



**ACTION SHEET  
ITEM FROM THE  
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING  
OF  
MONDAY, JULY 7, 2014**

**ITEM 9**

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)

**PUBLIC WORKS COMMITTEE ACTION: Approved on Consent**

**FUNDING SOURCE:**

**SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
<b>CHAIRPERSON TRUJILLO</b>			
<b>COUNCILOR BUSHEE</b>	<b>Excused</b>		
<b>COUNCILOR DIMAS</b>	<b>X</b>		
<b>COUNCILOR DOMINGUEZ</b>	<b>Excused</b>		
<b>COUNCILOR RIVERA</b>	<b>X</b>		

*C.G. Higgins Confections*, Santa Fe, New Mexico 87505

June 23, 2014

Public Works Committee  
City of Santa Fe, New Mexico

Dear Public Works Committee:

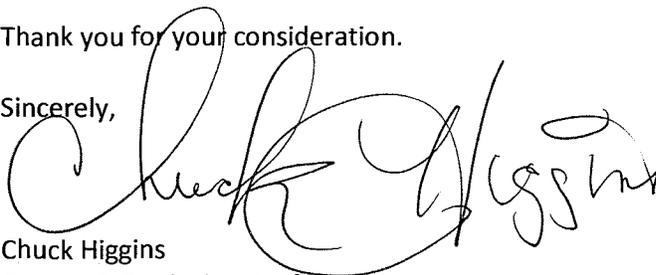
Thank you for considering my proposal to lease space in front of my candy shop/coffee shop to accommodate two tables. The customers have been requesting this accommodation since we opened last July.

In the meantime, I have an additional request. I don't know exactly whom at City Hall I should approach on this matter, so I thought this evening might be a good start. That is, during both the Spanish Market and the Indian Market, Lincoln Avenue, where my store is located is blocked off for vendors. Due to the street closure, I am unable to service my retail store as I have no backdoor access as do the other retailers in my building.

My request is that the City of Santa Fe assist in whatever way possible to give me permission to service my store in the early hours of the festival days, before the festivals open and the street is typically void of any traffic. Perhaps a letter to show to the blockade monitors or something that will make them comfortable so they will slide the barricade aside and allow me a brief access to my store.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Chuck Higgins". The signature is written in a cursive, flowing style with a large initial "C".

Chuck Higgins  
Owner, C.G. Higgins Confections

# 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 *EJ*

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## 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 for*  
\_\_\_\_\_  
KELLEY BRENNAN, INTERIM CITY ATTORNEY 6/13/14

APPROVED:

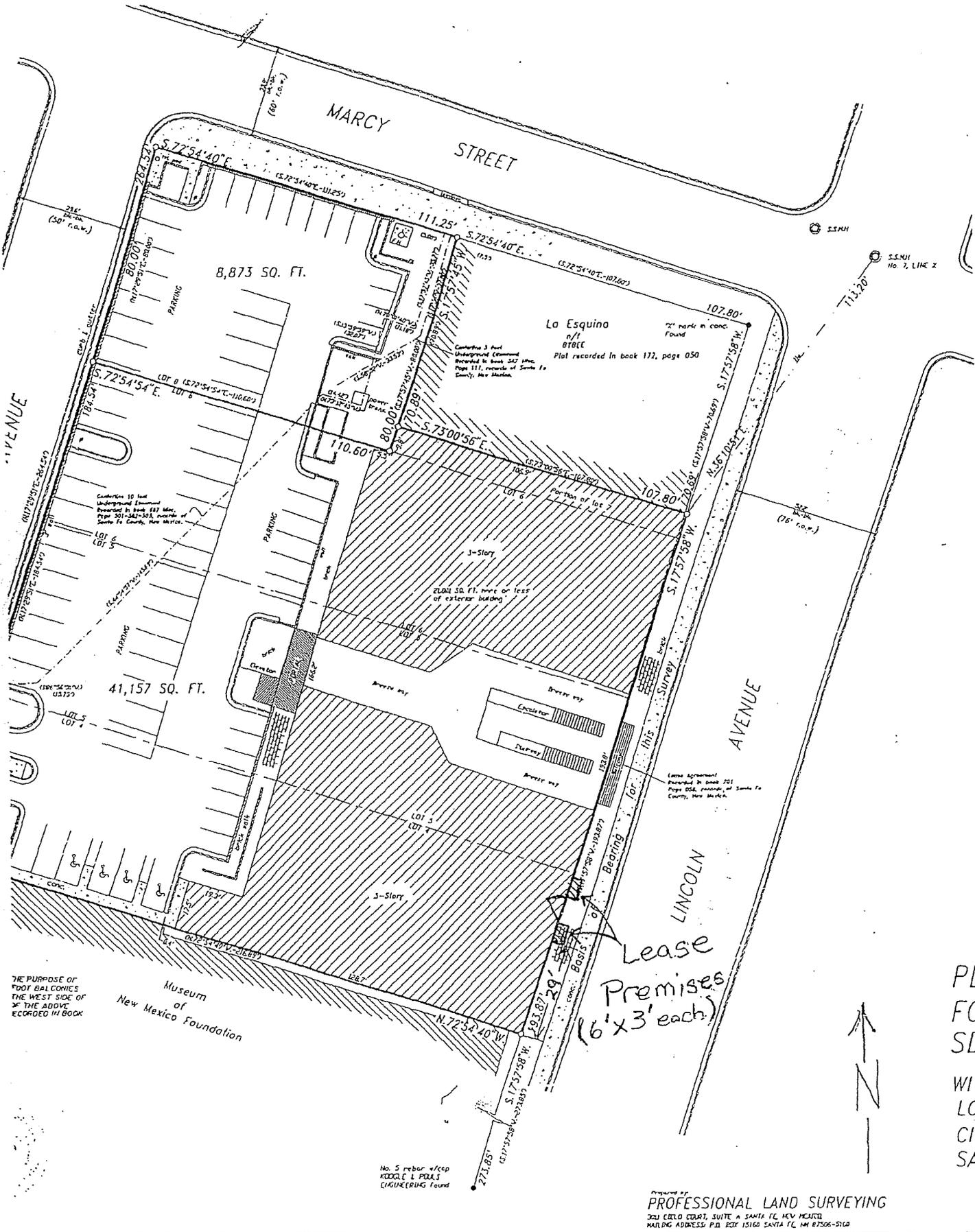
\_\_\_\_\_  
MARCOS A. TAPIA, FINANCE DIRECTOR

21117.460150  
BUSINESS UNIT/LINE ITEM

LESSEE:  
CHUCK HIGGINS DBA  
CHUCK'S NUTS

\_\_\_\_\_  
BY: CHUCK HIGGINS





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

Museum of New Mexico Foundation

No. 5 rebar w/cep KODICE & POLAKS ENGINEERING FOUND

Lease Premises (6'x3' each)

PL  
FC  
SD  
WIT  
LO  
CIT  
SAI

Prepared by  
**PROFESSIONAL LAND SURVEYING**  
301 CIELO COURT, SUITE A SANTA FE, NEW MEXICO  
MAILING ADDRESS: P.O. BOX 15160 SANTA FE, NM 87506-5160

Exhibit "A"

**VIGIL, EDWARD J.**

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**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](mailto:msoreilly@santafenm.gov)

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**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

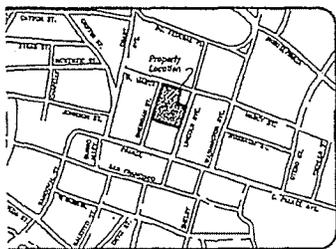
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**Subject:** Lease of City-owned Property - 130 Lincoln Ave. Suite B  
**Date:** Tue, 20 May 2014 16:12:31 -0600  
**From:** [msoreilly@ci.santa-fe.nm.us](mailto:msoreilly@ci.santa-fe.nm.us)  
**To:** [chuckhiggins@live.com](mailto:chuckhiggins@live.com)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

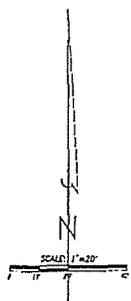
Mr. Higgins,

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**

BEARINGS AND DISTANCES IN PARAGRAPHS AND THE BASIS OF ALL THIS SURVEY WERE TAKEN FROM A SURVEY PREPARED BY JOHN L. BERNARDINI, N.M.S., HAS BEEN ENTITLED "A SURVEY FOR SDA, SANTA FE LIMITED PARTNERSHIP OF THE FORT MARCY ADDITION LOTS 4,5,6,8 & PORTION OF LOT 7 OF NEW MEXICO, DATED MARCH 1984".

WIT: DATED RECORDED IN BOOK 818, PAGE 824, 825.

THIS PROPERTY IS ZONED BUSINESS CAPITAL DISTRICT AREA WITHIN THE MARCY SUB-DISTRICT.

ALL RELEVANT PARKING SPACES & HANDICAPPED PARKING SPACES

WIT DOES NOT LIE WITHIN THE 100 YEAR FLOOD RETURN PERIOD MAP NO. 350070 00210 4, 1984.

NOT TO ALL EASEMENTS OF RECORD.

WIT'S POINTS FOUND AND USED AS MONUMENTS  
WIT'S "I" MARK SET IN CONCRETE, OR AS MONUMENT  
WIT'S LIGHT POLES.

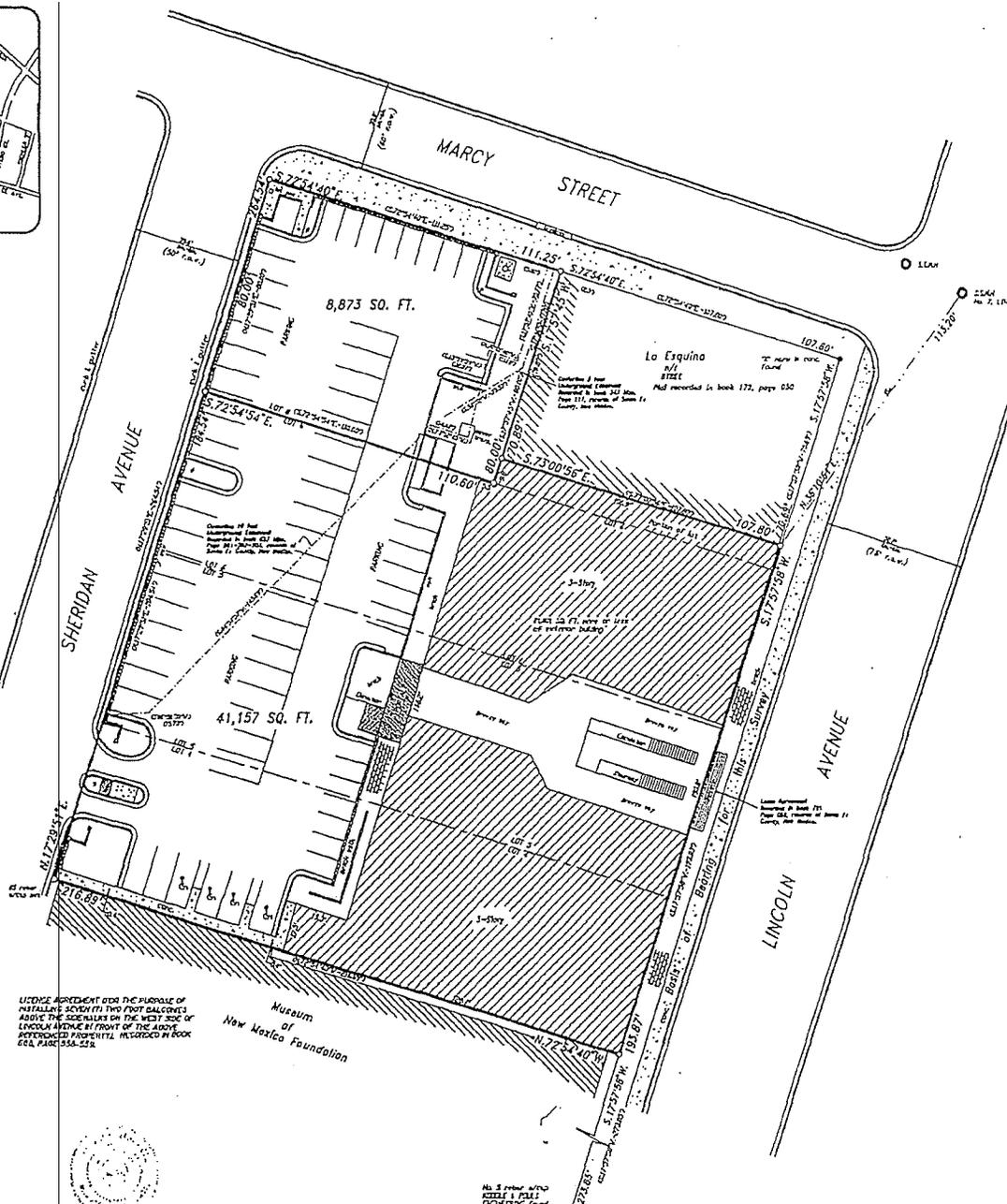
USE AGREEMENT (FOR THE PURPOSE OF INSTALLING LINE (1) ON LOTS ABOVE THE SIDEWALKS ON THE WEST SIDE OF LINCOLN AVENUE AT THE POINT OF THE ABOVE REFERENCED PROPERTY.) RECORDED FOR SDA, PAGE 820 AND 341.

**CERTIFICATE**

SDA Santa Fe Limited Partnership, National Properties of America, LLC, and personally but jointly as trustee under certain agreement and declaration of trust for Lincoln Street, dated November 14, 1984, Chicago, Illinois, known as Santa Fe Avenue, LLC.

It is hereby certified that this map and plat of this survey as shown on this map were made (1) in accordance with the minimum standard requirements for ALTA/ACSM Land Title Surveys, (2) comply with the provisions and scope of ALTA and ACSM in 2, and includes items 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Table A and (3) pursuant to the statutory provisions on this subject in ALTA and ACSM and to affect the acts of this State of New Mexico.

by *L. L. Bernhardt* 23 Dec 1984  
L. L. BERNHARDT N.M.S. No. 5024 GALT



**PUBLIC NOTICE**  
THIS SURVEY IS BASED ON THOSE RECORDED DOCUMENTS NOTED HEREIN. THE SANTA FE COUNTY LAND USE ADMINISTRATOR MUST APPROVE ALL DOCUMENTS SUBMITTED WITH AN APPLICATION FOR A BUILDING PERMIT OR A DEVELOPMENT 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 889-1  
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD ON THIS 23rd DAY OF DECEMBER, 1984, AND WAS FIRST RECORDED IN BOOK 818, PAGE 824 OF THE COUNTY OF SANTA FE COUNTY.  
WITNESS MY HAND AND SEAL OF OFFICE  
COUNTY CLERK, SANTA FE COUNTY, NM  
*Theresa Disher*

**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°10'31"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°37'55"W, A DISTANCE OF 193.87 FEET TO THE SOUTHWEST 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;  
THENCE N.172°20'51"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°37'55"W, A DISTANCE OF 70.89 FEET TO A POINT;  
THENCE S.73°00'55"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.

PROFESSIONAL LAND SURVEYING  
241 CEDAR STREET, SUITE 8 SANTA FE, NEW MEXICO  
PHONE: (505) 424-1111 FAX: (505) 424-1112