TAX INCREMENT DEVELOPMENT DISTRICT BOARD

TIDD BOARD ACTION AND EXECUTIVE SUMMARY

For Special Meeting of June 24, 2014

Resolution No. 14-003

Please check box that applies to this item:

☐ **QUASI JUDICIAL** ☐ **LEGISLATIVE** ☒ **ADMINISTRATIVE**

TITLE: A RESOLUTION APPROVING A CONTRACT FOR SALE OF IMPROVED REAL ESTATE BETWEEN THE TAX INCREMENT DEVELOPMENT DISTRICT OF THE CITY OF LAS CRUCES AND LAS CRUCES COMMUNITY PARTNERS, L.L.C. TO BUILD A DOWNTOWN CIVIC PLAZA.

PURPOSE(S) OF ACTION:

To approve a contract.

Drafter/Staff Contact: Monica Campbell	**Department/Section:** Legal/City Attorney	**Phone:** 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces established the Tax Increment Development District ("TIDD") and the Downtown Metropolitan Redevelopment Plan on October 15, 2007. On April 8, 2013, the TIDD Board established a list of priority projects which included a downtown civic plaza. On April 14, 2014, the TIDD Board adopted an amendment to the TIDD Plan to include a downtown civic plaza, thus making the purchase eligible for TIDD funding.

The TIDD, through its City of Las Cruces staff and Las Cruces Community Partners, L.L.C. ("LCCP") have negotiated a proposed Contract for Sale of Improved Real Estate ("Agreement") to build a civic plaza in an amount not to exceed $5,397,000. Terms, provisions and conditions of the performance based Agreement include:

- LCCP will convey title to the TIDD of the plaza land, generally between Griggs and Main Streets.
- Following the closing of the sale, LCCP will complete the plaza improvements consistent with a conceptual plan previously prepared and adopted as an amendment to the Downtown Master Plan.
- The TIDD will make incremental progress payments as elements of the civic plaza project are completed.

(Continue on additional sheets as required)

The concept of a civic plaza as the focus of Mainstreet Downtown Las Cruces, generally located between Griggs and Main Streets, has long been a vision, and essentially a requirement, for the success of a revitalized downtown.

SUPPORT INFORMATION:

1. Resolution
2. Exhibit "A", proposed Contract for Sale of Improved Real Estate.

SOURCE OF FUNDING:

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

BUDGET NARRATIVE

At the time of the sale, the TIDD board will be required to adjust the FY15 budget to appropriate the necessary funds. The dedicated TIDD fund (2815) is estimated to have an unappropriated fund balance in excess of $9.7 million dollars by the end of FY15. A portion of this funding is from a contribution from the State of New Mexico which needs to be used by 2018 and can only be used for financing projects.

FUND EXPENDITURE SUMMARY:

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

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Contract for Sale of Improved Real Estate which will allow construction of a downtown civic plaza, and authorize the City Manager to sign the contract, and be TIDD's point of contact and the project manager.

(Continue on additional sheets as required)

2. Vote "No"; this will mean that the contract is not approved and a downtown civic plaza, as contemplated by the contract, will not go forward.
3. Vote to "Amend"; this could include changes to the contract such as time frames.
4. Vote to "Table"; this could delay construction of a downtown civic plaza.

(Continue on additional sheets as required)

TIDD BOARD RESOLUTION NO. 14-003

A RESOLUTION APPROVING A CONTRACT FOR SALE OF IMPROVED REAL ESTATE BETWEEN THE TAX INCREMENT DEVELOPMENT DISTRICT OF THE CITY OF LAS CRUCES AND LAS CRUCES COMMUNITY PARTNERS, L.L.C. TO BUILD A DOWNTOWN CIVIC PLAZA.

The TIDD Board is informed that:

WHEREAS, a plaza is a traditional outdoor gathering place for regular and special events within a community; and

WHEREAS, the concept of a civic plaza as part of Mainstreet Downtown Las Cruces has long been a vision, as well as a requirement, for the success of a revitalized downtown; and

WHEREAS, the location of a civic plaza, generally between Griggs and Main Streets, will be the focus of Mainstreet Downtown Las Cruces; and

WHEREAS, the Tax Increment Development District ("TIDD") with the assistance of City of Las Cruces staff and Las Cruces Community Partners, L.L.C. ("LCCP") have negotiated a proposed Contract for Sale of Improved Real Estate ("Agreement") in substantial form as shown in Exhibit "1" attached hereto, in an amount not to exceed $5,397,000; and

WHEREAS, the terms, provisions and conditions of the performance based Agreement include LCCP conveying title to the TIDD of the plaza land, LCCP completing plaza improvements consistent with a conceptual plan previously prepared and adopted as an amendment to the Downtown Master Plan; and the City making incremental progress payments as elements of the civic plaza are completed.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces Tax Increment Development District:

(I)

THAT the Contract for Sale of Improved Real Estate between the Tax Increment Development District of the City of Las Cruces and Las Cruces Community Partners, L.L.C., is hereby approved.

(II)

THAT the City Manager, with concurrence of the Las Cruces City Council, shall be the point of contact and project manager on behalf of the TIDD Board and is hereby authorized to sign the form of contract in substantial form and content for the sale of improved real estate, in an amount not to exceed $5,397,000 as shown on Exhibit "1" attached hereto.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the hereinabove on behalf of the TIDD Board.

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

APPROVED:

_____
TIDD Chair

ATTEST:

_____
City Clerk

(SEAL)

VOTE:

Chair Miyagishima: _____
Board Member Silva: _____
Board Member Smith: _____
Board Member Pedroza: _____
Board Member Small: _____
Board Member Sorg: _____
Board Member Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

CONTRACT FOR SALE OF IMPROVED REAL ESTATE

This Contract for Sale of Improved Real Estate (this "Contract") is made by and between Las Cruces Community Partners, LLC ("Seller") and the Tax Increment Development District of the City of Las Cruces, a body politic and corporate of the State of New Mexico ("Buyer") upon the terms, provisions and conditions set forth herein. Seller and Buyer may be also referred as a "Party" or collectively as the "Parties."

Recitals

A. Seller has entered into a contract to purchase the Real Property (as defined below).

B. Buyer desires to purchase the Real Property along with the Plaza Improvements (as defined below).

C. Buyer will purchase the Plaza Parcel and the related Plaza Improvements as a single purchase, provided that certain requirements of Buyer are met.

D. The requirements of Buyer are:

(i) that Seller conveys, or causes to be conveyed the Real Property to the Buyer;
(ii) that Seller constructs, or causes to be constructed, the Plaza Improvements; and
(iii) that upon completion of the Plaza Improvements, Seller conveys the Plaza Improvements to Buyer.

E. The Parties now desire to enter into this Agreement to provide a completed plaza according to the terms and conditions set forth herein.

Article I
Purchase and Sale

Seller agrees to sell and convey to Buyer, and Buyer agrees to buy from Seller under the following terms and conditions, in exchange for the Sales Price the real property parcels generally depicted as IP1 and IP2 on Exhibit A attached hereto (the "Real Property") together with the improvements described on Exhibit B and Exhibit C attached hereto and as described in Article VII (the "Plaza Improvements") to be constructed on the Real Property, together with all and singular the rights, benefits, privileges, easements, tenements, hereditaments and appurtenances pertaining thereto, including, without limitation, any right, title, and interest of Seller in and to adjacent streets, alleys or rights of way.

Article II
Sales Price

2.1 Amount of Sales Price. The sales price for the Real Property (the "Sales Price") to be paid by Buyer to Seller is not to exceed $5,397,000.

2.2 Payment of Sales Price. The Sales Price is to be paid at the Closing as follows:

(a) Cash at Closing	$1,349,250
(b) To be deposited with Escrow Agent	4,047,750
(c) Total	$5,397,000

$ 4,047,750 of the Sales Price (the "Escrow Funds") will be paid to Doña Ana Title Company ("Escrow Agent") to be disbursed in accordance with Section 7.1. Buyer will have a security interest in and a lien upon the Escrow Funds to secure Buyer in the performance of Seller's obligations under Article VII.

Article III
Earnest Money

3.1 Deposit. Buyer shall deposit $539,700 (the "Earnest Money") with Doña Ana Title Company (the "Title Company"), whose address is 425 S. Telshor Blvd., Las Cruces, New Mexico 88011, attn. Scott Ackleson, within three (3) days after Buyer's execution of this Contract. The Earnest Money is deposited with the Title Company with the understanding that Title Company (i) does not assume or have any liability for performance or nonperformance of any Party; and (ii) subject to the remainder of this Contract, has the right to require the receipt, release and authorization in writing of all Parties before paying the deposit to any Party. If any Party unreasonably fails to agree in writing to an appropriate release of the Earnest Money, then such Party shall be liable to the other Parties to the extent provided in Article XII. At Closing, the Earnest Money shall be applied to the Sales Price or as otherwise directed by the Buyer. The Earnest Money will be held in a non-interest bearing account in a federally insured financial institution chosen by the Title Company.

Article IV
Survey, Title Commitment and Due Diligence Documents

4.1 Survey. Seller shall, at its sole cost and expense, furnish to Buyer within thirty (30) days from the Effective Date, a survey of the Real Property (the "Survey"). Upon the completion of the Survey, and the mutual approval of the Parties, the metes and bounds description of the Real Property as shown on the Survey shall be inserted into the Contract as Exhibit A-1 as the description of the Real Property and shall be used in the conveyance deed provided for in this Contract.

4.2 Title Commitment. Within fifteen (15) days after the Effective Date, Seller shall, at Seller's expense, deliver or cause to be delivered to Buyer a current commitment ("Title Commitment") for a New Mexico Form 1 (ALTA 2006) owner's title insurance policy for the Real Property issued by the Title Company, together with legible copies of all documents shown on and instruments referred to in the Title Commitment ("Existing Exceptions"). Seller shall cause the Title Company to issue to Buyer at Closing, at Seller's expense, an owner's title insurance policy (the "Title Policy") with such endorsements reasonably desired by Buyer (at Buyer's expense) and subject only to the Permitted Exceptions (hereinafter defined) to Buyer at Closing.

4.3. Buyer's Approval of Title and Survey. Buyer shall have until ten (10) days after both the Title Commitment and the Survey are delivered to Buyer to deliver in writing to Seller such objections as Buyer may have to anything contained in the Title Commitment or the Survey (the "Title and Survey Notice"). In the event that Buyer delivers such objections to Seller, Seller shall promptly undertake to eliminate or modify all such unacceptable matters to the reasonable satisfaction of Buyer provided, however, Seller shall be under no obligation to incur any cost in connection with such title cure. In the event that Seller fails to modify or eliminate such unacceptable matters within ten (10) days after receipt of the Title and Survey Notice (the "Cure Period"), Buyer may, at its option, terminate this Contract by providing written notice to the Seller on or before ten (10) days after expiration of the Cure Period (the "Title Termination Date"), whereupon this Contract shall terminate and the Earnest Money shall be immediately returned by the Title Company to Buyer without offset. In the event Buyer does not terminate the Contract on or before the expiration of the Title Termination Date, Buyer will be deemed to have approved such exceptions that have not been cured or agreed to by the Seller or the Title Company. Exceptions contained in the Title Commitment that are not timely objected to by the Buyer or that are deemed approved will be the "Permitted Exceptions."

Article V
Conditions Precedent

5.1 Conditions Precedent to the Parties' Obligations to the Closing. The obligations of Seller and Buyer shall in all respects be conditioned upon the satisfaction of each of the following conditions precedent:

(a) Seller's acquisition of title to the Real Property. Seller has executed a contract for the acquisition of Parcel IP2 as depicted on Exhibit A from Bank of the West and is negotiating for the acquisition of Parcel IP1. If by the Closing Date, Seller is unable to acquire title to Parcel IP1, the Parties will execute an amendment to this Contract amending the definition of the Real Property to include only Parcel IP2 and modify the Sales Price accordingly.

(b) The filing of a subdivision (replat) plat of the Real Property at Seller's expense. Buyer agrees to facilitate the processing of the subdivision platting process.

(c) The Parties have agreed on the Plaza Improvement Plans (as defined in Section 7.1(b).

(d) Buyer shall have complied with LCMC 1997, Section 2-1312, et. seq.

(e) All of the representations, warranties, covenants and agreements of both Seller and Buyer are true and correct and Seller and Buyer have complied in all material respects with all conditions or agreements of this Contract as of the Closing Date (as defined in Section 6.1).

The above conditions are for the benefit of both Seller and Buyer and may be waived by either Party at or prior to the Closing. On the failure of any condition precedent, except as otherwise provided in Section 5.1(a), either Party may terminate this Contract by written notice to the other, the Earnest Money will be returned to Buyer and neither Party will have any further obligation or liability hereunder.

5.2 Buyer's Cooperation. Buyer will expedite all necessary final and written permits and approvals, including any zoning change request, zoning variance, request for site plan approval, use permits, subdivision and consolidation approvals for the Real Property and Plaza Improvements and all requests for land use entitlements and building permits and approvals necessary for the conveyance of the Real Property and conveyance of the Plaza Improvements.

Article VI
Closing

6.1 Closing Date. The date for the closing of the sale (the "Closing Date" and/or the "Closing") shall be on or before 270 days from the Effective Date and will occur simultaneously with the closing of the acquisition of Parcel IP2 by Seller from Bank of the West. Seller will give Buyer 30 days' written notice of the Closing Date. The Closing shall take place at the offices of the Title Company unless otherwise agreed by Seller and Buyer.

6.2 Seller's Obligations. At the Closing, Seller shall execute and deliver the following to Buyer: (a) a general warranty deed in the form as attached as Exhibit D and conveying good and indefeasible title to the Real Property (as may be described in any replat of the Real Property) subject only to the Permitted Exceptions; (b) any escrow agreement required by the Escrow Agent and governing the release of the Escrow Funds under Section 7.1; (c) a non-foreign affidavit as required by Paragraph 14.10; (d) the Title Policy issued by Title Company in the full amount of the Sales Price dated as of the Closing Date and insuring Buyer's fee simple title to the Real Property to be good and marketable subject only to the Permitted Exceptions and containing the endorsements required elsewhere in this Contract; (e) an affidavit allowing the Title Company to delete any "parties in possession" or similar exception; and (f) such other documents reasonably requested by Title Company or Buyer or required elsewhere in this Contract, in connection with the Closing, including without limitation, evidence of Seller's authority for closing this transaction.

6.3 Buyer's Obligations. At the Closing, Buyer shall: (a) deliver to the Title Company the cash sum required by Paragraph 2.2; (b) any escrow agreement required by the Escrow Agent and governing the release of the Escrow Funds under Section 7.1; and (c) execute and deliver such other documents as are reasonably requested by the Title Company or Seller in connection with the closing of this transaction, including without limitation, evidence of Buyer's authority for closing this transaction.

6.4 Closing Costs. Unless otherwise provided herein, costs for the Title Policy, Survey, deed preparation, tax certificates, the escrow fee charged by the Title Company, recording fees for the Deed and other closing costs shall be at Seller's expense. Charges for endorsements to the Title Policy, if any, requested by Buyer shall be at Buyer's expense. Except as provided in Section 10.3, each Party shall pay its own attorney's fees.

6.5 Prorations. Ad valorem, personal property and other similar taxes or assessments for the then current year shall be adjusted or prorated between Seller and Buyer on the day of Closing as if Buyer owned the Real Property the entire day of Closing. If the Closing shall occur before the tax rate is fixed for the then current year, the apportionment of the taxes shall be made upon the basis of the tax rate for the preceding year applied to the latest assessed valuation. Any difference in ad valorem taxes actually paid for the year of sale shall be adjusted between the Parties upon receipt of written evidence of the payment thereof. The provisions of this Section 6.5 shall survive the Closing.

Article VII
Post-Closing Obligations

7.1 Construction of Park Improvements.

(a) Generally. After the Closing, Seller, at Seller's sole cost and expense, shall complete the Plaza Improvements: (i) in substantial compliance with the Plaza Improvement Plans (defined below); (ii) in a good and workmanlike manner and according to applicable construction industry standards; (iii) in conformance with all laws, ordinances, requirements, orders, codes, directives, rules and regulations of the federal, state, county and municipal governments (collectively, the "Laws"); (iv) in a lien-free condition.

(b) Approval of Plans and Minimum Design Criteria. Buyer and Seller agree that design of the Plaza Improvements shall be consistent with the Conceptual Plan prepared by PlaceMakers and adopted by Buyer as an amendment to the Downtown Master Plan in Resolution No.14-174. Seller and Buyer shall cooperate to establish the scope of the formal construction plans to be prepared by the Seller, and consistent with Exhibit B and Exhibit C, that shall be used for the Plaza Improvements (the "Plaza Improvement Plans"). Any material deviation of the Plaza Improvement Plans from the conceptual plan of PlaceMakers (Exhibit B) shall require the prior written approval of both Seller and Buyer. If subsurface conditions are encountered which are substantially different than that assumed by either Party, and which may affect the construction of the planned improvements, modifications to the scope will be negotiated between the Parties.

(c) Manner of Completion of Improvements. The construction of the Plaza Improvements shall be accomplished in a manner which will minimize the adverse impact on the use, quiet enjoyment and business operations on adjacent properties. Buyer shall have the right to inspect and accept the Plaza Improvements as being in accordance with the Plaza Improvement Plans.

(d) Periodic Payments from Escrow Funds. The Escrow Funds shall be disbursed in accordance with the payment schedule attached hereto as Exhibit E by the Escrow Agent to Seller. Ten (10) days prior each scheduled disbursement, Seller will provide to Escrow Agent and Buyer a current list by name and mailing address of each contractor and subcontractor who furnished labor or material valued at $100,000 or more in connection with the Plaza Improvements (the "Contractor List") and lien waivers or releases from all

contractors shown on the Contractor List submitted for the prior disbursement. Buyer's designated representative may inspect the Plaza Improvements for compliance with the Plaza Improvement Plans prior to each disbursement. If Buyer objects to the work as not being in compliance with the Plaza Improvement Plans, Buyer will give Seller and Escrow Agent written notice within five (5) days of Seller's submittal of the Contractor List specifying its objection and an amount that should be withheld by Escrow Agent pending the resolution of Buyer's objection. Escrow Agent may thereafter disburse to Seller from the Escrow Funds the scheduled disbursement amount less the amount needed to remedy Buyer's objection. Buyer will not unreasonably direct the Escrow Agent to withhold disbursement of the Escrow Funds to the Seller. With each disbursement from the Escrow Funds, Seller will execute and deliver to Buyer a general warranty deed in the form as attached as Exhibit F (a "Plaza Improvements Conveyance Deed") conveying to Buyer the Plaza Improvements that have been installed and fixed upon the Real Property to the date of the disbursement and that have not been previously conveyed to Buyer.

(e) Completion of Plaza Improvements and Final Release of Escrow Funds. Within ten (10) business days following delivery by Seller to Escrow Agent and Buyer of written notice that substantial completion of the Plaza Improvements has occurred, accompanied by a written request for final disbursement, together with: (i) a final Contractor's List; (ii) final conditional lien releases and waivers of all contractors shown on the final Contractor's List; (iii) final inspection by Buyer of all Plaza Improvements; (iv) a Certificate of Substantial Completion signed by Sellers; and (v) a Plaza Improvements Conveyance Deed conveying title to the all Plaza Improvements not previously conveyed to the Buyer. Unless Buyer delivers to Seller a written objection to such request for payment within such 10-day period, Escrow Agent shall disburse all remaining Escrow Funds to Seller, less amounts withheld for incomplete items. Notwithstanding the foregoing, in the event Buyer timely delivers to Escrow Agent and Seller a written objection to the request for final disbursement, Escrow Agent shall disburse the remaining Escrow Funds to Seller to which Buyer did not object.

(f) No Liens. Seller shall not permit any lien or claim of lien to stand against the Real Property or Plaza Improvements for any work done by, or materials furnished to, Seller in connection with construction of the Plaza Improvements. Seller shall indemnify and hold Buyer harmless against any such lien and from any and all expense and liability in connection with any such lien including, but not limited to, reasonable attorneys' fees and court costs resulting there-from and actually incurred. In the event any such lien or claim of lien arises, Seller shall cause the same to be released of record (either by payment or posting of a statutory bond) within sixty (60) days following written demand from Buyer, or if Seller desires to pursue other action as necessary to remove the effect thereof, in good faith within 60 business days of its notice of such liens or claims. If Seller shall fail to obtain the release of any such lien within said 60-day period, and Seller is not contesting such claim as provided for herein, Buyer, at its option, may bond for and obtain the release of any such lien, in which case Seller shall, within ten (10) business days of its receipt of a written request therefor, reimburse Buyer for all costs and expenses incurred by Buyer in obtaining such bond and release.

(g) Insurance. Seller or Seller's contractor shall, prior to its commencement of any of the Plaza Improvements, obtain, and maintain during the entire period of its installation of the Plaza Improvements, policies of builder's risk, workers compensation, employer's liability and commercial general liability insurance, including contractual liability coverage against claims for personal injury, death and/or property damage occurring in connection with the construction of the Improvements. Buyer shall be named as an additional insured on such policy.

(h) Temporary Easement. Buyer grants Seller, its agents, employees and contractors a temporary easement on and across the Real Property for the purpose of installing the Plaza Improvements. This easement will terminate on the delivery of the final Plaza Improvements Conveyance Deed and the final disbursement of the Escrow Funds to Seller.

(i) Underground Utilities. The Parties acknowledge that the Sales Price is based upon the assumption that underground utilities in the Real Property or adjoining streets that will have to be relocated or improved are as shown in the utility map attached hereto as Exhibit G. If during construction of the Plaza Improvements, the utilities are not as shown on the utility map and Seller will incur additional expense in relocating or improving the utilities, the Parties will execute an amendment to this Contract for the additional expense which the Parties agree will be incurred by Seller.

(j) No Merger. The Parties intend that the provisions of this Section 7.1 shall survive the Closing.

Article VIII
Broker's Fees

Buyer and Seller represent and warrant to each other that they have not engaged the services of any real estate broker or real estate agent in connection with this transaction. Each Party agrees to indemnify and hold the other harmless from any and all claims for any brokerage fees or commissions ever made or asserted against the other by any Party. The Party whose actions or alleged actions form the basis of any such claims for commissions shall indemnify the other. The indemnity obligations under this Article VIII shall survive the Closing or termination of this Contract.

Article IX
Warranties and Representations

9.1 Seller's Warranties and Representations. Seller represents and warrants to Buyer as of the Effective Date and as of the Closing Date, that:

(a) Foreign Person. Seller is not a "foreign person" as that term is defined in Federal Foreign Investment in Real Property Tax Act of 1980 or the 1984 Tax Reform Act, as amended, and any applicable regulations promulgated thereunder;

(b) Authority. Seller has full power and authority to execute and deliver this Contract and to perform and carry out all covenants and obligations to be performed and carried out by Seller hereunder;

(c) Parties in Possession. On the Closing Date there will be no Parties in possession of the Real Property as lessees, tenants, trespassers or otherwise;

(d) Title. On the Closing Date, Seller will have good, indefeasible and insurable title to the Real Property.

9.2 Buyer's Representations. To induce Seller to execute this Contract and to proceed to close the transaction contemplated hereby, Buyer represents, warrants, covenants and agrees as of the Effective Date of this Contract and as of the Closing Date, that Buyer has the full right, power and authority to purchase the Real Property from Seller as provided in this Contract and to carry out Buyer's obligations hereunder, and all required action necessary to authorize Buyer to enter into this Contract and to carry out Buyer's obligations hereunder has been or upon the Closing will have been taken.

9.3 Survival. The terms and provisions of this Article IX shall survive Closing and/or termination of this Contract.

Article X
Default

10.1 Buyer's Default. In the event Buyer shall fail to fully and timely perform any of its obligations under this Contract or shall fail to consummate the purchase of the Real Property for any reason, except Seller's default, Seller may, as its sole and exclusive remedy, terminate the Contract and recover the Earnest Money as liquidated damages, thereby releasing Buyer from any further liability and/or obligations under this Contract.

10.2 Seller's Default. In the event Seller shall fail to fully and timely perform any of its obligations hereunder or shall fail to consummate the sale of the Real Property, for any reason other than Buyer's default, and such default continues for more than thirty (30) days' written notice by Buyer to Seller, Buyer may, at its option: (i) terminate this Contract and if occurring prior to Closing, obtain a full refund of the Earnest Money and if after the Closing, any Escrow Funds will be paid to Buyer, and neither Party will have any further liability and/or obligations under this Contract; or (ii) if the default occurs prior to Closing, seek specific performance. If the default is of such a nature that it cannot be reasonably and completely remedied within thirty (30) days of Buyer's notice, Seller will not be in default if Seller commences the cure the default within thirty (30) days of Buyer's notice and continuously works thereafter to completing cure or remedy of the default.

10.3 Attorney's Fees. Any signatory to this Contract who is the prevailing Party against the other Party in any legal proceeding brought under or with relation to this Contract–shall be additionally entitled to recover from the non-prevailing Party court costs, reasonable attorneys' fees, and all other litigation expenses, including deposition, travel, and expert witness costs and fees.

Article XI
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) deposited in the United States mail, postage fully prepaid, registered or certified mail, return receipt requested; (ii) deposited with a nationally recognized overnight courier, postage fully prepaid; or (iii) sent by email. Any address for notice may be changed by giving notice thereof as provided in this Section. The addresses and email addresses for notice purposes are as follows:

If to Seller:
Las Cruces Community Partners, LLC
1340 Picacho Hills Drive
Las Cruces, New Mexico 88007
Attention: K. Douglas Wright, Manager
Telephone: (915) 471-4328
Email: doug.wright@thewrightcompanies.com

with a copy to:
J. Kerr
Firth Johnston Bunn Kerr, PLC
PO Box 942
El Paso, Texas 79946
415 N. Mesa Third Floor
El Paso, Texas 79901
Telephone: (915) 532-7500
Email: JKerr@F-JLaw.com

If to Buyer:
Tax Increment Development District of the City of Las Cruces
700 North Main Street
Las Cruces, NM 88004
Attn: City Manager
Email: rgarza@las-cruces.org

with a copy to:
City of Las Cruces
700 North Main Street
Las Cruces, NM 88004
Attn: City Attorney
Email: harryc@las-cruces.org

Article XII
Miscellaneous

12.1 Integration. This Contract contains the complete agreement among the Parties. It cannot be varied except by the written agreement of the Buyer and Seller. The Parties agree that there are no oral agreements, understandings, representations, or warranties that are not expressly set forth herein.

12.2 Binding Effect. This Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, representatives, successors and assigns, when such are not proscribed by this Contract.

12.3 Assignment. Seller may assign this Contract to a special purpose entity owned or controlled by the principal owners' of Seller without Buyer's prior consent. Upon any such assignment, the special purpose entity will assume all of Seller's obligations under the Contract and Seller will be released from any liability or obligation hereunder.

12.4 Legal Construction. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. This Contract shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the Party preparing this Contract or any part hereof.

12.5 Time of the Essence. Time is of the essence of this Contract. Provided, however, in the event a time period under this Contract requires performance on a Saturday, Sunday or Holiday (i.e. a day in which either the federal government, post office, banks or local county clerk is closed), the time period for performance will be extended until the date that is two Business Days after the Saturday, Sunday or Holiday. The term "Business Day" will be Monday through Friday that is not a Federal Holiday.

12.6 Governing Law. This Contract shall be construed under and in accordance with the laws of the state of New Mexico.

12.7 Force Majeure. No Party to this Contract will be deemed to be in default under this Contract if that Party is prevented or hindered in performing any of its obligations by reason of: (i) strikes, boycotts, labor disputes, embargos, shortages of labor or material or acts of God; (ii) unanticipated acts of any governmental authority, including but not limited to governmental imposed moratoriums; (iii) adverse weather conditions such as floods; (iv) riots, rebellion, sabotage; or (v) any other circumstance for which it is not responsible or which is not within its control and not involving the payment of money (collectively an "Event of Force Majeure"). Upon the occurrence of an Event of Force Majeure, the time for performance by a Party shall automatically be extended by the period of time that the Party is prevented from or delayed in performing its obligations hereunder. If a Party is prevented or hindered in its performance by an Event of Force

Majeure it will give written notice to the other Party of the Event of Force Majeure describing in detail the event which constitutes the Event of Force Majeure and the date that the Event of Force Majeure started. The Party who is hindered in performing due to an Event of Force Majeure will give written notice to the other Party once the Event of Force Majeure has ended.

12.8 Survival. All agreements, obligations, covenants, representations and warranties made by the respective Parties contained herein, or made in writing pursuant to this Contract, are intended to and shall remain true and correct as of the Closing, shall be deemed to be material, and shall survive the Closing of this Contract and the execution and delivery of the deed and transfer of title to the Real Property.

12.9 Effective Date. The "Effective Date" of this Contract shall be the date last signed by Buyer or Seller.

12.10 Foreign Person Federal Tax Requirement. If Seller is not a "foreign person", as that term is defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act as amended (the "Federal Tax Law"), then at the Closing, Seller shall deliver to Buyer a certificate so stating in a form complying with the Federal Tax Law. If Seller is a "foreign person" or if Seller fails to deliver the required certificate at the Closing, then in either such event the funding to Seller at the Closing shall be adjusted to the extent required to comply with the withholding provisions of the Federal Tax Law; and although the amount withheld shall still be paid at the Closing by Buyer, it shall be retained by a mutually acceptable escrow agent (the reasonable fees of which shall be paid by Seller at the Closing) for delivery to the Internal Revenue Service together with the appropriate Federal Tax Law forwarding forms, and with copies being provided both to Seller and Buyer. The Title Company is hereby approved as a mutually acceptable escrow agent in the event that withholding is warranted in accordance with this Section.

12.11 Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement. To facilitate execution of this Contract, the Parties may execute and exchange by email counterparts of the signature pages.

12.12 Exhibits. The following Exhibits are attached as part of this Contract and are incorporated herein for all purposes:

Exhibit A: Real Property Description
Exhibit A-1: Metes and Bounds Descriptions of the Real Property (to be provided after Survey)
Exhibit B: Conceptual Plan (PlaceMakers' rendering)
Exhibit C: Description of Improvements
Exhibit D: Form of General Warranty Deed
Exhibit E: Escrow Fund Disbursement Schedule
Exhibit F: Plaza Improvements Conveyance Deed
Exhibit G: Utility Map

Executed by Seller on _____, 2014.

Las Cruces Community Partners, LLC,
a New Mexico limited liability company

By: _____
Name: _____
Its: Manager

Executed by Buyer on _____, 2014.

Tax Increment Development District of the
City of Las Cruces,,a body politic and
corporate of the state of New Mexico

By: _____
Name: Robert L. Garza
Its: Project Manager

Approved as to Form:

_____
Harry Connelly, City Attorney

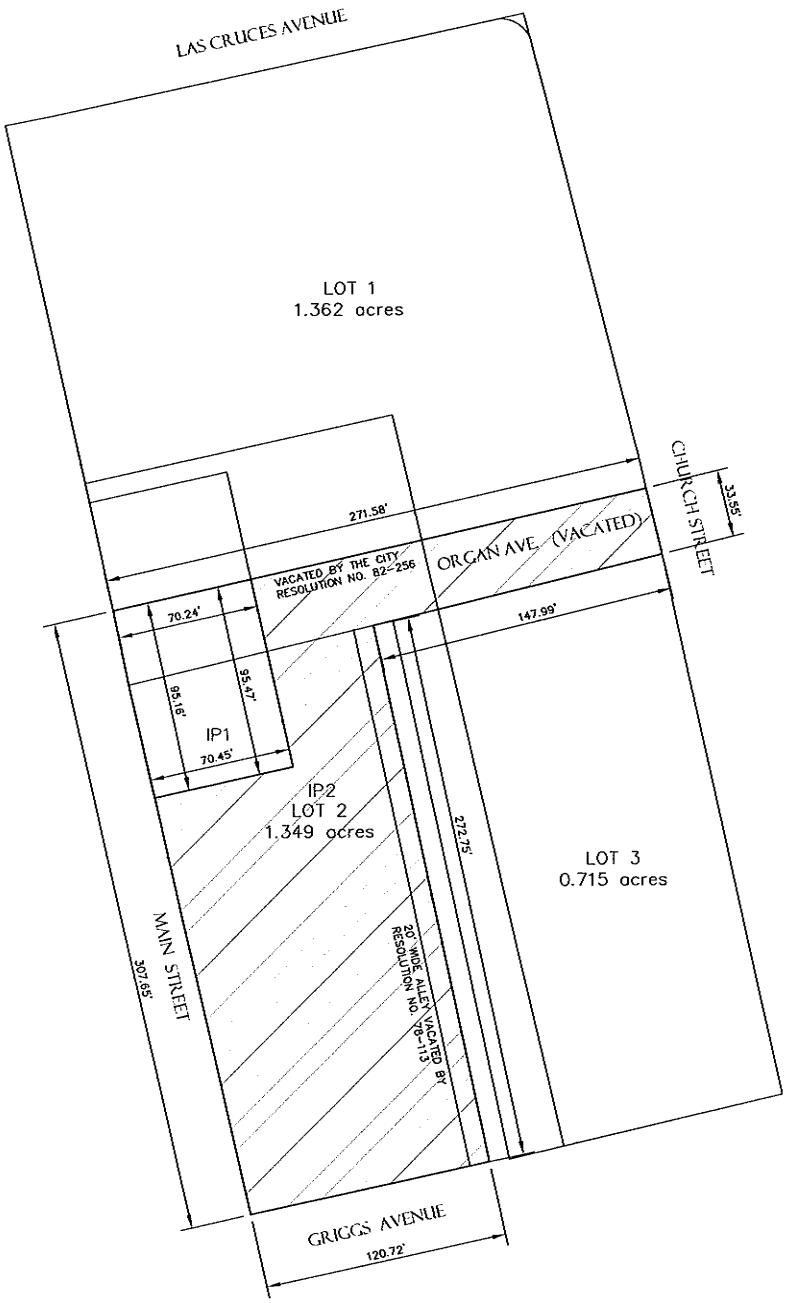
This Contract has been received by the Title Company on _____, 2014.

Doña Ana Title Company

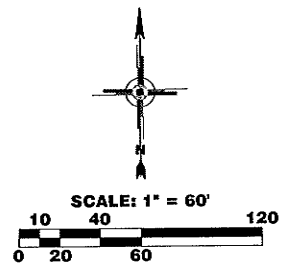
By: _____
Its: _____

DOWNTOWN PLAZA EXHIBIT A

WITHIN BLOCKS 15, AND 18, OF THE DOWNTOWN URBAN RENEWAL PROJECT N.M.R.-4,
FILED NOVEMBER 2, 1973 IN PLAT RECORD 11, PAGES 74 TRU 82 ALSO THE DOWNTOWN URBAN RENEWAL PROJECT
N.M.R.-4 REPLAT NO. 1 FILED SEPTEMBER 18, 1998 IN PLAT RECORD 19, PAGE 156 RECORDS OF DONA ANA COUNTY
CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO
SCALE 1"=60' JUNE 20, 2014



* ALL PLAN DIMENSIONS ARE APPROXIMATE
* SITE ACREAGE (SHADED AREAS) ARE THOSE PROPOSED FOR TRANSFER TO CITY = 0.988 ac. (APPROXIMATE)



Zia Engineering & Environmental Consultants, LLC.
755 S. Telshor Blvd., Suite F-201
Las Cruces, New Mexico 88011
Phone: (575) 532-1526
Fax: (575) 532-1587

Exhibit A-1

Metes and Bounds Descriptions of the Real Property

(to be provided after receipt of the Survey)

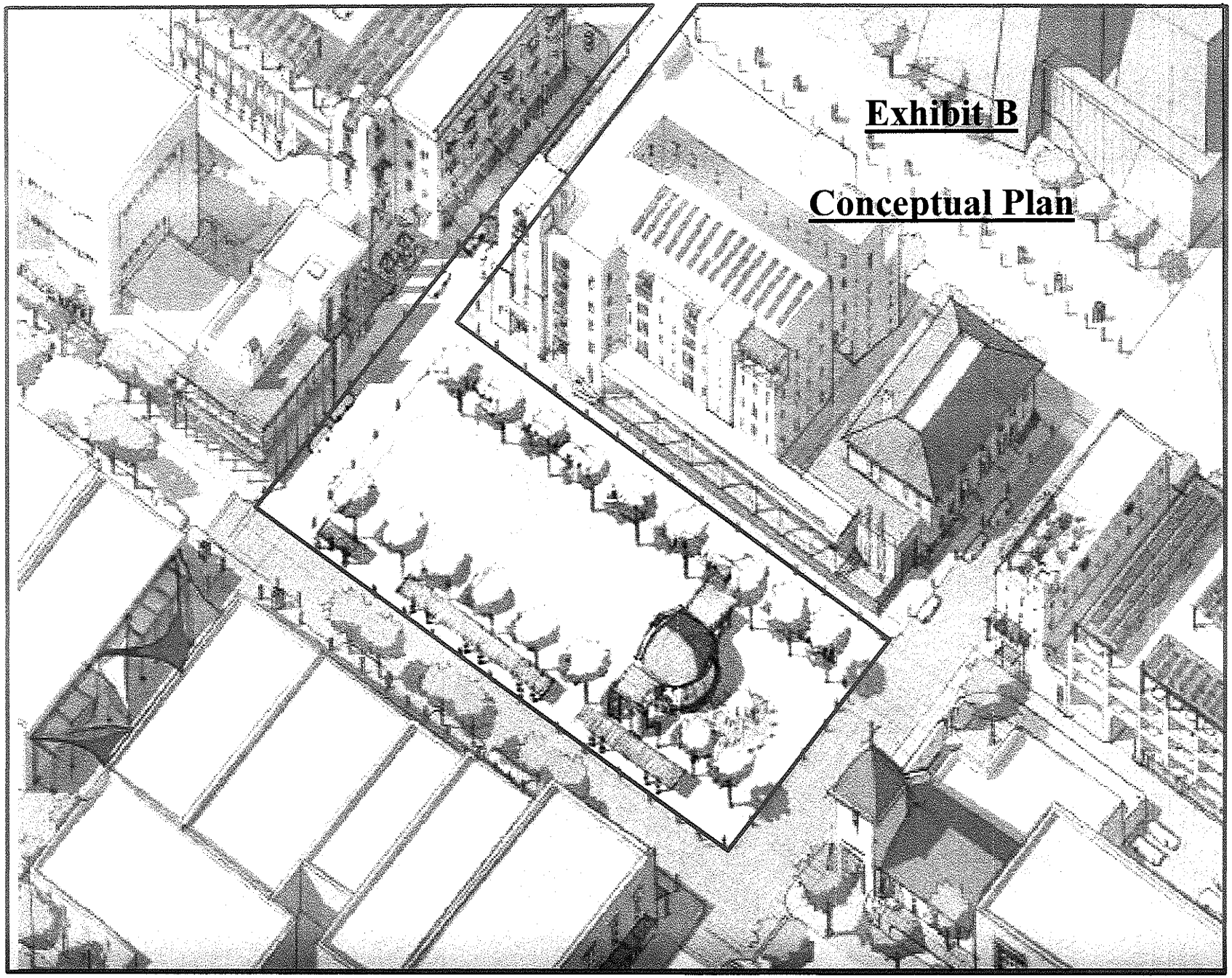


Exhibit B
Conceptual Plan

Exhibit C

Description of Plaza Improvements

The following improvements will be included in the Plaza:

1. DEMOLITION
    a. Organ Avenue. Remove existing pavement, curb and gutters, and sidewalks.
    b. Plaza Area. Demolish all asphalt drives, concrete curbs and drive-through structure.
    c. Utilities. Demolish existing sewer, water, gas, storm sewer, secondary electrical, lighting, and other utility lines as required for new construction. Final determination of need for new utility services will be coordinated with all serving utility companies.
    d. East Boundary Area. Demolish existing rock retaining wall.

2. STREETS
    a. Organ Avenue. Reconstructed from Main Street to Church Street, with two 11' driving lanes (concrete) for two-way traffic, and 5' concrete sidewalks. Details will generally match the design and construction of Main Street between Las Cruces Avenue and Griggs Avenue. Additional sidewalk width of 10' will be provided on the Plaza property to the south.
    b. East Street. Create new street on east side of Plaza, with same cross section as Organ Avenue.

3. STORM WATER MANAGEMENT
    a. Organ Avenue and East Street. Construct new storm sewer with curb inlets and catch basins with appropriate storm sewer piping to drain both streets. Connect to existing storm sewer below Organ Avenue.
    b. Plaza. Construct new storm sewer with catch basins with appropriate storm sewer piping to drain new Plaza area. Connect to existing storm sewer below Organ Avenue.

4. PUBLIC and PRIVATE UTILITIES
    a. Organ Avenue. Replace existing 14" water, 8" sewer, and 2" gas utility lines, with appropriate manholes, valves, connections, and building service/meter stub outs.
    b. East Street. Replace existing 2" gas utility line, with appropriate valves, connections, and building/meter stub outs.
    c. Fire Service. Coordinate with CLC Fire Department locations and quantities of fire hydrants, fire lanes, and fire alarm requirements.
    d. El Paso Electric. Coordinate location, sizing and location of existing and new primary electrical feeders, transformers and junction boxes for the Plaza improvements.
    e. Century Link. Coordinate location, sizing and location of existing and new communication feeders and junction boxes for the Plaza improvements.
    f. Comcast. Coordinate location, sizing and location of existing and new data feeders and junction boxes for the Plaza improvements.
    g. Fiber Optic Lines. Coordinate location, sizing and location of existing and new fiber optic trunk lines and junction boxes for the Plaza improvements.

5. PLAZA AMENITIES
    a. Hardscape. Install new concrete hardscape with scored concrete to match sidewalks on Main Street. Size and location will be finalized in Plaza design meetings with CLC administration.
    b. Retaining Walls. Install new concrete or rock retaining walls to accommodate 3' - 4' of slope across Plaza. Size and location will be finalized in Plaza design meetings with CLC administration.
    c. Plaza Furnishings and Amenities. Provide permanent benches, tables, trash receptacles, bike racks, and other amenities to generally match those on Main Street. Quantity and location will be finalized in Plaza design meetings with CLC administration.
    d. Multi-Purpose Entertainment Platform. Install foundation for new Plaza Multi-Purpose Entertainment Platform as determined in Plaza design meetings with CLC administration.
    e. Splash Fountain. Provide splash fountain in coordination with CLC and donor's funds. Size and location will be finalized in Plaza design meetings with CLC administration.
    f. Monuments. Coordinate with CLC and donors in selection of final location of monuments in Downtown area. Quantities and locations will be finalized in Plaza design meetings with CLC administration.

6. LANDSCAPE IMPROVEMENTS
    a. Organ Avenue and East Street. Provide concrete pedestal planters to match those on Main Street, with similar plant selections. Quantity and location will be finalized in Plaza design meetings with CLC administration.
    b. Plaza. Provide turf area, shade trees and tree wells, and planters commensurate with landscaping on Main Street. Quantity and location will be finalized in Plaza design meetings with CLC administration.
    c. Landscape Irrigation. Provide automatic landscape irrigation system for all planters, turf areas, and tree wells. Quantity and location will be finalized in Plaza design meetings with CLC administration.

7. SECURITY
    a. Street Closures. Provide removable street bollards as required. Quantity and location will be finalized in Plaza design meetings with CLC administration.
    b. Lighting. Provide security lighting for the Plaza area in accordance with the Night Sky Ordinance.

8. SIGNAGE
    a. Street Signage. Provide appropriate street and traffic signage similar to the signage on Main Street. Quantity and location will be finalized in Plaza design meetings with CLC administration.

9. PLUMBING SYSTEMS
    a. Water, Sewer and Gas. Provide service to building areas as required. Quantity and location will be finalized in Plaza design meetings with CLC administration and utility officials.

10. LIGHTING AND POWER
    a. Organ Avenue and East Street. Provide street light standards and lighted bollards along both streets to generally match the style of those on Main Street, with similar spacing. Provide 120v and 240v power points for food carts and general power. Quantity and location will be finalized in Plaza design meetings with CLC administration.
    b. Plaza. Provide light standards and lighted bollards in Plaza area to match those on Main Street. Provide 120v and 240v power points for food carts and general power. Provide support system and power for holiday lighting. Quantity and location will be finalized in Plaza design meetings with CLC administration.
    c. Multi-Purpose Entertainment Platform. Provide appropriate lighting and power for events and operations. Quantity and location will be finalized in Plaza design meetings with CLC administration.
    d. Main Power Distribution. Coordinate with El Paso Electric and CLC Parks Department to relocate and upgrade main power service from current location. Service size and location will be finalized in Plaza design meetings with CLC administration and EPE.
    e. Special Systems. Coordinate with CLC Parks and IT Departments for PA/sound systems, event lighting, and data/WiFi systems for Plaza area. Special Systems will be finalized in Plaza design meetings with CLC administration.

11. ST. GENEVIEVE MONUMENT
    a. Monument Relocation. Coordinate with the Las Cruces Catholic Diocese, the City, and CLC Parks Department for the relocation of this monument. Final location will be determined in Plaza design meetings with CLC administration and church officials.

12. MISCELLANEOUS
    a. Conformance and Compliance. All work on the Plaza improvements will conform to applicable CLC standards and specifications. If no CLC specifications exist, the improvements will comply with the appropriate industry standard of care.

Exhibit D

Form of General Warranty Deed

(statutory form to be provided after receipt from the Title Company)

Exhibit E

Escrow Fund Disbursement Schedule

The monthly payments by the Escrow Agent to Las Cruces Community Partners, LLC, for the Civic Plaza in accordance with this Contract for Sale of Improved Real Estate will be:

Payment #1:	25% of the Sales Price
Payments #2-#10	70% of the Sales Price divided by 9
Payment #11	5% of the Sales Price

Note: The disbursement schedule above assumes a 10-month installation schedule for the Plaza Improvements. If, from time to time, the installation schedule is revised, this Disbursement Schedule will also be revised, resulting in amended amounts for all payments except the first and last payments. For example, if the schedule was changed to a 12-month installation schedule for the Plaza Improvements, the disbursement schedule would be revised to the following:

Payment #1:	25% of the Sales Price
Payments #2-#12	70% of the Sales Price divided by 11
Payment #13	5% of the Sales Price

Exhibit F

Plaza Improvements Conveyance Deed

(statutory form to be provided after receipt from the Title Company)

DOWNTOWN PLAZA EXHIBIT G

WITHIN BLOCKS 15, AND 18, OF THE DOWNTOWN URBAN RENEWAL PROJECT N.M.R.-4,
FILED NOVEMBER 2, 1973 IN PLAT RECORD 11, PAGES 74 TRU 82 ALSO THE DOWNTOWN URBAN RENEWAL PROJECT
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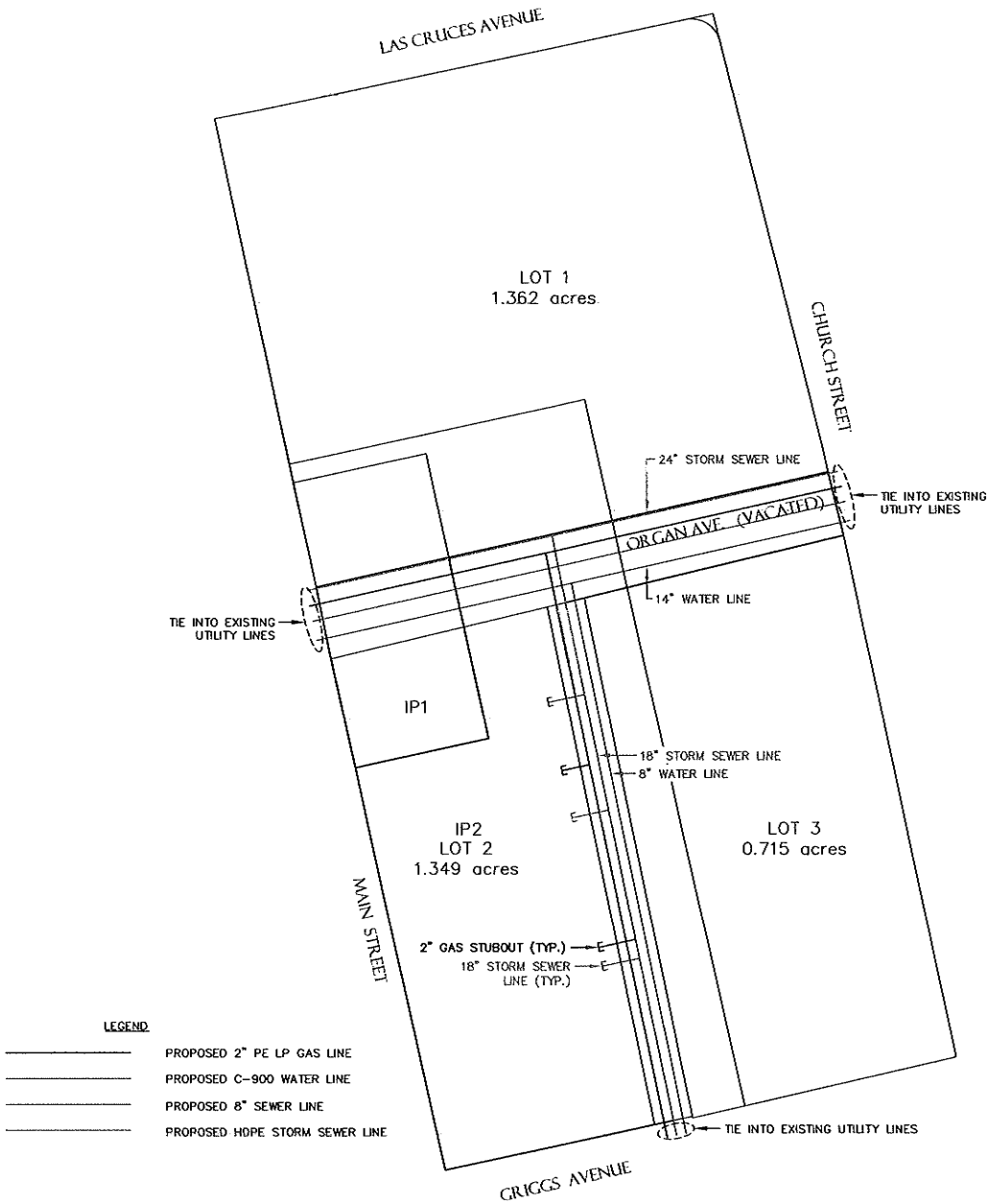

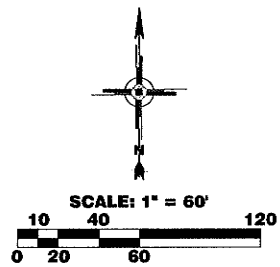

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Phone: (575) 532-1526
Fax: (575) 532-1587

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