



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 6Ordinance/Resolution# 16-208

For Meeting of _____ For Meeting of May 2, 2016
 (Ordinance First Reading Date) (Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND EXECUTE A COMMERCIAL LEASE AGREEMENT WITH OPTION TO PURCHASE BETWEEN THE CITY OF LAS CRUCES (CITY) AND LAS CRUCES COMMUNITY PARTNERS (LCCP) FOR TWO PARCELS OF CITY-OWNED PROPERTY LOCATED AT THE NORTHWEST CORNER OF NORTH WATER STREET AND WEST GRIGGS AVENUE.

PURPOSE(S) OF ACTION:

Negotiate and execute a commercial lease agreement.

COUNCIL DISTRICT: 1		
<u>Drafter/Staff Contact:</u> Bill Hamm	<u>Department/Section:</u> Public Works/Facilities Management	<u>Phone:</u> 528-3410
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City owns two (2) contiguous parcels of land, used as a paving lot, totaling approximately 1.08 acres located at the northwest corner of North Water Street and West Griggs Avenue within the Tax Increment Development District (TIDD). LCCP has provided a draft commercial lease agreement to the City Manager for consideration. The agreement is for a long-term lease with the option to purchase the two (2) contiguous parcels of land for the purpose of redevelopment in support of the ongoing effort in the revitalization and economic development of Downtown Las Cruces. The City recognizes the importance of continued promotion of the redevelopment of Downtown Las Cruces and is motivated to provide equitable incentives to private entities for the productive use and redevelopment of under-utilized properties.

The proposed commercial lease agreement carries a term of twenty (20) years with two (2) additional ten (10) year options. Additionally, the proposed lease offers the option to purchase the property. Both lease and purchase price shall be based upon appraisals which will determine the fair market value of the property in its "as is" condition as of the commencement date of the agreement.

The Resolution will grant the City Manager authority to negotiate and execute a commercial lease agreement with the option to purchase between the City and LCCP for the two (2) City-owned parcels. Furthermore, any resulting sale of the parcels will require City Council approval in accordance with appropriate ordinances.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Proposed commercial lease agreement.
3. Attachment "A", Vicinity map of City property being leased with option to purchase.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)	
	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ for FY__.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve authorization for the City Manager to execute and negotiate a commercial lease agreement with the option to purchase with LCCP for the two (2) City-owned parcels located at the northwest corner of North Water Street and West Griggs Avenue.

2. Vote "No"; this will not approve authorization for the City Manager to execute and negotiate a commercial lease agreement with LCCP.
3. Vote to "Amend"; this would allow City Council to modify the conditions of the commercial lease agreement.
4. Vote to "Table"; this would allow City Council to postpone consideration to authorize the City Manager to negotiate and execute the commercial lease agreement.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. N/A



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of May 2, 2016
(Adoption Date)

TITLE: A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND EXECUTE A COMMERCIAL LEASE AGREEMENT WITH OPTION TO PURCHASE BETWEEN THE CITY OF LAS CRUCES (CITY) AND LAS CRUCES COMMUNITY PARTNERS (LCCP) FOR TWO PARCELS OF CITY-OWNED PROPERTY LOCATED AT THE NORTHWEST CORNER OF NORTH WATER STREET AND WEST GRIGGS AVENUE.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		541-2502	4-22-16
Department Director		528-3125	4-22-16
Other			
Assistant City Manager /CAO Management & Budget Manager		541-2078 508-2107	4-22-2016 4-22-2016
Assistant City Manager/COO			4-22-16
City Attorney		EXT 2128	26 April 2016
City Clerk		82116	4-26-16

RESOLUTION NO. 16-208

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND EXECUTE A COMMERCIAL LEASE AGREEMENT WITH OPTION TO PURCHASE BETWEEN THE CITY OF LAS CRUCES (CITY) AND LAS CRUCES COMMUNITY PARTNERS (LCCP) FOR TWO PARCELS OF CITY-OWNED PROPERTY LOCATED AT THE NORTHWEST CORNER OF NORTH WATER STREET AND WEST GRIGGS AVENUE.

The City Council is informed that:

WHEREAS, the City owns two (2) contiguous parcels of land, used as a parking lot, totaling approximately 1.08 acres located at the northwest corner of North Water Street and West Griggs Avenue, within the Tax Increment Development District (TIDD); and

WHEREAS, the LCCP has proposed to enter into a commercial lease agreement with the option to purchase the two (2) parcels for the purposes of redevelopment in support of the ongoing effort in the revitalization and economic development of Downtown Las Cruces; and

WHEREAS, the City recognizes the importance of the continued promotion of the redevelopment of Downtown Las Cruces and is motivated to provide equitable incentives to private entities for the productive use and redevelopment of underutilized properties; and

WHEREAS, the lease and purchase price shall be based upon appraisals being secured; which will determine the fair market value of the premises in its "as is" condition as of the commencement date.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the City Manager is authorized to negotiate and execute a commercial lease agreement with the option to purchase, on behalf of the City, between the City and the LCCP for the two (2) City-owned parcels totaling approximately 1.08 acres located at the northwest corner of North Water Street and West Griggs Avenue, as outlined in Exhibit "A",

attached hereto and made part of this Resolution, is hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 20____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

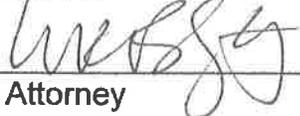
VOTE:

Mayor Miyagishima:	_____
Councillor Gandara:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Eakman:	_____
Councillor Sorg:	_____
Councillor Levatino:	_____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

EP Kiechic lot

DRAFT

COMMERCIAL LEASE

THIS COMMERCIAL LEASE (the "Lease") is entered into by and between the City of Las Cruces, a New Mexico municipal corporation (hereinafter "Landlord"), and Las Cruces Community Partners, LLC, a New Mexico limited liability company (hereinafter "Tenant").

WITNESSETH:

In consideration of the rents, covenants and agreements herein set forth, Landlord and Tenant enter into the following agreement:

1. Lease of Premises.

1.1 Premises. Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord those certain premises identified in Exhibit A attached hereto and incorporated herein by reference for all purposes, including all improvements thereon (herein called the "Premises").

1.2 Memorandum of Lease. This Lease shall not be recorded. Concurrently with the execution of this Lease, or promptly thereafter, Landlord and Tenant shall execute a memorandum of the material terms of this Lease (the "Memorandum of Lease") to be recorded in the Doña Ana County Clerk's office pursuant to N.M. Stat. Ann. § 14-9-1 (1991). The Memorandum of Lease shall be substantially in the form attached hereto as Exhibit B. The Memorandum of Lease shall not be construed as altering, amending, or modifying this Lease and in the event of any inconsistency between the Memorandum of Lease and this Lease, the terms of the Lease shall control.

2. Term. The term of this Lease shall be for twenty (20) years, commencing on the last day this Lease is executed by Landlord and Tenant or their respective authorized representatives (the "Commencement Date") and ending on the last day of the month of the twentieth (20th) anniversary of the Commencement Date, unless sooner terminated as provided herein (the "Term").

2.1 Option to Renew. Provided that Tenant is not in default in respect to any provision of the Lease, Tenant shall have the right and option to renew and extend the Term of this Lease for two (2) additional periods of ten (10) years each, provided, however, that written notice is given to Landlord of at least ninety (90) days prior to the then termination date of this Lease. Upon the exercise of any option, all provisions of this Lease shall continue in full force and effect for the period of such extension.

3. Feasibility Period.

3.1 Definition. The Feasibility Period is that period of one (1) year, beginning on the Commencement Date and expiring on the first anniversary of the Commencement Date, unless sooner terminated as provided herein (the "Feasibility Period").

3.2 Tenant's Obligations During Feasibility Period. During the Feasibility Period, Tenant shall have no obligation to pay Rent or Additional Rent, as defined below, nor any other fee, assessment, or expense related to the ownership of the Premises to or on behalf of Landlord. During the Feasibility Period, Tenant shall undertake commercially reasonable actions to: (a) determine the construction, remodeling, or renovation necessary to occupy or sublease the Premises; (b) obtain financing for any necessary construction, remodeling, or renovation of the Premises; (c) obtain any necessary permits or approvals from any necessary government entity or agency to complete the construction, remodeling, or renovation; (d) locate, develop, or solicit subtenants or assignees to sublease and occupy the Premises or

portions thereof; and, (e) determine the financial viability of occupying, subleasing, or otherwise using the Premises for commercial purposes.

3.3 Landlord's Obligations During Feasibility Period. During the Feasibility Period, Landlord shall pay all expenses, assessments, fees, and taxes associated with ownership of the Premises.

3.4 Termination of Feasibility Period. Tenant may terminate the Feasibility Period prior to the first anniversary of the Commencement Date pursuant to this Subsection. The Feasibility Period shall terminate on the occurrence of the earlier of either of the following events: (a) Tenant delivers to Landlord, at the address provided for Landlord herein or at such place as Landlord shall designate from time to time in writing, written notice of Tenant's election to terminate this Lease; or (b) Tenant delivers to Landlord, at the address provided for Landlord herein or at such place as Landlord shall designate from time to time in writing, written notice of Tenant's election to begin construction on, remodeling of, or renovation of the Premises.

3.5 Access to Premises During Feasibility Period. During the Feasibility Period, Tenant and Tenant's agent(s), employee(s), vendor(s), contractor(s), guest(s), or invitee(s) will have complete and full access to the Premises. Landlord or Landlord's agent may accompany Tenant or Tenant's agent(s), employee(s), vendor(s), contractor(s), guest(s), or invitee(s) during any visit to or inspection of the Premises during the Feasibility Period.

3.6 Personal Property Located at Premises. Tenant shall, at all times while Tenant or Tenant's agent(s), employee(s), vendor(s), contractor(s), guest(s), or invitee(s) access(es), inspect(s), or visit(s) the Premises during the Feasibility Period, undertake commercially reasonable efforts to ensure that the Premises and any personal property located on the Premises are secure. Unless otherwise agreed to by the parties, Tenant agrees that all personal property located at the Premises during the Feasibility Period is the personal property of Landlord. If Tenant elects to terminate the Feasibility Period by providing written notice to Landlord that Tenant will commence construction on the Premises, Landlord shall have fifteen (15) days after the receipt of such notice to remove any personal property located at the Premises. Any personal property remaining on the Premises after the expiration of the fifteen (15) day period for removing such items of personal property may be disposed of by Tenant at Tenant's discretion.

4. Construction, Remodeling, or Renovation. Tenant and Landlord agree that the Premises will require significant construction, remodeling, or renovation to facilitate the successful use and occupancy of the Premises by Tenant or any subtenants or assignees. Tenant shall be liable for all costs, expenses, and fees associated with the necessary construction on, remodeling of, or renovation of the Premises, but may receive credit for such expenditures as provided in Paragraph 36.3 herein.

4.1 Construction, Remodeling, or Renovation Liens. Tenant agrees to be solely liable for any liens, including but not limited to mechanic's and materialman's liens, or other encumbrances resulting from or associated with construction on, remodeling of, or renovation of the Premises. Landlord may, but is not required to, take any action necessary for the removal of any liens or other encumbrances on the Premises to preserve and protect the Premises. If Landlord takes any action to remove any lien or other encumbrance, Tenant agrees to indemnify Landlord for any costs, fees, or expenses, including but not limited to Landlord's attorney's fees, related to such action.

4.2 Leasehold Mortgage. Tenant shall have the right during the Term of this Lease upon written notice to Landlord to: (i) mortgage, pledge or otherwise encumber Tenant's interest in the Lease; and (ii) collaterally assign Tenant's interest in this Lease to a Qualified Lender for the purposes of financing construction, remodeling or renovation of the Premises. As used in this Lease, the term

"*Qualified Lender*" shall mean any lender who has made a loan to Tenant for the sole purposes of financing construction, remodeling or renovation of the Premises. Tenant shall not have the right to mortgage or pledge Landlord's fee interest, except that if Tenant provides adequate collateral or surety reasonably acceptable to Landlord, Landlord will reasonably cooperate with Tenant to mortgage Landlord's fee interest. Landlord agrees to reasonably cooperate with Tenant and its Qualified Lender, including, but not limited to subordinating any landlord's lien in Tenant's personal property to the security interest of the Qualified Lender.

4.3 Notice to Tenant's Mortgage. After Tenant has given Landlord written notice of the existence of any Qualified Lender and the name and address of any such Qualified Lender, Landlord agrees to give the Qualified Lender notice at the time it gives any notice of default or other notice to Tenant. The Qualified Lender shall have the right to cure any default of Tenant provided the cure is accomplished within the cure period granted Tenant under this Lease. A Qualified Lender may foreclose on Tenant's leasehold interest and become the tenant under this Lease without Landlord's consent. A Qualified Lender shall cure any existing monetary defaults at the time it succeeds to Tenant's interest under the Lease.

5. Rent.

5.1 Rent. Tenant agrees to pay Landlord at the address provided for Landlord herein or at such other place as Landlord shall designate from time to time in writing, the following annual rent, in arrears, for the Premises (the "*Rent*");

- On the second through sixth anniversaries of the Commencement Date, three and one-half per cent (3.5%) of the Appraised Value, as hereinafter defined;
- On the seventh through twentieth anniversaries of the Commencement Date, eight and 58/100 per cent (8.58%) of the Appraised Value;

What is
the
appraised
value

5.2 [Intentionally omitted]

5.3 Obligation to Pay Rent. Tenant's obligation to pay rent under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach of this Lease by Landlord, shall release Tenant of its obligation to pay rent as required by this Lease.

6. Late Charges. Tenant agrees to pay a late charge of five percent (5%) as additional rent for each payment due hereunder that is more than thirty (30) days delinquent to cover Landlord's administrative cost of processing such late payment. In addition to said late charge, any rental or other amount due from Tenant under this Lease which is more than thirty (30) days delinquent shall bear interest from the date such rental or other amount was due at the lesser of the rate of eighteen percent (18%) per year or the then maximum nonusurious rate under applicable law, (the lesser of said amounts being herein referred to as the "*Maximum Rate*"). In the event the late charge is ever deemed to be "interest", the amount of interest on past due amounts shall be automatically reduced so that the combination of said late charge and the interest on past due amounts, if any, does not exceed the Maximum Rate. Any amount collected which exceeds the Maximum Rate will be deemed credited to other amounts owed by Tenant to Landlord under this Lease, and any remaining excess after such credit shall be refunded to Tenant. It is the intent of both Landlord and Tenant to at all times comply with the applicable law regarding the maximum nonusurious amount or rate of interest which may be contracted for, charged, taken, reserved or received by Landlord. Any rental and/or other payments due hereunder returned to Landlord marked "Insufficient Funds" will entitle Landlord to collect an additional charge of not less than \$35.00 from Tenant for each such payment, plus any additional out-of-pocket expense incurred by Landlord as a result thereof.

7. [Intentionally omitted]

8. **[Intentionally omitted]**

9. **Quiet Enjoyment.** Landlord covenants and agrees that upon Tenant's paying rent and performing all of the covenants and conditions set forth in this Lease, Tenant shall, subject to all zoning ordinances and other laws and regulations governing or regulating the use of the Premises and all easements, rights-of-way, and prescriptive rights, and all presently recorded instruments which affect the Premises, peaceably and quietly have, hold, and enjoy the Premises for the term provided in this Lease.

10. **Conduct of Business of Tenant.**

10.1 **Use of Premises and Acceptance.** The Premises shall be occupied and used by Tenant solely for purposes permitted by law.

10.2 **Prohibited Uses; Exclusives.** Tenant agrees that it will not conduct nor permit to be conducted any illegal activity on the Premises.

10.3 **Operation by Tenant.** Tenant covenants and agrees to the following:

10.3.1 **Compliance With Laws; Indemnification.** Tenant, at Tenant's sole cost and expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to Tenant's use of the Premises and with any recorded covenants, conditions and restrictions, regardless of when they become effective, including, without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as defined below), waste disposal, air emissions and other environmental, health and safety, zoning and land use matters, and with any directive or order of any public officer or officers, pursuant to law, which impose any duty upon Landlord or Tenant with respect to the use or occupation of the Premises. In addition to, and without limitation on the general indemnity obligations of Tenant under this Lease, Tenant specifically agrees that it shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of any breach by Tenant of its obligations under this Section 10.3.1 or any contamination of the Premises resulting from the presence of Hazardous Materials on or about the Premises or neighboring properties caused or permitted by Tenant, its agents, employees, contractors or invitees.

11. **[Intentionally omitted]**

12. **Maintenance of Premises.**

12.1 **Structural Maintenance by Tenant.** Not applicable.

12.2 **Non-Structural Maintenance by Tenant.** Tenant shall at all times keep all parts of the Premises in good order, condition and repair and in a clean, orderly, sanitary, and safe condition, damage by unavoidable casualty excepted. Tenant's obligations shall include but not be limited to doing such things as are necessary to cause the Premises to comply with applicable laws, rules, regulations and orders of governmental and public bodies and agencies.

12.3 Surrender of Premises. In general, Tenant shall throughout the Lease term take good care of the Premises and keep the Premises free from waste or nuisance and Tenant shall surrender the Premises in good condition, reasonable wear and tear excepted.

12.4 Fire Equipment. Tenant agrees to supply and maintain at its own expense any interior fire extinguishers, or other fire prevention equipment required by law, rules, orders, ordinances, and regulations of any city, county, or state in which the Premises are located and/or required by any insurance carrier, underwriters association, bureau, or any other similar body having jurisdiction involving the Premises. Additionally, Tenant agrees to comply, at its own expense, with all requirements of any such authority.

13. Alterations, Fixtures, Liens and Signs.

13.1 Alterations. Tenant may make any structural alterations, additions, or changes to the Premises, without Landlord's prior written consent. Tenant may receive credit for such expenditures as provided in Paragraph 36.3 herein. The alterations shall be performed in a good and workmanlike manner in accordance with all applicable legal requirements.

13.2 Tenant Shall Discharge All Liens. Tenant shall promptly pay all contractors and materialmen, and not permit or suffer any lien to attach to the Premises or any part thereof, and shall indemnify, defend and save harmless Landlord against the same and all claims, damages, losses, liabilities, costs and expenses, including, without limitation, reasonable attorneys fees, related thereto.

14. Real Estate Taxes. Landlord and Tenant will coordinate and cooperate in all activities regarding rendering the property of which the Premises are a part to any appropriate taxing authorities, but Tenant will be primarily responsible for pursuing such activities on behalf of Landlord and itself.

15. Personal Property Taxes. During the term of this Lease, Tenant shall pay prior to delinquency all taxes assessed against and levied upon fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises.

16. Utilities. Tenant agrees to pay before delinquency all charges for all utilities (including but not limited to gas, heat, sewer, power, electricity, telephone, garbage removal, water meter charges and hookup or connection fees or charges) which may accrue with respect to the Premises during the Term of this Lease.

17. Insurance.

17.1 [Intentionally omitted]

17.2 Tenant's Obligations.

17.2.1 Physical Loss Insurance. Tenant shall, at its own cost and expense, procure and maintain during the term of this Lease "All Risk" property insurance, written on a replacement cost basis.

17.2.3 Liability. Tenant shall procure and maintain a policy or policies of insurance, insuring both Landlord and Tenant, against all claims, damages or actions arising out of or in connection with Tenant's use or occupancy of the Premises or by the condition of the Premises, the limits of such policy or policies to be in an amount not less than \$1,000,000 per occurrence and in an amount not

less than \$2,000,000 in the general aggregate for bodily injury and property damage. Said policy or policies shall additionally include "broad form contractual" in support of the indemnity sections of this Lease.

17.2.4 Construction Liability. Tenant, at its own cost and expense, shall obtain and maintain (or cause any contractor retained by Tenant to obtain and maintain) at all times when demolition, excavation, or construction work is in progress on the Premises, construction liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the general aggregate for bodily injury and property damage, protecting Landlord and Tenant as well as such other person or persons as Tenant may designate against any and all liability for injury or damage to any person or property in any way arising out of such demolition, excavation, or construction work.

17.2.5 Form of Insurance. All policies required of Tenant hereunder (a) shall be issued by a reputable insurance company or companies qualified to do business in New Mexico; (b) shall name Landlord and Tenant as the insureds or name Landlord as an additional insured; (c) shall provide that they cannot be cancelled or modified for any reason in any manner that is adverse to the Landlord's interest, unless Landlord is given thirty (30) days prior written notice by the insurer. A duly executed certificate of insurance shall be delivered to Landlord within ten (10) days after written request from Landlord for such certificate. All renewals shall be delivered to Landlord at least ten (10) days prior to the expiration of the respective policy terms. Tenant may carry such insurance under a blanket policy.

17.3 Mutual Waiver of Subrogation Rights. Landlord, Tenant, and all parties claiming under them mutually release and discharge each other and their respective officers, directors, partners, employees and agents from all claims and liabilities arising from or caused by any casualty or hazard to the extent covered by valid and collectible insurance on the Premises; and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof; provided that such release shall not operate in any case where the effect is to invalidate such insurance coverage. This release shall apply even if the loss or damage shall be caused by the fault or negligence of a party hereto or by any person for whom such party is responsible.

17.4 Waiver. Landlord, its agents and employees, shall not be liable for, and Tenant waives all claims for damage (except claims caused by or resulting from the gross negligence or willful misconduct of Landlord, its officers, directors, partners, agents or employees), including but not limited to any special and/or consequential damages, to person, property or otherwise, sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon any part of the Premises, including but not limited to, claims for damage resulting from: (a) any equipment or appurtenances becoming out of repair; (b) Landlord's failure to keep any part of the Premises in repair; (c) injury done or caused by wind, water, or other natural elements; (d) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water, and steam pipes, stairs, porches, railings or walks; (e) broken glass; (f) the backing up of any sewer pipe or downspout; (g) the bursting, leaking or running of any tank, tub, washstand, water, snow or ice upon the Premises; (h) the falling of any fixture, plaster or stucco; (i) damage to or loss by theft or otherwise of property of Tenant or others; (j) acts or omissions of persons in the Premises, occupants of nearby properties, or any other persons; (k) any act or omission of owners of adjacent or contiguous property; (l) any fire or casualty; or (m) any act of public enemy, criminal conduct, insurrection or war. All property of Tenant kept in the Premises shall be so kept at Tenant's sole risk and Tenant shall save Landlord harmless from claims, damages, losses, liabilities, costs and expenses, including, without limitation reasonable attorney's fees, arising out of damage to the same.

18. Right of Entry. Landlord, its agents and employees, shall have the right to enter the Premises from time to time at reasonable times to examine the Premises. Rent shall not abate during any such entry by Landlord, including without limitation, during the period of any such repairs, alterations,

improvements or additions. During the last six (6) months of the Term of this Lease, Landlord may show the Premises to prospective tenants and maintain upon the Premises any notices deemed advisable by Landlord. In addition, during any apparent emergency, Landlord, its agents and employees, may enter the Premises forcibly without liability therefor and without in any manner affecting Tenant's obligations under this Lease. Nothing herein contained, however, shall be deemed to impose upon Landlord any obligation, responsibility or liability whatsoever, for any care, maintenance or repair except as otherwise herein expressly provided.

19. Indemnification. Tenant shall indemnify, defend and save harmless Landlord from and against any and all liability, losses, liens, claims, demands, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), costs, fines, penalties, suits, proceedings, actions and causes of action of any and every kind and nature arising or growing out of or in any way connected with the use, occupancy, management or control of the Premises by Tenant, its agents, employees, contractors or invitees or the operations, conduct, or activities in the Premises by Tenant, its agents, employees, contractors or invitees. Tenant authorizes Landlord (although expressly recognizing that Landlord is under no obligation to do so) to defend, settle or compromise any claims, demands, suits, proceedings or the like which may represent an indemnifiable obligation of Tenant hereunder. Such action or inaction by Landlord shall in no way affect Tenant's indemnity obligations as provided herein. Tenant's indemnity obligations under this Paragraph and elsewhere in this Lease shall survive the expiration or earlier termination of this Lease.

20. [Intentionally omitted]

21. Damage and Destruction.

21.1 Partial Destruction. If the Premises are partially damaged, destroyed or rendered partially untenantable for their accustomed use by fire or other casualty, with the proceeds of the insurance described in Section 17.2.1 and subject to the rights of any leasehold mortgagee, Tenant shall promptly repair the Premises to substantially the condition which they were in immediately prior to the happenings of such casualty (excluding stock in trade, fixtures, furniture, furnishings, carpeting, floor covering, wall covering, drapes and equipment), and from the date of such casualty until the Premises are so repaired and restored, the monthly rent payments hereunder shall abate in such proportion as the part of said Premises thus destroyed or rendered untenantable bears to the total Premises. Landlord will permit any insurance proceeds to be used for restoration subject to appropriate and reasonable controls. Tenant shall not be obligated to expend for such repair or restoration, however, an amount in excess of the insurance proceeds received by Tenant and Landlord as a result of such damage.

21.2 Total Destruction or Casualty During Final 3 Years. If the Premises are: (i) wholly damaged, destroyed or rendered untenantable for their accustomed use; or (ii) partially damaged, destroyed or rendered partially untenantable for their accustomed use during the last three (3) years of the Term by fire or other casualty, then Tenant shall have the right to terminate this Lease effective as of the date of such casualty by giving to Landlord written notice of such termination within sixty (60) days after the happening of the casualty. If such notice is given, this Lease shall terminate and provided Tenant is not in default hereunder, Landlord shall promptly repay to Tenant any rent paid in advance which was not earned at the date of such casualty. If Tenant does not terminate this Lease, with the proceeds of the insurance described in Section 17.2.1 and subject to the rights of any leasehold mortgagee, Tenant shall promptly repair the Premises to substantially the condition which they were in immediately prior to the happenings of such casualty (excluding stock in trade, fixtures, furniture, furnishings, carpeting, floor covering, wall covering, drapes and equipment), and from the date of such casualty until the Premises are so repaired and restored, the monthly rent payments hereunder shall abate in such proportion as the part of said Premises thus destroyed or rendered untenantable bears to the total Premises. Landlord will permit any insurance proceeds to be used for restoration subject to appropriate and reasonable controls. Tenant

shall not be obligated to expend for such repair or restoration, however, an amount in excess of the insurance proceeds received by Tenant and Landlord as a result of such damage.

22. [Intentionally omitted]

23. Assignment and Subletting.

23.1 Assignment. Tenant may assign this Lease or any interest therein if: (a) at the time of such assignment Tenant is not in default in the performance and observance of any of the covenants and conditions of this Lease; (b) the assignee of Tenant shall expressly assume in writing all of Tenant's obligations hereunder; and (c) the Premises continue to be used solely for legal purposes. Unless otherwise agreed, any such assignment shall not relieve Tenant from liability for payment of all forms of rental and other charges herein provided or from the obligations to keep and be bound by the terms, conditions, and covenants of this Lease. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease, nor a consent to the assignment of the Premises. Consent to any assignment shall not be deemed a consent to any future assignment. Any merger, consolidation or transfer of ownership interests in Tenant, if Tenant is an entity or partnership, as to result in a change in the present voting control of Tenant by the person or persons owning a majority of said ownership interests on the date of this Lease, shall constitute an assignment and be subject to the conditions of this Paragraph.

23.2 Subletting. Tenant may sublet all or any portion of the Premises without the consent of Landlord. Each sublease will be made expressly subject to the terms of this Lease, other than the payment of Rent or additional rent and the term of any sublease may not extend beyond the Term of this Lease. Tenant, at its option, may request Landlord to consent to any subletting of the Premises. If Landlord consents to such subletting, Landlord will also agree in writing that if this Lease is terminated prior to the expiration of the Term or if Landlord takes possession of the Premises as a result of Tenant's default, Landlord will not terminate or disturb the subtenant's right to quiet enjoyment and possession of the Premises under the terms of the sublease or any of subtenant's other rights under the sublease so long as subtenant is not in default under any of the terms, covenants or conditions of the sublease provided that the subtenant agrees that Landlord shall not be: (i) liable for any act or omission of Tenant and Landlord under the sublease; (ii) subject to any offsets or defenses that the subtenant might have against Tenant; (iii) bound by any rent or additional rent that subtenant might have paid for more than one month in advance to Tenant; or (iv) bound by any amendment or modification to the sublease made after the date of Landlord's consent without the prior written consent of Landlord; and (v) liable for the return of any security deposit.

24. Landlord's Performance for Account of Tenant. If Tenant shall continue in default in the performance of any of the covenants or agreements herein contained after the time limit for the curing thereof, then Landlord may perform the same for the account of Tenant. Any amount paid or expense or liability incurred by Landlord in the performance of any such matter for the account of Tenant shall be deemed to be additional rent and the same (together with interest thereon at the maximum rate allowed by applicable law, from the date upon which any such expense shall have been incurred) may, at the option of Landlord, be added to any rent then due or thereafter falling due hereunder.

25. Default by Tenant.

25.1 Events of Default. The following shall be considered for all purposes to be events of default under and a breach of this Lease: (a) any failure of Tenant to pay any rent or other amount when due hereunder and such default continues for more than ten (10) days after written notice of such default; (b) any failure by Tenant to perform or observe any of the other terms, provisions, conditions, and covenants of this Lease for more than thirty (30) days after written notice of such failure; (c) if Tenant shall become bankrupt or insolvent, or file or have filed against it a petition in bankruptcy or for reorganization or

arrangement or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or Tenant makes an assignment for the benefit of creditors; or (d) this Lease, Tenant's interest herein or in the Premises, any improvements thereon, or any property of Tenant is executed upon or attached.

25.2 Landlord's Remedies. Upon the occurrence of any event of default specified in this Lease, Landlord, without grace period, further demand or notice (the same being hereby waived by Tenant), and in addition to all other rights or remedies Landlord may have for such default, shall have the right to pursue any one or more of the following remedies:

25.2.1 Termination. Terminate this Lease in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and except as provided in Section 23.2, any other person who may be occupying said Premises or any part thereof, by force if necessary, without notice or the need to resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby; and Landlord may recover from Tenant the amount of all loss and damage which Landlord may suffer by reason of such termination, including, without limitation, all costs of retaking the Premises and the total rent and charges reserved in this Lease for the remainder of the term of this Lease (i.e. the duration of this Lease had it not been terminated), all of which shall be immediately due and payable by Tenant to Landlord.

25.2.2 Expulsion Without Termination. Without terminating this Lease, enter upon and take possession of the Premises, and expel or remove Tenant and except as provided in Section 23.2, any other person who may be occupying said Premises, or any part thereof, by force if necessary, without notice or the need to resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby. Landlord may make such alterations and repairs as it deems advisable to relet the Premises, and relet the Premises or any part thereof for such term or terms (which may extend beyond the term of this Lease) and at such rentals and upon such other terms and conditions as Landlord in its sole discretion deems advisable. Upon each such reletting all rentals received by Landlord therefrom shall be applied: first, to any indebtedness other than rent due hereunder from Tenant to Landlord; second, to pay any costs and expenses of reletting, including brokers' and attorneys' fees and costs of alterations and repairs; third, to rent due hereunder; and fourth, the residue, if any, shall be held by Landlord and applied in payment of future rent as it becomes due hereunder. If rentals received from such reletting during any month are less than that to be paid during that month by Tenant hereunder, Tenant shall immediately pay any such deficiency to Landlord. In no event shall Tenant be entitled to any excess rent obtained by reletting the Premises over and above the rent reserved herein.

25.3 Remedies Cumulative. No re-entry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless a written notice of such termination is given by Landlord to Tenant. Notwithstanding any such reletting or re-entry or taking possession, without termination, Landlord may at any time thereafter terminate this Lease for any prior breach or default. Landlord shall have the right to dispose of any property left in the Premises upon the expiration or termination of this Lease or Landlord's re-entry following a default by Tenant in any manner Landlord deems desirable, including without limitation, discarding such items in a refuse container. Tenant shall be entitled to no payment or offset for the value of any such property (even if sold by Landlord) and shall pay to Landlord on demand, all costs incurred by Landlord in connection with such disposal. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent and/or additional rent due to Landlord hereunder or of any damages accruing to Landlord. In the event that Landlord is ever held to have a duty to mitigate, Tenant agrees that Landlord's actions shall be deemed "objectively reasonable efforts" and Landlord's duty shall be limited to listing the Premises for

lease with a licensed real estate broker of Landlord's choosing (which may be an affiliate of Landlord) for a period of three (3) months. If no party acceptable to Landlord executes a lease with Landlord on terms acceptable to Landlord (both the party and terms must be acceptable to Landlord in Landlord's sole discretion) within this three (3) month period, Tenant agrees that Landlord shall conclusively have used reasonable efforts to mitigate and shall have satisfied any such duty to re-lease or mitigate. In no event shall Landlord have any duty to lease to, and Landlord will not be considered to be acting unreasonably in refusing to lease to any party if: (a) the prospective lessee has a financial condition which is unacceptable to Landlord or Landlord's lenders; (b) the prospective lessee requires any alterations which are unacceptable to the Landlord or Landlord's lenders; (c) the prospective lessee requires that tenant improvements be paid by Landlord; (d) the prospective lessee requires lease terms different from this Lease or which are otherwise unacceptable to Landlord or Landlord's lenders; or (e) the prospective lessee requires a rental rate less than that previously generated (on an average annual basis over the Lease term to date) by Tenant. No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease. Landlord's written consent to or approval of any act by Tenant requiring Landlord's written consent or approval shall not be deemed to waive or render unnecessary Landlord's written consent to or approval of any subsequent act by Tenant. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.

26. **Waiver of Rights of Redemption.** To the extent permitted by law, Tenant waives any and all rights of redemption granted by or under any present or future laws if Tenant is evicted or dispossessed from the Premises for any cause, or if Landlord obtains possession of the Premises due to Tenant's default hereunder or otherwise.

27. **Default by Landlord; Tenant's Remedies; Limitation of Liability.** Landlord shall in no event be charged with default in any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days (or such additional time as is reasonably required to correct any such default) after written notice to Landlord by Tenant, specifically describing such failure. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. Any liability of Landlord under this Lease shall be limited solely to its interest in the Premises, and in no event shall any personal liability be asserted against Landlord in connection with this Lease, nor shall any recourse be had to any other property or assets of Landlord.

28. **Notices.** Any notice or communication required or permitted to be given under this Lease shall be in writing and shall be served on the parties at the following addresses:

Landlord:

City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88004
Attn: City Manager
AND
City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88004
Attn: City Attorney

Tenant:

Las Cruces Community Partners, LLC
1340 Picacho Hills Drive
Las Cruces, NM 88007
Attn: Robert H. Pofahl
AND
J. Crawford Kerr
415 N. Main Street
Third Floor
El Paso, TX 79901

Any such notices shall be either: (a) sent by certified mail, return receipt requested, in which case notice shall be deemed given three (3) business days after deposit, postage prepaid in the U.S. Mail; (b) sent by overnight delivery using a nationally recognized overnight courier, in which case it shall be deemed given one (1) business day after deposit with such courier; (c) sent by facsimile or by email, in which case notice shall be deemed given upon transmission of such notice; or (d) sent by personal delivery, in which case notice shall be deemed given on the date of delivery. The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

29. Waiver. No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

30. Holding Over and Successors.

30.1 Holding Over. If Tenant holds over or occupies the Premises after the termination of this Lease or demand by Landlord to vacate (it being agreed there shall be no such holding over or occupancy without Landlord's written consent), Tenant shall pay Landlord for each day of such holding over a sum equal to twice the highest monthly rent applicable under Section 5 at the expiration of the term or termination of the Lease, prorated for the number of days of such holding over. If Tenant holds over with or without Landlord's written consent, Tenant shall occupy the Premises as a tenant-at-sufferance and all other terms and provisions of this Lease shall be applicable to the period of such occupancy. Tenant agrees that Landlord may institute a forcible detainer or a forcible entry and detainer action against Tenant without serving any demand for possession, demand to vacate, notice of termination or similar demand or notice upon Tenant.

30.2 Successors. All rights and liabilities herein given or imposed upon the respective parties hereto shall bind and inure to the several respective heirs, successors, legal representatives, and assigns of the parties and if Tenant is more than one person, they shall be bound jointly and severally by this Lease. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment was approved by Landlord in writing.

31. Brokers or Finders. Tenant represents and warrants to Landlord that it has engaged no broker or finder and that no claims for brokerage commissions or finders' fees will arise in connection with the execution of this Lease.

32.-34. [Intentionally omitted]

35. Environmental Issues.

35.1 No Hazardous Materials. Tenant shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Premises by Tenant, its

agents, employees, contractors or invitees without the prior written consent of Landlord, which Landlord shall not unreasonably withhold provided Tenant demonstrates to Landlord's satisfaction that such Hazardous Material is necessary or useful to Tenant's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material. The foregoing will not apply to Hazardous Materials that are customarily used in office, restaurant and other commercial activity, but then only in such quantities and such uses as permitted by applicable Environmental Laws.

35.2 Hazardous Material. As used herein, the term "Hazardous Material" means any pollutant, toxic substance, regulated substance, hazardous waste, hazardous material, hazardous substance, oil, hydrocarbon, asbestos or similar item as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, as amended, the Safe Drinking Water Act, as amended, the Federal Water Pollution Control Act, as amended, or any other federal, state or local environmental or health and safety related, constitutional provision, law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced or subsequently enacted (collectively the "Environmental Law").

36. Option to Purchase.

36.1 Grant of Option to Purchase. Landlord grants Tenant the option to purchase the Premises for a purchase price equal to the Appraised Value (as defined below).

36.2 Determination of Appraised Value. Within 60 days from the Commencement Date, ~~Landlord and~~ Tenant will obtain an appraisal of the Premises prepared by an appraiser designated by Landlord and approved by Tenant to determine the fair market value of the Premises in its as is condition on the Commencement Date. The cost of the appraisal will be paid equally by ~~Landlord and~~ Tenant. Once the appraisal has been received, Landlord and Tenant will complete and execute the Addendum to Lease attached hereto as Exhibit C. The value of the Premises as determined by the appraisal will be the "Appraised Value" of the Premises for the purposes of this Lease. *If appraised value is more than \$150,000, a 2nd appraisal will be obtained as required by LCAC Sec 2-1513.*

36.3 Exercise of Option and Closing. Provided that Tenant is not then in default under this Lease beyond any notice and cure period, Tenant may exercise this option by giving written notice to Landlord at any time prior the expiration of the Term. The parties will close the sale and purchase of the Premises within 60 days after the date that Tenant has given Landlord notice of the exercise of the option. At the closing, Landlord will deliver a special warranty deed to Tenant, subject only to reservations, restrictions and easements of record on the Commencement Date (or otherwise approved by Tenant), free and clear of all liens and encumbrances, other than the lien for taxes for the current year and an Owner's Policy of Title Insurance in the amount of the Appraised Value. Tenant will accept the Premises in its "As Is" condition as of the date of closing without warranty or representation of any kind by Landlord. The closing will take place at the offices of the title company issuing the title policy at a time mutually agreeable to the parties. Both Landlord and Tenant will provide such reasonable documentation as may be required by the title company or the other party in order to close the sale and purchase of the Premises. Tenant's payment for the Premises shall be \$100 in cash at closing plus a mortgage note to Landlord for the balance of the purchase price. The mortgage note, secured by the Premises, shall require equal annual payments sufficient to amortize the principal and interest (of 3.5% per annum) over a 30-year period. Such current and future annual mortgage payments may be offset by the expenditures incurred by Tenant pursuant to Paragraphs 4 and 13.1 herein. The mortgage note may be prepaid in full (by cash and/or the application of such credits) at any time by Tenant, without penalty.

*Sec 2-1513
#appraisal*

36.4 Termination of Option. If this Lease is terminated due to Tenant's default or if Tenant fails to exercise the option prior to the expiration of the Term, then the option granted by this Paragraph 37 will automatically and immediately terminate without further notice.

36.5 Time of the Essence. Time is of the essence for all actions under this Paragraph.

37. Miscellaneous.

37.1 Partial Invalidity. If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

37.2 Captions. The various headings and numbers herein and the grouping of the provisions of this Lease into paragraphs are for the purpose of convenience only and shall not be considered a part hereof.

37.3 Gender; Number. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context otherwise requires.

37.4 Applicable Law. This Lease shall be governed in all respects by the laws of the state of New Mexico.

37.5 Time. Time is of the essence of this Lease.

37.6 Joint and Several Liability; Authority. If Tenant is a partnership or other business organization, the members of which are subject to personal liability, the liability of each such member shall be deemed to be joint and several. If a corporation, limited liability company, or other limited liability business organization executes this Lease as Tenant, it shall promptly furnish Landlord with certified corporate or other resolutions, as applicable, attesting to the authority of the officers or representatives executing this Lease on behalf of such entity.

37.7 No Partnership. By reason of the execution of this Lease, Landlord shall not, in any way or for any purpose, be deemed a partner, employer, principal, master, agent or joint venturer of or with Tenant.

37.8 Force Majeure. If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature, not the fault of the party delayed in performing work or doing acts required under this Lease, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Tenant shall not be excused from any obligations for payment of rent, additional rent or any other payments required by the terms of this Lease when same are due, and all such amounts shall be paid when due.

37.9 Existing Liens. Landlord represents that on the Commencement Date, the Premises are free of all liens and encumbrances.

37.10 Estoppel Certificate. Landlord shall at any time, within thirty (30) days after a written request from Tenant, execute, acknowledge and deliver to Tenant and/or Tenant's prospective

lender or purchaser an estoppel certificate certifying matters concerning the status of this Lease, including, without limitation, that this Lease is unmodified and in full force and effect (or if modified stating the nature of such modification and certifying that the Lease as modified is in full force and effect), the dates to which the rent and other charges are paid in advance, if any, and acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of any party under the Lease or specifying such defaults if any are claimed.

37.11 Venue; Waiver of Jury Trial. Any action or proceeding seeking to enforce any provisions of, or based on any right out of any right or obligation arising out of, this Lease must be brought against a party in the courts of the state of New Mexico sitting in Doña Ana County, New Mexico, if such court has or can obtain jurisdiction, or alternatively in the United States District Court for the District of New Mexico (Las Cruces Division); and each party to this Lease hereby consents for that party to such jurisdiction and venue and waives any objection to such agreed venue, and shall not assert that such venue is an inconvenient forum. Landlord and Tenant acknowledge the delay, expense and uncertainty associated with a jury trial involving a complex commercial lease of this nature, and in recognition of these inherent problems hereby mutually waive their rights to a jury trial and agree that any litigation regarding this Lease will be tried without a jury.

37.12 Attorney's Fees. In the event the Landlord finds it necessary to retain an attorney in connection with the default by Tenant in any of the agreements or covenants contained in this Lease, Tenant shall pay reasonable attorney's fees to said attorney. In the event of any litigation regarding this Lease, the losing party shall pay to the prevailing party reasonable attorney's fees. Without limitation on the foregoing, Tenant agrees that should Landlord ever file a forcible detainer action or a forcible entry and detainer action, Landlord shall be entitled to its reasonable attorney's fees and costs in such action.

37.13 Landlord's Consent. Wherever in this Lease Landlord's consent is required for any matter, Landlord will not unreasonably withhold, delay or condition its consent to such matter. If Landlord does not give its consent to a proposed matter, Landlord will give Tenant written notice of non-consent specifying in particular the reason(s) why Landlord has withheld its consent.

37.14 Entire Agreement. There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Landlord and Tenant other than herein set forth. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless in writing and signed by them.

[signatures are found on the following page]

IN WITNESS WHEREOF, Landlord and Tenant have signed this Lease to be effective as of the Commencement Date.

LANDLORD:

Approved as to form:

CITY OF LAS CRUCES, NEW MEXICO

City Attorney

Robert L. Garza, P.E.
City Manager

Date: _____

TENANT:

LAS CRUCES COMMUNITY PARTNERS, LLC

K. Douglas Wright
Manager

Date: _____

STATE OF NEW MEXICO §
 §
COUNTY OF DOÑA ANA §

This instrument was acknowledged before me on _____, 2016, by ROBERT L. GARZA, P.E., City Manager of the city of Las Cruces, New Mexico, on behalf of said municipality.

NOTARY PUBLIC

My commission expires: _____

STATE OF NEW MEXICO §
 §
COUNTY OF DOÑA ANA §

This instrument was acknowledged before me on _____, 2016, by K. DOUGLAS WRIGHT, Manager of Las Cruces Community Partners, LLC, a New Mexico limited liability company, on behalf of said limited liability company.

NOTARY PUBLIC

My commission expires: _____

EXHIBIT A**Premises**

The Premises are comprised of the real property constituting two parcels of land (totaling approximately 47,225 square feet) located at the northwest corner of N. Water Street and W. Griggs Avenue, Las Cruces, New Mexico 88001, more specifically defined as follows:

- Doña Ana Country Appraisal District Parcel 02-05925 comprising 14,120 square feet of land, and
- Doña Ana Country Appraisal District Parcel 02-05931 comprising 33,105 square feet of land.

THE STATE OF NEW MEXICO)
)
COUNTY OF DOÑA ANA)

This instrument was acknowledged before me on _____, 2016,
by K. Douglas Wright as Manager of Las Cruces Community Partners, LLC on behalf of said limited
liability company.

Notary Public in and for
The State of New Mexico

My Commission Expires:

THE STATE OF NEW MEXICO)
)
COUNTY OF DOÑA ANA)

This instrument was acknowledged before me on _____, 2016,
by Robert L. Garza, P.E. as City Manager of the City of Las Cruces, New Mexico on behalf of said
municipality.

Notary Public in and for
The State of New Mexico

My Commission Expires:

EXHIBIT C

Addendum to Lease

This Addendum to Lease is between the City of Las Cruces ("Landlord") and Las Cruces Community Partners, LLC ("Tenant") who are the parties to that lease commencing _____ (the "Lease") for the premises defined as Doña Ana Country Appraisal District Parcel 02-05925 comprising 14,120 square feet of land, and Doña Ana Country Appraisal District Parcel 02-05931 comprising 33,105 square feet of land.

Pursuant to Section 36.2 of the Lease, the parties agree as follows:

As determined by the appraisal of the Premises dated _____ and prepared by _____, the Appraised Value of the Premises for the purposes of Paragraph 36 of the Lease is \$ _____.

All capitalized terms used in this Addendum and not otherwise defined herein will have the meaning given such term in the Lease.

Dated: _____.

Tenant:

Las Cruces Community Partners, LLC

By: _____
K. Douglas Wright, Manager

Landlord:

City of Las Cruces, New Mexico

By: _____
Robert L. Garza, P.E., City Manager

Approved as to form:

City of Las Cruces City Attorney

VICINITY MAP

