RESOLUTION APPROVING FIFTH AMENDMENT TO THE 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 four amendments (Resolutions 2009-127; 2010-117; 2015-77; and 2018-091), collectively referred to as the “Agreement”; and

WHEREAS, the County Board desires to further enhance the fan experience at Werner Park via certain capital improvements; and

WHEREAS, the Fifth Amendment to the Stadium Lease and Use Agreement, attached hereto, is the first step in accomplishing those enhancements at Werner Park.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves the Fifth Amendment to the 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 19th day of June, 2018.

Attest:  
SEAL

[Signatures]

County Board of Commissioners Chairman  
Sarpy County Clerk
THIS FIFTH AMENDMENT TO THE STADIUM LEASE & USE AGREEMENT (this "Fifth Amendment") is made and entered into as of __June 19__, 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 Company ("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");

WHEREAS, the County and Alliance executed a Fourth Amendment to Stadium Lease & Use Agreement dated on or about March 20, 2018 ("Fourth Amendment") (the Amended Lease, Third Amendment, and the Fourth Amendment are collectively the "Agreement");

WHEREAS, the County and Alliance desire to further amend the Agreement to address the County's agreement to fund certain capital improvements to the Stadium resulting in Alliance's agreement to pay an increased Annual Rent, and to permit Alliance to enter into sublease agreements with other social, athletic, or recreational organizations to use 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. The Agreement is hereby amended by replacing Section 4.4 in its entirety with the following new Section 4.4:

   4.4 **Subletting.** Alliance has the right to sublease all or any part of the Stadium to any social, athletic, or recreational organization identified in Section 4.1 with prior written approval by the County, which shall not be unreasonably withheld.

2. The Agreement is hereby amended by adding the following new Section 49:

   49. **Capital Improvements.** Upon the mutual agreement of the parties, the County has agreed to fund new capital improvements to the Stadium in the amount of two million two hundred thousand dollars ($2,200,000) for the improvements as generally described in Exhibit "A" attached hereto ("Capital Improvements"). The
County shall be responsible for securing financing for the Capital Improvements and all related costs; the timing and method of disbursement or payment for the Capital Improvements shall be the subject of a separate amendment to the Stadium Lease and Use Agreement. In no event shall the County’s contribution exceed that amount specified in this section (Section 49). The cost for the Capital Improvements identified on Exhibit "A" that exceed the amount specified in this section (Section 49) shall be paid by Alliance. The parties agree that the construction for the Capital Improvements and the funding is contingent upon their mutual agreement regarding construction oversight, control, disbursement and payment methods, and the County’s approval of any third party organization’s use of the stadium for which the Capital Improvements are being made. If the parties are unable to mutually agree on such terms, this Fifth Amendment shall be void.

3. The Agreement is hereby amended by adding the following paragraph to the end of Section 7.1(b):

Notwithstanding the foregoing, the parties agree that Alliance's Annual Rent shall be increased by 5.75% each year for three years, commencing after the Capital Improvements are completed in accordance with the Plans. The Annual Rent shall be payable on the same terms as set forth above. The increased Annual Rent represents repayment to the County for the Capital Improvements. Alliance, or its sublessee, may at any time, for any reason, prepay the outstanding principal and interest, of the Capital Improvements including any interest on bonds that are not callable. Upon any such prepayment in full, the Annual Rent shall be reduced to the amount the Annual Rent would have been without the addition of the Capital Improvements as provided in this paragraph.

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

5. This Fifth 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.

(Signature Page to Follow)
IN WITNESS WHEREOF, the parties hereto have caused this Fifth 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: Donald R. Kelly  
Title: Chairman, Sarpy County Board

Approved as to form:  
Deputy Sarpy County Attorney

ALLIANCE BASEBALL OMAHA LLC, a Nebraska Limited Liability Company

By:  
Name: Martin J. Connar  
Title: President & General Manager
1. Field Modifications:
   a. Installation of retractable pitcher’s mound.
   b. Modifications of the wall at Right Field Foul Pole.

2. Auxiliary Locker Room: An additional locker room will be constructed.

3. Admin Expansion: The Admin area will be expanded via a permanent or temporary structure.

4. Increased storage: Additional storage areas will be installed in the outdoor area. The current general storage will be expanded.

5. Team Store Expansion: The Team Store and merchandise areas will be expanded to provide more visibility, more space for merchandise, and more storage.