

WATER LEASE AGREEMENT

This Water Lease Agreement, hereinafter "Agreement", is entered into on this _____ day of _____, 20____ by and between the City of Roswell, hereinafter "Lessor", and Leprino Foods Company, hereinafter "Lessee" upon the terms and conditions set forth herein:

RECITALS

WHEREAS, Lessee owns and operates a commercial cheese and related ingredients manufacturing and processing plant and has water wells located in Chaves County, New Mexico and desires to lease water which can be used by Lessee in connection with its commercial manufacturing and processing plant and associated farming operation (the "Facility"); and,

WHEREAS, Lessor has an interest in the continued success of the Facility through the City's participation in the Industrial Revenue bonds issued in relation to the Facility and through the Facility's substantial contribution to the local community in terms of direct and indirect jobs and overall community impact; and,

WHEREAS, Lessor owns certain Artesian water rights and water wells in Chaves County, New Mexico and Lessor has agreed to lease apportion of said water rights to Lessee. The total water rights Lessor desires to lease to Lessee is 1,200 acre-per feet per year at the lessee's location to be used from 11/1/2026 to 10/31/2031, hereinafter referred to as "Water Rights" and,

WHEREAS, in order to achieve 1200 acre-feet, per annum at the move to location, the Lessor will provide an estimated 1430 acre-feet, per annum, at the move from location; and

WHEREAS, a Water Year in the Roswell Artesian Basin starts on 11/1 and runs through 10/31 of the following year and;

WHEREAS, the parties will file a 10-year application for a Temporary Permit to Change an Existing Water Right with the New Mexico Office of the State Engineer for the purpose of permitting Lessee to use the lessor's Water Rights timeframe; and,

WHEREAS, Lessor and Lessee wish to enter into this Agreement for a lease of Lessor's Water Rights, with certain options provided herein, and agree that this Agreement is subject to the approval of the Application for Temporary Permit to Change an Existing Water Right by the New Mexico Office of the State Engineer, a copy of which is set forth in Exhibit A.

NOW THEREFORE, in consideration of the premises, and the mutual understandings by and between the parties, Lessor and Lessee agree to the following'

- I. **Reduction in Use:** During the term of this Agreement, Lessor, pursuant to NMSA 1978 § 72-6-1 et seq, shall reduce its use of the Water Rights to the extent necessary or required to provide water to Lessee in the amount provided for herein.
- II. **Amount:** During the initial term of this Lease, Lessee shall be entitled to use up to 1200 acre-feet of Water Rights per year at the move-to location, for which Lessee agrees to pay Lessor's the sum of \$38.00 per acre-feet of Water Rights which are successfully transferred to Lessee's property and used by Lessee as provided below. After the initial year and each successive year of the lease term thereafter, the per acre foot cost of the Water shall be increased by three percent (3%) annually per acre-foot to adjust for inflation. Lessee shall only be required to pay for the actual amount of water used by Lessee.
- III. **Cooperation:** Lessee and Lessor agree to cooperate in the filing of all necessary forms in the Office of the State Engineer and provide assistance in providing information necessary so as to carry out the terms, rights and obligations of this Agreement. Lessee shall be responsible for all cost associated with the submission of an Application for Temporary Permit to Change an Existing Water Right to the State Engineer, including cost of publication. Any additional costs related to obtaining approval of the transfer of the Water Rights shall be provided to Lessee in advance, and agreed to by Lessee in writing.
- IV. **Primary Term:** Option to Extend: The primary term of this Agreement shall be from 11/1/2026 to 10/31/2031. Lessee shall have an option to extend the term for a subsequent term for a period of five (5) years for the same amount of Water Rights per year as set forth in this Agreement. Lessee must give Lessor ninety (90) days written notice of its intent to either extend the term, or terminate this Agreement. In the event the Agreement is terminated, or otherwise not renewed, both parties shall provide written notice within thirty (30) days to the Office of the State Engineer of the parties intent to not extend the Agreement.
- V. **Payment:** During the term of this Agreement, Lessor will make available to Lessee a total of up to 1200 acre-feet per year. During such time, Lessor guarantees that there will be at least 1200 acre-feet of Water Rights per year available for use by Lessee through Lessee is not required to use all such Water Rights used by the Lessee during any given water year in the Roswell Artesian Basin.
- VI. **Representation:** The parties agree that payment based on consumption, as provided in paragraph 2, is an efficient way to lease the Water Rights for the committed amount set forth in this Agreement.
- VII. **Compliance with State Law:** Lessor and Lessee agree to abide by all laws, rules and regulations of the State of New Mexico and by any rules or regulations imposed by the State of New Mexico.
- VIII. **Notices:** All notices request or other communications required to be given by the parties, shall be by regular and certified mail and sent to the following:

CITY of Roswell
ATTN: City Manager
425 N. Richardson
Roswell, NM 88201

Leprino Foods Company
ATTN: Legal Department
1830 West 38th Avenue
Denver, CO 80211

- IX. **Waivers:** One or more waivers of any covenant, term or condition of this Agreement shall not be construed as a waiver of subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.
- X. **Force Majeure:** If, because of Force Majeure, Lessor is unable to carry out its obligations under this Agreement despite the exercise of reasonable efforts to identify alternative measures to enable Lessor to continue to meet its' obligations, and Lessor promptly gives written notice to Lessee, Lessor's obligations shall be suspended during the Force Majeure event or a period of 90 days, whichever is longer
For the purposes of this Agreement, "Force Majeure" shall mean any cause beyond the reasonable control of the Lessor that is caused by acts of God, including sustained drought, civil disorder, war, labor disputes, changes in law or damage to the Lessor's water supply infrastructure that leads to a severe shortage of water within the City of Roswell, and that either (i) prevents the Lessor from satisfying its obligations under this Lease; or (ii) prevents the Lessor from meeting the essential, non-discretionary water demands of its citizens without using the Water Rights that are the subject of this Lease to meet such essential non-discretionary water demands of its citizens.
- XI. **Governing Law:** This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of New Mexico. Both parties agree that they will abide by all rules and regulations of the State of New Mexico and imposed by the Office of the State Engineer (OSE) with regard to the Water Rights.
- XII. **Entire Agreement and Amendment:** This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties having been incorporated herein. No course of prior dealings between the party's shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understanding, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This Agreement is the entire Agreement and may be amended only in writing signed by Lessor and as approved by the City Council for the City of Roswell.
- XIII. **Assignment:** The Water Rights, the rights and obligations of Lessee, under this Agreement, and/or the land from which the Water Rights were transferred to shall not be assigned, transferred or sold by Lessee without prior written approval of Lessor.
- XIV. **Binding Effect; Filing:** In the event of an assignment, sale or transfer of the ownership of the Water Rights and/or the land from which the Water Rights were transferred to any party, such transfer, sale or assignment shall be subject to the terms of this Agreement. In connection therewith the parties agree that a Memorandum of Lease shall be filed in the

County Clerk's records of Chaves County, New Mexico, to give evidence of this Agreement to third-parties.

- XV. **Integration:** This agreement supersedes and replaces all prior agreements and understanding between the parties with respect to leasing water.

{Signatures to Follow}

IN WITNESS WHEREOF, Leprino Foods Company and the City of Roswell have caused this Agreement to be executed by their duly authorized officers on this _____ day of _____, 202____.

“City”

CITY OF ROSWELL

“Leprino”

LEPRINO FOODS COMPANY

By: Timothy Z. Jennings, Mayor

By: First Last, Title

City Seal

Amalia Martinez, City Clerk

Approved as to Form

Hessel Yntema, City Attorney