

**DEPARTMENT HEAD'S SUMMARY
REQUISITION FOR COUNCIL ACTION (RCA)**

DEPARTMENT: Information Technology

DATE: April 24, 2012

CONTACT PERSON/PHONE: Miguel A. Gamiño Jr., CPA
Director, Information Technology / 541-4746
Bertha Ontiveros
Assistant City Attorney / 541-4550

DISTRICT(S) AFFECTED: All

SUBJECT:

A Resolution to authorize the City Manager to execute the Lease Agreement, including a Purchase Option, with Luther Acquisition Company, L.P. for the lease of the property commonly known as 218 North Campbell, El Paso, Texas 79901.

The consideration to be paid by the City is an annual lease fee "not to exceed" the amount of \$1,443,017 for years 1-5 and will change per Exhibit E of the attached agreement for the remaining years of the 20-year term agreement, with a final purchase option in the amount of \$2,988,000.

BACKGROUND/DISCUSSION:

The property located in Downtown El Paso at 218 North Campbell, will be used for offices, technical operations, additional data center redundancies, and workshop facilities of the joint City and County Information Technology (IT) Department. On December 22, 2009 City Council approved an Interlocal Agreement between the City of El Paso and the County of El Paso establishing a shared services IT organization for the purpose of increasing departmental performance standards, operating efficiencies, leverage infrastructure overlap and lays the groundwork for consolidation.

The reorganization of City and County IT staff based on departmental core functions has been implemented. However, the physical location of City IT staff is scattered throughout City facilities. The ongoing need for sufficient office and technical operations facilities for staff limits the realization of the full potential benefits of the joint City and County IT Department by limiting the increased operating efficiencies, leveraged infrastructure and other consolidated benefits.

The building is located in Downtown El Paso across from The 9-1-1 District facility and near other critical City and County facilities. The property's unique location offers additional benefit by utilizing the building for Office of Emergency Management functions such as primary location for Continuation of Operations Plan (COOP) and secondary Emergency Operations Center (EOC) operations.

The proposed use of this building will cause the restoration, renovation and reactivation of a currently vacant and blighted property with rich local history in Downtown El Paso.

PRIOR COUNCIL ACTION:

No.

AMOUNT AND SOURCE OF FUNDING:

Department: Information Technology

BOARD/COMMISSION ACTION:

Office of Emergency Management, El Paso Fire Department recommends approval in order to utilize this facility in the COOP and EOC plans as described above.

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Miguel A. Gamiño Jr., CPA
Director, Information Technology Department

Information copy to appropriate Deputy City Manager

CITY CLERK DEPT.
2012 APR 19 PM 1:25

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lease between the CITY OF EL PASO and LUTHER ACQUISITION COMPANY, L.P. for the lease of the property commonly known as 218 North Campbell, El Paso, Texas more particularly described as

Lots 11 - 14, Block 230, CAMPBELL ADDITION, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 2, Page 68, Real Property Records, El Paso County, Texas.

Further, that the City Manager, or designee, be authorized to secure an appraisal with regard to the fair market value of the property, in accordance with applicable law, prior to the City's exercise of the option to purchase the property at the end of the lease term on the terms and condition set forth in the Lease.

And that the City Manager, or her designee, be authorized to sign any necessary documents to accomplish the intent of this Resolution.

ADOPTED this _____ day of _____, 2012.

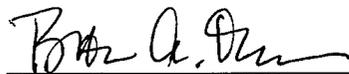
CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



William F. Studer, Jr., Deputy City Manager
Finance and Management Support Services



Miguel A. Gamino, Jr., CPA, Director
Information Technology Department

STANDARD LEASE

This Standard Lease (the "Lease") is dated this ____ day of _____, 2012, to be effective on the Effective Date, by and between Luther Acquisition Company, LP, a Texas limited partnership, or their assigns (hereinafter "Landlord") and City of El Paso, a municipal corporation (hereinafter "Tenant").

1. **Granting Clause.** In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord leases to Tenant, and Tenant takes from Landlord, the Premises for the Term.

2. **Definitions and Key Provisions.** The following terms shall be defined in this Lease as follows:

Additional Rent: Any amount due from Tenant under this Lease, other than Base Rent.

Architect: in*situ Architecture

Base Rent: Minimum Rent plus the Adjusted Rent.

Minimum Rent:	<u>Lease Year</u>	<u>Rentable Square Footage Rate</u>
	1 - 5:	\$1.00
	6 - 10:	\$1.11
	11- 15:	\$1.23
	16 - 20:	\$1.36

Minimum Rent will be calculated on an annual basis by multiplying the per Rentable Square Footage rate time the Rentable Square Footage of the Building shown below.

Adjusted Rent: For Lease Years 1 – 5, \$.102 multiplied by the Leasehold Improvement Costs pursuant to the Construction Addendum, divided by the Rentable Square Footage. Thereafter, at the end of each five Lease Years during the Term, Adjusted Rent shall be increased by two percent (2%) compounded each Lease Year during the previous five (5) Lease Years. The first increase shall be effective on the first day of the month following the fifth anniversary of the Rent Commencement Date, the second increase shall be effective on the first day of the month following the tenth anniversary of the Rent Commencement Date, the third increase shall be effective on the first day of the month following

effective on the first day of the month following the fifteenth anniversary of the Rent Commencement Date.

- Effective Date:** The date this lease is last signed by Landlord and Tenant.
- Laws:** All presently existing and future laws, statutes, ordinances, rules, regulations and orders of governmental authorities, public bodies and agencies.
- Lease Year:** With respect to the first Lease Year, the period commencing on the Rent Commencement Date and ending twelve (12) months thereafter. In the event the Rent Commencement Date does not occur on the first day of the month, the first Lease Year will include the Rent Commencement Date and the number of days remaining in the month when the Rent Commencement Date occurs plus the following twelve (12) calendar months. With respect to each subsequent Lease Year, the twelve (12) month period commencing on the next day following the previous Lease Year.
- Leasehold Improvement Costs:** All costs, expenses and fees incurred by Landlord in relation to Landlord's obligations under the Lease to adapt the Premises from its condition as of the Effective Date, including, but not limited to all costs, hard and soft, associated with the Leasehold Improvements.
- Premises:** The approximately 12,480 square foot parcel of real estate described on **Exhibit "A"** (the "**Land**") together with the building located on the Land contained approximately 73,667 in Rentable Square Footage (the "**Building**"), along with any other improvements to be constructed upon the Land and in the Building pursuant to the Construction Addendum attached to this Lease, situated in the City of El Paso, Texas.
- Rent Commencement Date:** Upon Substantial Completion of the Leasehold Improvements as provided in the Construction Addendum.
- Rentable Square Footage:** 73,667 square feet as agreed upon by Landlord and Tenant.
- Use:** Office purposes and any other lawful purpose in keeping with the class and character of the Building, subject to other provisions of this Lease.

Term: Twenty (20) Lease Years unless terminated earlier as provided herein, commencing on the Rent Commencement Date.

3. Rent.

3.1 Payment of Base Rent. Tenant shall pay Base Rent to Landlord for the Premises in the amount equal to 1/12 of the Base Rent set forth in **Section 2** (the "**Monthly Base Rent**"). Said Monthly Base Rent shall be paid in advance on the first day of each month of the Term, with proration to occur for any partial month if the Rent Commencement Date is other than on the first day of a calendar month. The first payment of Monthly Base Rent shall be due and payable on the Rent Commencement Date. All rentals to be paid by Tenant to Landlord shall be in lawful money of the United States of America and shall be paid without deduction or offset, prior notice or demand, except as provided elsewhere in this Lease and at such place or places as may be designated from time to time by Landlord. Tenant's obligation to pay rent under this Lease is an independent covenant and no act or circumstance shall release Tenant of its obligation to pay rent as required by this Lease, except as set forth herein. Notwithstanding the fact that the Rent Commencement Date may be subsequent to the Effective Date, it is the intention of Landlord and Tenant that each have vested rights hereunder and that this Lease constitutes a binding and valid obligation of each as of the date this Lease is fully executed.

3.2 Operating Expense Payments. It is the intention of Landlord and Tenant that Landlord receive the Base Rent "net" of all other charges; accordingly, beginning on the Effective Date, Tenant shall pay directly or as reimbursement to Landlord if not paid directly, all Operating Expenses for the Premises. The term "**Operating Expenses**" shall mean all costs and expenses with respect to the ownership of the Premises and for the maintenance and operation of the Premises to keep the Premises in the condition they were on the Rent Commencement Date, including but not limited to: Taxes (as provided in **Section 10**); Insurance (as provided in **Section 13**); utilities; compliance with Laws; maintenance, repair and replacement of all portions of the Premises, capital or otherwise, and all costs and expenses associated therewith including, but not limited to any, permits, amounts paid to contractors and subcontractors for work or services performed in connection with the foregoing; property management fees, if any (which, at Landlord's option, may be payable to itself, an affiliate or third party manager); deductibles on insurance loss; maintenance or security services, and any other charges in relation to the Premises.

Landlord shall furnish Tenant a written statement estimating the Operating Expenses for the current calendar year, if any, (herein the "**Estimate**") that are not paid and performed directly by Tenant. Beginning on the Rent Commencement Date and on the first day of each month during the Term, Tenant shall pay Landlord as Additional Rent one-twelfth (1/12) of the Estimate. In addition, Tenant shall pay with the rental payment for the first month following receipt of the Estimate an amount equal to the number of months elapsed in the calendar year prior to receipt of the Estimate times one-twelfth (1/12) of the Estimate, so as to bring said monthly payments current for the year. As soon as practical after the end of each calendar year, Landlord shall furnish Tenant a written statement showing the total Operating Expenses that are not paid or performed by Tenant actually due for the calendar year ended (the "**Actual Expenses**"), and, upon written request from Tenant a copy of back up invoices related to the Actual Expenses. If the Actual Expenses exceed the Estimate, then Tenant agrees to pay within ten (10) days of receipt of said statement, the difference between the Actual Expenses and the Estimate. If the Estimate exceeds the Actual Expenses, then Landlord agrees to refund the difference at the time that such statement is furnished, provided Tenant is not then in default in the performance of any of its obligations under this Lease. The provisions of

this **Section 3.2** shall apply for any partial calendar year during which this Lease is effective, subject to a pro rata adjustment based upon the number of calendar months or portions thereof that this Lease is in effect. Tenant's obligation to pay such difference shall survive the termination or expiration of this Lease.

For purposes of this Section, a year shall mean a calendar year except for the first year of this Lease, which shall begin on the Effective Date and the last year which shall end at the expiration of the Lease.

The Estimate and payments made by Tenant to Landlord will not include any Operating Expenses incurred directly by Tenant and paid directly by Tenant.

Without limitation on the foregoing, or on any other section of this Lease, Landlord and Tenant hereby each acknowledge and agree that they are knowledgeable and experienced in commercial transactions and further hereby acknowledge and agree that the provisions of this Lease for determining charges, amounts and additional rent payable by Tenant are commercially reasonable and valid even though such methods may not state precise mathematical formulae for determining such charges.

ACCORDINGLY, WITH REGARD TO OPERATING EXPENSE PAYMENTS SET FORTH IN SECTION 3.2, TENANT HEREBY VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS TO WHICH TENANT MAY BE ENTITLED UNDER SECTION 93.012 OF THE TEXAS PROPERTY CODE, AS SUCH SECTION NOW EXISTS OR AS SAME MAY BE HEREAFTER AMENDED OR SUCCEDED.

Notwithstanding anything in this Lease to the contrary, Tenant at its expense shall have the right at any reasonable time within twelve (12) months after receiving the statement of Actual Expenses for a calendar year, upon prior written notice to Landlord, to audit Landlord's books and records relating to this Lease for the immediately preceding calendar year in which the applicable Actual Expenses were paid to Landlord.

4. **Late Charges.** Tenant agrees to pay a late charge as Additional Rent for each payment due hereunder that remains unpaid after the fifth day of the month to cover Landlord's administrative costs of processing such late payment in accordance with the provisions of the Texas Government Code Section 2251.025 (Payment of Goods and Services). 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 then maximum rate allowable by applicable law, including but not limited to Texas Government Code Section 2251.025 (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. Landlord and Tenant acknowledge that the Tenant is a governmental entity subject to the Provisions of Texas Government Code Section 2251.025 (Payment of Goods and Services) and any late charges or interest shall be subject to the terms of such applicable state law, as it may be amended from time to time.

5. **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 governing or regulating the use of the Premises and all easements, rights-of-way, and prescriptive rights, and all recorded instruments which affect the Premises, peaceably and quietly have, hold and enjoy the Premises for the term provided in this Lease.

6. **Acceptance and Use of Premises.** The Premises shall be occupied and used by Tenant solely for the purpose of conducting therein the Use specified in **Section 2**. The Premises shall not be used for any other purpose. Tenant's execution of this Lease shall constitute acknowledgment by Tenant that Tenant has inspected the Premises and that that Tenant is aware of the condition of the Premises and the requirements to make the Premises suitable for Tenant's intended use thereof as stated in this Section. **NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, TENANT ACKNOWLEDGES THAT IT HAS BEEN INVOLVED WITH AND APPROVED THE DESIGN AND SPECIFICATIONS FOR LEASEHOLD IMPROVEMENTS REQUIRED TO ADAPT THE PREMISES, AND LANDLORD SHALL NOT BE RESPONSIBLE FOR DEFICIENCIES IN THE CONDITION OF THE PREMISES OR DESIGN AND SPECIFICATIONS OF THE LEASEHOLD IMPROVEMENTS TO THE PREMISES. TENANT RECOGNIZES AND AGREES EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE AND THE CONSTRUCTION ADDENDUM, LANDLORD IS MAKING NO WARRANTIES, EXPRESSED OR IMPLIED, REGARDING THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE CONDITION THEREOF OR THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR ANY PARTICULAR USE. TENANT ACCEPTS THE PREMISES "AS IS" WITH ALL FAULTS AND EXPRESSLY WAIVES ANY WARRANTIES, EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION HABITABILITY, GOOD AND WORKMAN LIKE PERFORMANCE AND FITNESS FOR A PARTICULAR USE.** Tenant will occupy the Premises upon the Rent Commencement Date. During the Term, Landlord will not be responsible for any costs or expenses or performing any acts in relation to the ownership, use, operation or maintenance of the Premises, all of which will be paid and/or performed by Tenant, as further set forth in this Lease. Without expanding Tenant's restricted use, Tenant agrees that it shall not use or permit the Premises to be used for an adult bookstore, adult motion picture theater, nude live entertainment club, or similar adult entertainment establishment as such terms are generally understood or as defined in Title 20 and other applicable sections of the El Paso Municipal Code or for any purpose set forth on **Exhibit "B"** (the **"Restricted Uses"**). Without limitation on the foregoing, Tenant shall not use or permit the Premises to be used in violation of the Lease or in any manner which would cause Landlord to be in violation of any agreement, covenant, or restriction contained in any lease, agreement, or document between Landlord and any third party, provided that Landlord has provided notice to Tenant of such agreement, covenant or restriction or Tenant has actual or constructive notice of such agreement, covenant or restriction.

7. **Compliance with Laws.** Tenant, at Tenant's expense, shall comply with all Laws pertaining to the Premises and 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 Laws, pertaining to air and water quality, Hazardous Materials and ADA (as hereinafter defined), 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, or any insurance carrier, underwriter's association or similar authority pursuant to law, which impose any duty upon Landlord or Tenant with respect to the use or occupation of the Premises. Tenant will be responsible for ordering and paying for all inspections required to comply with Laws. Tenant and Tenant's agents, employees, contractors and invitees shall faithfully observe and comply with all reasonable rules and regulations promulgated and provided to Tenant's Capital Assets Manager (or other person that the City Manager or designee may assign and notify such change in writing to Landlord from time to time) by the Landlord for the safety, care or cleanliness of the Premises and for the preservation of good order therein. Tenant's failure to keep and observe said rules and regulations shall constitute a breach of this Lease in the same manner as if said rules and regulations were set forth herein. Provided, however, Landlord shall have no obligation to

promulgate such rules or regulations. The current rules and regulations are attached hereto as the Exhibit "C".

8. Maintenance of Premises.

8.1 Maintenance by Landlord. Landlord shall not be obligated to make repairs, replacements or improvements of any kind upon the Premises, including the Building, or to any equipment, merchandise, stock in trade, facilities or fixtures therein, all of which shall be Tenant's sole responsibility. Landlord will not be required to incur any costs or expense in relation to the ownership, maintenance or operation of the Premises or this Lease.

8.2 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. Without limitation on the foregoing, Tenant's repair and maintenance obligations shall include repair, maintenance and replacement where applicable of the Building structure, foundation, roof, interior and exterior walls, interior and exterior heating, ventilation and air-conditioning equipment "**HVAC System**", elevators, stairwells, all glass, signage, windows, doors, fixtures, ceilings, fire sprinklers and fire protection systems, if any, equipment and appurtenances thereof; lighting, electrical and plumbing (the "**Structure and Building Systems**") and all such things necessary to cause the Premises to comply with Laws, capital or ordinary expenses to maintain the Premises in good condition. If replacement of equipment, fixtures and appurtenances thereto are necessary, Tenant shall replace the same with equipment, fixtures and appurtenances of the same quality, and shall repair all damages caused by such replacement. At the termination of this Lease, Tenant shall surrender the Premises in the same condition as they were on the Rent Commencement Date, reasonable wear and tear excepted, but in good working order, and deliver all keys for and all combinations on locks, safes and vaults in the Premises to Landlord. Tenant shall, at Tenant's expense, enter into a maintenance contract with a third party for the maintenance and repair of the HVAC System with a qualified contractor who shall provide the services in a good and workmanlike industry standard.

8.3 Fire Equipment. Tenant agrees to supply and maintain at its own expense any fire extinguishers, or other fire prevention equipment, including, without limitation, sprinkler or fire suppression systems, 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 recommendations of any such authority.

8.4 ADA Compliance. Following the Rent Commencement Date, Tenant agrees to assume sole responsibility for conforming its accommodations, facilities and services to the requirements of the Americans with Disabilities Act of 1990, as amended, and related state and local Laws (collectively the "ADA"), and further covenants not to discriminate against disabled persons on the basis of disability in the full and equal employment of goods, services, facilities, privileges, advantages or accommodations. Landlord and Tenant agree that the Leasehold Improvements made prior to the Rent Commencement Date shall include compliance with all ADA requirements at the time such improvements are made.

9. Additions.

9.1 Alterations. Tenant will not paint, decorate or change the architectural treatment of exterior of the Premises, without Landlord's prior written approval thereto, which approval shall not be unreasonably withheld or delayed, and will promptly remove any paint, decoration, alteration, addition or changes to the exterior of the Premises, applied or installed without Landlord's approval or take such other action with respect thereto as Landlord directs. Tenant shall not make any structural alterations, additions or changes to the Premises or changes to the operating or service systems of the Building without the Landlord's prior written approval thereto, which approval shall be at Landlord's sole discretion. Tenant may, at its own cost and expense erect shelves, bins, and removable (i.e., not attached to the real property) trade fixtures (collectively "**Trade Fixtures**") in the ordinary course of its business provided such items do not alter the basic character of the Premises, do not damage the Premises, may be removed without injury to the real property or the Structure and Building Systems of the Premises and the construction, erection and installation thereof complies with all Laws and other provisions of this Lease. If Landlord grants consent to any requested alterations, the alterations shall be performed in a good, workmanlike and lien free manner in accordance with all Laws and any restrictions which may be imposed by Landlord as a condition to its consent. All alterations, changes, additions and all leasehold improvements made by Tenant or made by Landlord on Tenant's behalf and all fixtures installed by Tenant which are not Trade Fixtures are herein collectively referred to as "**Tenant Additions**", including the Structure and Building Systems, shall be property of Landlord. Such Tenant Additions shall not be removed by Tenant on, before or following expiration or termination of the Lease without Landlord's consent. Notwithstanding the foregoing, Tenant may, without the Landlord's consent, make any nonstructural alterations, additions, and improvements to the interior of the Premises, provided Tenant complies with all Laws and such alterations, additions and improvements do not adversely affect the structure of the Building or the proper functioning of the Building's operating or service systems. In addition, Tenant may replace other operating systems without Landlord's consent; provided the replacement operating systems will be of equal or greater value, equal or greater specifications and will not compromise the operational integrity of the existing system or reduce the value of the Building. Tenant agrees to provide Landlord written notice of any replacement operating systems.

For any alterations, additions or improvements requiring Landlord's consent, Tenant shall submit specifications and working drawings to Landlord for Landlord's approval. If Landlord does not respond to Tenant's first request for consent (the "**First Request**") within thirty (30) days after submission of specifications and working drawings by Tenant, Tenant may provide a "**Second Request**" to Landlord conspicuously stating "**Landlord's consent will be deemed unless Landlord responds within fifteen (15) days after receipt of the Second Request**". As long as Tenant has delivered the First Request and Second Request as provided in this Section and in the manner and at the address under the notice provision contained in Section 26, unless Landlord objects to such specifications or working drawings within fifteen (15) days after receipt of the Second Request, Landlord's consent shall be deemed given to the same. Tenant will use only contractors that will perform the work in a first class manner. Landlord and Tenant agree and understand that the Tenant is a governmental entity and is subject to state and local procurement laws and generally cannot select a contractor to perform services without compliance with procurement laws. Landlord's approval of Tenant's plans and specifications shall act only as consent for Tenant to proceed with such improvements and shall in no way be construed as a waiver by Landlord of the requirement that Tenant make such improvements in compliance with Laws and other requirements imposed upon Tenant in this Lease. Landlord will never be deemed to consent to alterations or improvements that would alter the structure or building operating or service systems.

As long as installation, removal or maintenance will not void or diminish Landlord's roof warranty, Tenant may install, at its sole cost and expense, satellite dish/antennae ("Dish") on the roof of

the Building. Tenant shall not be charged any rent for space taken by the Dish or for cabling or access to the Dish. Upon expiration or termination of this Lease, Tenant shall remove the Dish and cable from its location. At its sole cost and expense, Tenant shall repair any damage to the roof or Building caused by the installation, maintenance and removal of the Dish and/or cabling, and shall be responsible for compliance with all Laws in relation to the installation, maintenance and operation of the Dish.

Tenant will not make any installations, repairs or penetrations that would void or diminish the roof warranty and will be responsible for repairs and damage resulting from the same.

9.2 Signage. Tenant shall be permitted by Landlord to install, at Tenant's expense, its customary signs and logo on the exterior of the Building, subject to municipal approval and compliance with all Laws. At the expiration or termination of this Lease Tenant shall remove all such signage installed upon the Building and repair all damage caused by such removal in the manner directed by Landlord so as to repair the Building to the condition immediately prior to installation of any signage.

9.3 Liens. Landlord and Tenant agree and understand that the Tenant is a governmental entity whose interest under this Lease is exempt from mechanics or any other type of lien for the Lease Term under applicable Texas law. Tenant shall promptly pay all contractors and materialmen, and not permit or suffer any lien to attach to the Premises or any part thereof. Since the Tenant is a governmental entity, it shall obtain from any contractors and provide a copy to Landlord, payment and performance bonds for such construction pursuant to Texas Government Code 2253 and as further described in **Section 13.2.6**. If any lien impermissibly attaches or is claimed, Tenant, within thirty (30) days following the imposing of any such lien and Tenant's actual knowledge thereof, shall cause the same to be released of record.

10. Real Estate Taxes. Landlord and Tenant agree and understand that the Tenant is a governmental entity whose interest under this Lease is exempt from real estate taxes under the Texas constitution and applicable statutes. Tenant agrees that it shall notify the El Paso Central Appraisal District or any other governmental agency of the Lease and Tenant's lease of the Premises and the exemption of the Premises from real estate taxes during the Term. If any taxes are assessed against the Premises, Tenant shall take immediate action to challenge or protest the imposition of such tax assessment, and if required by law, court order or other applicable legal authority, pay such taxes during the pending challenge or assessment. Any assessments, or governmental charges levied or assessed against the Premises (hereinafter collectively "**Taxes**") shall be considered Additional Rent under this Lease to the extent the Premises are not exempt due to Tenant's status as a governmental entity. To the extent any such Taxes are assessed against the Premises and any Taxes are not paid directly by Tenant to the applicable taxing authorities, they will be reimbursed to Landlord as Operating Expenses in accordance with **Section 3.2**. Tenant shall have the right, at its sole cost and expense, to contest the Taxes with the applicable taxing authorities, and Landlord shall cooperate with Tenant to affect said contest; provided, however no such contest shall relieve Tenant from payment of Taxes prior to incurring penalty or interest. Further Tenant shall reimburse Landlord for any expenses incurred by Landlord in relation to such cooperation, including but not limited to professional fees, penalties and interest, if any.

11. Personal Property Taxes. Landlord and Tenant agree and understand that the Tenant is a governmental entity whose interest under this Lease [following the Rent Commencement Date] is exempt from real estate taxes under Texas law. Tenant agrees that it shall file or cause to be filed any documents necessary to effectuate such exemption with the El Paso Central Appraisal District or any other governmental agency as required by law. 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 to the extent Tenant has not received an exemption.

12. **Utilities.** Tenant agrees to contract directly with all applicable utility companies and 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.

Tenant shall not install any equipment or make any use of the Premises which overloads the utilities available to the Premises and if Landlord deems Tenant's use of equipment to be in violation of this provision, Landlord may, in addition to such other remedies which Landlord has hereunder, require Tenant, at Tenant's expense, to upgrade such utility lines and related equipment including without limitation transformers.

13. **Insurance.**

13.1 **Landlord's Obligation.** At its sole option, Landlord shall procure and maintain during the term of this Lease such property, liability, rental loss, construction and other insurance and umbrella coverage on the Premises as Landlord deems appropriate. All such insurance under insurance policies maintained by Landlord, herein "**Insurance**", shall be included as a part of the Operating Expenses charged to Tenant. The Premises may be included in a blanket policy (in which case the cost of such insurance allocable to the Premises will be determined by Landlord based upon the insurer's cost calculations).

13.2 **Tenant's Obligations.**

13.2.1 **Property, Liability and Other Insurance.** To the extent Tenant is required to carry coverage under this Lease and fails to do so, Landlord may obtain such insurance and Tenant shall reimburse Landlord an amount equal to all premiums paid by Landlord for all Insurance not procured by Tenant. Said premiums are payable as Additional Rent in accordance with **Section 3.2.**

13.2.2 **Property Insurance.** Tenant shall, at its sole cost and expense, throughout the Term of this Lease, procure and maintain property insurance on the Building and improvements located on the Premises for the mutual benefit of Landlord and Tenant against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, acts of war, riots, vandalism and malicious mischief in an amount not less than the actual replacement cost of the Building and all improvements located on the Premises, including the costs of replacing excavations and foundation, but without deduction for depreciation (the "Full Insurable Value"). Such property insurance shall include extra expense insurance coverage for the additional cost to maintain operations or get back in operation more quickly following a covered property loss.

13.2.3 **General Commercial Liability/Workers Compensation.** Tenant shall, at its sole cost and expense, procure and maintain a general commercial liability policy or policies of insurance, insuring Tenant, and adding Landlord as an additional insured, 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 One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, Two Million Dollars (\$2,000,000.00) combined single limit per occurrence in the general aggregate for bodily injury and Two Million Dollars (\$2,000,000.00) for property damage arising out of each occurrence. Said policy or policies shall additionally include coverage in support of Tenant's liabilities as contemplated by the Texas Tort Claims Act.

Tenant shall also maintain Workman's Compensation Insurance on its employees. Landlord agrees that Tenant may self-insure against the risks that would be covered through Workman's Compensation Insurance to the extent permitted by state law, provided that Tenant shall provide evidence of such compliance with state law. Tenant hereby waives its right of recovery against Landlord and its officers, employees or agents of any amounts paid by Tenant or on Tenant's behalf to satisfy applicable worker's compensation laws.

13.2.4 Personal Property Coverage. Tenant also agrees it will carry insurance or self-insure against damage or destruction, for the full insurable value, covering all of Tenant's merchandise, trade fixtures, furnishings, wall covering, floor covering, carpeting, drapes, equipment and all items of personal property of Tenant located on or within the Premises, at the Tenant's option. **ALL PROPERTY OF TENANT KEPT IN THE PREMISES SHALL BE SO KEPT AT TENANT'S SOLE RISK REGARDLESS IF THE DAMAGE OR DESTRUCTION RESULTS FROM THE ACTS OR OMISSIONS, INCLUDING THE NEGLIGENCE, OF LANDLORD.**

13.2.5 Construction Liability. If additions, alterations or capital repairs to the Premises are performed by Tenant or Tenant's contractors, Tenant, at its own cost and expense, shall obtain and maintain, or cause such contractors to obtain and maintain, at all times when demolition, excavation, or construction work is in progress on the Premises by Tenant, Builders Risk insurance coverage (fire and extended coverage) on a one hundred percent (100%) completed value basis on the insurable portion of the project and liability insurance coverage with liability limits of not less than Three Million Dollars (\$3,000,000.00) combined single limit 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.

13.2.6 Payment and Performance Bonds. In the event of the Tenant commences any construction on the Premises in an amount over \$50,000, Tenant, at its own cost and expense, shall cause Tenant's contractor to obtain and deliver to Landlord two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Landlord against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Tenant to perform completely the work described as herein provided.
- B. Prior to the date of commencement of any construction, a payment bond with Tenant's contractor or contractors as principal, in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.
- C. Landlord and Tenant acknowledge that these bonds are required for construction projects on Tenant property using public funds and state law prohibits divide a single project into separate, sequential or component projects in order to avoid the statutory requirements.

13.2.7 Form of Insurance. All policies required of Tenant hereunder shall: (i) be issued by a reputable insurance company that is acceptable to Landlord and qualified to do business in the state where the Premises are located and that has an A.M. Best Rating Company rating of not less than "A-XII" according to the most recent rating thereof; (ii) name Landlord and Landlord's lender, if any, as an additional insured and Tenant as the named insured under Tenant's liability policies; (iii) name Tenant as loss payee and Landlord and Landlord's lender, to the extent of their interest, as additional loss payees with regard to casualty and/or property policies (iv) provide that they cannot be canceled or materially amended for any reason unless Landlord is given thirty (30) days written notice by the insurer; (v) state that such insurance is primary over any insurance carried by Landlord and; (vi) contain an endorsement in favor of Landlord, waiving such insurance company's right of subrogation against Landlord. A duly executed certificate of insurance shall be delivered to Landlord, in a contractually binding form, within ten (10) days after the Effective Date and attached hereto as **Exhibit "D"**. All renewals shall be delivered to Landlord at least ten (10) days prior to the expiration of the respective policy terms. At Landlord's request, Tenant will furnish Landlord copies of Tenant's actual insurance policies. Landlord shall have the right to review said insurance amounts and coverage at least yearly during the Term of this Lease and require Tenant to increase said insurance policies to provide coverage in such amounts and capacities as Landlord reasonably deems necessary. Tenant agrees to procure and maintain said increased insurance coverage. Tenant's right to self-insure under this Lease is limited to the right to self-insure for Workmen's Compensation coverage and Tenant's personal property. In relation to Tenant's self-insurance, Tenant agrees to provide Landlord with the same coverage which Landlord would be afforded if the insurance called for in this Lease was maintained with a third party insurance provider including, without limitation, a defense and waiver of subrogation. Tenant's self-insurance will in no way restrict or reduce Landlord's benefits that Landlord would have received in the event Tenant was not self-insured.

13.3 Mutual Waiver of Subrogation Rights. Landlord and 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 they could be covered by the insurance required to be carried hereunder 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 FOR ANY PERSON FOR WHICH SUCH PARTY IS RESPONSIBLE.**

13.4 WAIVER. LANDLORD, ITS AGENTS AND EMPLOYEES, SHALL NOT BE LIABLE FOR, AND TENANT WAIVES ALL CLAIMS FOR DAMAGE OR LOSS (INCLUDING CLAIMS CAUSED BY OR RESULTING FROM THE NEGLIGENCE OF LANDLORD, ITS OFFICERS, DIRECTORS, PARTNERS, AGENTS OR EMPLOYEES), INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES AND BUSINESS INTERRUPTIONS, 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. ALL PROPERTY OF TENANT KEPT IN THE PREMISES SHALL BE SO KEPT AT TENANT'S RISK ONLY.

14. Right of Entry. Landlord, its agents and employees, shall have the right to enter the Premises from time to time, upon twenty-four (24) hours prior notice except in the case of an emergency, to examine, to show them to prospective lenders, purchasers and other persons, and to make such repairs, alterations, improvements or additions as are necessary in accordance with the provisions of this Lease. Rent shall not abate during any such entry by Landlord, including without limitation, during the period of any such repairs, alterations, improvements, or additions, except as hereinafter provided. During the last six (6) months of the term of this Lease, Landlord may exhibit the Premises to prospective tenants. 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.

15. Subordination and Attornment. Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust, or other lien presently existing on the Premises and to any renewals and extensions thereof; but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust, or other lien to this Lease. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust, or other lien hereafter placed on the Premises and Tenant agrees on demand to execute such instruments as Landlord may request: (i) subordinating this Lease to any such future mortgage, deed of trust or other lien; (ii) agreeing to give the holder of the lien simultaneous notice of a default by Landlord; and (iii) releasing the holder of such lien from defaults by Landlord prior to the foreclosure of such lien. However, such future subordination shall be on the express condition that: (i) this Lease shall be recognized by the mortgagee; (ii) unless required by law, Tenant shall not be named as a party defendant in any foreclosure proceedings; and (iii) that the rights of Tenant shall remain in full force and effect during the term of this Lease, so long as Tenant shall continue to perform all of the covenants and conditions of this Lease. Tenant covenants and agrees that upon foreclosure of any deed of trust, mortgage or other instrument of security and the sale of the Premises pursuant to any such document, to attorn to any purchaser at such a sale and to recognize such purchaser as the landlord under this Lease. The agreement of Tenant to attorn to any purchaser pursuant to such a foreclosure sale or trustee's sale in the preceding sentence shall survive any such sale.

16. Estoppel Certificate. Tenant shall at any time, upon the request of Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying 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 Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed. The parties hereto agree that any such statement may be relied upon by any prospective purchaser or encumbrancer. Tenant's failure to deliver such statement within ten (10) days after Landlord's request for the same, shall be conclusive upon Tenant that: (i) this Lease is in full force and effect; (ii) there are no uncured defaults in Landlord's performance; (iii) not more than one month's rent or other charge has been paid in advance; and (iv) this Lease has not been modified or amended other than as expressly stated.

17. Damage and Destruction. In the event of a full or partial destruction of the Building during the Term, as a result of fire, water, weather, soil condition or other casualty (collectively "**Casualty**"), Tenant will rebuild the Building and restore the improvements to the condition they were in prior to such Casualty. Tenant may use the proceeds of casualty insurance to restore the Building and improvement to the extent available. The Tenant agrees to commence construction within 90 days after the Casualty and diligently pursue construction until completion. Upon the happening of a Casualty, rents and other payments called for under this Lease will not abate following such Casualty. Notwithstanding the foregoing, within thirty (30) days after the Casualty, Landlord may, at Landlord's option, elect to rebuild the Building and restore the improvements to the condition they were in prior to the Casualty in place of Tenant's obligation to rebuild. Whether or not Landlord or Tenant rebuilds the Building, Landlord will have the right to participate in any proceeds and adjustment and settlement of insurance proceeds. No adjustment or settlement of insurance proceeds will be agreed upon by Tenant without Landlord's consent and the consent of Landlord's mortgagee, if any. Upon adjustment and settlement, insurance proceeds will be deposited with Lone Star Title Insurance Company, of El Paso, Texas

("**Escrow Agent**") to be disbursed by Escrow Agent as provided in this Lease. If Lone Star Title Insurance Company is unable or unwilling to act as escrow agent, the Escrow Agent will be another title insurance company having an office in El Paso, Texas, as mutually agreed upon between Landlord and Tenant and Landlord's mortgagee, if any. If the Lease remains in full force and Landlord or Tenant is rebuilding the Premises to its prior condition, the insurance proceeds will be disbursed by Escrow Agent to the rebuilding party's contractors in accordance with plans and draws approved by Landlord and Tenant, and Landlord's mortgagee, if any, with approval not to be unreasonably withheld or delayed. Any undisbursed insurance proceeds not used to rebuild and restore the Building will be disbursed to Landlord as partial compensation for Landlord's property loss. Once Landlord or Tenant restores the Building as provided above, Tenant shall promptly repair or replace, at Tenant's sole cost, its stock in trade, trade fixtures, furnishings, furniture, carpeting, wall covering, floor covering, drapes and equipment to the same condition as they were in immediately prior to the Casualty, and if Tenant has closed its business, Tenant shall promptly reopen for business upon the completion of such repairs. Further, Tenant will not have the right to terminate this Lease due to any Casualty or damage to the Building or any portion of the Premises.

18. Eminent Domain. If a substantial portion of the Premises shall be acquired, condemned or damaged as a result of the exercise of any power of eminent domain, condemnation or sale under threat thereof or in lieu thereof (herein called a "**Taking**"), then Landlord at its election may terminate this Lease by giving notice to Tenant of its election, within one hundred eighty (180) days of the date the condemning authority shall have the right to possession of the Premises or portion of the Premises condemned. As used in this Section 18, "**substantial portion**" will mean more than 10 % of the Rentable Square Footage of the Building or more than 25% of the Land outside the Building. If the Lease shall not be terminated as aforesaid, or if the Taking is for a portion of the Premises that is not substantial, then it shall continue in full force and effect, and Landlord shall within a reasonable time after possession is physically taken by the condemning authority (subject to delays due to shortage of labor, materials or equipment, labor difficulties, breakdown of equipment, governmental restrictions, fires, other casualties or other causes beyond the reasonable control of Landlord) restore the remaining portion of the Premises to the extent reasonably possible, to render it reasonably suitable for the use permitted by **Section 2**. Provided, however, Landlord shall not be obligated to expend an amount greater than the proceeds received by Landlord from the condemning authority (the "**Award**") less all reasonable expenses incurred in connection therewith (including attorney's fees) for the restoration. Base Rent as provided in **Section 2**, shall be reduced in the proportion that the area of the Building so taken bears to the total Rentable Square Footage of the Building. Base Rent will not be reduced for a Taking of any portion of the Premises not included within the Building nor will a Taking of a portion of the Premises entitle Tenant to terminate the Lease, except as provided herein. Except to the extent provided in **Section 18.2**, Landlord reserves and Tenant assigns to Landlord, all rights to damages on account of any Taking, or any act of any public or quasi-public authority for which damages are payable. Tenant shall execute such instruments of assignment as Landlord reasonably requires, join with Landlord in any action for the recovery of damages, if requested by Landlord, and turn over to Landlord any damages recovered in any proceeding, other than as provided in **Section 18.2**. Notwithstanding the foregoing, if so much of the Building is taken or condemned so that Tenant, in its reasonable opinion, cannot satisfactorily use the Premises or the balance thereof, as the case may be, Tenant may terminate this Lease by giving written notice of such termination to Landlord within ninety (90) days of the date the condemning authority shall have a right to possession of the Building or portion of the Building. Upon such election by Tenant, this Lease shall be terminated and Base Rent and Additional Rent shall be apportioned as of the date the condemning authority has the right to possession. Except as specifically provided above, no rent or other charges will abate in relation or due to a Taking. Notwithstanding anything to the contrary, Tenant will not have the right to terminate this Lease if the Taking is initiated by the City of El Paso, Texas or (the County of El Paso, Texas, if the County of El Paso, Texas is an occupant of a portion of the Premises) or one of their agencies or affiliates (a "**Tenant Party Taking**"), without payment of a Termination Fee to Landlord, in addition to the condemnation proceeds. As used herein, the term "**Termination Fee**" means the net present value of the payments of Base Rent that would have been made by Tenant under this

Lease for the remainder of the Term if the Lease did not terminate or the Base Rent was not reduced due to a Taking, plus any prepayment fee, yield maintenance fee or similar payment or fee resulting from a prepayment of Landlord's loan secured by the Premises. If the Tenant Party Taking occurs during the period when Landlord's Permanent Loan is not in place, the discount rate used to calculate the Termination Fee will be the Prime Rate as reflected by the Wall Street Journal money section on the date the party initiating the Taking is entitled to possession of the portion of the Premises taken (the "Prime Rate"). If the Tenant Party Taking occurs during the period when Landlord's Permanent Loan is in place, the discount rate used to calculate the net present value will be the lesser of the Prime Rate and the rate of interest charged under Landlord's Permanent Loan. "**Landlord's Permanent Loan**" will mean any loan secured by the Premises containing a prepayment fee, yield maintenance or similar payment if the loan is paid prior to a stated period of time. Notwithstanding the foregoing to the contrary, should there be a partial taking in the last year of the Term, Landlord shall be relieved of the responsibility to so restore the Premises by notifying the Tenant and the amounts awarded for improvements to the Premises paid for by Tenant and the leasehold estate shall be disbursed to Landlord.

18.1 Total Taking. Upon a total Taking, Tenant's obligation to pay rent or other charges hereunder shall terminate on the date the condemning authority shall have a right to possession of the Building or portion of the Building, but Tenant's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation.

18.2 Rights of Tenant. Tenant shall have the right to petition the court or condemnation award authority for any and all costs incurred by its related to such taking or condemnation action, including but not limited to, relocation expenses, rent differentials, brokerage and attorney fees, unamortized improvements to the Premises paid for by Tenant, personal property, trade fixtures, its leasehold estate and any other expenses or costs reasonably related to such taking or condemnation with Tenant's award being disbursed directly by the applicable condemning authority or court; provided, however, any such cost awarded Tenant will not reduce the award payable to Landlord.

19. Assignment and Subletting. Tenant shall not assign this Lease or any interest therein, whether voluntarily, by operation of law, or otherwise, and shall not sublet the Premises or any part thereof except by written permission and consent of Landlord being first had and obtained. Landlord will be deemed not to be unreasonable in withholding consent if: (i) at the time of such assignment or subletting Tenant is in default in the performance and observance of any of the covenants and conditions of this Lease; (ii) the assignee or subtenant of Tenant does not expressly assume in writing all of Tenant's obligations hereunder; (iii) the Premises be used solely for the use set forth in **Section 2**; and (iv) if in Landlord's sole judgment, the financial condition of the assignee or subtenant is not acceptable to Landlord or Landlord's lender. In connection with any such assignment or sublease, Tenant or the assignee or subtenant of Tenant shall pay to Landlord any legal and administrative costs incurred by Landlord in approving such assignment or subletting, not to exceed \$1,000.00 and shall provide a fully executed copy thereof within ten (10) days of Landlord's approval. Any such assignment or sublease, even with the approval of Landlord or even where the approval of Landlord is not required in this Section, 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, or consent to the assignment or subletting of the Premises. Consent to any assignment or subletting shall not be deemed consent to any future assignment or subletting. In the event that the rental due and payable by a sublessee or assignee or a combination of the rental payable under such sublease or assignment plus any excess or other consideration therefor or incident thereto exceeds the rental payable under this Lease then Tenant shall be bound and obligated to pay Landlord in addition to all rental required hereunder, of all such excess rental and other excess consideration within ten (10) days following receipt thereof by Tenant from such sublessee, assignee or other transferee, as the case may be. Without limited on Landlord's approval rights as herein provided, Tenant shall provide a copy of any executed sublease or assignment to Landlord within ten (10) days of execution thereof.

Notwithstanding the forgoing, Tenant will have the right to sublease a portion of the Premises, without Landlord's consent, to El Paso County, Texas for office and administrative use and up to _____ square feet of the Premises to a third party food service provider for operation of a food service facility only (collectively "**Pre-Approved Parties**"). Tenant will provide Landlord with a copy of any assignment and sublease agreement with the Pre-Approved Parties within thirty (30) days after execution with the Pre-Approved Parties agreement to abide by the terms and conditions of this Lease.

20. Landlord's Performance for Account of Tenant. If the 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 reasonable amount paid or reasonable 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 highest lawful rate, herein the "**Maximum Rate**" 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, or shall be payable by Tenant to Landlord on demand.

21. Default by Tenant.

21.1 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 Base Rent, Additional Rent or other amount when due hereunder and the same continues after five (5) days written notice from Landlord (provided, Landlord will not be required to give notice of a failure to make such payment more than once in any Lease Year, prior to declaring an event of default by Tenant); (b) any failure by Tenant to perform or observe any other of the terms, provisions, conditions and covenants of this Lease for more than thirty (30) days after written notice of such failure (or, provided that Tenant commence such performance within 30 days and diligently pursue the same, such additional time as is reasonably required to correct any such default), provided no notice shall be required for Tenant's failure to maintain the required insurance; (c) Landlord determining that Tenant has submitted any false report required to be furnished hereunder; (d) 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; (e) this Lease, Tenant's interest herein or in the Premises, any improvements thereon, or any property of Tenant is executed upon or attached; or (f) the Premises are occupied by any person other than expressly permitted under this Lease.

21.2 Landlord's Remedies. Upon the occurrence of any event of default specified in this Lease, Landlord, without grace period, demand or notice, except as provided in **Section 21.1**, (the same being hereby waived by Tenant), except as provided otherwise in this Lease, 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: (a) 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 any other person who may be occupying said Premises or any part thereof, by force if necessary, and without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby; and, in either event, 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 reasonable costs of retaking the Premises, and the total rent provided for in this Lease for the remainder of the Term of this Lease (i.e., the duration of this Lease had it not been terminated) along with other charges called for by this Lease, all of which shall accelerate and be deemed accrued unpaid obligations as of the date of termination, shall survive such termination and shall be immediately due and payable by Tenant to Landlord as damages for Tenant's breach hereof; (b) without terminating this Lease, enter upon and take possession of the Premises, and expel or remove Tenant and

any other person who may be occupying said Premises, or any part thereof, by force if necessary, and without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby: (i) sue for rent as it comes due from time to time in one or more actions; and/or (ii) treat Tenant's breach as an anticipatory breach and recover from Tenant in damages, total rent and charges provided for in this Lease for the remainder of the Term, all of which will be deemed accelerated and immediately due. Landlord may make such reasonable 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 reasonable discretion deems advisable but in keeping with market conditions at the time. No such reletting shall relieve Tenant or any guarantors from their obligations under this Lease or any guaranty. Upon any 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 reasonable costs and reasonable 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 pay any such deficiency to Landlord within thirty (30) days from the date of invoice pursuant to the Prompt Payment Act. In no event shall Tenant be entitled to any excess rent obtained by reletting the Premises over and above the rent reserved herein.

21.3 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 if same is continuing and has not been cured. 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 reasonable 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 or in equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord. In the event Tenant should default prior to the Rent Commencement Date, the Tenant's rental obligations hereunder shall be deemed to have commenced upon the execution date hereof and Landlord will be relieved of any construction obligations hereunder. No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a 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. Exercise by Landlord of any one or more remedies hereunder or otherwise available shall not be deemed an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or operation of law, it being understood that such surrender and/or termination can be effected only by the express written declaration of Landlord. 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. Notwithstanding anything herein to the contrary, except as provided in this **Section 21**, Tenant agrees that Landlord shall have no obligation to relet or attempt to relet the Premises or any portion thereof following termination of this Lease, re-entry or repossession of the Premises or to otherwise mitigate its damages in the event of a Tenant default. In the event the Lease is terminated, or if Landlord is ever held to have a duty to mitigate, Tenant agrees that 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 each year for the remaining Term. If no party acceptable to Landlord executes a lease with Landlord on terms acceptable to Landlord (in Landlord's sole discretion) within this each three (3)

month period, Tenant agrees that Landlord shall conclusively have satisfied any such duty to release or mitigate. In no event will Landlord have any duty to lease the Premises before Landlord leases other property owned by Landlord nor 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: (i) the prospective lessee has a financial condition which is unacceptable to Landlord or Landlord's lenders; (ii) the prospective lessee requires any alterations which are unacceptable to Landlord or Landlord's lender; (iii) the prospective lessee requires tenant improvements to be paid by Landlord; (iv) the prospective lessee requires lease terms different from this Lease or which are otherwise unacceptable to Landlord or Landlord's lender; (v) the prospective lessee requires a rental rate less than that required hereunder plus any costs of reletting, including without limitation, lease commissions; or (vi) if percentage rent is payable and the prospective lessee is likely (in Landlord's sole discretion) to generate percentage rental less than that previously generated (on an average annual basis over the Lease Term to date) by Tenant.

21.4 Tenant's Remedies if Default by Landlord - Limitations on 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, provided Landlord commences such performance within thirty (30) days after notice from Tenant, 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. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises and in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing. 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.

22. Application of Payments Received From Tenant. Landlord shall have the right to apply any payments made by Tenant to the satisfaction of any debt or obligation of Tenant to Landlord according to Landlord's sole discretion and regardless of the instructions of Tenant as to application of any such sum, whether such instructions be endorsed upon Tenant's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by Landlord of a check or checks drawn by a party other than Tenant shall not affect Tenant's liability hereunder nor shall it be deemed an approval of any assignment or sublease of this Lease by Tenant.

23. Notices. Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when addressed to the intended recipient at the address provided below and: (i) three (3) days after being deposited in the United States mail, postage fully prepaid, registered or certified mail, return receipt requested; (ii) one (1) day after being deposited with a nationally recognized overnight courier, postage fully prepaid; or (iii) upon receiving confirmation of a successful transmission from the sending fax machines when sent by fax transmission; provided, however, when using the method described in this subsection the sender must also follow by sending a copy of the same notice by method (i) or (ii) within two (2) days after sending the fax transmission. Any address for notice may be changed by giving notice thereof as provided in this Section. The addresses and fax numbers for notice purposes are as follows:

If to Tenant:	City of El Paso 2 Civic Center Plaza El Paso, Texas 79901 Attn: City Manager Fax: (915) 541-4866
---------------	--------------------------------------------------------------------------------------------------------------

With a Copy to: City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901
Attn: Capital Assets Manager
Fax: (915) 541-4222

If to Landlord: Luther Acquisition Company, LP
123 W. Mills Avenue, Suite 600
El Paso, Texas 79901
Attn: Brent D. Harris
Fax: 915-504-7099

With a Copy to: Gordon Davis Johnson & Shane P.C.
4695 N. Mesa
El Paso, Texas 79912
Attention: Timothy D. Johnson
Fax: 915-545-4433

24. **Sale of Premises by Landlord.** In the event of any sale of the Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease. Furthermore, in the event of a sale or conveyance by Landlord of the Premises, this Lease shall not be affected by any such sale, and Tenant agrees to attorn to the purchaser thereof.

25. **Surrender.** Upon the expiration or earlier termination of this Lease, whether by forfeiture, lapse of time, or otherwise, or upon the termination of Tenant's right to possession of the Premises, Tenant will at once surrender and deliver up the Premises, to Landlord in good and broom-clean condition and repair, with all mechanical and electrical systems in good working order. All Tenant Additions will, following the expiration or termination of this Lease, remain in the Premises as Landlord's property unless Landlord directs Tenant to remove all or any portion of same whereupon Tenant agrees that it shall, at its expense, remove any such Tenant Additions (or portion thereof directed by Landlord) that Tenant did not obtain or was not required to obtain Landlord's consent to perform. Provided Tenant is not in default, it will remove its Trade Fixtures, inventory, and other personal property upon the expiration of the Term. If Tenant is in default, it shall remove its Trade Fixtures only if specifically directed to do so in writing by Landlord. Tenant shall repair any damage to the Premises caused by the removal of such Tenant Additions, Trade Fixtures, or other items. In no event will any fire sprinklers, fire suppression equipment, HVAC System components, floor tiles, carpeting, ceiling tiles, plumbing fixtures, or similar building system items or any equipment or fixtures attached to the realty be considered "**Trade Fixtures**" or be removed. Tenant shall remove all Hazardous Materials introduced to the Premises by Tenant, its employees, agents or contractors. Any Trade Fixtures or Tenant Additions required to be removed hereunder, and not removed by Tenant as required herein shall be deemed abandoned and may be stored, removed and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention or disposal of same. Tenant shall be entitled to no payment or offset for the value of any such property (even if sold by Landlord) and shall pay on demand all reasonable costs incurred by Landlord in connection with such removal or disposal. All obligations of Tenant hereunder not fully performed as of the termination or expiration of the Lease shall survive such termination or expiration.

26. **Holding Over.** If Tenant holds over or occupies the Premises after the termination or expiration 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: (i) pay Landlord for each day of such holding over a sum equal to one hundred twenty-five percent (125%) of the monthly rent applicable hereunder at the expiration of the Term or termination of the Lease, prorated for the number of days of such holding over; and (ii) be liable to Landlord for and indemnify Landlord against: (A) any payment or rent concession which Landlord may be required to make to any tenant obtained by Landlord for all or any part of the Premises (a "New Tenant") by reason of the late delivery of space to the New Tenant as a result of Tenant's holding over or in order to induce such New Tenant not to terminate its lease by reason of the holding over by Tenant; (B) the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding over by Tenant; and (C) any claim for damages by any New Tenant. 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.

27. **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 execution of this Lease.

28. **Environmental Issues.**

28.1 **No Hazardous Materials.** Tenant shall not cause or permit any Hazardous Material 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 so brought upon or used or kept in or about the Premises. If any Hazardous Material is permitted by Landlord, Tenant shall remove all such Hazardous Material brought to the Premises by Tenant, its employees, agents, contractors or invitees upon the expiration or termination of this Lease and restore the Premises to its condition immediately prior to the introduction of such Hazardous Materials, ordinary wear and tear excepted. The provisions of this **Section 28.1** shall survive the expiration or termination of the Lease.

28.2 **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, the Texas Water Code, as amended, the Texas Solid Waste Disposal Act, as amended, or any other federal, state or local environmental or health and safety related, constitutional provisions, Laws, whether existing as of the date hereof, previously enforced or subsequently enacted (collectively the "**Environmental Laws**").

28.3 **Notice of Certain Events and Curative Actions.** Tenant shall immediately advise Landlord in writing of (a) any governmental or regulatory actions instituted or threatened under any Environmental Law affecting the Tenant or the Premises, (b) all claims made or threatened by any third party against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (c) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises to be classified in a manner which may support a claim under any Environmental Law, and (d) the discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject Tenant or the Premises to any restrictions in ownership, occupancy, transferability or use of the Premises under any Environmental Law. Landlord may elect to join and participate in any

settlements, remedial actions, legal proceedings or other actions initiated in connection with any claims under any Environmental Law and to have its reasonable attorney's fees paid by Tenant, if Tenant, its employees, agents, contractors or invitees caused the presence of the Hazardous Material. At its sole cost and expense, Tenant agrees when applicable or upon request of Landlord to promptly and completely cure and remedy every violation of an Environmental Law affecting the Premises, and will release Landlord from any claims, damages and liabilities arising from the presence of Hazardous Materials in, about or under the Premises.

28.4 Environmental Review. In the event reasonable evidence exists of the occurrence or existence of the violation of any Environmental Law or the presence of any Hazardous Material on the Premises, Landlord (by its officers, employees and agents) at any time and from time to time may contract for the services of persons (the "**Site Reviewers**") to perform environmental site assessments ("**Site Assessments**") on the Premises, or neighboring properties for the purpose of determining whether there exists on the Premises, or neighboring properties any environmental condition which could reasonably be expected to result in any liability, cost or expense to Landlord. The Site Reviewers are hereby authorized to enter upon the Premises for purposes of conducting Site Assessments. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Materials and such other tests on the Premises, or neighboring properties as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Tenant agrees to supply to the Site Reviewers such historical and operational information regarding the Premises as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. The results of Site Assessments shall be furnished to Tenant upon request. The cost of performing such Site Assessments shall be paid by Tenant.

29. Miscellaneous.

29.1 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.

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

29.3 Gender; Number and Construction. 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. Landlord and Tenant acknowledge that this Lease has been freely negotiated by both parties and that in the event of any controversy, dispute or contest over this Lease, there shall be no inference, presumption or conclusion drawn against either party by virtue of that party having drafted this Lease or any portion thereof.

29.4 Applicable Law. This Lease shall be governed by the laws of the State of Texas and venue shall be in the courts of El Paso, El Paso County, Texas.

29.5 No Partnership. Landlord does not, in any way or for any purpose, become a partner, employer, principal, master, agent or joint venturer of or with Tenant.

29.6 Force Majeure. If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder or under the Construction Addendum by reason of strikes, labor troubles, inability to procure material, failure of power, restrictive governmental Laws, 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 or any other payments required by the terms of this Lease when same are due, and all such amounts shall be paid when due. Except for Force Majeure, time shall be of the essence.

29.7 Attorney's Fees and Waiver of Jury Trial. In the event of any litigation regarding this Lease, the losing party shall pay to the prevailing party reasonable attorney's fees.

29.8 Entire Agreement and Successors. There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Landlord and Tenant other than herein set forth, in this Lease and its exhibits and addendum. 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. All rights and liabilities herein given or imposed upon the respective parties hereto shall bind and inure to the respective heirs, successors, administrators, executors 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.

29.9 Building Name. Landlord reserves the right to change the name of the Building from time to time but shall consult with Tenant prior to making such change during the Term of the Lease.

29.10 No Offer. The submission by Landlord of this lease in draft form shall be solely for Tenant's consideration and not for acceptance and execution. Such submission shall have no binding force or effect and shall confer no rights nor impose any obligations, including brokerage obligations, on either party unless and until both Landlord and Tenant shall have executed a lease and duplicate originals thereof shall have been delivered to the respective parties.

29.11 Certain Remedies. If Tenant requests Landlord's consent and Landlord fails or refuses to give such consent, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent, it being intended that Tenant's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases where this Lease provides that Landlord shall not unreasonably withhold its consent. In determining the reasonableness, Landlord may consider the economic burden placed on Landlord along with the effect on the Property and value of the Property during the Term and after expiration of termination of the Lease.

29.12 Leasehold Improvement Costs. The final Leasehold Improvements Costs will be paid by Tenant as Adjusted Rent provided for in **Section 2** of this Lease, based upon an amortization of the final Leasehold Improvement Costs over a 20 year period. If this Lease terminates or expires for any reason prior to the full payment and amortization of the Leasehold Improvement Costs, the unamortized Leasehold Improvement Costs will be immediately due and payable to Landlord as a termination fee.

30. Exhibits. The exhibits listed below and attached to this Lease are incorporated herein by reference.

- (a) Exhibit "A" - Legal Description.
- (b) Exhibit "B" - Restricted Uses.
- (c) Exhibit "C" - Rules and Regulations.

(d) Exhibit "D" – Certificate of Tenant’s Insurance.

(e) Exhibit “E” – Rent Calculation Examples

31. Additional Provisions. Landlord’s obligations under this Lease are subject to satisfaction by Landlord as to the feasibility of the Lease and the project contemplated by this Lease prior to expiration of the Feasibility Period under the Construction Addendum.

32. Addendums. The following addendums are attached hereto and incorporated herein for all purposes (check as applicable):

Construction Addendum

Purchase Option Addendum

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

LANDLORD:

Luther Acquisition Company, LP, a Texas limited partnership

By: FML Acquisition GP LLC, a Texas limited liability company
Its: General Partner

By: 
Name: Brent D. Harris
Title: President

Date Signed: 4/12/12

TENANT:

City of El Paso

By: _____
Name: Joyce Wilson
Title: City Manager

Date Signed: _____

ATTEST:

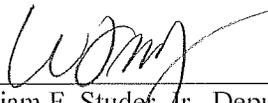
Richarda Duffy Momsen
City Clerk

Approved as to Form:



Bertha A. Ontiveros
Assistant City Attorney

Approved as to Content:



William F. Studer, Jr., Deputy City Manager
Financial and Management Services



Miguel Gamino, Jr., CPA Director
Information Technology Department

CITY CLERK DEPT.
2012 APR 17 AM 9:27

EXHIBIT "A"

Land Description

Lots 11 - 14, Block 230, CAMPBELL ADDITION, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 2, Page 68, Real Property Records, El Paso County, Texas.

EXHIBIT "B"

Restricted Uses

None

EXHIBIT "C"
Rules and Regulations

None

EXHIBIT "D"

Certificate of Tenant's Insurance

[To be attached]

EXHIBIT "E"

Rental Calculation Example "NOT TO EXCEED"

Rentable Square Footage 73,667

Adjusted Rent Calculation

	Total	PSF
Total Project Cost	13,950,000	189.37
Less: Shell Building and Land	(525,000)	(7.13)
Total Leasehold Improvement Costs *	13,425,000	182.24

	Total	PSF
Total Leasehold Improvement Costs *	13,425,000	182.24
Adjusted Rent Formula	0.102	0.102
Adjusted Rent	1,369,350	18.59

Total Rent Calculation

	Annual	PSF
Minimum Rent (Shell Building and Land)	73,667	1.00
Adjusted Rent	1,369,350	18.59
	1,443,017	19.59

Lease Term Total Rent Calculation

Years	Minimum Base Rent PSF	Adjusted Rent PSF	Total Rent PSF	Total Annual Rental
1 - 5	1.00	18.59	19.59	1,443,017
6 - 10	1.10	20.52	21.63	1,593,207
11 - 15	1.22	22.66	23.88	1,759,030
16 - 20	1.35	25.02	26.36	1,942,111

* The Total Leasehold Improvement Costs include all hard and soft costs associated with the project such as hard construction costs, architectural and engineering fees, financing fees, legal, testing services and development fees.

Note: The Total Leasehold Improvement Costs and the Adjusted Rent amount used in this exhibit are for example purposes only. The actual Total Leasehold Improvement Costs and Adjusted Rent will be calculated in the manner provided for in the Lease.

CONSTRUCTION ADDENDUM

This "**Construction Addendum**" dated _____ by and between Luther Acquisition Company, LP, a Texas limited partnership, hereinafter referred to as "**Landlord**" and City of El Paso, hereinafter referred to as "**Tenant**," shall be attached to and become a part of that certain Standard Lease (the "**Lease**") between the parties dated of even date herewith for the Premises described in the Lease.

- 1. Construction.** Landlord agrees to perform the work necessary to adapt the Premises for Tenant's use and occupancy (the "**Leasehold Improvements**"), in accordance with the Approved Plans, agreed upon between Landlord and Tenant as provided below.
- 2. Plans.** A set of preliminary plans and specifications are attached as **Exhibit "A"** to this Construction Addendum (the "**Preliminary Plans**"), along with an estimate of the cost of modifying the Premises in accordance with the Preliminary Plans attached as **Exhibit "B"** (the "**Preliminary Budget**"). The Preliminary Plans and Preliminary Budget have been approved by Tenant.

As soon as practical after the Effective Date, Landlord will cause Architect to provide to Tenant form plans and specifications for the construction of the Leasehold Improvements contemplated by the Preliminary Plans (the "**Plans**") in approximately 50% completion (the "**50% Plans**"). No later than 30 days after submission of the 50% Plans, Landlord will cause the Architect to provide to Tenant Plans in approximately 98% completion form (the "**98% Plans**"). No later than 10 days after the date Landlord submits the 98% Plans Landlord will cause Architect to provide to Tenant proposed complete Plans for the Tenant's written approval.

The Tenant shall review and approve complete Plans within fifteen (15) days after such Plans are provided to Tenant (the "**Final Response Period**"). If the Tenant approves the complete Plans, Tenant shall evidence such approval by sending a written notice to this effect to the Landlord setting forth the date upon which it has approved the complete Plans. Plans approved by the Landlord and the Tenant in accordance with this Construction Addendum will be referred to as the "**Approved Plans**." In the event that Tenant has not approved the complete Plans within the Final Response Period, Landlord shall have the option to (i) terminate the Lease or (ii) continue the process between Landlord and Tenant until the submitted Plans are approved by Landlord and Tenant. Provided that Landlord is not in default of the Lease, if Landlord terminates the Lease in accordance with this Construction Addendum, Tenant agrees to pay damages to Landlord that will consist of all costs and charges incurred by Landlord in relation to the Lease and the proposed Leasehold Improvements through the date of termination. Either party's approval of the Plans may be indicated by initialing and dating the plans and specifications and delivering a copy of such approval to the other party.

- 3. Solicitation of Construction Bids.** If the Lease is not terminated as provided in **Section 2**, above, Landlord shall submit the Approved Plans to bid by such general contractor or contractors selected by Landlord. Each bid shall include a budget for the portion of the Leasehold Improvements to be performed by the designated general contractor in such detail required by Landlord. Thereafter, upon receipt of final bids, Landlord and Tenant shall meet to review such bids and Tenant shall consent to Landlord's selection of the general contractor for the project (the "**Contractor**"), which consent shall not be unreasonably withheld.
- 4. Budget.** After selection of the Contractor by Landlord, Landlord will obtain and provide an estimated budget to Tenant, estimating the cost of modifying the Premises in accordance with the Approved Plans, including the estimated cost incurred or to be incurred by Landlord in relation to the Lease and Leasehold Improvements (the "**Estimated Budget**"), not to exceed \$13,950,000.00 (the "**Maximum Budget Amount**"). Tenant will review, approve and comment to the Estimated Budget within thirty (30) days after receipt from Landlord (the "**Budget Response Period**"). If Tenant has not

approved the Estimated Budget within the Budget Response Period or the Estimated Budget exceeds the Maximum Budget Amount, Landlord shall have the option to (i) terminate the Lease or (ii) continue the process between Landlord and Tenant by revising the Approved Plans and Estimated Budget until the Estimated Budget and any revised Approved Plans are approved by Landlord and Tenant. Provided that Landlord is not in default of the Lease, if Landlord terminates the Lease in accordance with this Construction Addendum, Tenant agrees to pay damages that will consist of all costs and charges incurred by Landlord in relation to the Lease and the proposed Leasehold Improvements through the date of termination. Either party's approval of the Estimated Budget may be indicated by initialing and dating the Estimated Budget and delivering a copy of such approval to the other party.

5. **Landlord Feasibility Period.** Landlord shall have until thirty (30) days after approval of the Estimated Budget by Tenant ("**Feasibility Period**"), to determine, in Landlord's sole discretion, whether to construct the Leasehold Improvements taking into account the availability of financing and economic feasibility of the project. Should Landlord determine not to proceed with the project and so notify Tenant in writing on or before the expiration of the Feasibility Period, Landlord and Tenant shall have no further obligation hereunder and this Lease will become null and void.

6. **Construction Contract.** After waiver of the Feasibility Period, Landlord will execute a contract with Contractor for the construction of the Leasehold Improvements in accordance with the Approved Plans which shall provide for a guaranteed maximum sum in the amount of the bid agreed upon by Landlord and Tenant, said amount being herein referred to as the "**Contract Price**". The form and content of the contract(s) must be acceptable to Landlord in all respects. No change orders will be executed unless approved by Landlord in consultation with Tenant; provided, however, in the event Tenant does not respond to Landlord's change order within three (3) days after submittal by Landlord, the Landlord may approve the change order without further consultation with Tenant.

7. **Construction.** The construction contract will call for Contractor to commence construction of the Leasehold Improvements and to diligently prosecute same until Substantial Completion in accordance with the Approved Plans.

(i) Landlord, in consultation with Tenant, reserves the right to substitute any materials, equipment and appliances called for in the Approved Plans provided such substituted materials do not materially diminish the overall quality of the Leasehold Improvements to be constructed. To the extent the Approved Plans permit selections by Tenant, all such selections shall be made within five (5) days after a request by Landlord that Tenant do so, or Landlord may make such selection for Tenant and Tenant agrees to accept such selection.

(ii) Tenant shall have the right to request changes to the Approved Plans and Landlord and Landlord will review, approve and execute any change order for the revisions to the Approved Plans, provided that Landlord will have no obligation to agree on the revised Approved Plans or to execute a change order if the revisions would operate to delay Substantial Completion, increase the Contract Price or, in Landlord's opinion, interfere with the viability of the project.

(iii) LANDLORD WILL NOT BE LIABLE FOR FAILURE TO COMPLETE CONSTRUCTION ON THE SCHEDULE AGREED BY LANDLORD AND TENANT DUE TO ERRORS OR OMISSIONS IN THE APPROVED PLANS OR DUE TO ERRORS OR OMISSIONS OF THE CONTRACTOR. IN THE EVENT AN ERROR OR OMISSION IS DISCOVERED, THE LANDLORD AND TENANT WILL COOPERATE TO CORRECT THE ERROR OR OMISSION AND THE TIME PERIODS CALLED FOR COMPLETION WILL BE EXTENDED AND THE BUDGET AND CONTRACT PRICE WILL BE INCREASED ACCORDINGLY.

8. **Substantial Completion.** “Substantial Completion” shall occur and the Leasehold Improvements shall be deemed “Substantially Complete” on the date Contractor and Architect, with both acting reasonably, certify in writing that the Leasehold Improvements have been completed in accordance with the Approved Plans and Landlord has received final sign off on applicable building inspection cards for the Leasehold Improvements.

9. **Leasehold Improvement Costs.** Upon Substantial Completion, Landlord shall submit to Tenant an accounting of the actual Leasehold Improvements Costs and setting forth the calculation of Adjusted Rent to be paid by Tenant. The Leasehold Improvement Costs will include a construction management fee payable to Landlord or a Landlord’s designee, equal to 4% of all construction and design costs (hard and soft) in connection with the Leasehold Improvements. This fee will be in addition to any contractor’s fee and the cost of supervision and coordination by contractors, architects or engineers. Landlord shall maintain financial records for amounts to be included in Adjusted Rent and such shall be open and available for Tenant’s inspection and audit. Tenant’s audit rights will not delay the Rent Commencement Date or Tenant’s obligations to pay the Base Rent called for in the Lease.

10. **Occupancy.** Subject to the terms of the Lease and this Construction Addendum, Tenant's acceptance of occupancy from Landlord shall constitute acknowledgment by Tenant that the Premises are then in the condition called for in the Lease and this Construction Addendum, and that Landlord has satisfactorily completed Leasehold Improvements, except for latent defects for items which Tenant notifies Landlord have not been satisfactorily completed within thirty (30) days of Tenant’s occupancy pursuant to the punch list inspection.

11. **Representations and Warranties.** The Landlord will cause Contractor to warrant Contractor’s work against all defects in material and workmanship as performed by Contractor for a period of one (1) year from the date the Contractor’s work is complete. Further, to the extent assignable, Landlord will assign to Tenant any warranties provided in relation to the Leasehold Improvements. **TENANT ACCEPTS THE WARRANTY CONTAINED IN THIS SECTION 11 IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED BY LAW, AND INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD AND WORKMANLIKE CONSTRUCTION AND HABITABILITY. TENANT ACKNOWLEDGES AND AGREES THAT LANDLORD IS RELYING ON THIS WAIVER AND WOULD NOT ENTER INTO THE LEASE WITHOUT THIS WAIVER. TENANT’S initials in the margin indicate its approval of the Section 11.**

12. **Punch List.** Tenant shall have the right within thirty (30) days after the Rent Commencement Date to submit a “punch list” to Landlord in writing setting forth items of Landlord’s Work reasonably determined by Tenant to require completion or correction. Landlord shall submit to Contractor to correct and complete such items within thirty (30) days of such submission if more than thirty (30) days is reasonably required to correct any punch list items, then Contractor shall have such additional time as may be necessary to make the correction so long as corrective effort is commenced by Contractor within such thirty (30) day period and thereafter Contractor diligently prosecutes such corrective actions to completion.

13. **City Approvals.** Any approvals under this Construction Addendum by Tenant, including, but not limited to approval of plans, specifications, budgets, contracts, change orders or construction required by this Construction Addendum shall be construed to mean the approval of the City Manager or designee.

14. **Addendum.** Landlord and Tenant agree to execute an addendum to the Lease in which both parties acknowledge the actual day of the Rent Commencement Date of the Lease.

15. **Defined Terms.** Unless otherwise defined, capitalized terms used in this Construction Addendum shall have the same meaning as capitalized terms in the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have signed this Addendum as of the day and year first above written.

AGREED AND ACCEPTED:

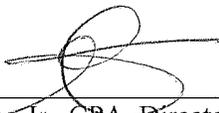
LANDLORD:

Luther Acquisition Company, LP, a Texas limited partnership

By: FML Acquisition GP LLC, a Texas limited liability company

Its: General Partner

By: 
Name: Brent D. Harris
Title: President


Miguel Samino Jr., CPA, Director
Information Technology Department

TENANT:

City of El Paso

By: _____

Name: Joyce Wilson

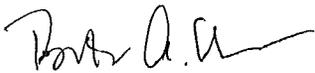
Title: City Manager

Date Signed: _____

ATTEST:

Richarda Duffy Momsen
City Clerk

Approved as to Form:

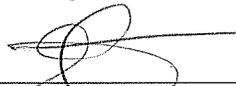


Bertha A. Ontiveros
Assistant City Attorney

Approved as to Content:



William F. Studer, Jr., Deputy City Manager
Financial and Management Services



Miguel Gamino, Jr., CPA Director
Information Technology Department

CITY CLERK DEPT.
2012 APR 17 AM 9:27

**ADDENDUM
PURCHASE OPTION**

This Purchase Option Addendum ("**Purchase Addendum**") dated _____ by and between Luther Acquisition Company, LP, a Texas limited partnership, hereinafter referred to as "**Landlord**," and City of El Paso, hereinafter referred to as "**Tenant**," shall be attached to and become a part of that certain Standard Lease between the parties dated _____ for the rental of the Premises (the "**Lease**").

For good and valuable consideration, the Landlord and Tenant agree as follows:

1. **Purchase Option.** The City of El Paso, Texas will have the right to purchase the Premises on the last day of the Term of the Lease (the "**Purchase Option**"), if and only if all of the following conditions are satisfied: (i) the City of El Paso, Texas, is the then Tenant under the Lease; (ii) the Lease is in full force and effect; (iii) no event has occurred that would constitute a default or, with the giving of notice and passage of time, would constitute a default under the Lease.

2. **Option Notice.** To exercise the Purchase Option, Tenant must provide Landlord written notice irrevocably exercising the Purchase Option (the "**Purchase Notice**") at least twelve (12) months, but not more than fifteen (15) months prior to expiration of the Term (the "**Notice Period**") and deposit an amount equal to the annual Base Rent for the 20th Lease Year in the Term with Landlord as payment and consideration for the Purchase Option (the "**Option Payment**"). The Option Payment will be earned by Landlord upon deposit, but will be applied to the Sales Price at the Closing under this Purchase Option.

IF THE PURCHASE NOTICE IS NOT ACCOMPANIED BY THE OPTION PAYMENT, THE PURCHASE NOTICE WILL BE VOID. SUBSEQUENT DEPOSIT OF THE OPTION PAYMENT WILL NOT SERVE TO VALIDATE THE PURCHASE NOTICE.

3. **Terms.** The Purchase Option is subject to and will be exercised under the following terms:

(i) **Title and Survey.** Within thirty (30) days after receipt of the Purchase Notice, Landlord shall deliver or cause to be delivered to Tenant a title commitment ("**Title Binder**") covering the Premises, by a title company who issues title insurance in the State of Texas (the "**Title Company**") binding the Title Company to issue at the Closing a Owner's Policy of Title Insurance (the "**Title Policy**") on the standard form of policy prescribed by the Texas State Board of Insurance or applicable regulatory body, in the full amount of the Sales Price. In addition, within sixty (60) days after receipt of the Purchase Notice, Landlord shall deliver or cause to be delivered to Tenant a copy of an updated survey of the Premises (the "**Survey**"). Tenant shall have until thirty (30) days after both the Title Binder and the Survey are delivered to Tenant to deliver in writing to Landlord such objections as Tenant may have to anything contained in the Title Binder or the Survey (the "**Title and Survey Notice**"). In the event that Tenant delivers such objections to Landlord, Landlord may, but will not be obligated to undertake to eliminate or modify all such unacceptable matters to the reasonable satisfaction of Tenant. In the event Landlord fails to modify or eliminate such unacceptable matters within thirty (30) days after receipt of the Title and Survey Notice (the "**Cure Period**"), Tenant may, at its option, terminate the Purchase Option by providing written notice to Landlord on or before thirty (30) days after expiration of the Cure Period (the "**Title Termination Date**"), whereupon the Purchase Option shall terminate and the parties will have no further obligation under the Purchase Option. In the event Tenant does not terminate the Purchase Option on or before the expiration of the Title Termination Date, Tenant will be

deemed to have approved such exceptions that have not been cured by Landlord or Title Company. Exceptions contained in Schedule B of the Title Binder that are not timely objected to by the Tenant or that are deemed approved will be the “**Permitted Exceptions**”. Notwithstanding anything herein to the contrary, the exceptions shown on Schedule C of the Title Binder will never be Permitted Exceptions and, to the extent they are obligations of Landlord, must be satisfied by Landlord on or prior to the Closing Date.

- (ii) **Sales Price.** The “**Sales Price**” will be Two Million Nine Hundred Eighty-Eight Thousand and No/100ths Dollars (\$2,988,000.00), payable in immediately available funds of United States Dollars at Closing.
- (iii) **Closing Date.** The “**Closing**” or “**Closing Date**” will be on the last day of the Term of the Lease, and will be at the offices of the Title Company, unless otherwise mutually agreed by Landlord and Tenant.
- (v) **Closing Documents.** At Closing, Landlord will execute and deliver a special warranty deed subject to only the Permitted Exceptions (the “**Deed**”), an AS-IS bill of sale regarding all equipment and personalty within the Premises owned by Landlord, an assignment of any building warranties and such other documents as may be reasonably requested by the Title Company issuing the Title Policy. Tenant will deliver cash or immediately available funds equal to the Sales Price plus all closing costs associated with such sale and such other documents as may be reasonably requested by the Title Company issuing the Title Policy.
- (vi) **Prorations.** There will be no proration of taxes or other expenses at the Closing and Tenant agrees to assume all obligations for taxes and other expenses accruing or incurred prior to the Closing Date. Tenant will take the Premises subject to the payment of all taxes for the year in which the Closing occurs. Landlord and Tenant acknowledge that Tenant is a municipal corporation of the State of Texas and is exempt from property taxes under applicable law.
- (vii) **General and Specific Disclaimers.** **TENANT, AS BUYER ACKNOWLEDGES AND AGREES THAT AS OF THE CLOSING DATE, LANDLORD, AS SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (i) THE VALUE, NATURE, QUALITY OR, CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY; (ii) THE INCOME TO BE DERIVED FROM THE PREMISES; (iii) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH TENANT OR ANY TENANT MAY CONDUCT THEREON; (iv) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (v) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES; (vi) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PREMISES, (vii) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PREMISES; (viii) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION**

OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PREMISES OF HAZARDOUS MATERIALS; OR (ix) ANY OTHER MATTER WITH RESPECT TO THE PREMISES. ADDITIONALLY, AS OF THE CLOSING DATE, NO PERSON ACTING ON BEHALF OF LANDLORD IS AUTHORIZED TO MAKE, AND AS OF THE CLOSING DATE, TENANT ACKNOWLEDGES THAT NO PERSON HAS MADE, ANY REPRESENTATION, AGREEMENT, STATEMENT, WARRANTY, GUARANTY OR PROMISE REGARDING THE PREMISES OR THE TRANSACTION CONTEMPLATED HEREIN EXCEPT AS SET FORTH IN THE LEASE BETWEEN LANDLORD AND TENANT AND THIS OPTION; AND NO SUCH REPRESENTATION, WARRANTY, AGREEMENT, GUARANTY, STATEMENT OR PROMISE, IF ANY, MADE BY ANY PERSON ACTING ON BEHALF OF LANDLORD SHALL BE VALID OR BINDING UPON LANDLORD UNLESS EXPRESSLY SET FORTH HEREIN. AS OF THE CLOSING DATE, TENANT FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PREMISES, TENANT IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PREMISES AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY LANDLORD AND AGREES TO ACCEPT THE PREMISES AT THE CLOSING AND WAIVE ALL OBJECTIONS OR CLAIMS AGAINST LANDLORD (INCLUDING, BUT NOT LIMITED TO, ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE PREMISES OR TO ANY HAZARDOUS MATERIALS ON THE PREMISES. AS OF THE CLOSING DATE, TENANT FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PREMISES WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT LANDLORD AND MAKES NO REPRESENTATIONS, AS TO THE ACCURACY, TRUTHFULNESS OR COMPLETENESS OF SUCH INFORMATION. AS OF THE CLOSING DATE, LANDLORD IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENT, REPRESENTATION OR INFORMATION PERTAINING TO THE PREMISES, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, CONTRACTOR, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. AS OF THE CLOSING DATE, TENANT FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PREMISES AS PROVIDED FOR HEREIN IS MADE "AS IS" AND WITH ALL FAULTS INCLUDING EXPRESSLY, BUT WITHOUT LIMITATION, THOSE RELATING TO THE IMPROVEMENTS ON THE LAND. IT IS UNDERSTOOD AND AGREED THAT THE SALES PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT THE PREMISES IS SOLD BY LANDLORD AND PURCHASED BY TENANT SUBJECT TO THE FOREGOING.

Change of Conditions. TENANT SPECIFICALLY ACKNOWLEDGES IN EXERCISING THIS OPTION THAT THE FACT THAT ANY PORTION OF THE LAND OR IMPROVEMENTS OR ANY EQUIPMENT OR MACHINERY THEREIN OR THEREON, OR ANY PART THEREOF MAY NOT BE IN NORMAL WORKING ORDER OR CONDITION ON THE CLOSING DATE BY REASON OF WEAR AND TEAR OR DAMAGE BY CONDEMNATION, FIRE OR OTHER CASUALTY, SHALL NOT, EXCEPT AS EXPRESSLY PROVIDED IN THE CONTRACT, RELIEVE TENANT OF ITS OBLIGATION TO

COMPLETE THE CLOSING UNDER THIS CONTRACT AND PAY THE FULL SALES PRICE.

Release. EXCEPT FOR THE REPRESENTATIONS, COVENANTS AND OBLIGATIONS OF LANDLORD EXPRESSLY SET FORTH IN THIS CONTRACT, UPON TENANT'S EXERCISING THIS OPTION, AS OF THE CLOSING DATE, TENANT HEREBY RELEASES LANDLORD AND LANDLORD PARTIES (AS THE CASE MAY BE) EACH OF THEIR RESPECTIVE MEMBERS, PARTNERS, PARENTS, AFFILIATED AND SUBSIDIARY ENTITIES AND ALL OF THEIR RESPECTIVE MEMBERS, OFFICERS, DIRECTORS, SHAREHOLDERS, TRUSTEES, PARTNERS, EMPLOYEES, MANAGERS AND AGENTS (COLLECTIVELY, "LANDLORD'S AGENTS") FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES WHETHER SUIT IS INSTITUTED OR NOT) WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR CONTINGENT (HEREINAFTER COLLECTIVELY CALLED THE "CLAIMS") ARISING FROM OR RELATING TO: (i) ANY DEFECTS (PATENT OR LATENT), ERRORS OR OMISSIONS IN THE DESIGN OR CONSTRUCTION OF THE IMPROVEMENTS WHETHER THE SAME ARE THE RESULT OF NEGLIGENCE OR OTHERWISE; AND (ii) ANY OTHER CONDITIONS, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO THE BUILDING FACADE, ENVIRONMENTAL AND OTHER PHYSICAL CONDITIONS AFFECTING THE PREMISES WHETHER THE SAME ARE A RESULT OF NEGLIGENCE OR OTHERWISE, EXCLUDING CLAIMS AGAINST LANDLORD (BUT NOT LANDLORD'S AGENTS) FOR ACTS OF FRAUD, GROSS NEGLIGENCE AND WILLFUL MISCONDUCT OR INTENTIONAL MISREPRESENTATION. THE RELEASE SET FORTH IN THIS SECTION SPECIFICALLY INCLUDES, WITHOUT LIMITATION, ANY CLAIMS UNDER ANY ENVIRONMENTAL REQUIREMENTS OR UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990, AS ANY OF THE SAME MAY BE AMENDED FROM TIME TO TIME AND ANY REGULATIONS, ORDERS, RULES OF PROCEDURES OR GUIDELINES PROMULGATED IN CONNECTION THEREWITH, REGARDLESS OF WHETHER THEY ARE IN EXISTENCE ON THE DATE THE TENANT EXERCISES THIS PURCHASE OPTION. TENANT ACKNOWLEDGES THAT TENANT IS GRANTING THIS RELEASE OF ITS OWN VOLITION AND AFTER CONSULTATION WITH TENANT'S COUNSEL.

Waiver. AS OF THE CLOSING DATE, TENANT HEREBY REPRESENTS AND WARRANTS TO LANDLORD THAT: (i) TENANT IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION FROM LANDLORD; (ii) TENANT IS REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF TENANT'S SELECTION; (iii) TENANT IS SEEKING TO ACQUIRE THE PREMISES, WHICH WILL NOT BE USED AS A RESIDENCE; AND (iv) TENANT IS A SOPHISTICATED BUYER AND HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF THIS TRANSACTION.

The provisions of Section 3vii, shall survive the Closing or any termination of the Lease. The General and Specific Waivers and Disclaimer portion of this Section will be included in the Deed but will not serve to diminish the warranty of title made by Landlord in the Deed.

- (viii) **Closing Costs.** Tenant will pay any prepayment fee or assumption fee if applicable, associated with the release and payment or assumption of any debt on the Premises. At Closing, Tenant will obtain and shall pay for the cost of the Title Policy and all related endorsement and deletions required by Tenant. Unless otherwise specifically stated herein, all other closing costs shall be paid by Tenant.
- (ix) **Assignment.** This Purchase Option is not assignable.
- (x) **Timing.** Time is of the essence in the exercise of the Purchase Option and Closing under this Purchase Option. Failure by Tenant to provide Landlord with the Purchase Notice, within the Notice Period and Close on the last day of the Term of the Lease will invalidate this Purchase Option and thereafter the Tenant will have no further rights under this Purchase Option. If the Lease is terminated prior to twenty (20) Lease Years after the Rent Commencement Date, this Purchase Option will terminate and be of no further force and effect. If the Closing Date falls on a Saturday, Sunday or a date in which the Federal or State government is not open for business (a "**Legal Holiday**"), then the Closing Date shall be the first Business Day after the Saturday, Sunday or Legal Holiday. The term "**Business Day**" shall mean Monday through Friday, that is not a Legal Holiday.

4. **Tenant's Default.** If, after delivery of the Purchase Notice and Option Payment, (a) Tenant defaults in its obligations hereunder to Close on the Closing Date and deliver to the Landlord the Sales Price and any documentation or information when required under this Purchase Option, or (b) Tenant defaults under the terms of the Lease, then, immediately and without notice or cure, Tenant shall have no right to application or repayment of the Option Payment, and Landlord will not be obligated to proceed with the sale of the Premises, and Landlord may pursue any other rights and remedies at law or in equity to enforce Tenant's obligations under the Purchase Option.

5. **Landlord's Default.** If Landlord, prior to the Closing, defaults in its obligation under the Purchase Option to sell the Premises as required by this Purchase Option and such default continues for more than 10 days after written notice from Tenant, then, at Tenant's election and as Tenant's sole and exclusive remedy, either (a) this Purchase Option shall terminate, and the Option Payment shall be returned to Tenant, or (b) Tenant may seek specific performance of Landlord's obligation to deliver the Deed pursuant to this Purchase Option (but not damages). **LANDLORD AND TENANT FURTHER AGREE THAT THIS SECTION 5 IS INTENDED TO AND DOES LIMIT THE AMOUNT OF DAMAGES DUE TENANT AND THE REMEDIES AVAILABLE TO TENANT, AND SHALL BE TENANT'S EXCLUSIVE REMEDY AGAINST LANDLORD, BOTH AT LAW AND IN EQUITY ARISING FROM OR RELATED TO A BREACH BY LANDLORD OF ITS OBLIGATION TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS PURCHASE OPTION. UNDER NO CIRCUMSTANCES MAY TENANT SEEK OR BE ENTITLED TO RECOVER ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES, ALL OF WHICH TENANT SPECIFICALLY WAIVES, FROM LANDLORD FOR ANY BREACH BY LANDLORD, OF ITS REPRESENTATIONS, WARRANTIES OR COVENANTS OR ITS OBLIGATIONS UNDER THIS PURCHASE OPTION. TENANT SPECIFICALLY WAIVES THE RIGHT TO FILE ANY LIS PENDENS OR ANY LIEN AGAINST THE PREMISES.**

AS A CONDITION PRECEDENT TO TENANT FILING SUIT FOR SPECIFIC PERFORMANCE, TENANT SHALL (A) NOTIFY LANDLORD OF ITS ELECTION TO SEEK THE REMEDY OF SPECIFIC PERFORMANCE ON OR BEFORE THE DATE WHICH IS FORTY FIVE (45) DAYS AFTER THE DATE OF LANDLORD'S DEFAULT AND (B) INSTITUTE PROCEEDINGS SEEKING SUCH REMEDY ON OR BEFORE THE DATE WHICH IS THIRTY (30) DAYS AFTER THE DATE OF TENANT'S NOTICE.

TENANT SHALL BE DEEMED TO HAVE WAIVED ITS ELECTION TO SEEK THE REMEDY OF SPECIFIC PERFORMANCE IF TENANT DOES NOT (x) NOTIFY LANDLORD OF SUCH ELECTION AS PROVIDED IN (A), ABOVE, OR (y) INSTITUTE PROCEEDINGS, SEEKING SUCH REMEDY AS PROVIDED IN (B) ABOVE. With respect to specific performance, Landlord will not be required to: (i) change the condition or status of the Premises; (ii) obtain governmental approvals; or (iii) resolve title issues.

6. Capitalized Terms. All initial capitalized terms used in this Purchase Addendum are intended to have the same meaning as such capitalized terms used in the Lease and vice versa.

7. Remainder of Lease Unaffected. Except as expressly amended hereby, the remainder of the Lease shall be unaffected and shall remain in full force and effect.

LANDLORD:

Luther Acquisition Company, LP, a Texas limited partnership

By: FML Acquisition GP LLC, a Texas limited liability company

Its: General Partner

By:



Name: Brent D. Harris

Title: President

TENANT:

City of El Paso

By: _____

Name: _____

Title: _____

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Luther Building Acquisition

By

William F. Studer, Jr.
Deputy City Manager



Luther Building Acquisition

Option 1

Lease for 20 years with option to purchase at end of lease term

Option 2

Option to purchase upon finish out of building
Present value cost \$3.8 million less



Public/Private Partnership (P3) SB 1048

- Approved by 2011 Legislature
- Requires adoption of P3 guidelines
- Provides process for unsolicited proposals
 - Post on City Website for 45 days
 - Evaluate alternative proposals received, if any
 - Select best option



Additional Consideration

- P3 process will add 90-120 days to time frame
- Cost of Building improvements will be financed by City
- Building acquisition cost financed by City
- No non-appropriation “out”
- Positive impact on surrounding tax values will be minimal
- Cost implication of City directed remodeling



**Questions
or
Comments?**