

21.1
ORDINANCE NO. 018864

CITY CLERK DEPT.
2018 SEP 27 11:14

AN ORDINANCE AMENDING ORDINANCE NO. 017880 AUTHORIZING THE CITY MANAGER TO SIGN SECOND 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 (the "Lease");

WHEREAS, the City Council of the City of El Paso approved Ordinance No. 018029 on June 18, 2013, authorizing the City Manager to sign a First Amendment to the Lease, to change certain definitions;

WHEREAS, the City desires to further amend the Ballpark Lease Agreement to accommodate soccer events at the Ballpark.

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

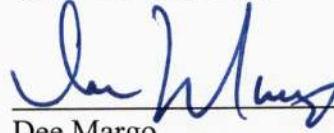
1. That the City Manager is hereby authorized to sign, on behalf of the City of El Paso as Lessor, the Second Amendment to the Ballpark Lease Agreement with Mountain Star Sports Group, LLC-El Paso Baseball Club Series and Mountain Star Sports Group, LLC, as Tenant attached hereto as Exhibit "A", to accommodate soccer events at the Ballpark (as that term is defined in the Lease).

018864

ORDINANCE NO. _____
12-1033-043.010/826175/ORD TO 2D AMD - LEASE MOUNTAINSTAR/JF

PASSED AND APPROVED on this the 16th day of OCTOBER, 2018.

CITY OF EL PASO



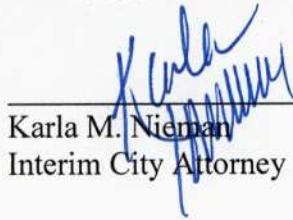
Dee Margo
Mayor

ATTEST:



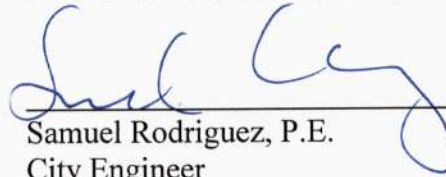
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Karla M. Nieman
Interim City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
City Engineer

018864

ORDINANCE NO. _____

12-1033-043.010/826175/ORD TO 2D AMD - LEASE MOUNTAINSTAR/JF

Exhibit “A”

Second Amendment to the Ballpark Lease Agreement with Mountain
Star Sports Group, LLC-EL Paso Baseball Club Series and Mountain
Star Sports Group, LLC

SECOND AMENDMENT TO BALLPARK LEASE AGREEMENT

THIS SECOND AMENDMENT TO THE BALLPARK LEASE AGREEMENT, (this "Amendment") is dated as of the 14th day of October, 2018, by and among the City of El Paso, a Texas home rule city (the "City"), El Paso Stadium Operations Company, a series of MountainStar Baseball, LLC, a Texas limited liability company established pursuant to Subchapter M (Section 101.601 *et seq.*) of Chapter 101 of the Texas Business Organizations Code (the "Tenant" or "EPSOC"), and MountainStar Baseball, LLC (f/k/a Mountain Star Sports Group, LLC), a Texas limited liability company (the "Company").

RECITALS

WHEREAS, the City, El Paso Baseball Club Series, a series of the Company ("El Paso Baseball"), and the Company previously entered into a Ballpark Lease Agreement executed by the parties on October 11, 2012, as amended by that certain First Amendment To Ballpark Lease Agreement executed by the parties on June 18, 2013 (collectively, as amended, the "Original Agreement").

WHEREAS, effective on January 1, 2014, El Paso Baseball, a series of the Company, assigned and transferred all of its duties, rights, obligations, responsibilities, and interests under the Original Agreement to EPSOC, and EPSOC assumed all such duties, rights and obligations, responsibilities, and interests.

WHEREAS, MountainStar USL Holdings, LLC, a Texas limited liability company ("MountainStar Holdings"), is an affiliate of the Company.

WHEREAS, MountainStar USL Franchise Company, a series of MountainStar Holdings ("MountainStar Franchise"), entered into a United Soccer League Franchise Agreement with USL Pro, LLC, a Florida limited liability company ("USL"), whereby MountainStar USL Operations Company, a series of MountainStar Holdings and affiliate of MountainStar Franchise ("MountainStar Soccer"), will establish and operate a soccer team (the "MountainStar Soccer Team") that participates in the men's professional league known as the United Soccer League.

WHEREAS, Tenant (or its permitted assignees and sublessees) is entitled, among other uses, to use all or any portion of the Ballpark for soccer events.

WHEREAS, in addition to Tenant's substantial investment of over \$15,000,000 towards the initial Ballpark construction and subsequent Ballpark improvements, Tenant (or its permitted assignees and sublessees) desires, at its cost and expense, to construct the initial City-owned improvements required by the USL to accommodate the soccer events, together with several other City-owned updates and improvements at the Ballpark that are intended to enhance the Ballpark experience (the "**Updates and Improvements**"). **The Updates and Improvements to be provided by Tenant for the benefit of the City are currently estimated to cost an additional \$3,500,000.**

WHEREAS, the City recognizes the substantial economic benefits to the City and its residents in having the City and the Ballpark serve as the home of the El Paso Chihuahuas and the MountainStar Soccer Team. The City further recognizes the significant value provided to the

City and its residents through Tenant's additional capital improvements proposed to the Ballpark, which improvements will be owned by and for the benefit of the City.

WHEREAS, the parties desire to amend the terms of the Original Agreement to authorize Tenant to perform the work contemplated herein, and to clarify certain other provisions in 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 1.01 Article I of the Original Agreement is hereby amended by deleting the definition of "Baseball Season" in its entirety and in its place inserting the following:

"Baseball Season" means each annual baseball season during the Term running from 10 days prior to a pre-season exhibition game at the Ballpark featuring a Major League Baseball team or the Team's first regular season home game, whichever is earlier, through September 30 of the applicable calendar year and includes, and may be modified from time to time by Tenant to include, all pre-season games, regular season games and playoff games."

Section 1.02 Article I of the Original Agreement is hereby amended by deleting the definition of "City's Personal Property" in its entirety and in its place inserting the following:

"The term **"City's Personal Property"** means all movable equipment, furniture, fixtures and other tangible personal property that are reasonably required in connection with Tenant's activities at the Ballpark or the Ballpark Surface Parking that are located on or within the Ballpark (and that do not constitute fixtures) and can be removed from the Ballpark without damage thereto (it being the intent of the parties that Tenant may use the City's Personal Property at the Ballpark, the Ballpark Surface Parking, and other locations as reasonably determined by Tenant). The term "City's Personal Property" includes any replacements of City's Personal Property by City or otherwise."

Section 1.03 Article I of the Original Agreement is hereby amended by inserting the following definition:

"MountainStar Soccer" means MountainStar USL Operations Company, a series of MountainStar USL Holdings, LLC, a Texas limited liability company."

Section 1.04 Article I of the Original Agreement is hereby amended by inserting the following definition:

"Soccer Season" means each annual soccer season during the Term and includes, and may be modified by Tenant to include, all pre-season games, regular season games and playoff games."

Section 1.05 Article I of the Original Agreement is hereby amended by inserting the following definition:

“**Soccer Team**” means all rights, title and interest, including franchise rights, in the United Soccer League franchise granted by USL to MountainStar USL Franchise Company, a series of MountainStar USL Holdings, LLC, a Texas limited liability company, and affiliate of MountainStar Soccer.”

Section 1.06 Article I of the Original Agreement is hereby amended by deleting the definition of “Team Ballpark Event” in its entirety and in its place inserting the following:

“**Team Ballpark Event**” means any Ballpark Event directly involving the Team or the Soccer Team, including home games of the Team or the Soccer Team.”

Section 1.07 Article I of the Original Agreement is hereby amended by deleting the definition of “Use Agreement” in its entirety and in its place inserting the following:

“**Use Agreement**” means a use, sublease, license, concession, occupancy or other agreement for the use or occupancy of any designated space or designated facilities within (i) the Ballpark for any Permitted Use, or (ii) the Ballpark Surface Parking for the uses permitted herein, but shall not include any of the foregoing for all or substantially all of the Ballpark or Ballpark Surface Parking for a period greater than the then remaining Term.”

Section 1.08 Article I of the Original Agreement is hereby amended by inserting the following definition:

“**USL**” means USL Pro, LLC, a Florida limited liability company.”

Section 1.09 The Original Agreement is hereby amended by deleting Section 4.1 in its entirety and in its place inserting the following:

“Section 4.1 Ballpark Events. Tenant shall be entitled to the use of all or any portion of the Ballpark for all (a) home games (including pre-season, regular season and playoff games) of the Team and the Soccer Team, (b) practices of the Team and the Soccer Team, (c) concerts and other entertainment events, (d) meetings and banquets, (e) soccer, football, lacrosse, baseball (e.g., high school and college) and other sporting events, (f) community-oriented events (other than City Sponsored Events), (g) USL events, (h) any other for profit events, (i) reasonable periods before and after the events described in subsections (a)-(h) hereof, for field protection, recovery and repair and event move-ins/move-outs and (j) Ballpark routine repairs and maintenance, and for any other lawful purpose that is not a Prohibited Use (collectively, the “**Ballpark Events**”). Tenant shall be entitled to use all or any portion of the City property commonly known as “**Cleveland Square Park**” for any activities described in subparagraphs (b)-(h) above during Ballpark Parking Hours for any Ballpark Events involving subparagraph (a) above. Tenant shall notify the City of dates and times it intends to use Cleveland Square Park and be required to clean and restore Cleveland Square Park after any use by Tenant or Tenant’s agents, representatives or invitees under the terms of a standard use permit.”

Section 1.10 The Original Agreement is hereby amended by inserting new Section 4.4(c) as follows:

“Section 4.4(c). Notwithstanding the foregoing Section 4.4(a), all revenues generated from the Soccer Team and/or the Ballpark on the date of a Soccer Team home game or USL events including, without limitation, all revenues from Soccer Team or USL ticket sales (except Ticket Fees), parking (except for City’s share of parking revenue, discussed in Article V of this Agreement), Soccer Team or USL Concessions, Soccer Team or USL Merchandise, Soccer Team or USL suite, and club seat sales, interior and exterior Soccer Team or USL-related Ballpark advertising and signage, sponsorships, any and all Soccer Team or USL naming rights and other advertising, sales of broadcast and telecast rights, internet rights, league expansion fees and team fundraising, and any other sources of Soccer Team or USL related revenue, shall be retained by MountainStar Soccer or the USL, as appropriate.”

Section 1.11 The Original Agreement is hereby amended by deleting Section 4.5(f) in its entirety and inserting in its place the following:

“Section 4.5(f). Use any portion of the Ballpark, other than portions designated for same inside the Ballpark building, for storage;”

Section 1.12 The Original Agreement is hereby amended by deleting Section 4.5(g) in its entirety and inserting in its place the following:

“Section 4.5(g). Operate any speakers or amplified music near or on any exterior portions of the Ballpark other than during Ballpark Parking Hours, without the Approval of City Representative (but specifically excluding any pre-event sound checks for Ballpark Events and reasonable testing of the Ballpark sound facilities); or”

Section 1.13 The Original Agreement is hereby amended by deleting Section 5.5 in its entirety and in its place inserting the following:

“Section 5.5 Season Parking. At least ten (10) Business Days prior to the beginning of each Baseball Season, Tenant shall provide City with written notice of the number of parking spaces needed by Tenant for the ensuing twelve month period, in the Offsite Garage Parking, for all Ballpark Events known at the time of such notice and for up to five additional Ballpark Events which do not have to be specifically designated at the time of such notice (collectively, the “**Baseball Season Parking Events**”). At least ten (10) Business Days prior to the beginning of the regular season for each Soccer Season, Tenant shall provide City with written notice of the number of parking spaces needed by Tenant for the ensuing twelve month period, in the Offsite Garage Parking, for all Ballpark Events known at the time of such notice and for up to five additional Ballpark Events which do not have to be specifically designated at the time of such notice (collectively, the “**Soccer Season Parking Events**,” and together with Baseball Season Parking Events, the “**Season Parking Events**”). As so specifically requested by Tenant in such notice, City shall provide Tenant with up to three hundred (300) parking spaces in the Offsite Garage Parking for each Baseball Season Parking Event and Soccer Season Parking Event during the applicable twelve month period. Tenant shall pay to City the

Parking Fee for each parking space requested by Tenant in the Offsite Garage Parking for the applicable twelve month period, subject to the limitations contained in Section 3.8. No other parking fees will be charged by City for the use of such parking spaces during any Season Parking Event during the applicable twelve month period. If Tenant does not timely specify the number of spaces needed for Baseball Season Parking Events for any twelve month period, the Parking Fee for such season shall be calculated, and the Tenant shall pay such fee, on the basis of 300 spaces times 77 Baseball Season Parking Events, subject to the limitations contained in Section 3.8. If Tenant does not timely specify the number of spaces needed for Soccer Season Parking Events for any twelve month period, the Parking Fee for such season shall be calculated, and the Tenant shall pay such fee, on the basis of 300 spaces times 17 Soccer Season Parking Events, subject to the limitations contained in Section 3.8.”

Section 1.14 The Original Agreement is hereby amended by inserting new Section 5.8 as follows:

“Section 5.8. Permitted Uses; Ballpark Surface Parking. Without limiting the Tenant’s rights to use the parking as described in this Article V, the Tenant shall also have the right to use the Ballpark Surface Parking for (a) concerts and other entertainment events, (b) meetings and banquets, (c) community-oriented events (d) any other for profit events, (e) reasonable periods before and after the events described in subsections, (a)-(d) hereof, (f) storage, (g) rental to neighboring businesses, and (h) and for any other lawful purpose that is not a Prohibited Use.”

Section 1.15 The Original Agreement is hereby amended by deleting Section 6.1(h) in its entirety and in its place inserting the following:

“Section 6.1(h). Tenant, in its reasonable discretion, shall provide at its sole cost and expense all interior Ballpark security, emergency medical and other necessary staff inside the Ballpark at a level of service appropriate for the applicable Ballpark Event and consistent with the Ballpark Standard. City, in its reasonable discretion, shall provide at its sole cost and expense (using City employees or contract services, as determined by City) all customary police, traffic control, fire prevention, emergency medical, street cleaning, trash removal and other similar City-provided services, outside and in the general vicinity of the Ballpark, at a level of service consistent with the Ballpark Standard; provided, however, that City may request and receive, in Tenant’s sole discretion, approval to provide less than the aforementioned customary level of outside services for any Ballpark Event. If City in its sole discretion determines that an emergency public safety issue exists at any Event, City shall have the right to provide additional police or emergency staffing for such Event at City’s cost. The Representatives shall meet from time to time to update each other on staffing needs for scheduled Events.”

Section 1.16 The Original Agreement is hereby amended by deleting Section 15.3(a) in its entirety and in its place inserting the following:

"Section 15.3(a). City shall not offer any financial incentives to, or assist in establishing or locating, without Team's written permission, any other professional baseball franchise within City or any professional soccer franchise within City other than the Soccer Team. As used in this section, "financial incentives" includes, without limitation, cash payments, tax abatements, transferring interests in real estate or personal property, loans, guarantees, or any other form of financial accommodations."

Section 1.17 The Original Agreement is hereby amended by deleting Section 15.3(c) in its entirety and in its place inserting the following:

"Section 15.3(c). Neither City nor any Affiliate of City, shall, directly or indirectly, develop, finance, facilitate or otherwise participate in the development or approval of any outdoor concert venue in downtown El Paso that is reasonably anticipated to compete with the Ballpark, with the exception of a soccer stadium for a United Soccer League Soccer team."

ARTICLE II.

ADDITIONAL AGREEMENTS

Section 2.01 Ballpark Improvements.

(a) The parties agree that Tenant, at Tenant's sole cost and expense, may make certain Capital Improvements and other improvements to the Ballpark, all of which are City-owned, to accommodate the Soccer Team and to improve the Ballpark experience, including, but not limited to, (i) modifications to the existing Ballpark to provide for a soccer field to meet USL's guidelines; (ii) improvements to the existing auxiliary locker room to add shower and restroom facilities, (iii) improvements to add (A) a coaches' area, (B) a training room, and (C) offices for Soccer Team administrative personnel; (iv) new signage and graphics to reflect the Soccer Team's marks and logos; (v) a removable pitching mound to facilitate changeovers to and from baseball and other events; (vi) additional storage areas for Soccer Team equipment; (vii) space for Soccer Team related merchandise sales; (viii) field level signage systems; (ix) updates and additions to Ballpark videoboard and ribbon boards; and (x) any other improvements required by USL or as the Tenant or Soccer Team reasonably deems appropriate (collectively, the "Ballpark Improvements").

(b) Tenant will be responsible for selection of, and the payment to, the architect, designers, and contractors, as well as the design and oversight of the construction process for the Ballpark Improvements.

(c) The City will cooperate and ensure expedited plan review, permits and inspections of the Ballpark Improvements and do so at no expense to Tenant.

(d) The City Engineer will review and consider for approval the plans and specifications for any improvements to be performed by Tenant in this Section 2.01. The City Engineer shall approve or disapprove with comments any plans and specifications submitted for review within twenty (20) days after receipt thereof, which approval shall not be unreasonably withheld, conditioned or delayed. If the City Engineer disapproves any plans or specifications

the parties shall follow the twenty-day review process following revisions to the applicable plans or specifications and re-submittal to the City Engineer. Notwithstanding anything to the contrary contained herein, the City Engineer shall not disapprove any plans or specifications for improvements described in this Section 2.01 if (a) such improvements are at a quality that equals or exceeds the Ballpark Standard and (b) are in accordance with Applicable Laws that are applicable to the review and approval of such plans and specifications. Following completion of the work related to any such plans and specifications, the City Engineer shall have the right to inspect such work to ensure substantial conformance with such plans and specifications.

Section 2.02 Offsite Garage Parking.

(a) In an effort to meet the City's unfulfilled obligation to provide 200 Ballpark Surface Parking spaces, the City will make best efforts to lease (or otherwise acquire rights sufficient to make the parking available to Tenant contemplated in this Section) within one year of the effective date of this Amendment the Texas Department of Transportation ("TxDOT") lot located near the Ballpark on West Franklin Street and thereafter make available to Tenant approximately 60 additional spaces (the "**West Franklin Lot**"). If the City does not purchase TxDOT's entire interest in the West Franklin Lot, the parties shall reasonably cooperate to ensure that the underlying lease or other use agreement includes provisions to accommodate the terms and conditions of the additional spaces described herein, and Tenant shall have the right to review and approve such agreement, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Upon the City's acquisition or lease of the West Franklin Lot:

(i) Team will be responsible, at its sole cost and expense, for the following improvements to the West Franklin Lot: (A) installation of a new surface, (B) overhead lighting, (C) a perimeter fence, and (D) other improvements, in each case as determined in the Team's sole and absolute discretion. For the avoidance of doubt, the improvements set forth in this Section 2.02(b)(i) are Updates and Improvements.

(ii) City will provide at City's sole cost all necessary utilities to the West Franklin Lot, including electrical and water service, and access and connection to stormwater drainage systems where feasible.

(iii) The parking shall be deemed included as Ballpark Surface Parking in the Original Agreement (as amended) for all purposes.

(c) Until such time as the West Franklin Lot is leased, the City will provide 60 permanent spaces, on a 24/7 basis, for use by the Company in the UPTT Garage or the El Paso Convention Center Lots (the "**Temporary Parking Lot**"). Company will retain 100% of the revenue from the Temporary Parking Lot.

Section 2.03 Missouri Street Closure. City shall close that portion of Missouri Street between Santa Fe Street and Durango Street that is adjacent to the Ballpark for all Ballpark Events at least 30 minutes prior to the gates opening for the Ballpark Event (or such earlier time as is reasonably requested by Team) until 30 minutes after the end of the Ballpark Event. During

such closure, City shall monitor and control the entrances and exits to such closure during the closure period. Such services, being necessary to ensure the safety of pedestrians and fans, shall be provided at the City's cost and expense consistent with the standards set forth in Section 6.1(h) of the Agreement.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

Section 3.01 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 3.02 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 IV. MISCELLANEOUS

Section 4.01 Effective Date. This Amendment shall be effective as of the date of its execution by all the parties hereto (the "Effective Date").

Section 4.02 Capitalized Terms. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Original Agreement.

Section 4.03 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 4.04 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 4.05 Time of the Essence. Time is of the essence with respect to all sections of this Amendment.

Section 4.06 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.

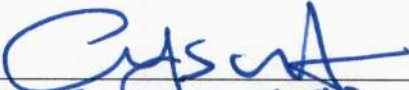
Section 4.07 Counterparts. This Amendment may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.

Section 4.08 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: Cary S. Weston
Its: Deputy City Manager
Date: 16 October 2018


Approved as to Form:


Josette Flores
Senior Assistant City Attorney

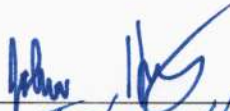
Approved as to Content:


Samuel Rodriguez, P.E.
City Engineer

**EL PASO STADIUM OPERATIONS
COMPANY**

By: 
Name: Joshua Hunt
Its: Series 7 Manager
Date: 9/26/2018

MOUNTAINSTAR BASEBALL, LLC

By: 
Name: Joshua Hunt
Its: Manager
Date: 9/26/2018