

MEMO

DATE: June 12, 2014 for June 23, 2014
TO: Public Works, CIP and Land Use Committee
VIA: Matthew O'Reilly, P.E., Land Use Department Director *MSO*
FROM: Edward J. Vigil, Property Manager Land Use Department *EV*

ITEM & ISSUE:

Request for approval of Lease Agreement for outdoor seating within a portion of the Lincoln Avenue right of way adjoining 130 Lincoln Avenue containing approximately 36 square feet by Chuck Higgins dba Chuck's Nuts (Edward Vigil)

BACKGROUND & SUMMARY:

The City acquired the subject real estate by means of Patent recorded in Deed Book G-1, page 612, records of Santa Fe County, NM. Chuck Higgins has requested to enter into a Lease Agreement with the City of SF for the purpose of outdoor seating to serve the patrons of Chuck's Nuts at 130 Lincoln Ave. The applicant would like to place two small tables with chairs on either side of the main entrance of his store on the public sidewalk. Conditioning will be placed in the lease agreement which dictate the prescribed use only and mandate that the tables and chairs be removed from the sidewalk every evening. Also in the agreement are reserved rights to the City for use of the area for its purposes upon request and a termination clause which benefits the City. This request is brought before committees to request procedural guidance for future leases of this type, as the City Manager could currently consent to such use as the City's Purchasing Manual already allows for the City Manager to enter into lease agreements for real property up to \$50,000 in value, but input from City Councilors and the public should be considered and vetted prior to issuance of this proposed agreement.

ACTION:

This request is being presented for your consideration and direction. If approved, the request shall be forwarded to the Finance Committee and thereafter City Council.

Exhibits: A – Draft Lease Agreement
B – Request by Chuck Higgins
C – Plat of Survey for SDA Santa Fe Ltd recorded in Plat Book 293, pg 023

21117.460150

BUSINESS UNIT/LINE ITEM

LEASE AGREEMENT
BETWEEN THE CITY OF SANTA FE
AND CHUCK HIGGINS

This LEASE AGREEMENT is made and entered into this ____ day of _____, 2014, by and between the City of Santa Fe, a Municipal Corporation, ("Lessor") and Chuck Higgins dba Chuck's Nuts ("Lessee"), whose address is 130 Lincoln Ave, Santa Fe NM 87501.

WITNESSETH:

In consideration of the Lessee's promises herein, Lessor hereby leases to the Lessee the property of the Lessor identified as follows:

1. PREMISES

Subject to the terms and conditions of this Lease Agreement, the Lessor allows the Lessee to use and occupy, subject to all of the terms and conditions hereinafter stated, that certain portion of the City public right-of-way within Lincoln Avenue, Santa Fe, NM. The leased property ("Premises") consists of approximately thirty-six (36) square feet for two seating areas contiguous to the entrance to shop, all as more fully described and shown on Exhibit "A" attached hereto and made a part hereof. Lessee accepts the Premises in its present state and agrees that it is in good condition, without any representation or warranty by Lessor as to the condition of the Premises or as to the use, which may be made thereof.

2. USE OF PREMISES

Lessor agrees to allow the Lessee use of the premises for the purpose of allowing patrons of Chuck's Nuts to congregate and consume food and beverages carried from the retail store to seating and tables located on the Premises. No further use of the Premises shall be allowed except those actions necessary for use and maintenance of the

area at the sole and exclusive expense of the Lessee. The use of the Premises is also subject to the following conditions:

- (a) Installation of tables and seats shall be removed from the Premises each night. Residual eleven and one half feet (11.5') of public sidewalk adjoining Premises shall be kept clear for pedestrian use at all times;
- (b) No other commercial use of the Premises, including but not limited to, the sale or display of merchandise or installation of advertising signage shall be permitted;
- (c) No blocking of any existing emergency entrances and exits to other businesses is strictly prohibited;
- (d) Adequate lighting, reviewed and approved by the City, may be provided at the Lessee's expense within the Premises.
- (e) Lessor reserves the right to allow the use of Lincoln Avenue right of way upon request for special events without discount or refund to Lessee;
- (f) Lessee shall comply with all local codes and regulations and any violations shall be considered grounds for termination of this Agreement;
- (g) No alcoholic beverages shall be allowed on leased premises without additional approvals by City Council;
- (h) All rental payments shall be made to the Lessor by means of cash, cashiers check, money order, or -by credit card, no personal checks shall be accepted;

3. LEASE TERM AND OPTION TO RENEW

The term of this Lease Agreement shall commence on _____, 2014 and shall run for one (1) year unless sooner terminated as provided herein. At the end of the

one year, the Lease Agreement can be renewed with 60 days written notice by Lessee to Lessor. In the event Lessee shall remain in possession of the Premises after the expiration of the term of this Lease Agreement, initial or subsequent term of this Lease, such possession may, at the sole option of Lessor, will continue to be a month-to-month tenancy. During any such month-to-month tenancy, the rent may be adjusted by Lessor and shall be prorated and payable on a monthly basis in advance of the first day of each month, and the terms and conditions of the Lease shall be otherwise applicable.

4. RENT

Rent shall be paid as follows:

A. Base Rent. Lessee shall pay three hundred sixty dollars (\$360.00) per year as base rent, beginning on _____, 2014, and due on beginning date for one year ending on _____, 2015, without notice or demand and without deduction or offset for any cause whatsoever. Lessee shall make all payments of rent each month before anniversary date to the Lessor's Cashier Office, Room 114, 200 Lincoln Ave., Santa Fe, NM.

B. Increases in Base Rent. Commencing the second year of this Lease Agreement, or any renewal thereof, the annual rent shall be adjusted by multiplying the previous year's annual rent by the sum of one and the change over the most recent 12 months in the Consumer Price Index ("CPI") seasonally adjusted U.S. City Average for All Urban Consumers published monthly in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor (hereinafter, the "CPI-U").

C. In no event shall there be a decline in the rent from year to year as a result of the adjustment provided for in Paragraph B hereof.

5. PENALTY FOR LATE PAYMENT OF RENT

In the event the yearly rent is not received by Lessor on or before the anniversary date of this Agreement each year due, Lessee shall pay a penalty of one and one half percent (1 ½ %) of the rent due for each 30 day period or fraction thereof that the rent payment is outstanding.

6. CANCELLATION BY LESSOR

A. Lessor may terminate this Lease Agreement at any time without cause upon thirty (30) days written notice to the Lessee. The termination notice shall be hand delivered or mailed to Lessee via certified or registered mail.

B. If Lessor finds that there is a code or regulation violation pursuant to Paragraph 2(f), herein, Lessor may cancel this Lease Agreement. Not less than fifteen (15) days prior to cancellation, Lessor shall hand deliver or mail notice to Lessee via certified or registered mail specifying the code or regulation violation and any relevant facts detailing the violation. Lessee shall have no more than ten (10) days from issuance of the notice to respond and demonstrate that a violation did not occur.

7. ASSIGNMENT OR SUBLEASE

Lessee shall not transfer or assign in whole or in part, its rights and obligations under this Lease Agreement. Any such actions taken by Lessee shall result in immediate termination of this Lease Agreement.

8. INSURANCE

A. The Lessee at its own cost and expense, shall carry and maintain in full force and effect during the term of this Lease Agreement comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the Lessor, with limits of coverage in the maximum

amount which the Lessor could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the Lessor is named as an additional insured and that Lessor will be notified within 10 days of cancellation for any reason. The Lessee shall furnish the Lessor with a copy of a "Certificate of Insurance" as a condition of the Lease.

B. The Lessee shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Lessee's employees throughout the term of this Lease Agreement. Lessee shall provide the Lessor with evidence of its compliance with such requirement prior to performing services under this Lease Agreement.

9. INDEMNIFICATION

The Lessee shall indemnify, hold harmless and defend the Lessor from all losses, damages, claims or judgments, including payment of all attorney's fees and costs, on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Lessee's use of the premises hereunder, as well as that of any of Lessee's employees, agents, representatives, guests or invitees and subcontractors.

10. THIRD PARTY BENEFICIARIES

By entering into this Lease Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Lessor and the Lessee. No person shall claim any right, title or interest under this Lease or seek to enforce this Lease Agreement as a third party beneficiary of this Lease Agreement.

11. REPAIR AND MAINTENANCE

Lessee shall not cause or permit any waste, damage or injury to the Premises. Lessee shall, at its sole expense, keep and maintain the Premises in good condition,

reasonable wear and tear excepted, and shall be responsible for payment of all necessary expenses of repairs and replacements that arise during Lessee's use of the Premises.

12. ALTERATIONS AND IMPROVEMENTS

Lessee shall make no alteration, addition or improvements to the Premises for the uses described in Article 2 herein without the prior written consent of the Lessor. Lessor shall have the right to require Lessee to remove any alterations, additions or improvements made, at Lessee's sole expense, upon termination of this Lease Agreement.

13. EASEMENTS

Lessor reserves the exclusive right to grant access, utility or other easements on or through the Premises.

14. NOTICE

Any required notice will be deemed delivered, given and received (i) when personally delivered, or (ii) five days after the same are deposited in the United States mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

Lessor:
City of Santa Fe
City Manager
200 Lincoln Ave.
Santa Fe, NM 87504-0909

Lessee:
Chuck Higgins dba
Chuck's Nuts
130 Lincoln Ave.
Santa Fe, NM 87501

15. NO WAIVER

No waiver of a breach of any of the covenants contained in this Lease Agreement shall be construed to be a waiver of any succeeding breach of the same or any other requirements.

16. SEVERABILITY

In the event that one or more of the provisions contained in this Lease Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

17. ENTIRE AGREEMENT

The foregoing constitutes the entire agreement between Lessor and Lessee, represents their entire understanding and defines all of their respective rights, title and interests as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the parties are merged herein. This Lease Agreement shall not be modified or amended except by a written document signed by the parties.

18. BINDING EFFECT

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

19. LITIGATION EXPENSE

In the event of litigation between the parties, the Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which the Lessor shall incur in enforcing this Lease or in recovering any and all damages caused to the Premises by Lessee, or Lessee's agents, employees or permitted assigns.

20. RECORDING

This Lease Agreement shall be recorded in its entirety. Lessee shall bear all costs for recording of the Lease Agreement and any other associated costs.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of this _____ day of _____, 2014.

LESSOR:
CITY OF SANTA FE

BRIAN K. SNYDER, CITY MANAGER

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:



KELLEY BRENNAN, INTERIM CITY ATTORNEY 6/13/14

APPROVED:

MARCOS A. TAPIA, FINANCE DIRECTOR

21117.460150
BUSINESS UNIT/LINE ITEM

LESSEE:
CHUCK HIGGINS DBA
CHUCK'S NUTS

BY: CHUCK HIGGINS

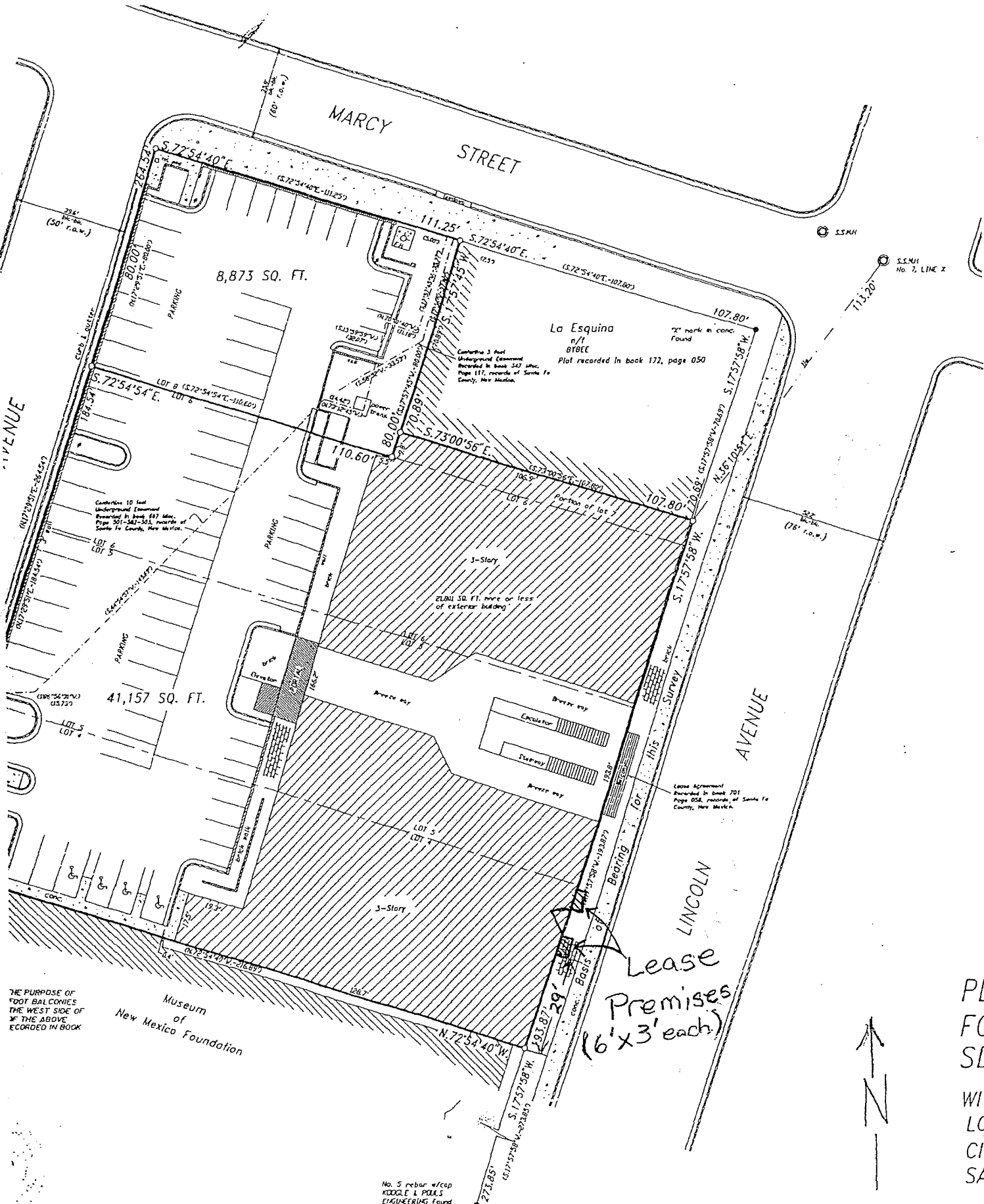
ACKNOWLEDGEMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO}
 }
COUNTY OF SANTA FE }

The foregoing instrument was acknowledged before me on this ____ day of _____,
2014 by Chuck Higgins d/b/a Chuck's Nuts.

NOTARY PUBLIC

My Commission Expires: _____
(seal)



THE PURPOSE OF
FOOT BALCONIES
THE WEST SIDE OF
IF THE ABOVE
RECORDED IN BOOK

Museum
of
New Mexico Foundation

No. 5 rebar w/cap
KODGEE & POLLS
ENGINEERING FOUND

Lease
Premises
(6'x3' each)

Prepared by
PROFESSIONAL LAND SURVEYING
3011 CIELO COURT, SUITE A SANTA FE, NEW MEXICO
MAILING ADDRESS: P.O. BOX 13160 SANTA FE, NM 87506-5160

Exhibit "A"

PL
FC
SD
WIT
LO
CIT
SAI

VIGIL, EDWARD J.

From: OREILLY, MATTHEW S.
Sent: Wednesday, May 21, 2014 1:44 PM
To: VIGIL, EDWARD J.
Subject: FW: Lease of City-owned Property - 130 Lincoln Ave. Suite B

Ed,

FYI – Please begin processing this lease request. Thanks.

Matthew O'Reilly
Land Use Department Director
City of Santa Fe
P. O. Box 909
Santa Fe, NM 87504-0909
505-955-6617
msoreilly@santafenm.gov

From: Chuck Higgins [<mailto:chuckhiggins@live.com>]
Sent: Wednesday, May 21, 2014 12:15 PM
To: OREILLY, MATTHEW S.
Cc: Donald Stout; Anne Cumming
Subject: RE: Lease of City-owned Property - 130 Lincoln Ave. Suite B

Matthew,

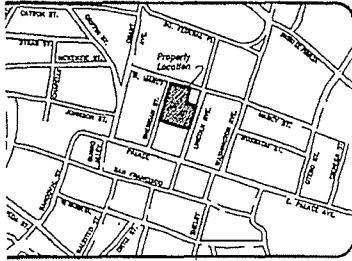
Yes, I am confirming this request.
Thank you.
Chuck Higgins

Subject: Lease of City-owned Property - 130 Lincoln Ave. Suite B
Date: Tue, 20 May 2014 16:12:31 -0600
From: msoreilly@ci.santa-fe.nm.us
To: chuckhiggins@live.com
CC: ejvigil@ci.santa-fe.nm.us

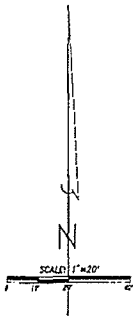
Mr. Higgins,

Per our recent discussion, I understand that you wish to lease city-owned land (sidewalk) at the above referenced location. Specifically, you wish to lease two 18 square-foot (SF) areas on the sidewalk immediately adjacent to your store front - a total of 36 SF. At each of these locations you plan to place one 24" x 24" table with two chairs. The tables and chairs will be removed at the end of business each day.

Please confirm your request to lease this property so that the Land Use Department can begin to process your request.



VICINITY MAP
(not to scale)



REFERENCE SURVEYS

EXHIBITS AND DISTANCES IN PARAGRAPHS AND THE BASIS OF
AS FOR THIS SURVEY WERE TAKEN FROM A SURVEY PREPARED BY
WILLIAM L. BOWMAN, N.M.P.S. No. 5524, PLAT ENTITLED
"A SURVEY FOR S.D.A. SANTA FE LIMITED PARTNERSHIP
OF THE FORT MARCY ADDITION LOTS 4, 5, 6, 8 & A PORTION OF LOT 7
IN THE CITY OF SANTA FE, NEW MEXICO," DATED MARCH 1983.
WHY DATED RECORDED IN BOOK 888, PAGE 829, 830.

THIS PROPERTY IS ZONED BUSINESS CAPITAL DISTRICT AREA
WITHIN THE MARCY SUB-DISTRICT.
ALL REGULAR PARKING SPACES
AND UNPAVED PARKING SPACES

WHY DOES NOT LIE WITHIN THE 100 YEAR FLOOD
WITHIN COMMUNITY PANEL NO. 330070 00310
4, 1986.

CT TO ALL EASEMENTS OF RECORD.

NOTES POINTS FOUND AND USED AS NOTED.
NOTES "A" MARK SET IN CONCRETE, OR AS NOTED.
NOTES LIGHT POLES.

SEE AGREEMENT FROM THE PURPOSE OF INSTALLING SIX (6)
OF ANCHORS ABOVE THE SIDEWALKS ON THE WEST SIDE OF LINCOLN
AVENUE IN FRONT OF THE ABOVE REFERENCED PROPERTY, RECORDED
BOOK 888, PAGE 880 AND 881.

CERTIFICATE

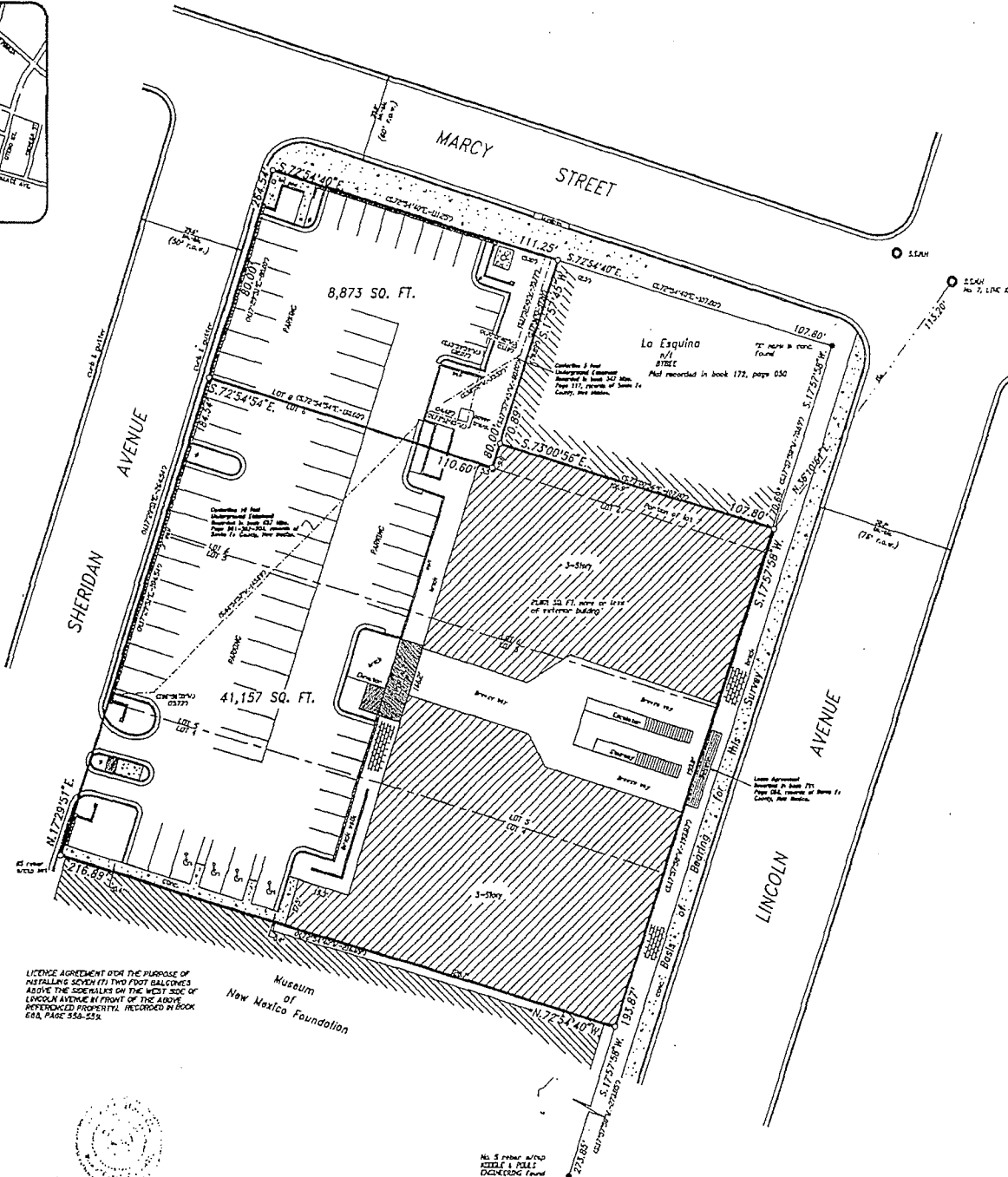
SDA Santa Fe Limited Partnership, National Properties of
Santa Fe, Ltd., not personally but solely on the basis of
certain agreement and declaration of trust for Lincoln
Avenue, dated December 18, 1986, Chicago Title Insurance
Company of Chicago, Inc.

In testimony whereof, I, the undersigned, on the day and date
above stated, have signed this map and plat and the survey as
shown hereon, and have caused the same to be recorded in the
public records of Santa Fe County, New Mexico, and I have caused
this certificate to be signed by me and the same to be recorded
in the public records of Santa Fe County, New Mexico, and I have
caused this certificate to be signed by me and the same to be
recorded in the public records of Santa Fe County, New Mexico.

W. L. Bowman 23 DEC 1987
W. L. BOWMAN N.M.P.S. No. 5524 DATE

LICENSE AGREEMENT FROM THE PURPOSE OF
INSTALLING SEVEN (7) TWO FOOT BALCONIES
ABOVE THE SIDEWALKS ON THE WEST SIDE OF
LINCOLN AVENUE IN FRONT OF THE ABOVE
REFERENCED PROPERTY, RECORDED IN BOOK
888, PAGE 880-881.

Museum
of
New Mexico Foundation



PUBLIC NOTICE

THIS SURVEY IS BASED ON THOSE RECORDED DOCUMENTS NOTED HEREIN.
THE SANTA FE COUNTY LAND USE ADMINISTRATOR MUST APPROVE ALL D
SUBMITTED WITH AN APPLICATION FOR A BUILDING PERMIT OR A DEVELOP
PERMIT AS DEFINED IN THE SANTA FE COUNTY LAND DEVELOPMENT CODE
FE COUNTY AND/OR THE GOVERNING MUNICIPALITY MAY REQUIRE SUBMIT
ADDITIONAL DOCUMENTATION TO PROVE LEGAL LOT OF RECORD.

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) SS 889-4

I HEREBY CERTIFY THAT THIS INSTRUMENT
WAS FILED FOR RECORD ON THIS 23RD DAY
OF DECEMBER, A.D. 1987, AT
O'DONOGHUE, N.M. AND WAS ONLY RECORDED IN
BOOK 888, PAGE 829 OF THE
SANTA FE COUNTY.

WITNESS MY HAND AND SEAL OF OFFICE
JONAS E. ARANGO
COUNTY CLERK, SANTA FE COUNTY, NM
Jonas E. Arango

Description

A PORTION OF LAND LYING AND BEING SITUATE WITHIN THE CITY OF
SANTA FE, SANTA FE COUNTY, STATE OF NEW MEXICO, BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE TRACT HEREIN
DESCRIBED, WHENCE A SANITARY SEWER MAINLINE NO. 7, LINE X AT
THE INTERSECTION OF MARCY STREET AND LINCOLN AVENUE BEARS,
N.36°10'51"E, A DISTANCE OF 113.20 FEET;

THENCE FROM SAID POINT AND PLACE OF BEGINNING ALONG THE
WESTERLY RIGHT OF WAY LINE OF LINCOLN AVENUE S.17°57'58"W,
A DISTANCE OF 193.87 FEET TO THE SOUTHEAST CORNER OF THE
TRACT HEREIN DESCRIBED;

THENCE LEAVING SAID RIGHT OF WAY LINE N.72°54'40"W, ALONG
THE SOUTHERLY LINE OF THE TRACT HEREIN DESCRIBED, A DISTANCE
OF 218.89 FEET TO THE SOUTHWEST CORNER BEING ALSO A POINT ON
THE EASTERLY RIGHT OF WAY LINE OF SHERIDAN AVENUE AND THE SOUTHERLY RIGHT
OF WAY LINE OF MARCY STREET;

THENCE N.17°29'51"E, ALONG SAID RIGHT OF WAY LINE A
DISTANCE OF 284.54 FEET TO THE NORTHWEST CORNER OF THE TRACT
HEREIN DESCRIBED, BEING THE INTERSECTION OF THE EASTERLY
RIGHT OF WAY LINE OF SHERIDAN AVENUE AND THE SOUTHERLY RIGHT
OF WAY LINE OF MARCY STREET;

THENCE S.72°54'40"E, ALONG THE SOUTHERLY RIGHT OF WAY LINE
OF MARCY STREET A DISTANCE OF 111.25 FEET TO A POINT;

THENCE LEAVING SAID RIGHT OF WAY LINE S.17°57'58"W, A
DISTANCE OF 70.89 FEET TO A POINT;

THENCE S.73°00'56"E, ALONG THE NORTHERLY LINE OF THE TRACT
HEREIN DESCRIBED, A DISTANCE OF 107.80 FEET TO THE NORTHEAST
CORNER BEING ALSO THE POINT AND PLACE OF BEGINNING.

TOTAL AREA 1.149 ACRES (50,030 SQ. FT.) MORE OR LESS.

PLAT OF SURVEY
FOR
SDA Santa Fe Limited Partner
WITHIN THE FORT MARCY ADDITION
LOTS 4, 5, 6, 8, AND A PORTION OF LOT 7
CITY OF SANTA FE
SANTA FE COUNTY, NEW MEXICO.

Prepared by
PROFESSIONAL LAND SURVEYING
201 COLD CREEK DRIVE A SANTA FE, NEW MEXICO
85000-1000 P.O. BOX 10000 SANTA FE, NM 87508-1000