RESOLUTION AUTHORIZING CHAIRMAN TO SIGN FOURTH AMENDMENT TO STADIUM LEASE AND USE AGREEMENT

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104(6), 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;

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

WHEREAS, the County Board previously approved a Stadium Lease and Use Agreement (Resolution 2009-058) as well as three addendums (Resolutions 2009-127, 2010-117, and 2015-77, respectively), collectively referred to as the “Agreement”; and

WHEREAS, the County Board desires to amend the Agreement for the purpose of providing the framework for the installation of a licensed communication network (“LCN”) system at Werner Park Stadium; said LCN will enhance the existing communications network at or near the Stadium; and

WHEREAS, a copy of the Fourth Amendment to Stadium Lease and Use Agreement is attached hereto.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves the Fourth Amendment to Stadium Lease and Use Agreement, and any other related documents, the same being approved by the Board.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with the applicable law on the ___27th____ day of ___March______, 2018.

Attest:

SEAL

County Board of Commissioners Chair

Sarpy County Clerk
MEMORANDUM

To: Sarpy County Board of Commissioners
From: Bonnie Moore
Date: March 22, 2018
RE: Fourth Amendment to Stadium Lease and Use Agreement

For your consideration on Tuesday’s agenda is a Fourth Amendment to the Stadium Lease and Use Agreement. The purpose of the Amendment is to provide the framework for eventually installing a licensed communication network (“LCN”) at Werner Park Stadium. The LCN enhances wireless communications in and around the Stadium. Should the County Board find an acceptable provider for the LCN, an additional Amendment will be entered into between Sarpy County and Alliance Baseball Omaha, LLC.

Should you have any questions, please feel free to contact me.
FOURTH AMENDMENT TO STADIUM LEASE & USE AGREEMENT

THIS FOURTH AMENDMENT TO THE STADIUM LEASE & USE AGREEMENT (this “Fourth Amendment”) is made and entered into as of \textit{March 20}, 2018 by and among the COUNTY OF SARPY, a political subdivision of the State of Nebraska (the “County”), and ALLIANCE BASEBALL OMAHA, LLC, a Nebraska Limited Liability Corporation (“Alliance”).

WHEREAS, the County and the Omaha Royals Limited Partnership entered into a Stadium Lease & Use Agreement dated March 17, 2009, which was amended by a First Amendment to Stadium Lease & Use Agreement dated June 1, 2009, and a Second Amendment to Stadium Lease & Use Agreement dated May 4, 2010 (collectively “Amended Lease”);

WHEREAS, the Omaha Royals Limited Partnership assigned its interest in the Amended Lease to Alliance;

WHEREAS, the County and Alliance executed a Third Amendment to Stadium Lease & Use Agreement dated on or about March 9, 2015 ("Third Amendment") (the Third Amendment and the Amended Lease are collectively the "Agreement");

WHEREAS, the County and Alliance desire to further amend the Agreement to permit the County to enter into a lease agreement with a licensed communications network provider for the purpose of enhancing the existing communications network at or near the Stadium;

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, the parties hereto, each intending to be legally bound, do hereby mutually agree as follows:

1. Any reference to “ORoyals” in the Agreement is hereby replaced with “Alliance”.

2. The Agreement is hereby amended by addition the following Section 1.69:

1.69: Licensed Communications Network ("LCN"). Any infrastructure including without limitation cell towers, cell-on-wheels, antennas, and distributed antenna systems that may be used by wireless carriers (including without limitation Verizon Wireless, AT&T, T-Mobile, and Sprint) for the provision of wireless services that require a license from the Federal Communications Commission, including without limitation cellular, personal communication services (PCS), advanced wireless services (AWS), wireless communications service (WCS), broadband radio service (BRS); educational broadband service (EBS), and 700 MHz services. Excluded from said definition is any infrastructure used to provide radio or television broadcast services, which is subject to the provisions of Section 9.6 of this Agreement.
3. The Agreement is hereby amended by adding the following Section 2.4:

2.4 LCN Lease. Upon receiving Alliance's prior written consent, which shall be granted in Alliance's sole discretion, the parties acknowledge that Sarpy County may from time to time enter into leases with third parties for the operation of a LCN at the Stadium Site (each, "LCN Lease"). The parties further agree that once Alliance has provided written consent and the LCN Lease is executed, the County and Alliance will execute an amendment to the Agreement that (a) removes the area of the LCN Lease from the definition of Stadium Site, and (b) the County shall agree to indemnify, defend and hold harmless Alliance 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 the LCN Lease or its tenant.

4. Except to the extent expressly modified in this Fourth Amendment, the Agreement shall remain unchanged and in full force and effect. Any capitalized terms used in this Fourth Amendment but not defined herein shall have the same meaning given to such terms in the Agreement.

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

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

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

By: 
Name: Don Kelly
Title: Chairman, Sarpy County Board

STATE OF NEBRASKA

COUNTY OF Sarpy

Subscribed and sworn to before me this 27th day of March, 2018.

Christine Anne Vance
Notary Public

Approved as to form:

Deputy Sarpy County Attorney
ALLIANCE BASEBALL OMAHA LLC, a Nebraska Limited Liability Corporation

By: 

Name: Martie J. Cordaro
Title: President & General Manager

STATE OF NEBRASKA

COUNTY OF Sarpy

Subscribed and sworn to before me this 20 day of March, 2018.

Notary Public

[Signature]

[Notary Public]

My Comm. Exp. March 20, 2018