

ORDINANCE NO. 018029

AN ORDINANCE AMENDING ORDINANCE NO. 017880 AUTHORIZING THE CITY MANAGER TO SIGN FIRST AMENDMENT TO BALLPARK LEASE BY AND BETWEEN THE CITY OF EL PASO AS LESSOR AND MOUNTAIN STAR SPORTS GROUP, LLC – EL PASO BASEBALL CLUB SERIES AND MOUNTAIN STAR SPORTS GROUP, LLC AS TENANT COVERING LOTS 1 THROUGH 10 AND LOTS 11 THROUGH 40, AND A PORTION OF THE T-ALLEY BLOCK B, STEVENS ADDITION AND A PORTION OF BLOCK 28 AND 48, MILLS MAP ADDITION AND A PORTION OF FRANKLIN STREET, EL PASO, EL PASO COUNTY, TEXAS, CONTAINING 4.8274 ACRES OF LAND MORE OR LESS; A PORTION OF LOTS 30 THROUGH 42, BLOCK C, STEVENS ADDITION, EL PASO, EL PASO COUNTY, TEXAS CONTAINING 0.9521 ACRES OF LAND MORE OR LESS; AND A PORTION OF THE UNION PACIFIC COMPANY RIGHT OF WAY OUT OF BLOCKS 28 AND 48, MILLS MAP ADDITION, EL PASO, EL PASO COUNTY, TEXAS CONTAINING 0.1994 ACRES OF LAND MORE OR LESS (“CITY HALL SITE”).

WHEREAS, the City Council of the City of El Paso approved Ordinance No. 017880 on September 18, 2012 authorizing the City Manager to sign a lease by and between the City of El Paso and Mountain Star Sports Group, LLC – El Paso Baseball Club Series and Mountain Star Sports Group, LLC;

WHEREAS, the City desires to amend the Ballpark Lease Agreement.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:


1. That the City Manager is hereby authorized to sign, on behalf of the City of El Paso as Lessor, the First Amendment to the Ballpark Lease Agreement with Mountain Star Sports Group, LLC-El Paso Baseball Club Series and Mountain Star Sports Group, LLC, as Tenant attached hereto as Exhibit “A”.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

ORDINANCE NO. 018029
12-1033-043/184891/ORD-LEASE MOUNTAIN STAR

PASSED AND APPROVED on this the 18th day of June, 2013.

CITY OF EL PASO


John F. Cook
John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
Sylvia Borunda Firth
City Attorney

APPROVED AS TO CONTENT:

Carmen Arrieta Candelaria
Carmen Arrieta Candelaria
Chief Financial Officer

CITY CLERK DEPT.
2013 JUN 13 AM 11:16

ORDINANCE NO. 018029
12-1033-043/184891/ORD-LEASE MOUNTAIN STAR

FIRST AMENDMENT TO BALLPARK LEASE AGREEMENT

This FIRST AMENDMENT TO THE BALLPARK LEASE AGREEMENT, (this "**Amendment**") is dated as of the 18th day of June, 2013 by and among the City of El Paso, a Texas home rule city (the "**City**"), Mountain Star Sports Group, LLC—El Paso Baseball Club Series, a Texas limited liability company (the "**Tenant**") and Mountain Star Sports Group, LLC, a Texas limited liability company (the "**Company**").

RECITALS

WHEREAS, the City, Tenant and Company have previously entered into a Ballpark Lease Agreement executed by the parties on October 11, 2012 (the "**Original Agreement**"); and

WHEREAS, the parties would like to amend the terms of the Original Agreement;

NOW THEREFORE, in consideration of the foregoing, the terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I:

AMENDMENTS TO ORIGINAL AGREEMENT

Section 1.1 The fourth RECITAL to the Original Agreement is hereby amended by deleting such recital in its entirety and in its place inserting the following:

WHEREAS, the City and Tenant have entered into (a) that certain Ballpark Development Agreement dated as of September 18, 2012 (the "**Development Agreement**"), whereby the City (partially through a local government corporation created by City) has agreed to finance, own, design, develop and construct a new, first class, state-of-the-art, natural turf, open-air Minor League Baseball ballpark and related facilities, located on the Real Property, that will serve as the home of the Team and will also host concerts, other sporting events and community-oriented events (the "**Ballpark**"); such Ballpark to be built in accordance with the Project Plans (as defined in the Development Agreement); and (b) that certain Non-Relocation Agreement (the "**Non-Relocation Agreement**") dated effective of even date herewith, whereby the parties thereto agreed to certain restrictions on relocation of the Team (as defined below).

Section 1.2 Article I of the Original Agreement is hereby amended by deleting the definition of "Fixed Rental" in its entirety and in its place inserting the following:

"Fixed Rental" means (i) \$400,000 per year for the first five calendar years of the Initial Term; (ii) \$440,000 per year for the sixth through tenth calendar years of the Initial Term; (iii) \$484,000 per year for the 11th through 15th calendar years of the Initial Term; (iv) \$532,400 per calendar year for the 16th through 20th calendar years of the Initial Term; (v) \$585,640 per calendar year for the 21st through 25th calendar years of the Initial Term; and (vi) \$644,204 per year for each calendar year thereafter throughout the remaining Initial Term.

CITY CLERK DEPT.
2013 JUN 13 AM 11:16

Section 1.3 Article I of the Original Agreement is hereby amended by deleting the definition of “Parking Fee” in its entirety and in its place inserting the following:

“Parking Fee” means a seasonal parking fee for each parking space requested by Tenant in the Offsite Garage Parking in accordance with Section 5.5 hereof, to be calculated as follows: (i) for each of the first five calendar years of the Initial Term, \$1.00 for each parking space requested by Tenant multiplied times the number of Season Parking Events during the applicable period; (ii) for each calendar year during the sixth through tenth calendar years of the Initial Term, \$1.10 for each parking space requested by Tenant multiplied times the number of Season Parking Events during the applicable period; (iii) for each calendar year during the 11th through 15th calendar years of the Initial Term, \$1.21 for each parking space requested by Tenant multiplied times the number of Season Parking Events during the applicable period; (iv) for each calendar year during the 16th through 20th calendar years of the Initial Term, \$1.33 for each parking space requested by Tenant multiplied times the number of Season Parking Events during the applicable period; (v) for each calendar year during the 21st through 25th calendar years of the Initial Term, \$1.46 for each parking space requested by Tenant multiplied times the number of Season Parking Events during the applicable period; and (vi) for each calendar year thereafter throughout the remaining Initial Term, \$1.60 for each parking space requested by Tenant multiplied times the number of Season Parking Events during the applicable period.

Section 1.4 Article I of the Original Agreement is hereby amended by deleting the definition of “Ticket Fee” in its entirety and in its place inserting the following:

“Ticket Fee” means a fixed admission surcharge of (i) Fifty Cents (\$0.50) for each ticket sold for each Ballpark Event during each of the first five calendar years of the Initial Term; (ii) Fifty-Five Cents (\$0.55) for each ticket sold for each Ballpark Event during each of the sixth through tenth calendar years of the Initial Term; (iii) Sixty-One Cents (\$0.61) for each ticket sold for each Ballpark Event during each of the 11th through 15th calendar years of the Initial Term; (iv) Sixty-Seven Cents (\$0.67) for each ticket sold for each Ballpark Event during each of the 16th through 20th calendar years of the Initial Term; (v) Seventy-Three Cents (\$0.73) for each ticket sold for each Ballpark Event during each of the 21st through 25th calendar years of the Initial Term; and (vi) Eighty Cents (\$0.80) for each ticket sold for each Ballpark Event during each calendar year thereafter throughout the remaining Initial Term.

Section 1.5 Section 3.4 of the Original Agreement is hereby amended by deleting such section in its entirety and in its place inserting the following:

Initial Term. Subject to the terms and conditions hereof, City hereby leases the Ballpark to Tenant for a **period commencing on the Commencement Date and ending on September 30** (or such later date as is reasonably necessary to accommodate any Team Ballpark Events (e.g., playoff games)) **of that year in which the thirtieth (30th) full Baseball Season after the Commencement Date** has occurred, unless the Agreement is sooner terminated pursuant to any applicable

provision hereof, (the “**Initial Term**”), unless sooner terminated by law or pursuant to the terms and conditions of the Agreement.

ARTICLE II:

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations of Tenant and Company. The Tenant and the Company hereby represent and warrant to the City as follows:

(a) the execution, delivery and performance of this Amendment by each of Tenant and Company are within Tenant’s and Company’s powers, respectively, and have been duly authorized by all necessary limited liability company action of Tenant or Company, as applicable;

(b) each of the Tenant and the Company has full power and legal right to execute and deliver this Amendment and to perform and observe the provisions of this Amendment;

(c) this Amendment is a legal, valid and binding obligation of the Tenant and the Company enforceable against such parties in accordance with its terms; except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time;

(d) there is no action, proceeding or investigation pending or, to the knowledge of the Tenant or the Company, threatened or affecting the Tenant or the Company, which may adversely affect the ability of the Tenant or the Company to fulfill and perform their respective obligations and other undertakings under this Amendment or the Original Agreement. The Tenant and the Company are not in default with respect to any judgment, order, injunction or decree of any Governmental Authority which is in any respect material to the transactions contemplated in and by this Amendment;

(e) each of the Tenant and the Company is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Texas;

(f) the Tenant is a member in good standing of Minor League Baseball and, to the best of the knowledge of Tenant management, is in compliance in all material respects with all applicable Baseball Rules and Regulations that are relevant to this Amendment or the Original Agreement; and

(g) the execution, delivery and performance by the Tenant and the Company of this Amendment will not contravene or conflict with any provision of the Tenant’s Professional Baseball Agreement and any other applicable Minor League Baseball rules or regulations except where any of the foregoing could not reasonably be expected to have a material adverse effect on the Tenant and/or the Company, this Amendment or the Original Agreement.

Section 2.2 Representations of the City. The City hereby represents and warrants to the Tenant and Company as follows:

(a) the execution, delivery and performance of this Amendment by the City are within the City's powers, and have been duly authorized by all necessary action on the part of the City;

(b) the City has full power and legal right to execute and deliver this Amendment and to perform and observe the provisions of this Amendment;

(c) this Amendment is a legal, valid and binding obligation of the City enforceable against such party in accordance with its terms; except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time;

(d) there is no action, proceeding or investigation pending or, to the knowledge of the City, threatened or affecting the City, which may adversely affect the ability of the City to fulfill and perform its obligations and other undertakings under this Amendment or the Original Agreement. The City is not in default with respect to any judgment, order, injunction or decree of any Governmental Authority which is in any respect material to the transactions contemplated in and by this Amendment; and

(e) the City is a municipal corporation duly formed and validly existing under the laws of the State of Texas.

ARTICLE III:

MISCELLANEOUS

Section 3.1 Effective Date. This Amendment shall be effective as of the date of its execution by all the parties hereto (the "Effective Date").

Section 3.2 Capitalized Terms. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Original Agreement.

Section 3.3 Prior Agreements Confirmed. Except as otherwise expressly modified by the terms hereof, all of the remaining terms of the Original Agreement remain in effect and are hereby ratified and affirmed. The Non-Relocation Agreement which is drafted to run concurrently with the term of the Lease (subject to certain rights of termination as set forth in the Non-Relocation Agreement) is hereby affirmed and will apply to the Initial Term as amended by this Amendment.

Section 3.4 Partial Invalidity. If any section of this Amendment or its application to any Party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Amendment or the application of such Section to persons or circumstances, other than those as to which it is so determined invalid or enforceable to any extent, shall not be affected thereby, and each Section hereof shall be valid and enforceable to the fullest extent permitted by law.

Section 3.5 Time of the Essence. Time is of the essence with respect to all sections of this Amendment.

Section 3.6 Successors and Assigns. This Amendment and all terms and conditions contained herein shall inure to the benefit and be binding upon the successors and permitted assigns of the Parties.

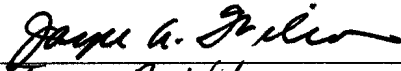
Section 3.7 Counterparts. This Amendment may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.

Section 3.8 Governing Law. **THIS AMENDMENT AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS NOTWITHSTANDING ANY CHOICE-OF-LAW OR CONFLICT-OF-LAW PRINCIPLE THAT MIGHT DICTATE A DIFFERENT GOVERNING LAW.** In the event of any proceedings regarding this Amendment, the Parties agree that the venue shall be the state courts of Texas located in El Paso County or any Federal court whose jurisdiction includes El Paso County, Texas.

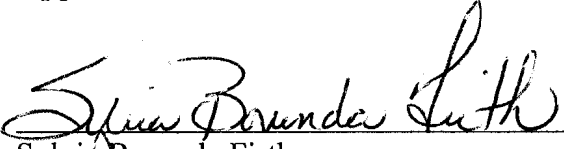
[Signatures and acknowledgements appear on following pages]

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective as of the Effective Date.

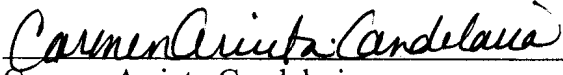
CITY OF EL PASO, TEXAS

By: 
Name: Joyce A. Wilson
Its: City Manager
Date: June 18, 2013

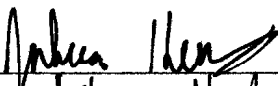
Approved as to Form:


Sylvia Borunda Firth
City Attorney

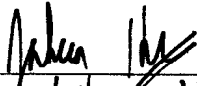
Approved as to Content:


Carmen Arrieta-Candelaria
Chief Financial Officer

**MOUNTAIN STAR SPORTS
GROUP, LLC—EL PASO BASEBALL
CLUB SERIES**

By: 
Name: Joshua Hunt
Its: _____
Date: June 18, 2013

**MOUNTAIN STAR SPORTS
GROUP, LLC**

By: 
Name: Joshua Hunt
Its: _____
Date: June 18, 2013