuant to Nebraska law.

*Q: How much will the Stadium cost?*

A: Sarpy County and the ORoyals have agreed that the final cost of the Stadium will not exceed \$20.33M. However, the exact cost will not be known until the site is purchased and the bids for construction are received.

*Q: Are there other costs not included in the \$20.33M total?*

A: Yes, the cost of purchasing the stadium site itself is not included in that total, nor is the cost of bringing utilities and/or installing additional road access to the site ("infrastructure"), if necessary. Additionally, the cost of the professionals working on the project on behalf of Sarpy County (architects, engineers, lawyers, financial advisors) is not included in the \$20.33M total Stadium cost.

*Q: Is there a limit on these additional costs?*

A: Yes, Sarpy County and the ORoyals have agreed that the cost of the entire project (stadium + site land + infrastructure + utilities + professional fees) will not exceed \$26M.

*Q: Hasn't the cost of the Stadium been quoted at \$40M?*

A: Convention Sports & Leisure International conducted a feasibility study for Sarpy County in 2008 which indicated a total project cost of \$40M. However, through negotiation and mutual compromise, Sarpy County and the ORoyals have reached agreement on a Stadium entailing \$14M less expense.

*Q: Given all the economic uncertainty, isn't this a bad time to be building the Stadium?*

A: No. In fact, this is a great time to be seeking bids on a major construction project such as this because it will ensure that Sarpy County obtains the lowest possible price. Furthermore, this project will mean work for Sarpy County businesses, both in terms of construction and operation of the Stadium, as well as the citizens of Sarpy County who can work at the Stadium. This is a long-range project that will benefit Sarpy County for 25 years or more.

*Q: How will Sarpy County pay for construction of the Stadium?*

A: Much as Sarpy County does with other major construction projects, bonds will be issued by Sarpy County to finance the cost of construction. Thus, Sarpy County is not paying for the Stadium "all at once."

Q: *What have the ORoyals agreed to pay?*

A: The ORoyals have agreed to pay \$350,000 toward the predevelopment construction costs incurred, \$2M in direct cash payments and \$450,000 in annual rent, which rent will increase every five (5) years based upon inflation.

Q: *How will the bonds be paid?*

A: Approximately one-half (1/2) of the total cost will be paid by the ORoyals themselves via the payments identified above. The remaining sources of payment cannot be finally determined until the site is selected and all potential funding sources, some of which depend upon the location of the site, are evaluated.

Q: *What about the expense of managing and operating the Stadium?*

A: Unlike the ORoyals' arrangement with the City of Omaha at Rosenblatt, the ORoyals are responsible for all the costs of maintaining, staffing and operating the Stadium. However, Sarpy County is responsible for any "capital repairs" needed to the Stadium during the 25 year term of the Agreement.

Q: *Where will the Stadium be located?*

A: The location of the Stadium will be a decision jointly reached by Sarpy County and the ORoyals. To date, nine (9) landowners within Sarpy County have submitted viable proposals pursuant to which land that they own could be selected as the site for the Stadium. Each proposal is somewhat unique due to location, access, visibility, presence/absence of infrastructure and, last but not least, price.

Q: *Where are these potential sites?*

A: Sites have been offered within the zoning jurisdictions of Bellevue, La Vista and Papillion, as well as in the greater Sarpy County area. In order to preserve the County's negotiation position, the location of any specific sites will not be disclosed until Sarpy County and the ORoyals have had an opportunity to review each of the sites, a process that will not begin until after the Agreement is signed.

*Q: If a "free site" has been offered, shouldn't that site be selected because it has the lowest cost?*

A: Not necessarily. Although cost will be a major factor in selecting a site, issues such as access, visibility, parking, topography and the ability of the site selected to serve as a catalyst for future development within Sarpy County will also be considered. Again, Sarpy County and the ORoyals have to agree on the site selected.

*Q: When will the site be determined?*

A: Sarpy County and the ORoyals must agree on three (3) site "finalists" by April 22<sup>nd</sup>. However, the site ultimately selected will not be known until negotiations are conducted with each of the "finalists."

*Q: What will the Stadium be named?*

A: The ability to sell naming rights is a right reserved to the ORoyals under the Agreement, subject to Sarpy County approval. It is expected that naming rights for the Stadium will be sold. Based upon the amount of any sale, Sarpy County may be able to share in a percentage of the naming rights revenue.

*Q: Does Sarpy County receive a percentage of ticket or concessions sales?*

A: No. The Agreement is structured so that the annual payment made by the ORoyals is fixed, rather than having Sarpy County's share be dependent upon operations. The payments are, however, indexed for inflation.

*Q: How many people attend ORoyals games?*

A: The ORoyals had their best attendance ever in 2008 with a per game average of approximately 5,200. ORoyals management has said publicly that it expects attendance at the Stadium to increase to between 425,000 and 500,000 annually (an increase of between 18 - 38% over 2008).

Q: *Why does Sarpy County want to retain the ORoyals?*

A: The ORoyals rank behind only the Henry Doorly Zoo and Nebraska football in terms of annual attendance. On an annual basis, more people attend ORoyals games than attend the College World Series and Omaha Lancers hockey games, combined. It makes no sense to let an asset like the ORoyals, and the annual sales and local jobs which they generate, leave Nebraska.

Q: *Why can't the ORoyals play in the baseball stadium being built in Downtown Omaha?*

A: The baseball stadium being built to retain the College World Series is designed to serve a totally different event than the Stadium to be built in Sarpy County. That event is by necessity driven by the demands of a NCAA national championship, while ORoyals games are about "family entertainment." The ORoyals have consistently stated that the Downtown Omaha stadium is not consistent with their vision of an intimate, family friendly environment. Indeed, no ballpark project for a minor league baseball team in the last 15 years has resembled the Downtown Omaha project in size and scope - other than the common element of baseball, the economic models are completely different.

Please remember that, as stated by Mayor Fahey, the economics of the College World Series justify building the Downtown Omaha stadium with or without the ORoyals participation. Fortunately for Sarpy County, the ORoyals have retained a strong desire to continue to operate in our metropolitan area.

Q: *What will tickets cost at the Stadium?*

A: The pricing of tickets is determined solely by the ORoyals. However, the ORoyals have committed to make sure that their pricing remains affordable and, thus, enables attendance by families, growth and profit.

Q: *Will there be a charge for parking at the Stadium?*

A: Whether or not a fee will be charged for parking is for the ORoyals to decide. Sarpy County has no say in the matter, except to the extent that the site selected impacts the amount of or the proximity of parking.

Q: *When will public forums about the Stadium be held?*

A: As the Agreement was only finalized this week, none have yet been scheduled.

Q: *What about an ice rink in Sarpy County?*

A: Sarpy County remains very interested in constructing two (2) sheets of public ice in the near future. However, the need for the ORoyals to begin playing games in the Stadium in 2011 dictates that this process proceed before plans for ice can be further evaluated.