

LEASE AGREEMENT

This LEASE AGREEMENT ("Agreement") is hereby entered into on this Effective Date (the "Effective Date"), by and between the CITY OF ROSWELL, NEW MEXICO ("City"), a political subdivision of the State of New Mexico, located at 425 N. Richardson, Roswell, NM 88201, and PECOS LEAGUE OF PROFESSIONAL BASEBALL CLUBS DBA THE ROSWELL INVADERS, a(n) Corporation, whose principal address is PO BOX 271489, Houston, TX 77277 ("The Roswell Invaders"), collectively referred to herein as the Parties.

RECITALS

WHEREAS, the City is the fee owner of and has the right to utilize, including the right to lease, the following described real property, together with the improvements thereon, in Chaves County, New Mexico, to wit:

S: 16 T: 11S R: 24E NW4NE4NE4 S 514' N 544' E 440' W 465' BK: 275 PG: 833, known as, and referred to hereinafter, as "**Joe Bauman Stadium**"; and

WHEREAS, The City of Roswell hereby leases the subject property to PECOS LEAGUE OF PROFESSIONAL BASEBALL CLUBS dba The Roswell Invaders for purposes related to the operation of The Roswell Invaders baseball organization, including, but not limited to, the operation and management of The Roswell Invaders baseball team. The subject property shall also be made available for use by the Roswell High School Baseball Team pursuant to a shared scheduling arrangement. All scheduling, coordination, and allocation of field use between The Roswell Invaders and the Roswell High School Baseball Team shall be administered and managed by the Lessee under the terms of this Lease Agreement.

WHEREAS, The City of Roswell ("Lessor") shall lease the Premises to The Roswell Invaders ("Lessee") for an initial term of five (5) years (the "Initial Term"), commencing on the effective date of this Lease Agreement and continuing until the expiration of the Initial Term, unless earlier terminated in accordance with the provisions of this Agreement. Upon expiration of the Initial Term, the parties may negotiate a new lease agreement. Any renewal or extension of this Lease shall be subject to the mutual written agreement of the parties and all applicable governmental approvals, authorizations, and legal requirements. Nothing herein shall be construed as obligating the City of Roswell to renew or extend this Lease.

WHEREAS, The Lessee shall be responsible for the maintenance and upkeep of Joe Bauman Stadium, including, but not limited to, all field maintenance, groundskeeping, and the removal and disposal of all trash, litter, debris, and other waste from the premises. The Lessee, shall also be responsible for any water or sewage-related damage occurring within or to the premises, unless otherwise determined by the governing body. The City shall assist with the repair of any damage to the premises when the cost of such repairs exceeds Five Thousand Dollars (\$5,000.00). The extent and manner of the City's assistance shall be determined in consultation with the Lessee and shall be subject to the terms of this Agreement

NOW THEREFORE, in consideration for the mutual covenants contained herein, The Roswell Invaders and the City agree as follows:

1. GRANTING CLAUSE

For the Term, at the Rent and otherwise upon the terms, provisions and conditions contained herein, the City hereby lets and leases unto The Roswell Invaders the surface only to Joe Bauman Stadium, together with all improvements located thereon.

2. RENT

a. The Roswell Invaders agrees to pay to the City as rent the sum of ONE HUNDRED DOLLARS (\$100.00) annually, payable at the City's option on a lump-sum basis at the commencement of this Agreement and each anniversary thereafter, or in 12 monthly installments of \$8.34 (the "Rent") the first payment of which shall be due on the Effective Date hereof and thereafter on the first day of each month. After the first year of the Term, Rent will be adjusted every year by 3% or Consumer Price Index ("CPI"), whichever is greater.

b. If The Roswell Invaders fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, The Roswell Invaders shall pay to the City an additional 12% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting the City in the exercise of any other right or remedy to which it may be entitled by reason of The Roswell

Invaders's failure to pay rent when due. All rent shall be paid to the City without abatement, reduction or set off of any kind except as herein specifically provided.

3. **SECURITY DEPOSIT**

a. Upon the execution of this Agreement, The Roswell Invaders shall pay to the City the following a security deposit to be held as security for the payment of rent and the faithful performance by The Roswell Invaders of all of its obligations under this Agreement:

☒ i. \$0.00

☐ ii. The City waives the security deposit for this Agreement.

b. The City may use the security deposit to repair any damage to Joe Bauman Stadium caused by The Roswell Invaders or its guests, and to clean the Joe Bauman Stadium upon termination of this Agreement. If The Roswell Invaders fully performs its obligations under this Agreement, the security deposit, or the balance remaining, shall promptly be returned to The Roswell Invaders after the termination of this Agreement.

4. **TERM**

The term of this Agreement shall commence on the Effective Date and shall continue for a period of 5 year(s) (the "Term"). This Agreement will not be renewed; therefore, a new lease agreement must be negotiated upon expiration of the initial term.

5. **USE OF PREMISES**

a. The Roswell Invaders shall use Joe Bauman Stadium solely for the purposes of operation and management of The Roswell Invaders baseball team, and related uses, and for no other purposes. The Roswell Invaders shall not use the Joe Bauman Stadium for any purpose prohibited by the laws of the United States, the State of New Mexico, or the ordinances of the City of Roswell.

b. The Roswell Invaders shall conduct and operate its business in such a manner so as to prevent the performance of any act, creation, or maintenance of anything which in the opinion of the City may be or become a nuisance or otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor, other forms of air pollution, or other condition, substance, or element in such amounts as to affect the surrounding area or adjoining premises. The City shall be the sole judge as to whether

any act done or things created or maintained by The Roswell Invaders on the Joe Bauman Stadium is or may become a nuisance or otherwise noxious or objectionable condition and The Roswell Invaders agree to abide by the City's decision and act in accordance with its directions with respect thereto.

c. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of The Roswell Invaders's use or occupancy of Joe Bauman Stadium is the sole and absolute responsibility of The Roswell Invaders. The Roswell Invaders shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, generated on or as a part of The Roswell Invaders's use or occupancy of Joe Bauman Stadium shall be grounds for the immediate termination of this Agreement with or without process of law. The Roswell Invaders represents to the City that it will not release any hazardous materials at, in, on or about Joe Bauman Stadium. To the extent it is proven that hazardous materials have been released by The Roswell Invaders during the Term, The Roswell Invaders hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold the City harmless from and against any bodily injury, death or property damage, including (1) environmental claims, (2) environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials, and (3) liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.

6. CONDITION OF THE PREMISES

The Roswell Invaders has inspected Joe Bauman Stadium and accepts Joe Bauman Stadium in its present condition, as is. The Roswell Invaders acknowledges that any requirements for accessibility and/or public accommodation(s) are The Roswell Invaders's responsibility. The City makes no representations or warranties that Joe Bauman Stadium is suitable for The Roswell Invaders's use or any other purpose.

7. MAINTENANCE

a. The Roswell Invaders, at its own expense, shall maintain Joe Bauman Stadium and appurtenances to Joe Bauman Stadium in good repair and in at least as good condition as that in which they were delivered, allowing for ordinary wear and tear, and provided that Joe Bauman

Stadium shall not be required to make any structural repairs or alterations, which shall be the responsibility of the City, except as provided below.

b. The City shall be the sole judge of the quality of repair and maintenance by The Roswell Invaders under this Section and, upon written notice by the City, The Roswell Invaders shall be required to perform whatever maintenance or repairs deemed necessary by the City. If said maintenance or repair is not undertaken within ten (10) days after receipt of written notice, the City shall have the right to enter upon Joe Bauman Stadium and perform the necessary maintenance, the cost of which shall be borne by The Roswell Invaders.

c. The Roswell Invaders shall notify the City of any structural repairs as soon as The Roswell Invaders knows or should know of the need for such repairs. The City shall bear the cost and responsibility of such structural repairs, except to the extent caused by The Roswell Invaders's failure to timely notify the City of the need for such repairs, or made necessary as a result of the activities of The Roswell Invaders at Joe Bauman Stadium. The cost of structural repairs made necessary as a result of The Roswell Invaders's activities or failure to timely notify the City shall be deemed additional Rent and shall be payable to the City on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

8. TAXES, LICENSES AND UTILITIES

During the Term hereof, The Roswell Invaders shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by The Roswell Invaders upon Joe Bauman Stadium, of whatsoever kind or nature, incident to or arising out of the conduct of The Roswell Invaders's activities. Failure to have or maintain any appropriate current license or permit shall be a breach of this Agreement. The Roswell Invaders shall be responsible for all utilities to Joe Bauman Stadium.

9. PERSONAL PROPERTY AND FIXTURES

All personal property and fixtures of The Roswell Invaders in and on Joe Bauman Stadium shall be kept at the sole risk of The Roswell Invaders, and the City shall not be liable for any damage thereto or to The Roswell Invaders for interruption of business or otherwise. The Roswell Invaders hereby waives all causes or rights of recovery against City, its agents, employees, invitees and for any loss to such personal property and fixtures on Joe Bauman Stadium or to consequential loss arising there from caused by fire or other casualty, whether negligently caused or not.

10. EQUIPMENT AND IMPROVEMENTS

a. Except as otherwise provided herein, The Roswell Invaders shall have the right to install such equipment as may be necessary for the conduct of its business on Joe Bauman Stadium; and at the expiration or termination of the Agreement The Roswell Invaders shall have the right to remove all of such equipment installed by The Roswell Invaders that is removable without damage to Joe Bauman Stadium. Also, except as provided in this Agreement, The Roswell Invaders shall, upon written demand by the City, at The Roswell Invaders's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by The Roswell Invaders pursuant to this Section.

b. The Roswell Invaders shall not make, suffer or permit to be made, any major additions, alterations or improvements on Joe Bauman Stadium (including but not limited to, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in) without first obtaining the written consent of the City, which consent will not be unreasonably withheld. At the termination or expiration of this Agreement, all such permitted improvements shall become the sole property of the City.

11. MECHANICS' LIENS

In the event that The Roswell Invaders makes any major alterations, additions or improvements, as provided for above, The Roswell Invaders shall not cause, suffer or permit any mechanic's, materialmen's, or other liens to be filed against Joe Bauman Stadium, or any part thereof, nor against The Roswell Invaders's leasehold interest, by reason of work, labor, services, or materials supplied or claimed to have been supplied to The Roswell Invaders. In the event that such liens shall be recorded against the Joe Bauman Stadium, The Roswell Invaders shall cause the same to be removed or, in the alternative, if it in good faith desires to contest the same, it shall be privileged to do so, but in such case The Roswell Invaders hereby agrees to indemnify and save the City harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure, cause the same to be discharged and removed prior to the execution of such judgment.

12. ACCESS AND INSPECTION

Upon giving reasonable notice to The Roswell Invaders, the City may enter Joe Bauman Stadium during The Roswell Invaders's regular business hours and have free access to Joe Bauman Stadium and improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to City under the terms and provisions of this Agreement.

13. HOLDOVER

In the event The Roswell Invaders remains in possession of Joe Bauman Stadium after the expiration or termination of this Agreement, The Roswell Invaders shall be deemed a tenant at sufferance, and shall be required to pay to the City the fair market rental value of the Joe Bauman Stadium on a monthly basis, and The Roswell Invaders's occupancy shall be governed in all other respects by the provisions hereof, except as to the duration of the Term.

14. CONDEMNATION

a. In the event that the Joe Bauman Stadium or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the Term hereof, this Agreement shall terminate as of the effective date of such condemnation or taking, unless the Parties mutually agree that any remainder left after a partial condemnation or taking is still suitable for the purposes of this Agreement, in which case this Agreement may continue at the election of the Parties. In such event, The Roswell Invaders shall bear any necessary costs of relocating its equipment and placing the remaining Joe Bauman Stadium in proper and usable condition.

b. In the event of total or partial condemnation or taking of the Joe Bauman Stadium as aforesaid, all compensation awarded or paid upon a total or partial taking of the Joe Bauman Stadium shall belong to City and The Roswell Invaders shall have no right or cause of action against City; provided, however that The Roswell Invaders shall be entitled to participate in any award to the extent that such award includes the loss, if any, sustained by The Roswell Invaders as a result of the termination of this Agreement or diminution of its leasehold estate and the value of any fixtures condemned or taken if such fixtures were installed by The Roswell Invaders and are located upon Joe Bauman Stadium at the time of such condemnation or taking. The Roswell Invaders reserves the right to proceed independently of City with any claim for compensation for

damages to which The Roswell Invaders may become entitled by reason of such total or partial condemnation or taking.

15. DAMAGE OR DESTRUCTION OF PREMISES

a. In the event Joe Bauman Stadium is damaged or destroyed by fire, the elements, or other perils or casualty not the fault of The Roswell Invaders, the City may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage, or terminate this Agreement by 30 days' written notice to The Roswell Invaders. If the City elects to repair or rebuild, this Agreement shall remain in full force and effect, except that The Roswell Invaders's obligation to pay Rent shall be waived or reduced based upon the extent to which the damage and making of such repairs shall reasonably interfere with the activities carried on by The Roswell Invaders in Joe Bauman Stadium, as determined by the City. The City shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements, of any leasehold improvements, fixtures, or other personal property of The Roswell Invaders. In no event shall the City be liable to or for any costs incurred by The Roswell Invaders as a result of disruption of its activities by casualty under this Section.

b. In the event that the City elects to repair or rebuild Joe Bauman Stadium under this Section, the City shall act promptly and with due diligence, but the City shall not be responsible for delays caused by factors beyond the City's control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, The Roswell Invaders agrees that the City shall not be responsible for damages, nor shall the City be deemed to be in default under this Agreement.

16. TERMINATION

Either Party may terminate this Agreement at any time during the Term or any Renewal Term hereof by giving 30 days' written notice in advance. Termination under this Section shall not terminate, prejudice or otherwise effect any right or obligation accruing hereunder prior to the termination.

17. SURRENDER

Upon expiration or termination of this Agreement, The Roswell Invaders shall quit and surrender Joe Bauman Stadium to the City within 30 days of the expiration or notice of termination, in as clean and good order and condition as it was at the commencement of the Term, normal wear

and tear excepted. Except as otherwise provided for herein, The Roswell Invaders shall remove all of its personal property and fixtures from Joe Bauman Stadium prior to surrender and any such personal property or fixtures abandoned on or about the Joe Bauman Stadium after surrender shall become irrevocably the property of the City, but The Roswell Invaders shall be liable for any costs to the City of disposing of any of its property or fixtures left after surrender that the City, in its discretion, does not elect to keep. The Roswell Invaders shall be further liable for any costs of repairs, restoration or cleaning of Joe Bauman Stadium made necessary as a result of The Roswell Invaders's failure to maintain its obligations under this Section.

18. INSURANCE

a. The Roswell Invaders agrees to have and maintain the policies of insurance set forth in Exhibit A: Insurance, which Exhibit is attached hereto and incorporated by reference as if set forth fully herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

b. The Roswell Invaders's insurance obligations under this Agreement shall be:

- i. all insurance coverage and/or limits by or available to The Roswell Invaders; or
- ii. the minimum coverage requirements and/or limits set forth in Exhibit A, whichever is greater.

c. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits set forth in Exhibit A, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements set forth in Exhibit A are sufficient to cover the obligations of The Roswell Invaders pursuant to this Agreement. The Roswell Invaders's requirements under this Section shall be referred to herein as the "Insurance."

d. Maintenance of insurance coverage set forth in this Section during the entire Term, and any Renewal Term, is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of the existence or renewal of required insurance may be treated by the City as a material breach of this Agreement.

19. INDEMNIFICATION AND HOLD HARMLESS

a. The City shall not be liable to The Roswell Invaders or to The Roswell Invaders's employees, customers, visitors, or any other person for any injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the premises in connection with, or arising out of, The Roswell Invaders's operation and use of Joe Bauman Stadium.

b. The Roswell Invaders agrees to accept responsibility for loss or damage to any person or property, and to release, defend at its own expense, indemnify, and hold harmless the City, its council members, officials, officers, employees, agents, and volunteers, against any and all liability, actions, claims, losses, damages, disabilities, and expenses, including costs of litigation and reasonable attorneys' fees, that are asserted by any person or entity, to the extent arising out of any and all acts or omissions of The Roswell Invaders, or its officers, employees or agents, in the performance of this Agreement, excluding, however, such liability, claims, losses, damages, or expenses arising from the City's sole negligence or willful acts.

c. The Roswell Invaders agrees to be responsible for all loss or damage from any cause whatsoever to any of its property or equipment. The Roswell Invaders is responsible for providing its own liability and loss insurance coverage for any of its property or equipment and The Roswell Invaders expressly acknowledges that no part of said property or equipment shall be covered under the City's insurance policies.

d. These indemnifications are independent of and shall not in any way be limited by the insurance requirements of this Agreement. Approval by the City of the insurance requirement by this Agreement shall not in any way relieve The Roswell Invaders from liability under this Section. The City's right to indemnification hereunder shall survive termination, whether for cause or not, or expiration of this Agreement.

20. DEFAULT

The Roswell Invaders shall be in default of this Agreement, if at any time during the Term hereof, it shall:

a. Default in the payment of any installment of Rent or any other sums specifically to be paid by The Roswell Invaders hereunder and such default shall not have been cured within ten (10) days after the City shall have given to The Roswell Invaders written notice specifying such default; or

b. Fail in the observance of any covenants, agreements or obligations hereunder, other than the covenants to pay Rent, when such failure shall not have been cured within thirty (30) days after City shall have given to The Roswell Invaders written notice specifying such default; provided, however, that if the failure complained of shall be of such nature that the same cannot be completely remedied or cured within such thirty (30) day period, then such failure shall not be an enforceable default against The Roswell Invaders for the purposes of this paragraph if The Roswell Invaders shall have commenced curing the failure within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the failure complained of; or

c. Finally, and without further possibility of appeal or review

- i. be adjudicated bankrupt or insolvent,
- ii. have a receiver or trustee appointed for all or substantially all of its business or assets, or
- iii. suffer an order to be entered approving a petition filed against The Roswell Invaders seeking reorganization of The Roswell Invaders under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof; or

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property; or

e. Leave Joe Bauman Stadium vacant or deserted for a period of thirty (30) consecutive days and such lack of use shall continue for thirty (30) days after City has given The Roswell Invaders written notice specifying the vacancy.

21. CITY'S REMEDIES ON DEFAULT

a. Upon default of this Agreement by The Roswell Invaders, the City may declare this Agreement, and all rights and interest created by it, to be terminated without further notice to The Roswell Invaders, whereupon The Roswell Invaders shall surrender Joe Bauman Stadium as otherwise provided for herein. In the event that The Roswell Invaders shall fail or refuse to surrender Joe Bauman Stadium, the City shall be entitled to regain possession thereof in the manner provided by the laws of the State of New Mexico in force at the time of the default. Termination

hereunder shall not relieve The Roswell Invaders from any claim for damages accruing to the City under this Agreement or as a result of the default and the City shall be entitled to enforce the payment of such claim for damages by any remedy provided by law, whether or not stated herein. The City may further sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease.

b. If The Roswell Invaders shall at any time be in default in fulfilling any of the covenants of this Agreement, the City may, but shall not be obligated to, take or cause to be taken such action or make such payment as may be required by such covenant, without notice to or demand upon The Roswell Invaders and at The Roswell Invaders's risk and expense. All expenses, costs and liabilities of the City incurred hereunder shall be deemed additional Rent and shall be payable to the City on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

22. FORCE MAJEURE

Neither Party shall be held liable for failure of or delay in performing its obligations under this Agreement if such failure or delay is the result of an act of God, such as earthquake, hurricane, tornado, flooding, or other natural disaster, or in the case of war, action of foreign enemies, terrorist activities, labor dispute or strike, government sanction, blockage, embargo, or failure of electrical service, nor for any failure or delay caused by the negligence or omission of the City. Either Party claiming force majeure hereunder must make every reasonable attempt to minimize delay of performance. In the event of a force majeure, the Party claiming force majeure shall notify the other Party thereof within 10 days of its occurrence. If such force majeure continues longer than 120 days, either Party may terminate the Agreement, as otherwise provided for herein.

23. NONDISCRIMINATION

The Roswell Invaders shall not discriminate against any otherwise qualified employee, applicant for employment, subcontractor, or other person, in connection with the performance of this Agreement, unless based on a bona fide occupational qualification or other statutory prohibition, because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or spousal affiliation. In the event of The Roswell Invaders's noncompliance with the provisions of this Section, this Agreement may be canceled, terminated or suspended, in whole or in part, and The Roswell Invaders may be declared ineligible for further contracts with the City.

24. **CHOICE OF LAW AND FORUM SELECTION**

This Agreement shall be governed by the laws of the State of New Mexico, exclusive of choice of law provisions, and venue for any judicial proceeding resulting here from shall lie in the Fifth Judicial District, Chaves County, New Mexico.

25. **NOTICES**

Notices and other communications under this Agreement must be in writing and are effective upon the sooner to occur of (i) the business day actually received (or if such date is not a business day, on the next business day thereafter), (ii) on the next business day after placing such written notice or communication with a reputable overnight delivery service for overnight (next morning) delivery, or (iii) on the third (3rd) business day following the date on which such written notice or communication was deposited with the United States Postal Service with postage prepaid and marked as certified or registered mail, return receipt requested, so long as, in each case, such written notice or communication was addressed to the Party to whom it was intended at such Party's address set forth herein or to such other address as that Party may from time to time provide in a writing pursuant to this Subsection to the other Party:

CITY OF ROSWELL

Attn: Hessel Yntema
City Manager
P.O. 1838, Roswell, NM 88202-1838

PECOS LEAGUE OF PROFESSIONAL
BASEBALL CLUBS dba the roswell
invaders

Attn: Andrew Dunn
Owner
PO BOX 271489, Houston, TX 77277

26. **COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

27. **ENTIRE AGREEMENT, MODIFICATION**

This Agreement constitutes the entire agreement of the Parties and supersedes any prior agreements, understandings or negotiations, written or oral. This Agreement may only be modified or amended in writing, signed by the Parties hereto, and any such duly-executed written modification or amendment shall be automatically incorporated into this Agreement as if set forth fully herein.

28. **SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

29. NON-WAIVER.

The Parties agree that no failure to exercise and no delay in exercising any right, power or privilege under this Agreement on the part of either Party shall operate as a waiver of any right, power, or privilege under this Agreement.

30. RIGHTS CUMULATIVE

All rights, options, and remedies of the City contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and the City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement.

31. BINDING EFFECT

This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

32. NO ASSIGNMENT

The Roswell Invaders shall not assign, sublet or subcontract any obligation, duty, right or covenant hereunder without the express written consent of the City, which the City may withhold in its total discretion.

33. AUTHORITY

The individual signing below warrants and represents that he or she is duly authorized to execute this Agreement on behalf of The Roswell Invaders.

34. HEADINGS.

The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Agreement.

35. NO ADDITIONAL REPRESENTATIONS

- a. The Roswell Invaders expressly acknowledges that in entering into this Agreement, it does not rely on any statement, representation, or warranty other than those expressly set out in this Agreement.

- b. The Roswell Invaders expressly acknowledges that it has been advised to seek its own separate legal counsel for advice with respect to this Agreement, and has had sufficient opportunity to do so. The Parties further agree that interpretation of this Agreement shall be made without regard to authorship or negotiation.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, The Roswell Invaders and the City of Roswell have caused this Agreement to be executed by their duly authorized officers on this Effective Date, the Effective Date hereof.

“City”

CITY OF ROSWELL

“The Roswell Invaders”

PECOS LEAGUE OF
PROFESSIONAL BASEBALL
CLUBS dba the roswell invaders

By: Hessel Yntema
City Manager

By: Andrew Dunn
Owner

CITY SEAL

Amalia Martinez, City Clerk

Approved as to form:



Theodoro Garcia, Asst. City Attorney

EXHIBIT A: INSURANCE

1. MINIMUM SCOPE OF INSURANCE

a. The Roswell Invaders shall procure and maintain for the duration of the contract the following minimum insurance against claims for injuries to persons or damages to property which may arise from or in connection with the lease of Joe Bauman Stadium by The Roswell Invaders, its agents, representatives, employees or subcontractors (check all that apply):

☒ I. **Commercial General Liability** ("CGL"): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000.00** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

☐ II. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or if The Roswell Invaders has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000.00** per accident for bodily injury and property damage.

☐ III. **Worker's Compensation**: as required by the State of New Mexico, with Statutory Limits and Employer's Liability Insurance with limit of no less than **\$1,000,000.00** per accident for bodily injury or disease.

☐ IV. **Professional Liability (Errors and Omissions)**: Insurance appropriate to The Roswell Invaders's profession, with limit no less than **\$1,000,000.00** per occurrence or claim, **\$2,000,000.00** aggregate.

☒ V. **Property Insurance**: against all risks of loss to any and all improvements, betterments, and fixtures on or to real property made the subject of this Agreement, at full replacement cost with no coinsurance penalty provisions.

b. If The Roswell Invaders maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by The Roswell Invaders.

2. ADDITIONAL INSURED STATUS

The City, its council members, officials, officers, employees, agents, and volunteers are to be covered as additional insured on the CGL policy with respect to liability arising out of the lease of Joe Bauman Stadium by The Roswell Invaders, including materials, parts or equipment furnished in connection with the lease. General Liability coverage can be provided in the form of an endorsement to The Roswell Invaders's insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38, or CG 20 38; and CG 20 37 form is later revisions used).

3. PRIMARY COVERAGE

For any claims related to this Agreement, The Roswell Invaders's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its council members, officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its council members, officials, officers, employees, agents, and volunteers shall be excess of The Roswell Invaders's insurance and shall not contribute to it.

4. NOTICE OF CANCELLATION

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

5. WAIVER OF SUBROGATION

The Roswell Invaders hereby grants to the City a waiver of any right to subrogation which any of The Roswell Invaders's insurers may acquire against the City by virtue of the payment of any loss under such insurance. The Roswell Invaders agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

6. SELF INSURED RETENTIONS

Self-insured retentions must be declared to and approved by the City. The City may require The Roswell Invaders to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administrations, and defense expenses within the retention.

7. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers authorized to conduct business in the State of New Mexico with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

8. CLAIMS MADE POLICIES

If any of the required policies provide claims-made coverage:

- i. The Retroactive Date must be shown, and must be before the Effective Date of this Agreement or the beginning of occupancy hereunder.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the occupancy.
- iii. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Effective Date, The Roswell Invaders must purchase "extended reporting" coverage for a minimum of five years after completion of occupancy.

9. VERIFICATION OF COVERAGE

The Roswell Invaders shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this Section. All certificates and endorsements are to be received and approved by the City before the occupancy commences. Failure to obtain the required documents prior to occupancy, however, shall not waive The Roswell Invaders's obligations to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications at any time.

10. SPECIAL RISKS OR CIRCUMSTANCES

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.