LEASE

(4704 College Avenue, San Diego, CA 92115)

by and between

THE CITY OF SAN DIEGO,
a California municipal corporation

and

COLLEGE AREA ECONOMIC DEVELOPMENT CORPORATION,
a California Public Benefit Corporation

LEASE

(4704 College Avenue, San Diego, CA 92115)

This LEASE ("**Lease**") is dated as of the Commencement Date (defined in Section 2.15), between THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), and COLLEGE AREA ECONOMIC DEVELOPMENT CORPORATION, a California public benefit corporation ("**Tenant**").

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, LANDLORD AND TENANT AGREE AS FOLLOWS:

1. **PURPOSES.** As of the Commencement Date, Landlord owns the Premises (defined in Section 2.73). Landlord previously leased the Premises to Tenant under that certain City of San Diego Public Purpose Lease signed February 19, 2020. Landlord and Tenant are entering into this Lease to establish the terms of Tenant's occupancy of the Premises on and after the Commencement Date. This Lease serves the public purpose of providing a united voice for community members and giving business owners within the College Area BID (defined in Section 2.14) the ability to flourish.

2. **DEFINITIONS.** In addition to words, terms, or phrases defined elsewhere in this Lease, the following words, terms, or phrases indicated to be defined terms in this Lease by initial capitalization are used in this Lease with the following meanings:

2.1 Additional Rent. All sums this Lease requires Tenant to pay Landlord or any other Person, whether expressly called Additional Rent, except Base Rent.

2.2 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. Affiliated shall have the correlative meaning.

2.3 Application. Each application, document, or submission (or amendment of any of the foregoing) necessary or appropriate for Tenant to pursue or obtain an Approval for Construction this Lease allows or an Approval to use or operate the Premises in accordance with this Lease.

2.4 Approval. All licenses, permits (including building, grading, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any Construction, or for the use, occupancy, maintenance, or operation of the Premises in accordance with this Lease.

2.5 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 United States Code or any other or successor state or Federal statute relating to assignment for the

benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.6 Base Rent. Four Thousand Five Hundred Thirty-Two and 50/100 Dollars ($4,532.50), as adjusted annually under Section 7.

2.7 Business Day. Monday through Friday, except City holidays when City offices are closed.

2.8 Business Improvement District. A type of assessment district in which business owners choose to be assessed a fee, which the City collects on their behalf for use in promoting and improving the business area.

2.9 Casualty. Any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting the Premises, whether or not insured or insurable.

2.10 Certifying Party. Defined in Section 29.

2.11 City. The City of San Diego, a California municipal corporation.

2.12 City Attorney. City Attorney of the City of San Diego, California.

2.13 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine, or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature), or any judgment.

2.14 College Area BID. The Business Improvement District established on February 20, 1996, under San Diego Ordinance No. O-18263.

2.15 Commencement Date. The first day of the calendar month immediately following the calendar month in which this Lease is approved as to form by the City Attorney, unless the date of such approval is the first day of a calendar month, in which case the Commencement Date shall be the same date as the date on which this Lease is approved as to form by the City Attorney.

2.16 Condemnation. All the following: (a) any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Premises by condemnation, eminent domain, or any similar proceeding; or (b) Government action not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any part of the Premises, but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.

2.17 Condemnation Award. All award(s) paid or payable (whether or not in a separate award) to a Party after the Commencement Date, because of or as compensation for a Condemnation, including: (a) an award made for improvements that are the subject of the Condemnation; (b) the full amount of money paid or payable or other value deliverable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation

proceeding; (c) all interest on such award; and (d) all other monetary amounts payable on account of such Condemnation.

2.18 Condemnation Effective Date. For any Condemnation, the earlier of: (a) the first date when the condemning authority acquires title to or possession of any part of the Premises that is the subject of the Condemnation; or (b) the commencement of Government action creating a physical right to compensation, but not resulting in an actual transfer of an interest in or right to use or occupy the Premises.

2.19 Construction. Any alteration, construction, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration, or other work affecting the Premises, including new construction.

2.20 Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person or bind such Person, whether by ownership of Equity Interests, by contract, or otherwise.

2.21 Controlling and Controlled. Exercising or having Control.

2.22 Council. The City Council of the City.

2.23 County. The County of San Diego, California.

2.24 CPI. Defined in Section 7.1.1.

2.25 Default. Any Monetary Default or Non-Monetary Default.

2.26 Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per year; or (b) the highest rate of interest, if any, that Law allows under the circumstances.

2.27 Depository. A Federal or State chartered bank selected by Landlord.

2.28 Environmental Condition. Any of the following events relating to the Premises: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

2.29 Environmental Law. Each Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation,

control, disposal, generation, storage, release, discharge, transportation, use of, or liability, or standards of conduct concerning, Hazardous Substances.

2.30 Equipment. All fixtures incorporated in the Premises by either Landlord or Tenant, and used, useful, or necessary to operate the Premises.

2.31 Equity Interest. All or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any Person.

2.32 Estoppel Certificate. A written certification of each of the following: (a) the nature of the Certifying Party's interest in the Premises and all Transfers of which the Certifying Party is aware, except as otherwise disclosed in the public record; (b) this Lease is unmodified and in full force and effect, or, if there have been modifications, that this Lease is in full force and effect, as modified, in the manner specified in the certification; (c) to the Certifying Party's knowledge (meaning to the current, actual knowledge of the Mayor, in the case of Landlord, or the Tenant Official, in the case of Tenant, each without any duty of inquiry or investigation), there are no uncured breaches, Defaults or failures to perform under this Lease on the part of the Requesting Party or the Certifying Party or specifying any such breaches, Defaults or failures claimed to exist; (d) the dates to which any amounts of Rent have been paid by or to the Requesting Party in advance; (e) the Commencement Date and the Scheduled Expiration Date; and (f) any other matters reasonably requested by the Requesting Party.

2.33 Event of Default. Defined in Section 24.1.

2.34 Expiration Date. The date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord's exercise of remedies after an Event of Default, or otherwise.

2.35 Federal. Relating or under the authority of the federal government of the United States of America.

2.36 Fee Estate. Landlord's fee estate in the Premises, including Landlord's reversionary interest in the Premises after the Expiration Date.

2.37 FF&E. All movable furniture, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Equipment) used for the Permitted Use that may be removed, without material damage to the Premises, and without adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as furniture, telephone, telecommunications, and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, computer systems, and peripherals.

2.38 Government. Every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the Federal government of the United States of America, the State and County governments and their subdivisions and municipalities, including

Landlord (in Landlord's governmental capacity), any planning commission, board of standards and appeals, building department, zoning board of appeals, design review board or committee, the California Coastal Commission, and all other applicable governmental agencies, authorities, and subdivisions having or claiming jurisdiction over the Premises or any activities on or at the Premises.

2.39 Gross Revenue. The sum of all the following: (a) the gross amount of cash paid, or to be paid; (b) the fair market value of other property transferred or to be transferred; (c) the outstanding amount of Tenant liabilities assumed, or to be assumed; (d) the value of any liability forgiveness provided to Tenant; or (e) in the case of a Transfer, sublease, or license without any of the previously described forms of consideration, the fair market value of the estate or interest in the property transferred. Any fair market value determination shall be as of the date of the subject Transfer, sublease, or license.

2.40 Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any "hazardous" or "toxic" material, substance or waste defined by those or similar terms or regulated as such under any Law, any matter, waste or substance subject to any Law regulating, relating to or imposing obligations, liability, or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or form of energy from whatever source; provided, however, Hazardous Substance shall not include any household chemical products in normal quantities used for operation and maintenance of the Premises in compliance with Law.

2.41 Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into or from the Premises, or relating to transportation of any Hazardous Substance to or from the Premises (whether on its own or contained in other material or property), or arising at any time from the use, occupancy, or operation of the Premises or any activities conducted at, on, under or in the Premises whether or not caused by a Party or occurring before or after the Commencement Date.

2.42 Immaterial Loss. A Casualty or Condemnation resulting in a Loss of ten thousand dollars ($10,000) or less.

2.43 Improvements. All improvements located on the Premises from time to time.

2.44 Indemnify. Where this Lease states that any Indemnitor shall "Indemnify" any Indemnitee from, against, or for a particular Claim, the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise), including all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Claim; or (b) in enforcing the Indemnitor's indemnity obligation

regarding the Claim. "Indemnified," "Indemnification," or similar terms shall have the correlative meanings.

2.45 Indemnitee. A Person entitled to be Indemnified under this Lease.

2.46 Indemnitor. A Person agreeing to Indemnify any other Person under this Lease.

2.47 Insubstantial Condemnation. Any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

2.48 Landlord. Initially, means the Landlord named in the initial paragraph of this Lease. After every transfer or conveyance of the Fee Estate, "Landlord" means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a transfer or conveyance of the entire Fee Estate occurs (in all cases in compliance with this Lease), the transferor shall be entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such transfer or conveyance.

2.49 Landlord Default. The occurrence of any of the following, subject to Landlord's right to Notice and opportunity to cure in accordance with Section 24.12: (a) any material failure by Landlord to perform its obligations under this Lease; or (b) Landlord's failure to comply with any material restriction or prohibition in this Lease.

2.50 Landlord Parties. Collectively, Landlord, its City Council, elected officials, officers, employees, and agents.

2.51 Landlord Party. Individually, Landlord, its City Council, elected officials, officers, employees, or agents.

2.52 Law. All laws, ordinances, requirements, orders, proclamations, directives, rules, or regulations of any Government affecting the Premises, this Lease, or the Permitted Use, in any way, including any development, use, maintenance, taxation, operation, or occupancy of, or environmental condition affecting, the Premises, or the Permitted Use, or relating to any taxes, or otherwise relating to this Lease, the Premises, the Permitted Use, or any Party's rights, obligations, or remedies under this Lease, whether in force on the Commencement Date or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

2.53 Lease Year. Each of: (a) the period from the Commencement Date through the day before the first anniversary of the Commencement Date; and (b) every subsequent period of twelve (12) calendar months beginning on an anniversary of the Commencement Date and ending on the day before the immediately following anniversary of the Commencement Date during the Term. Each Lease Year is referred to in this Lease in consecutive chronological order, starting with "Lease Year 1" and continuing with "Lease Year 2," and "Lease Year 3."

2.54 Leasehold Estate. Tenant's leasehold estate in the Premises, and all Tenant's rights and privileges under this Lease, upon and subject to all the terms and conditions of this Lease.

2.55 Legal Costs. For any Person, means all reasonable costs and expenses such Person incurs

in any legal proceeding (or other matter for which such Person is entitled to be reimbursed or Indemnified for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, including in or as a result of any: (a) Bankruptcy Proceeding; (b) litigation between the Parties; (c) negotiating or documenting any agreement, certificate or other matter with a Third Person requested by the other Party; (d) requirement or request that such Person or its employees act as a witness in any proceeding regarding this Lease or the other Party; or (e) review or approval that the other Party requests of such Person. All references to Legal Costs of Landlord shall include the salaries, benefits and costs of the City Attorney in representing Landlord and the lawyers employed in the City Attorney's office who provide legal services regarding a particular matter, adjusted to or billed at an hourly rate based on their respective salary and multiplied by the time spent on such matter rounded to increments of 1/10th of an hour, in addition to Legal Costs of outside counsel retained by Landlord for any matter.

2.56 Loss. Any Casualty, Condemnation, or other damage or injury to the Premises.

2.57 Loss Proceeds. Any Condemnation Award(s) or Property Insurance Proceeds.

2.58 Maintenance Deficiency. Defined in Section 10.3.

2.59 Maintenance Standard. Defined in Section 10.2.

2.60 Market Value. Regarding either the Fee Estate or the Leasehold Estate, as applicable, means, as of any date of determination, the present fair market value of such estate (including the fair market value of the rights of the holder of such estate in and to any improvements) as of such date, considered: (a) as if no Loss occurred; (b) without adjusting for any expectation of any Loss; (c) as if the Leasehold Estate was not terminated; (d) taking into account the benefits and burdens of this Lease, the remaining Term, and all other matters affecting such estate and its valuation, in accordance with then current appraisal practices; and (e) discounting to present value all the obligations and benefits associated with such estate (including, in the case of the Fee Estate, the Rent and Landlord's reversion). The Market Value shall be determined as if the Term were to continue until the Scheduled Expiration Date.

2.61 Mayor. The Mayor, from time to time, of Landlord or such Person's designee or successor in function, or, if the Fee Estate is transferred to a Person other than Landlord, then such Fee Estate owner's representative designated in a Notice to Tenant.

2.62 Modification. Any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of a specified agreement, document, or terms.

2.63 Modify. Agree to, cause, make, or permit any Modification.

2.64 Monetary Default. Any failure by Tenant to: (a) pay, when and as this Lease requires, any Rent, including Additional Rent, whether to Landlord or to a Third Person; (b) properly apply any Loss Proceeds or other money, if any, that this Lease requires Tenant to apply in a particular manner or for a particular purpose; (c) comply with all obligations regarding Prohibited Liens set

forth in Section 13; or (d) obtain, replace, maintain, or pay premiums for (or give Landlord written evidence of) any insurance coverage when and as this Lease requires.

2.65 Non-Monetary Default. The occurrence of any of the following, except to the extent constituting a Monetary Default: (a) any breach by Tenant of its obligations under this Lease; (b) Tenant's failure to comply with any restriction or prohibition in this Lease; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Lease by Tenant.

2.66 Notice. Any approval, consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default or termination of this Lease or Notice of a Landlord Default. Notices shall be delivered, and shall become effective, only in accordance with Section 26.

2.67 Notify. Give a Notice.

2.68 Parties. Collectively, Landlord and Tenant.

2.69 Party. Individually, Landlord or Tenant, as applicable.

2.70 Permitted Exceptions. Each of the following matters: (a) taxes not on rolls; (b) the lien of Real Estate Taxes, if any, relating to the Leasehold Estate because of the creation of the Leasehold Estate under this Lease; (c) all adverse claims based upon the assertion that some portion of said land is tide or submerged lands or has been created by artificial means or has accreted to such portion so created; (d) zoning, environmental, municipal, building, and all other Laws imposed by any Federal, State, municipal, or local government or any public or quasi-public board, authority, or similar agency having jurisdiction over the Premises; (e) all Applications made at Tenant's request or all Approvals issued because of such Applications; (f) matters consented to or otherwise caused by Tenant; and (g) all liens, encumbrances, covenants, conditions, restriction, reservations, contracts, permits, licenses, easement or rights-of-way relating to or affecting the Premises, whether or not of record.

2.71 Permitted Use. Conducting business and providing technical assistance to help small business owners within the College Area BID increase their exposure to economic opportunities ("BID Services"). The Premises are also available to College Area community groups for meetings and gatherings. City may approve in writing additional allowed uses that are in compliance with the primary purpose of activities for the general public, from time to time and in City's sole discretion. Each and all allowed uses shall be conducted in compliance with all applicable laws, rules, regulations, and directives of competent governmental authorities.

2.72 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

2.73 Premises. The real property specifically described in **EXHIBIT A** attached to this Lease, including all improvements located on such real property on or after the Commencement Date. The Premises are generally depicted and shown, as of the Commencement Date, in **EXHIBIT A.**

2.74 Prevailing Wage Law. Defined in **EXHIBIT E,** Section 1.

2.75 Prevailing Wage Determination. Any of the following: (a) any determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781 or 1782.

2.76 Prohibited Lien. Any deed of trust, mortgage, or other security instrument securing repayment of money encumbering the Leasehold Estate, or any mechanic's, vendor's, laborers,z or material supplier's statutory lien or other similar lien against the Leasehold Estate arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to or on behalf of Tenant (or anyone claiming through Tenant).

2.77 Prohibited Transferee. Any Person: (a) with whom Landlord is in litigation at the time the Transfer to such Person is made or is to be made by Tenant, exclusive of defendants in eminent domain litigation commenced by Landlord where the right of Landlord to take the subject property is not challenged; (b) that Landlord reasonably determines has any connection with any terrorist organization, including, any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States or any Person identified as a specially designated national or blocked person by the United States Department of the Treasury listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by laws, rules, regulations or executive orders, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (c) that is entitled to claim diplomatic immunity; (d) that is a domestic or foreign governmental entity; or (e) that is immune or may elect to be immune from suit under State or Federal law.

2.78 Property Insurance. Defined in **EXHIBIT C.**

2.79 Property Insurance Proceeds. Net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Landlord, Tenant, or Depository, excluding proceeds of Tenant's business interruption insurance exceeding Rent.

2.80 Real Estate Taxes. All general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes and the like), supplemental taxes, possessory interest taxes, special taxes imposed under the Mello-Roos Community Facilities District Act or other special taxing district, assessments, municipal water and sewer rents, rates or charges, excises, levies, license and permit

fees, fines, penalties and other Governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever that at any time during the Term and applicable to the Term or any part of it that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or any vault, passageway or space in, over or under any street constituting a portion of the Premises, or any FF&E, Equipment or other facility used in the operation of the Premises, or the rent or income received from the Premises, or any use or occupancy of the Premises. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and that Tenant may be subject to payment of property taxes levied on such interest. Any possessory interest tax imposed shall be solely a tax liability of Tenant and shall be paid before delinquency by Tenant. If at any time during the Term, the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy (including any municipal, State or Federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Premises or any rent or income from the Premises and imposed upon Landlord, then all such new taxes, assessments, levies, real estate taxes, or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the term "Real Estate Taxes," to the extent that such Real Estate Taxes would be payable, if the Premises were the only property of Landlord subject to such Real Estate Taxes.

2.81 Rent. Collectively, Base Rent and all Additional Rent.

2.82 Requesting Party. Defined in Section 29.

2.83 Restoration. After a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining improvements, substantially equivalent to their condition before the Loss, subject to any changes in Law limiting the foregoing.

2.84 Restoration Funds. Any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

2.85 Restore. Accomplish a Restoration.

2.86 Scheduled Expiration Date. 11:59 p.m., Ten Years from Execution Date.

2.87 SDMC. Defined in Section 9.10.

2.88 Sign. Defined in Section 9.12.

2.89 State. The State of California.

2.90 Substantial Condemnation. Any Condemnation that: (a) takes the entire Premises; or (b) in Tenant's reasonable determination renders the remainder of the Premises Uneconomic.

2.91 Temporary Condemnation. A Condemnation of the temporary right to use or occupy all or part of the Premises.

2.92 Tenant. BFS Group of California LLC, a Delaware limited liability company, and its permitted successors or assigns under this Lease.

2.93 Tenant Improvements. Items that are or are to be installed on the Premises by or for the benefit of Tenant, such as floor coverings, wall coverings, walls and doors that are not load bearing, window treatments, and other similar items.

2.94 Tenant Official. A Person holding a senior level management position with Tenant who has intimate knowledge regarding operation of the Premises, as designated by Notice from Tenant to Landlord, from time to time. On the Commencement Date, the Tenant Official is Jim Schneider, Executive Director of College Area Economic Development Corporation.

2.95 Tenant Parties. Collectively, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, and owners of Equity Interests in Tenant.

2.96 Tenant Party. Individually, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, or owners of Equity Interests in Tenant.

2.97 Term. Defined in Section 4.

2.98 Third Person. Any Person that is not a Party, an Affiliate of a Party or an elected official, director, officer, shareholder, member, principal, partner, manager, owner of an Equity Interest, employee, or agent of a Party.

2.99 Transfer. Any of the following events, whether occurring by operation of law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of Tenant's legal, beneficial, or equitable interest in this Lease; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in Tenant by the owner(s) of such Equity Interest(s); (c) any transaction described in clause "(b)" affecting any Equity Interest(s) or any owner of Equity Interests (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "(b)" through "(d)," shall be deemed a Transfer by Tenant even though Tenant is not technically the transferor. A "Transfer" shall not, however, include any of the foregoing (provided that the other Party to this Lease has received Notice of such event) relating to any Equity Interest: (i) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; or (ii) to any Person that, as of

the Commencement Date, holds an Equity Interest in the Person whose Equity Interest is being transferred.

2.100 Unavoidable Delay. A delay in either Party performing any obligation under this Lease arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, Casualty, war, acts of terrorism, riots, Government action or inaction, regional natural disasters, or inability to obtain materials, except for the payment of money, unless the delay in the payment of money is due to one of the causes described above that prevents or materially limits the ability to transfer funds by or between Federally regulated financial institutions. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

2.101 Uneconomic. The Premises: (a) are materially diminished in value or utility; (b) cannot be used for the intended purpose; (c) are subject to material impairment of access to, required parking facilities, or any material service(s) necessary or appropriate for economic operation; (d) require Restoration at a total cost that Tenant reasonably estimates in writing would exceed 1.5 times the then-current Market Value of the Premises; (e) do not comply with the operating requirements under a necessary Approval held by Tenant; or (f) cannot reasonably be operated as the Premises, whether in a manner substantially equivalent to past practice or on a scale that is smaller but nevertheless profitable (after taking into account the payment of all expenses, including Rent as adjusted after any Condemnation) and reasonably feasible.

2.102 User Fee. Defined in Section 7.3.

3. **LEASING AND HIRING.** Landlord leases the Premises to Tenant and Tenant hires the Premises from Landlord, subject to the Permitted Exceptions, for the Term, upon the terms and conditions of this Lease.

4. **TERM.** The term of this Lease ("**Term**") shall be ten (10) years and shall: (a) begin on the Commencement Date; and (b) end on the earlier of the Scheduled Expiration Date or an earlier Expiration Date occurring under the terms of this Lease.

5. **QUIET ENJOYMENT.** During the Term, Landlord covenants that Tenant shall and may peaceably and quietly enjoy the Premises for the Term, without molestation, hindrance, or disturbance by or from Landlord, subject to the terms and conditions of this Lease. The covenant of quiet enjoyment under this Lease is limited to occupancy of the Premises and express rights under this Lease. No implied or inferred rights are intended under this covenant. This covenant also is not intended to limit Landlord's governmental police or regulatory powers.

6. **PREMISES DELIVERY CONDITION.**

6.1 Delivery. Landlord shall deliver possession of the Premises to Tenant on the Commencement Date subject to the Permitted Exceptions.

6.2 Acceptance. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5, ON THE COMMENCEMENT DATE, TENANT ACCEPTS THE PREMISES IN THE PREMISES' "AS IS/WHERE IS" CONDITION, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO TITLE, PHYSICAL CONDITION, SOIL

CONDITION, THE PRESENCE OR ABSENCE OF FILL, OCEAN OR TIDAL IMPACTS, SHORING OR BLUFF STABILITY OR SUPPORT, SUB-SURFACE SUPPORT, ZONING, LAND USE RESTRICTIONS, THE AVAILABILITY OR LOCATION OF UTILITIES OR SERVICES, THE LOCATION OF ANY PUBLIC INFRASTRUCTURE ON OR OFF OF THE PREMISES (ACTIVE, INACTIVE OR ABANDONED), THE SUITABILITY OF THE PREMISES FOR ANY PARTICULAR USE OR THE EXISTENCE OR ABSENCE OF HAZARDOUS SUBSTANCES (EXCEPTING ANY HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD) AND WITH FULL KNOWLEDGE OF THE PHYSICAL CONDITION OF THE PREMISES, THE NATURE OF LANDLORD'S INTEREST IN AND USE OF THE PREMISES, ALL LAWS APPLICABLE TO THE PREMISES, AND THE PERMITTED EXCEPTIONS. TENANT ACKNOWLEDGES, AGREES, AND REPRESENTS TO LANDLORD ALL THE FOLLOWING: (A) TENANT HAD AMPLE OPPORTUNITY TO INSPECT AND EVALUATE THE PREMISES AND THE FEASIBILITY OF THE USES AND ACTIVITIES TENANT IS ENTITLED TO CONDUCT ON THE PREMISES; (B) TENANT HAS RELIED AND WILL RELY ENTIRELY ON TENANT'S EXPERIENCE, EXPERTISE AND ITS OWN INSPECTION OF THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE IN ENTERING INTO THIS LEASE; (C) TENANT ACCEPTS THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE; AND (D) TO THE EXTENT TENANT'S OWN EXPERTISE WITH RESPECT TO ANY MATTER RELATING TO THE PREMISES IS INSUFFICIENT TO ENABLE TENANT TO REACH AN INFORMED CONCLUSION ABOUT SUCH MATTER, TENANT ENGAGED THE SERVICES OF PERSONS QUALIFIED TO ADVISE TENANT WITH RESPECT TO SUCH MATTERS. TENANT'S SIGNATURE ON THIS LEASE CONSTITUTES TENANT'S ACKNOWLEDGMENT, AGREEMENT, REPRESENTATION AND WARRANTY TO LANDLORD THAT TENANT RECEIVED ASSURANCES ACCEPTABLE TO TENANT BY MEANS INDEPENDENT OF THE LANDLORD PARTIES OF THE TRUTH OF ALL FACTS MATERIAL TO TENANT'S ENTRY INTO THIS LEASE AND THAT TENANT IS ENTERING INTO THIS LEASE AS A RESULT OF ITS OWN KNOWLEDGE, INSPECTION, AND INVESTIGATION OF THE PREMISES AND NOT AS A RESULT OF ANY REPRESENTATION MADE BY ANY LANDLORD PARTY RELATING TO THE CONDITION OF THE PREMISES. TENANT HAS NOT RELIED AND IS NOT RELYING ON ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN REPRESENTATION OR WARRANTY MADE BY ANY LANDLORD PARTY OR ITS REPRESENTATIVE. LANDLORD SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE PREMISES ON THE COMMENCEMENT DATE.

6.3 Hazardous Substances. LANDLORD SHALL HAVE NO LIABILITY TO TENANT OR TENANT'S SUCCESSORS, ASSIGNS, OR OTHERS WHO ACQUIRE AN INTEREST IN THE PREMISES FROM OR THROUGH TENANT WITH RESPECT TO THE CURRENT OR FUTURE PRESENCE OF ANY HAZARDOUS SUBSTANCE ON THE PREMISES, EXCEPT TO THE EXTENT OF A HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD.

6.4 Waivers and Releases. BY ENTERING INTO THIS LEASE, TENANT WAIVES AND RELEASES LANDLORD AND ITS REPRESENTATIVES FROM ALL CLAIMS RELATING TO THE CONDITION OF THE PREMISES AS OF THE COMMENCEMENT DATE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, EXCEPT AS

EXPRESSLY SET FORTH IN SECTION 6.5. WITH RESPECT TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 6.4, TENANT WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL SIMILAR PROVISIONS AND PRINCIPLES OF LAW. CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6.5 Specific Exclusions. THE FOREGOING GENERAL RELEASE NOTWITHSTANDING, TENANT IS NOT RELEASING LANDLORD FROM: (1) LANDLORD'S EXPRESS COVENANTS UNDER THIS LEASE; OR (2) LIABILITY FOR A HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD. NOTHWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD RETAINS ALL AVAILABLE DEFENSES OR IMMUNITIES OF LANDLORD UNDER APPLICABLE LAW.

JPC

Initials of Authorized
Tenant Representative(s)

6.6 Asbestos Disclosure. Portions of the Improvements may contain asbestos. Tenant acknowledges receipt of written notice from Landlord of the presence of such asbestos in accordance with California Health and Safety Code section 25915. Tenant shall disclose to all appropriate Persons the existence of asbestos on the Premises as required by California Health and Safety Code section 25915. Tenant shall Indemnify Landlord against all Claims arising from or relating to the existence of asbestos on the Premises and Tenant's use or occupancy of the Premises.

6.7 Asbestos Remediation. If Tenant makes improvements, alterations, or repairs to the Improvements, Tenant shall be responsible for performance of all associated asbestos removal, management, remediation, or containment and all costs associated with such activities. Asbestos removal, management, remediation, or containment shall be conducted only with Landlord's prior written consent and in accordance with all applicable Laws.

7. RENT.

7.1 Base Rent. Tenant shall pay Base Rent to Landlord in advance on or before the Commencement Date and thereafter on or before the anniversary of the Commencement Date for each Lease Year during the Term as part of the consideration to Landlord for leasing Tenant the Premises for the Permitted Use under this Lease. Base Rent shall increase on the first day of Lease Year 2 and each subsequent Lease Year, as provided in Section 7.1.3.

7.1.1 *CPI.* The United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for all Urban Consumers (CPI-U) all items published for the San Diego-Carlsbad Metropolitan Statistical Area currently using a base of 1982-1984 = 100 or any revision to this

index or successor index that tracks the same data. If the CPI ceases to be published, with no successor index, then the Parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

7.1.2 *CPI Adjustment Factor.* As of any date, the greater of: (a) 1.00; or (b) the CPI for such date divided by the CPI for the Commencement Date.

7.1.3 *Periodic Increases in Base Rent.* On the first day of Lease Year 2 (the first adjustment occurring on such date) and on the first day of every Lease Year thereafter, the Base Rent shall be increased by the amount determined by multiplying the Base Rent in effect during the immediately preceding Lease Year by four percent (4%). If the CPI Adjustment Factor is greater than four percent, then the CPI Adjustment Factor will be used instead. Following the effective date of each increase in the Base Rent under this Section 7.1.3, City shall Notify Lessee of the increased Base Rent, with reasonable detail about the calculation of the increased Base Rent. Each such Notice may be given by City at any time following an increase in the Base Rent under this Section 7.1.3. Lessee shall pay to City all increased Base Rent accrued between the effective date of such Base Rent increase under this Section 7.1.3 and City's Notice of such Base Rent increase, within thirty (30) days following Notice of the subject increase. Until City gives Lessee Notice of a Base Rent increase, Lessee shall continue to pay the Base Rent in effect prior to delivery of such Notice, subject to Lessee's obligation to pay increased Base Rent amounts accrued between the effective date of such increase in the Base Rent under this Section 7.1.3 and City's Notice of such increase in the Base Rent under this Section 7.1.3.

7.2 Payment. Base Rent is payable to Landlord's City Treasurer in lawful money of the United States of America. Base Rent payments shall be delivered to Landlord as follows:

By first-class mail through the United States Postal Service with all postage pre-paid and addressed to:	By hand delivery to:
The City of San Diego Office of the City Treasurer P.O. Box 129030 San Diego, California 92112-9030	Office of the City Treasurer Civic Center Plaza 1200 Third Avenue, First Floor San Diego, California 92101

7.3 User Fee. As part of the consideration to Landlord for renewing and entering into this Lease, Tenant shall pay Landlord a one-time renewal processing payment of $5,000 ("**User Fee**") in lawful money of the United States of America within five (5) days after the Commencement Date at the City's Department of Real Estate and Airport Management at Civic Center Plaza, 1200 Third Avenue, Suite 1700, San Diego, California 92101. Checks must be made payable to the City Treasurer. Checks only constitute payment when collected.

7.4 Required Payment Information. Tenant shall include Landlord's customer account number for Tenant with each Base Rent payment. Tenant's failure to include its Landlord customer account number may result in Tenant's payment not being timely applied to Tenant's account and the application of late payment charges. Tenant assumes all risk of loss and responsibility for all late

payment charges or administrative fees under Section 24.7 arising from its failure to include its Landlord customer account number with a Base Rent payment. The place of payment may be changed at any time by Landlord upon thirty (30) days prior Notice to Tenant. Checks only constitute payment when collected. Tenant assumes all risk of loss and responsibility for late payment charges or administrative fees under Section 24.7 if payments are sent by mail.

7.5 Invoicing Courtesy. Landlord may invoice Tenant for monetary amounts payable under this Lease. However, any such invoicing is a courtesy only. Tenant shall make all payments becoming due under this Lease on or before each applicable due date, regardless of whether or not Landlord invoiced the required payment.

7.6 Additional Rent. In addition to Base Rent, Tenant shall pay to Landlord (or the appropriate Third Person, as applicable) all Additional Rent. Except where this Lease expressly provides otherwise, Tenant shall pay all Additional Rent prior to delinquency.

7.7 No Offsets. Tenant shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

7.8 No Allocation to FF&E. No Rent is allocable to any FF&E, Construction, or Tenant Improvements.

8. ADDITIONAL PAYMENTS BY TENANT; TAXES.

8.1 Landlord's Net Return. This Lease shall constitute an absolutely "net" lease. The Rent shall give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Premises. Tenant shall pay as Additional Rent and discharge before delinquency each item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Restoration or Construction affecting, the Premises, except: (a) Landlord's administrative expenses; or (b) liability for any Hazardous Substance Discharge by Landlord.

8.2 Real Estate Taxes. Tenant shall pay and discharge all Real Estate Taxes payable or accruing for all period(s) within the Term before delinquency. Tenant shall also pay all interest and penalties assessed for late payment of Real Estate Taxes this Lease requires Tenant to pay. Tenant shall within a reasonable time after Notice from Landlord give Landlord reasonable proof that Tenant paid all Real Estate Taxes this Lease requires Tenant to pay. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and Real Estate Taxes include all possessory interest taxes imposed as a result of this Lease.

8.3 Personal Property Taxes. Tenant shall pay and discharge all personal property taxes payable or accruing for all period(s) within the Term relating to all personal property stored at, used in the operation of, or otherwise relating to the Premises before delinquency. Tenant shall also pay all interest and penalties assessed for late payment of any such personal property tax.

8.4 Documentary Transfer Tax. Tenant shall pay all documentary transfer taxes imposed by the State, the County or other Government under California Revenue and Taxation Code Sections 11911, *et seq.*, with respect to entry into this Lease, each Modification to this Lease, each extension of this Lease, each Transfer, or otherwise imposed regarding this Lease or Tenant.

8.5 Transfer of Leasehold Estate. Without limiting the generality of Tenant's obligations to pay Real Estate Taxes and subject to the limitations on Transfers in this Lease, Tenant agrees that it shall pay all increases in Real Estate Taxes resulting from a change in ownership of the Leasehold Estate.

8.6 Utilities. Tenant shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, television, internet, satellite, and other similar charges or services, and the expenses of installation, maintenance, use, and service relating to all such items for the Premises during the Term. All utilities on the Premises shall be installed underground and shall be used for Tenant's operations only. Landlord shall have no responsibility for providing or paying for any utilities or services for the Premises during the Term. Landlord shall not be liable for any interference with or disruption of any utilities or services for the Premises, unless such interference or disruption results solely from Landlord's gross negligence or willful misconduct while acting in its proprietary capacity, except to the extent Landlord is immune under applicable law and subject to any defense to such liability available to Landlord.

8.7 Unauthorized Use Charge. Tenant shall pay Landlord one hundred percent (100%) of the Gross Revenue, without any deduction, credit, or set-off, from any use of the Premises that is not a Permitted Use within thirty (30) days after Tenant receives such revenue. Nothing in this Section 8.7 or Landlord's acceptance of any payment under this Section 8.7 is intended to authorize any use of the Premises that is not a Permitted Use, waive Tenant's Default for conducting or allowing such use, or waive any Landlord right or remedy under this Lease.

9. USE.

9.1 Permitted Use. Tenant shall only use the Premises during the Term for the Permitted Use in compliance with Law and this Lease and no other uses. Tenant shall be solely responsible for operation of the Premises. Landlord shall have no responsibility for operation of the Premises.

9.2 Premises Operation. Tenant shall operate the Premises in a manner that will provide decent, safe and sanitary facilities to all users of the Premises and will comply with all the provisions of this Lease and all applicable Law. Tenant shall keep all areas immediately adjacent to the Premises clean and clear of refuse and obstructions. Tenant shall be solely responsible for operation of the Premises. Landlord shall have no responsibility for operation of the Premises.

9.3 Competent Management. Tenant shall provide competent management of the Permitted Use to Landlord's reasonable satisfaction. For the purposes of this Section 9.3 the following terms are defined:

9.3.1 "Competent management" means and refers to management practices generally considered acceptable within Tenant's industry for the management and operation of activities substantially like the Permitted Use and in compliance with all applicable Law, and regulations, and in a fiscally responsible manner.

9.3.2 "Fiscally responsible manner" means and refers to in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

9.4 Operating Hours. Tenant has established a regular schedule of days and hours of operation to best serve the public, as described in **EXHIBIT F** attached to this Lease. Tenant shall not make any changes to its days and hours of operation without Landlord's prior written consent.

9.5 Trash and Refuse. Tenant shall, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers shall not be located outside the Premises. Tenant shall contract to ensure that refuse containers are emptied on a regular basis and shall prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. Tenant shall contract to ensure that the contents of all refuse containers on the Premises are disposed of at authorized landfills or other garbage reception areas, as provided under applicable Law at the time of refuse collection.

9.6 Limitation on Construction. Tenant shall not perform any Construction on or related to the Premises that is not Restoration or maintenance required to be performed by Tenant under this Lease.

9.7 Continuous Operation. Tenant shall continuously use and operate the entirety of the Premises during the Term for the Permitted Use and no other use. Notwithstanding the immediately preceding sentence, nothing in this Lease shall obligate Tenant to use or operate any affected part of the Premises for any purpose following a Loss (other than an Immaterial Loss), until Tenant has completed Restoration.

9.8 Abandonment. Tenant shall not abandon, vacate, or surrender the Leasehold Estate created by this Lease or any portion of the Premises during the Term.

9.9 No Discrimination or Segregation. Tenant covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons claiming under or through it, him or her, that neither Tenant nor any Person claiming under or through Tenant shall establish or allow any discrimination against or segregation of any Person or group of Persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the use of the Premises.

9.10 Noise. Tenant shall not use or permit the use of the Premises in any manner that creates or maintains any noise or sound violating San Diego Municipal Code ("**SDMC**") Chapter 5, Article 9.5.

9.11 Nuisance. Tenant shall not itself and shall not allow any other Person to use the Premises for any unlawful purpose and shall not itself and shall not allow any other Person to perform, permit or suffer any act or omission upon or about the Premises that would result in a nuisance or a violation of Law.

9.12 Exterior Signs. No banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising (each, a "**Sign**") may be placed on the Premises without Landlord's prior written consent, in each instance, which consent may be given or withheld in Landlord's sole and absolute discretion, except for Signs located inside the Improvements and not visible outside the Improvements or Signs required by Law. All Signs on the Premises will be maintained by Tenant in good, clean, and operating condition during the Term. Tenant will remove

all Signs from the Premises on or before the Expiration Date and repair all damage caused by installation or removal of Signs, all at Tenant's sole cost and expense. Tenant shall comply with all Laws requiring the posting of Signs on the Premises. If any unauthorized Sign is found on the Premises, Tenant shall remove the Sign at Tenant's sole cost and expense within twenty-four (24) hours after Notice from Landlord requesting the removal. If Tenant does not remove the Sign within such twenty-four (24) hour period, Landlord may enter the Premises and remove the Sign at Tenant's sole cost and expense. If Landlord removes a Sign from the Premises under this Section 9.12, Tenant shall reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing such work (including the costs of Landlord's staff time, administrative overhead, and Legal Costs), within fifteen (15) days after Notice to Tenant of such costs. Any amount of money reimbursable to Landlord by Tenant under this Section 9.12 that is not paid within fifteen (15) days after Notice to Tenant of such amount shall accrue Default Interest from the date incurred until paid.

9.13 No Artist's Rights. Tenant shall not install any artwork on the Premises that may provide the creator or owner of such artwork with any right to prevent removal of such artwork from the Premises under any Law.

9.14 Availability of Tenant Employees. Tenant agrees to have one or more of its employees who is/are knowledgeable regarding this Lease and the operation of the Premises, such that such Person(s) can meaningfully respond to Landlord or Landlord's staff regarding operation of the Premises attend meetings with Landlord's staff or meetings of Landlord's City Council, when requested to do so by reasonable advance Notice to Tenant.

9.15 Compliance with Law. Tenant shall, during the Term, at Tenant's sole cost and expense, in all material respects: (a) comply with all Laws; (b) procure and comply with all Approvals required by Law; and (c) comply with all notices issued by Landlord (in its governmental capacity) or any other Government under the authority of current or future Law.

9.16 Accident Reports. Tenant shall immediately, or as soon as practicable and not more than 48 hours after Tenant becomes aware of any accident on or around the Premises causing more than ten thousand dollars ($10,0000) in property damage or injury to any Person, report to Landlord the names and addresses of the Person(s) involved, the circumstances, the date and hour of the accident, the names and addresses of all witnesses, and all other pertinent information.

10. MAINTENANCE.

10.1 Obligation to Maintain. Except to the extent that this Lease otherwise expressly provides or allows, or Tenant is performing Construction in compliance with this Lease, Tenant shall during the Term keep and maintain the Premises in good order, condition, and repair, in accordance with the Maintenance Standard, subject to reasonable wear and tear and any other condition this Lease expressly does not require Tenant to repair or restore. Tenant's obligation to maintain the Premises includes an obligation to make all repairs that the Premises, including the Improvements, may require under applicable Law. Tenant shall remove trash and debris from the Premises and the adjacent areas and maintain them in a reasonably clean condition. Landlord has no obligation to maintain or repair the Premises. To the maximum extent allowed by Law, Tenant expressly waives all Landlord's obligations to maintain or repair the Premises, all right to terminate this Lease under

California Civil Code sections 1932 or 1933 or any similar Law, and all right to make repairs at Landlord's expense under California Civil Code sections 1941 through 1942 or any similar Law.

10.2 Maintenance Standard. Tenant's obligation to maintain the Premises under Section 10.1 includes maintenance, repair, reconstruction, and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Premises, now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the Premises. Tenant's obligation to maintain the Premises described in the immediately preceding sentence shall include: (a) maintaining the surfaces of the Premises in an evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (b) removing all papers, mud, sand, debris, filth, and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep such areas in a clean and orderly condition; (c) removing or covering graffiti in accordance with Section 10.4; (d) placing, keeping in repair and replacing all necessary and appropriate directional signs, markers, and lines; (e) operating, keeping in repair, and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (f) providing security services and taking all reasonably appropriate measures to ensure the safety of Persons using the Premises; and (g) maintaining, mowing, weeding, trimming, and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance, character and level of quality of the landscaping, all at the sole cost and expense of Tenant. Tenant's obligation to maintain the Premises described in the two immediately preceding sentences is, collectively, referred to in this Lease as the "**Maintenance Standard.**" Tenant may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of Tenant to maintain the Premises; provided, however, that Tenant shall remain responsible and liable for complying with the Maintenance Standard for the Premises during the Term.

10.3 Maintenance Default. At any time during the Term, if there is an occurrence of an adverse condition on any area of the Premises in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then Landlord may Notify Tenant of the Maintenance Deficiency. If Tenant fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days following Tenant's receipt of Notice of the Maintenance Deficiency, Landlord shall have the right (but no obligation) to enter the Premises following five (5) days advance Notice and perform all acts necessary to cure the Maintenance Deficiency or to take any other action at law or in equity that may then be available to Landlord to accomplish the abatement of the Maintenance Deficiency. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 shall be reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of the amount. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 that is not reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of such amount shall accrue Default Interest until paid in full.

10.4 Graffiti. Graffiti, as defined in Government Code section 38772, applied to any exterior surface of the Improvements shall be removed by Tenant by either painting over the evidence of such vandalism with a paint color-matched to the surface on which the paint is applied or removed with solvents, detergents, or water, as appropriate. Notwithstanding Section 10.3, if any such

graffiti is not removed within seventy-two (72) hours after the time Tenant discovers or receives Notice of the graffiti or, in the case of graffiti that cannot reasonably be removed within seventy-two (72) hours after the time Tenant discovers or receives Notice of the graffiti, whichever is earlier, if Tenant does not duly commence and diligently complete such cure within a reasonable time under the circumstances, then after Notice to Tenant, Landlord shall have the right (but no obligation) to enter the Premises and remove the graffiti. Any amount of money expended by Landlord for removal of graffiti from the Premises under this Section 10.4 shall be reimbursed to Landlord by Tenant, within thirty (30) days after Notice to Tenant of such amount. Any amount of money expended by Landlord for removal of graffiti under this Section 10.4 not reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of such amount shall accrue Default Interest until paid in full.

11. **PREVAILING WAGE LAWS.** Tenant shall comply with Prevailing Wage Laws in performing all Construction on the Premises.

12. **TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY.** Notwithstanding anything to the contrary in this Lease, all Improvements, Equipment, and FF&E located in, on, or at the Premises or otherwise constituting part of the Premises shall, during the Term, be owned by, and belong to, Tenant and all benefits and burdens of ownership of such Improvements, Equipment, or FF&E, including title, depreciation, taxes, tax credits, assessments, and all other tax items and obligations shall be and remain in Tenant during the Term.

13. **PROHIBITED LIENS.**

13.1 Tenant's Covenant. Tenant shall Notify Landlord of each Prohibited Lien within twenty (20) days following Tenant's receipt of notice of such Prohibited Lien. Tenant shall, within thirty (30) days after receiving notice of a Prohibited Lien (but in any case within fifteen (15) days after Tenant receives notice of commencement of foreclosure proceedings regarding any Prohibited Lien), cause such Prohibited Lien to be paid, discharged, and cleared from title to the Leasehold Estate; provided, however, that if Tenant disputes such Prohibited Lien in good faith, Tenant may maintain an appropriate dispute of such Prohibited Lien without payment, if Tenant records a bond complying with the provisions of California Civil Code Section 3143 and causes the release of the Leasehold Estate from the disputed Prohibited Lien. Tenant shall, thereafter, prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any Prohibited Lien, then Landlord shall Notify Tenant.

13.2 Protection of Landlord. LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, OR EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICES OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER, OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE

RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY EQUIPMENT OR MATERIAL THAT WOULD GIVE RISE TO THE FILING OF ANY LIEN AGAINST THE FEE ESTATE. TENANT SHALL INDEMNIFY LANDLORD AGAINST ALL LIABILITY ARISING FROM OR RELATING TO CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT AND AGAINST ALL PROHIBITED LIENS.

13.3 No Liens Against Public Property. TENANT ACKNOWLEDGES AND AGREES THAT ON THE COMMENCEMENT DATE THE FEE ESTATE IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES. TENANT FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES OF SUCH FACT AND THAT LANDLORD AND THE FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL. LANDLORD SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES TO POST AND KEEP POSTED ON THE PREMISES ALL NOTICES LANDLORD MAY DEEM NECESSARY FOR THE PROTECTION OF LANDLORD OR THE FEE ESTATE FROM MECHANIC'S LIENS OR OTHER CLAIMS. TENANT SHALL GIVE LANDLORD TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE COMMENCEMENT OF ANY CONSTRUCTION OR OTHER WORK ON THE PREMISES TO ENABLE LANDLORD TO POST SUCH NOTICES.

14. **INSURANCE.** To protect the Landlord Parties against Claims arising from or related to this Lease, the Premises, or the Permitted Use, Tenant shall maintain, at its sole expense, throughout the Term, all the insurance coverage described in **EXHIBIT C** attached to this Lease.

15. **LOSSES AND LOSS PROCEEDS.**

15.1 Notice. If either Party becomes aware of any Loss, such Party shall Notify the other Party of such Loss within a reasonable time.

15.2 Casualty. If any Casualty occurs after the Commencement Date, no Rent shall abate, and Tenant shall Restore with reasonable promptness (regardless of the availability or sufficiency of Property Insurance Proceeds for such purpose); and (b) Tenant shall be solely responsible for: (i) negotiating and adjusting any Property Insurance Proceeds regarding the Casualty; and (ii) the costs of Restoration.

15.3 Substantial Condemnation. On the occurrence of a Substantial Condemnation, this Lease shall terminate in its entirety, on the Condemnation Effective Date. Neither Landlord nor Tenant shall settle or compromise any Condemnation Award without consent from the other Party, not to be unreasonably withheld; provided, however, neither Landlord nor Tenant shall be required to obtain the consent of the other Party to settle or compromise any Condemnation Award when Landlord is the condemning authority. Any Condemnation Award shall be paid to Depository under Section 15.6. For a Substantial Condemnation, Landlord and Tenant shall allocate the

Condemnation Award as follows and in the following order of priority, without duplication, until exhausted:

15.3.1 *Landlord's Costs.* For a Substantial Condemnation where Landlord is not the condemning authority, to reimburse Landlord for Landlord's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

15.3.2 *Tenant's Costs.* To reimburse Tenant for Tenant's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

15.3.3 *Tenant's Claim.* Tenant shall receive such portion of the Condemnation Award equal to the Market Value of the portion of the Leasehold Estate taken as of the Condemnation Effective Date.

15.3.4 *Landlord's Claim.* Landlord shall receive such portion of the Condemnation Award equal to the Market Value of the portion of the Fee Estate taken as of the Condemnation Effective Date.

15.3.5 *Landlord's Residual Claim.* Landlord shall receive the entire remaining Condemnation Award.

15.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) shall be paid to Depository and applied first toward Restoration, in the same manner as Restoration after Casualty. Regardless of whether the Condemnation Award is adequate, Tenant shall, at its expense, Restore in compliance with this Lease. After Tenant completes and pays for Restoration, any remaining Condemnation Award shall be distributed to Landlord and Tenant in accordance with Section 15.3, as if it arose from a Substantial Condemnation affecting only the part of the Premises taken.

15.5 Temporary Condemnation. If a Temporary Condemnation occurs after the Commencement Date, then no Rent shall abate under this Lease and this Lease shall not be affected in any way, except as to use restrictions resulting from the Temporary Condemnation. To the extent that the period of a Temporary Condemnation includes any period outside the Term, the Condemnation Award from such Temporary Condemnation allocable to a period outside the Term shall belong to Landlord. Otherwise, Tenant shall receive the Condemnation Award (to the extent attributable to periods within the Term).

15.6 Use of Loss Proceeds. Landlord assigns to Tenant the right to receive all Loss Proceeds, subject to the terms of this Lease. All Loss Proceeds shall be paid to Depository, to be disbursed by Depository under the terms of this Lease. If Landlord receives any Loss Proceeds, Landlord shall remit them to Depository. If a Loss is an Immaterial Loss, then Depository shall release all Loss Proceeds to Tenant, to be applied first to Restoration. If a Loss is not an Immaterial Loss, then Depository shall retain the Loss Proceeds and pay them over to Tenant, from time to time, upon the following terms, for Restoration, unless there is a Substantial Condemnation in which case the Loss Proceeds shall be paid to Landlord and Tenant as provided in Section 15.3. Depository shall first reimburse Landlord and Tenant from such Loss Proceeds for their actual,

necessary, and proper costs and expenses in collecting such Loss Proceeds. Depository shall release Loss Proceeds to Tenant, from time to time, in proportion to the percentage of completion of the Restoration, subject to a reasonable retention (at least ten percent (10%)). When Tenant has completed and paid for Restoration, Depository shall release to Tenant, and Tenant may retain all remaining Loss Proceeds. Until Tenant has completed and paid for Restoration, Tenant shall hold all Loss Proceeds in trust for the benefit of Landlord to be used first to Restore and for no other purpose. If any Prohibited Lien is filed against the Premises, Tenant shall not be entitled to receive any further installment of Loss Proceeds, until Tenant has bonded, satisfied, or otherwise discharged such Prohibited Lien under Section 13.1. If Loss Proceeds are insufficient to Restore and there is no Substantial Condemnation affecting the portion of the Premises requiring Restoration, then Tenant shall nevertheless Restore at Tenant's sole cost and expense. Depository shall not release any Loss Proceeds, unless and until Tenant expends an amount of money equal to the insufficiency of Loss Proceeds for such Restoration. Landlord shall determine the amount of the insufficiency between the total amount of Loss Proceeds available for Restoration and the total costs of such Restoration.

15.7 Continuation of Lease. Except as this Lease expressly provides, this Lease shall not terminate, be forfeited, or be affected in any other manner by any Loss. Tenant waives all right to quit or surrender the Premises because of any Loss or any resulting untenability, including the provisions of California Civil Code sections 1932 and 1933, and agrees that the provisions of this Lease shall exclusively govern the rights and responsibilities of the Parties in the event of a Loss. Unless and until this Lease is validly terminated in accordance with its terms, Tenant's obligations under this Lease, including the obligation to pay Rent, shall continue unabated.

15.8 No Effect on Landlord Eminent Domain Authority; No Condemnation. Nothing in this Lease is intended to, nor shall be interpreted to, waive, limit, or restrict any Landlord power of eminent domain over the Premises or any other property. No action by Landlord in pursuing its rights or performing its obligations under this Lease shall be considered any type or form of Condemnation.

16. **WASTE**: Subject to the provisions of this Lease concerning Construction, Condemnation and Casualty, Tenant shall not commit or suffer to be committed any waste of the Premises, Improvements, or Equipment. Tenant agrees to keep the Premises, Improvements, and Equipment clean and clear of refuse and obstructions, to promptly dispose of all garbage, trash, and rubbish and to pay all taxes, fees, and other charges levied regarding this Lease, the Leasehold Estate, the Premises, Improvements, Equipment, or FF&E. Tenant shall immediately Notify Landlord of any waste, Casualty, or damage to the Premises. If waste, Casualty, or damage to the Premises arises from the Permitted Use, at Landlord's election, in Landlord's sole and absolute discretion, Tenant shall make, or cause to be made, full repair of the waste, Casualty, or damage and Restore the Premises to its condition existing immediately prior to the waste, Casualty, or damage. Tenant shall commence preliminary steps toward Restoration of the Premises as soon as practicable, but no later than thirty (30) days after the date the waste, Casualty, or damage occurs. Tenant shall complete all required Restoration of the Premises within ninety (90) days after the date the waste,

Casualty, or damage occurs. Tenant must obtain all Approvals required for Restoration of all waste, Casualty, or damage to the Premises.

17. **ENVIRONMENTAL CONDITIONS.** Tenant shall not cause or permit any Environmental Condition. If Tenant discovers or becomes aware of an Environmental Condition, Tenant shall Notify Landlord of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following the Tenant becoming aware of such Environmental Condition.

17.1 Remediation. If an Environmental Condition occurs, Tenant shall remediate the Environmental Condition in accordance with Law to allow all uses of the Premises permitted by Law immediately before the Environmental Condition is discovered, at Tenant's sole cost and expense. If Tenant knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, Tenant shall take all actions necessary to alleviate the imminent danger, at Tenant's sole cost and expense.

17.2 Removal. If a Tenant Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Premises in accordance with Law, Tenant shall remove all such Hazardous Substances from the Premises prior to the Termination Date and provide Landlord with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Tenant shall be responsible for all costs incurred by Landlord to remove or dispose of any Hazardous Substances not removed from the Premises by Tenant in accordance with this Section 17.2.

17.3 Reports. Tenant shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to Landlord within three (3) days after Notifying Landlord of the Environmental Condition. Tenant shall also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

17.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, Landlord may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at Tenant's sole cost and expense. Tenant shall reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing the environmental assessment within fifteen (15) days after Notice to Tenant of the amount of such costs and expenses. Any amount reimbursable to Landlord by Tenant under this Section 17.4 that is not paid within fifteen (15) days after Notice to Tenant of such amount, shall accrue Default Interest until paid.

18. **ACCESS AND INSPECTION.** Notwithstanding anything to the contrary in this Lease, Landlord and its agents may enter the Premises upon reasonable advance Notice, without the payment of charges or fees, during regular hours of operation of the Premises, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults as permitted by this Lease; (c) perform such tests, borings, or other analyses as Landlord determines are necessary or appropriate relating to possible (non)compliance with Law or possible Hazardous Substance Discharge; provided, however, no invasive testing shall be conducted by Landlord without Tenant's prior written consent, not to be unreasonably withheld. In entering the Premises,

Landlord and its agents shall not unreasonably interfere with Tenant's Permitted Use of the Premises and shall comply with Tenant's reasonable instructions. Landlord's entry onto the Premises under this Section 18 shall not entitle Tenant to any rights or remedies, except as expressly provided in this Section 18, and such entry shall not constitute an actual or constructive eviction of Tenant from the Premises, nor shall it entitle Tenant to any offset, deduction, or abatement of Rent. Landlord may enter the Premises without Notice to Tenant in the event of an emergency. All Landlord representatives or agents who enter the Premises shall identify themselves at the main entrance to the Premises and shall always be accompanied by a Tenant representative while on the Premises. Tenant shall make a Tenant representative available for this purpose during all regular hours of operation for the Premises upon reasonable advance Notice from Landlord. If in Landlord's reasonable judgment it is necessary, Landlord shall have the further right, from time to time, at its own cost, to retain a consultant or consultants to inspect the Premises regarding compliance by Tenant with this Lease. Tenant acknowledges and agrees that: (i) all such Landlord inspections are for the sole purpose of protecting Landlord's rights under this Lease; (ii) are made solely for Landlord's benefit; (iii) Landlord's inspections may be superficial and general in nature; (iv) are for the purposes of informing Landlord of the conformity of the Premises with this Lease; and (v) Tenant shall not be entitled to rely on any such inspection(s) as constituting Landlord's approval, satisfaction, or acceptance of any materials or workmanship, conformity of the Premises with this Lease or otherwise. Tenant agrees to make its own regular inspections of the Premises to determine the conformity of the Premises with this Lease.

19. INDEMNIFICATION.

19.1 Tenant Indemnity Obligations. In addition to Tenant's obligations to Indemnify the Landlord Parties under other provisions of this Lease, Tenant shall Indemnify the Landlord Parties against all Claims arising from: (a) Tenant's use or occupancy of the Premises or this Lease; (b) personal injury (including death) or property damage (to property of Tenant or any other Person) occurring on the Premises or adjoining real property; (c) personal injury (including death) or property damage resulting from Tenant's use or occupancy of the Premises; (d) wrongful intentional acts or negligence of one or more of the Tenant Parties; (e) strict liability relating to Tenant's use or occupancy of the Premises; (f) all Applications made at Tenant's request; (g) an agreement that Tenant (or anyone claiming by or through Tenant) makes with a Third Person regarding this Lease or the Premises; (h) services, labor, material, or equipment supplied to, for, or on behalf of Tenant; (i) a workers' compensation claim by one or more employees or contractors of one or more of the Tenant Parties; (j) a Prevailing Wage Determination; or (k) an Environmental Condition occurring on or after the Commencement Date. Notwithstanding anything to the contrary in this Lease, Tenant's obligations to Indemnify the Landlord Parties excludes Claims arising solely from the established active negligence or willful misconduct of a Landlord Party.

19.2 Independence of Insurance and Indemnity Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease shall not be construed or interpreted as in any way restricting, limiting, or Modifying Tenant's insurance or other obligations under this Lease. Tenant's obligations to Indemnify the Landlord Parties under this Lease are independent of Tenant's insurance and other obligations under this Lease. Tenant's compliance with its insurance obligations and other obligations under this Lease shall not in any way restrict, limit, or Modify Tenant's obligations to Indemnify the Landlord Parties under this Lease and are independent of Tenant's obligations to Indemnify the Landlord Parties and other obligations under this Lease.

19.3 Survival of Indemnification Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease shall survive the expiration or earlier termination of this Lease, until all actual or prospective Claims subject to Tenant's obligations to Indemnify the Landlord Parties under this Lease are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

19.4 Indemnification Procedures. Wherever this Lease requires Tenant to Indemnify the Landlord Parties:

19.4.1 *Notice.* The affected Landlord Parties shall Notify Tenant of the Claim within a reasonable time.

19.4.2 *Selection of Counsel.* Tenant shall select counsel reasonably acceptable to Landlord's City Council. Even though Tenant shall defend the Claim, the affected Landlord Parties may, in their respective sole and absolute discretion, engage separate legal counsel, at Tenant's expense, to advise them regarding the Claim and their defense. The affected Landlord Parties' separate legal counsel(s) may attend all proceedings and meetings. Tenant's legal counsel shall actively consult with the Landlord Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

19.4.3 *Cooperation.* The affected Landlord Parties shall reasonably cooperate with Tenant's defense of the Landlord Parties.

19.4.4 *Settlement.* Tenant may only settle a Claim with the prior written consent of the affected Landlord Parties, in their respective sole and absolute discretion.

19.5 Immediate Duty to Defend. The duty to defend that is within Tenant's obligations to Indemnify the Landlord Parties under this Lease includes Claims for which the Landlord Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Tenant or the Landlord Parties have been determined. The duty to defend applies immediately, regardless of whether the Landlord Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that the Landlord Parties be entitled to obtain summary adjudication or summary judgment regarding Tenant's duty to defend the Landlord Parties at any stage of a Claim within the scope of Tenant's obligations to Indemnify the Landlord Parties under this Lease.

19.6 Savings Provision. Notwithstanding anything in this Lease to the contrary, if the extent of Tenant's obligation to Indemnify the Landlord Parties under this Lease exceeds the indemnity obligation allowed by applicable Law, Tenant's obligation to Indemnify the Landlord Parties shall be reduced to the extent required to comply with applicable Law.

20. **LANDLORD'S TRANSFERS.** Landlord may transfer or convey the Fee Estate to any Person at any time. Landlord shall Notify Tenant of each transfer or conveyance of the Fee Estate promptly following such transfer or conveyance. Upon any transfer or conveyance of the Fee Estate in compliance with this Lease, the grantor shall be relieved from all liability (excluding liability arising before such transfer or conveyance) for performance of any covenants or obligations to be performed by Landlord under this Lease after the effective date of the transfer or

conveyance. This Lease shall bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities or obligations under this Lease arising before the effective date of transfer or conveyance of the Fee Estate.

21. **TENANT TRANSFERS.** Tenant shall not have any right to make or allow any Transfer without the prior written consent of Landlord, which may be given or withheld in Landlord's sole and absolute discretion. Tenant acknowledges and agrees that Landlord will not approve a Transfer to a Prohibited Transferee. Tenant further acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Tenant, the restrictions in this Lease on Transfers are reasonable.

21.1 Transfer Revenue Sharing with Landlord. If Landlord approves a Transfer, Tenant shall pay to Landlord two percent (2%) of the Gross Revenue received by Tenant in consideration of the Transfer on or before the effective date of the Transfer.

22. **SUBLEASING OR LICENSING.** Tenant may not sublease or license use of the Premises without Landlord's prior written consent, which may be given or withheld in Landlord's sole and absolute discretion. Tenant acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Tenant, the restrictions in this Lease on subleasing and licensing are reasonable.

22.1 Sublease Revenue Sharing with Landlord. If Landlord approves a sublease or license of the Premises, Tenant shall pay to Landlord fifty percent (50%) of the Gross Revenue received by Tenant in consideration of the sublease or license within ten (10) days after Tenant receives all or any portion of such Gross Revenue, including up-front payments and periodic payments.

23. **LANDLORD'S RESERVATION OF RIGHTS.**

23.1 Government Action: Nothing express or implied in this Lease is intended, nor shall be construed or interpreted, to limit, restrict, waive, or vary any required Approval from Landlord under its police power land use regulatory authority or other police powers or constitute an Approval by Landlord under its police power land use regulatory authority or other police powers. By entering this Lease, Landlord is not obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the Premises, including re-zonings, variances, environmental clearances, any Approval required for the Permitted Use, or otherwise. Tenant shall diligently seek and use commercially reasonable efforts to obtain, at Tenant's sole cost and expense, all Approvals required from Landlord (in its governmental regulatory capacity) and other Governments necessary for the Permitted Use. Nothing express or implied in this Lease is intended, nor shall be construed or interpreted, to limit, restrict, waive, or vary any Landlord police power land use regulatory authority or other police power.

23.2 Natural Resources. Landlord reserves all right, title, and interest in all natural resources relating to the Premises, including subsurface natural gas, oil, minerals, and water, on or within the Premises.

23.3 Access Rights. Landlord reserves the right to grant and use easements or establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or public or Government access to the Premises or other real property.

24. EVENTS OF DEFAULT; REMEDIES.

24.1 Definition of "Event of Default". An **"Event of Default"** means the occurrence of any one or more of the following:

24.1.1 *Monetary Default.* A Monetary Default that continues for ten (10) days after Notice to Tenant of the Monetary Default.

24.1.2 *Bankruptcy or Insolvency.* Tenant ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all Tenant's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days after being made).

24.1.3 *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Section 24.1.2, occurs and Tenant does not cure it within thirty (30) days after Notice to Tenant of the Non-Monetary Default. For a Non-Monetary Default that cannot reasonably be cured within thirty (30) days from the date of such Notice, Tenant will not be in Default if it does all the following: (a) within thirty (30) days from the date of Notice to Tenant of the Non-Monetary Default, advise Landlord of Tenant's intention to take all reasonable steps to cure such Non-Monetary Default; (b) within a reasonable time under the circumstances, Tenant commences such cure and diligently prosecutes such cure to completion.

24.2 Remedies. If an Event of Default occurs, then Landlord shall, at Landlord's option, in Landlord's sole and absolute discretion, have all the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law, in equity, or under any other provision of this Lease:

24.2.1 *Termination of Tenant's Rights; Conditional Limitation.* Landlord may serve upon Tenant a 10-day Notice of termination of this Lease. Upon the expiration of such 10-day period, this Lease and the Term shall automatically, and without further action by any Person, terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 10-day period were the Expiration Date. The passage of such 10-day period constitutes the limit beyond which Tenant's tenancy no longer exists. Tenant shall then quit and surrender the Premises to Landlord in accordance with Section 25 but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term shall terminate and expire as set forth in this Section 24.2.1. This Section 24.2.1 is intended to establish a conditional limitation and not a condition subsequent.

24.2.2 *Recovery of Damages Following Termination.* If Tenant's right to possession of the Premises is terminated by Landlord following the occurrence of an Event of Default, this Lease

shall also terminate on the date on which Tenant's right to possession of the Premises terminates. Upon any such termination of this Lease, Landlord may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent which had been earned at time of termination;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

(e) The "worth at the time of award" of the amounts referred to in Sections 24.2.2(a) and 24.2.2(b) is computed by accruing Default Interest on such amounts. The "worth at the time of award" of the amount referred to in Section 24.2.2(c) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

24.2.3 *Taking Possession.* Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease and without: (a) being liable for damages; (b) being guilty of trespass; or (c) terminating this Lease. This Section 24.2.3 is intended to constitute an express right of re-entry in favor of Landlord. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Following any such entry or re-entry by Landlord, Landlord may, at any time and from time to time, in Landlord's sole and absolute discretion, relet all or any portion of the Premises. Landlord may, in Landlord's sole and absolute discretion, eject all Persons or eject some and not others or eject none. Landlord shall apply all rents from any such reletting in the manner provided in Section 24.6. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may enter into any leases made under this Section 24.2.3 in Landlord's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses (including Legal Costs), less the avails of any reletting. No act by or on behalf of Landlord under this Section 24.2.3 shall constitute a termination of this Lease unless Landlord gives Tenant Notice of termination of this Lease.

24.2.4 *Suits Before Expiration Date.* Landlord may sue for damages or to recover Rent, from time to time, in Landlord's sole and absolute discretion.

24.2.5 *Receipt of Money*. No receipt of money by Landlord from Tenant after termination of this Lease or after giving any Notice of termination of this Lease shall reinstate, continue, or extend this Lease or affect any Notice previously given to Tenant, or waive Landlord's right to enforce payment of any Rent payable or later falling due, or Landlord's right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after delivery of Notice of termination of this Lease or commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect all money due or thereafter falling due from Tenant under this Lease, without in any manner affecting such Notice, proceeding, order, suit, or judgment, all such money collected being deemed payments on account of use and occupation of the Premises by Tenant or, in Landlord's sole and absolute discretion, on account of Tenant's liability to Landlord.

24.2.6 *No Waiver*. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, condition or restriction of this Lease or to exercise any right or remedy upon a Default or Event of Default, and no acceptance of full or partial Rent during continuance of any such Default or Event of Default, shall waive any such Default, Event of Default, or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Default or Event of Default, shall be Modified, except by a written instrument signed by Landlord. No waiver of any Default or Event of Default shall Modify this Lease. Each covenant, agreement, term, condition, and restriction of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term, condition, or restriction of this Lease.

24.2.7 *Damages*. Landlord may recover from Tenant all damages Landlord incurs because of Tenant's Default, including reasonable costs of recovering possession, reletting the Premises, all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Landlord may recover such damages at any time after Tenant's Default, including after the Expiration Date. Notwithstanding any Law to the contrary, Landlord need not commence separate actions to enforce Tenant's obligations for each Lease Year's Rent not paid or each Lease Year's accrual of damages for Tenant's Default but may bring and prosecute a single combined action for all such Rent or damages.

24.3 Continue Lease. Landlord may, in Landlord's sole and absolute discretion, maintain Tenant's right to possession of the Premises. Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). If Landlord elects to maintain Tenant's right to possession of the Premises after an Event of Default, this Lease shall continue and Landlord may continue to enforce it, including the right to collect Rent when due and all remedies for non-payment of Rent. Tenant acknowledges and agrees that the standards and conditions of this Lease regarding Tenant's right to Transfer this Lease or sublease the Premises are reasonable.

24.4 Injunction of Breaches. Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages do not constitute an adequate remedy for a Non-Monetary Default.

24.5 Restoration Funds. Upon any termination of this Lease, to the extent Landlord or Depository then holds any Restoration Funds, such funds shall be applied as provided in this Lease, including as a payment toward any sums then payable to Landlord under this Lease.

24.6 Proceeds of Reletting. Landlord shall apply all proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

24.6.1 *Landlord's Costs.* First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and removing all Persons and property from the Premises, including reasonable and customary brokerage commissions and Legal Costs;

24.6.2 *Preparation for Reletting.* Second, to pay to itself the cost and expense reasonably incurred in securing any new tenants or other occupants, including all brokerage commissions, Legal Costs, and all other reasonable costs of preparing the Premises for reletting;

24.6.3 *Costs of Maintenance and Operation.* Third, to the extent that Landlord shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

24.6.4 *Residue.* Fourth, to pay to itself the remaining balance of Tenant's liability to Landlord.

24.7 Tenant's Late Payments; Administrative Charges. If Tenant fails to make any payment to Landlord required under this Lease when such payment is first due and payable, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Tenant shall pay five percent (5%) of the unpaid amount to Landlord as the reasonably estimated cost of the payment delay to Landlord. If any amount of such payment remains unpaid fifteen (15) days after such payment is first due and payable, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Tenant shall pay an additional five percent (5%) of the unpaid amount (a total of 10%) to Landlord as the reasonably estimated cost of the payment delay to Landlord. Notwithstanding anything to the contrary in the two immediately preceding sentences, the amount payable by Tenant to Landlord under either sentence shall be no less than $25. Nothing in this Section 24.7 is intended to affect or change Landlord's rights or remedies regarding a Default or Event of Default. This Section 24.7 only establishes Landlord's right to recover reasonably estimated costs of late payments, including compensating Landlord for staff time incurred by Landlord to handle the late or missed payment. Amounts payable by Tenant to Landlord under this Section 24.7 are not a penalty or compensation for use of funds and shall not be credited against any other obligation of Tenant under this Lease.

24.8 Landlord's Right to Cure. If Tenant, at any time, fails to make any payment or take any action this Lease requires, then Landlord, after five (5) Business Days' Notice to Tenant, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation or Default and without waiving Landlord's right to take such action as this Lease may permit following such Default, may (but need not) make such payment or take such action. Within ten (10) days after Notice of such

payment amount, Tenant shall reimburse Landlord, as Additional Rent, for an amount equal to: (a) all reasonable monetary amounts paid (including Legal Costs) by Landlord in exercising its cure rights under this Section 24.8; plus (b) Default Interest on the monetary amounts described in clause "(a)" of this Section 24.8 from the date paid until the date of reimbursement to Landlord.

24.9 Accord and Satisfaction; Partial Payments. No payment by Tenant or receipt by Landlord of a lesser amount of money than the amount of money owed under this Lease shall be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of the amount of money due to Landlord or pursue any other remedy for a Default or Event of Default.

24.10 Survival. No termination of this Lease and no taking possession of or reletting the Premises shall relieve Landlord or Tenant of their respective liabilities and obligations under this Lease that survive such expiration, termination, repossession, or reletting.

24.11 Multiple Suits. Landlord may sue to recover damages, or monetary amount(s) equal to any installment(s) of Rent payable by Tenant, from time to time, at Landlord's election in Landlord's sole and absolute discretion. Nothing in this Lease requires Landlord to await the Scheduled Expiration Date or any other Expiration Date to bring suit to remedy or recover damages after an Event of Default.

24.12 Landlord's Notice and Opportunity to Cure. Notwithstanding anything to the contrary in this Lease, before exercising any right or remedy under this Lease or applicable Law because of a Landlord Default or claiming a partial or total eviction (actual or constructive) because of a Landlord Default, Tenant shall give Landlord Notice of the Landlord Default and thirty (30) days following the effective date of such Notice to cure the Landlord Default. If Landlord cannot with due diligence cure a Landlord Default within thirty (30) days following the effective date of Notice of such Landlord Default, the cure period for the Landlord Default shall be extended for such further period as Landlord shall reasonably require to cure the Landlord Default, provided that Landlord shall: (a) within thirty (30) days following the effective date of Notice to Landlord of the Landlord Default, advise Tenant of Landlord's intention to take all reasonable steps to cure such Landlord Default; and (b) within a reasonable time under the circumstances, commence such cure and diligently prosecute such cure to completion. Tenant acknowledges the independence of the covenants in this Lease and waives all right to terminate this Lease because of any Landlord Default.

25. END OF TERM.

25.1 Surrender. Upon any Expiration Date: (a) all Improvements(s) and Equipment shall become Landlord's property; (b) Tenant shall deliver to Landlord possession of the Premises, in the condition this Lease requires, subject to any Loss this Lease does not require Tenant to Restore; (c) Tenant shall surrender to Landlord all right, title, or interest in and to the Premises and deliver such written evidence and confirmation of such surrender as Landlord reasonably requires; (d) Tenant shall deliver the Premises free and clear of all liens, except liens that Landlord directly caused; (e) Tenant shall assign to Landlord, without recourse, and give Landlord copies or

originals of, all assignable warranties then in effect for the Premises; (f) the Parties shall cooperate to achieve an orderly transition of operation of the Premises from Tenant to Landlord (to the extent reasonably possible), without interruption, including delivery of such books and records (or copies thereof), as Landlord reasonably requires; and (g) the Parties shall adjust for expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment, in the same manner as for a sale of the Premises (but any amount of money otherwise payable to Tenant shall first be applied to cure any Default), provided, however, that Tenant shall be responsible for applying to applicable taxing entities for a refund of any Real Estate Taxes paid by Tenant for periods after the Expiration Date (if any) and Landlord shall not be required to pay or credit Tenant for any such amount. Notwithstanding anything to the contrary in this Section 25.1, Tenant may remove from the Premises any FF&E owned by Tenant, but Tenant must do so, if at all, prior to the Expiration Date. Tenant shall immediately repair all damage to the Premises from removal of FF&E. Tenant's FF&E not removed before the Expiration Date shall be deemed abandoned.

25.2 Quitclaim of Tenant's Interests. Following any Expiration Date, Tenant shall sign, acknowledge, and deliver to Landlord a quitclaim deed acceptable to Landlord conveying all of Tenant's right, title, and interest in and to the Premises to Landlord, within thirty (30) days following Notice requesting such quitclaim deed (which Notice may be given thirty (30) days before any Expiration Date or later). If Tenant fails or refuses to sign, deliver, and record such quitclaim deed to Landlord within the provided thirty (30) day period, Tenant appoints Landlord as its attorney-in-fact to sign, deliver, and record such a quitclaim deed, which appointment is irrevocable and coupled with an interest.

26. **NOTICES.** All Notices submitted by a Party to the other Party under or as required by this Lease shall be sent by either messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.), or registered or certified first-class mail, postage prepaid, return receipt requested through the United States Postal Service, to the address of the recipient Party designated in **EXHIBIT B** attached to this Lease. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 26. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the Notice is sent by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or three (3) days after the Notice is deposited with the United States Postal Service in accordance with this Section 26. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Commencement Date, are set forth in **EXHIBIT B.**

27. **REPLACEMENT OF STATUTORY NOTICE REQUIREMENTS.** When this Lease requires service of a Notice, that Notice shall replace, rather than supplement, any equivalent or similar Notice required by Law, including any Notices required by California Code of Civil Procedure section 1161 or any similar or successor Law. When a Law requires service of a Notice in a particular manner, service of that Notice (or a similar Notice required by this Lease) in the manner required by Section 26 shall replace and satisfy the service-of-notice procedures of such Law, including those required by California Code of Civil Procedure section 1162 or any similar or successor Law.

28. **NO BROKER.** Each Party: (a) represents and warrants to the other Party that it did not engage or deal with any broker or finder regarding this Lease and no Person is entitled to any commission or finder's fee regarding this Lease under any agreement or arrangement made by such Party; and (b) shall Indemnify the other Party against any breach of the representations or warranties in clause "(a)" of this Section 28.

29. **ESTOPPEL CERTIFICATES.** Each Party to this Lease ("**Requesting Party**") may require the other Party ("**Certifying Party**") to sign and deliver to the Requesting Party (or directly to a Third Person designated by the Requesting Party) up to four (4) original counterparts of an Estoppel Certificate. The Certifying Party shall sign and deliver such Estoppel Certificate, within fifteen (15) days after request, even if the Requesting Party is in Default or Landlord Default. If a Certifying Party fails to sign and deliver an Estoppel Certificate within the required fifteen (15) day period, then the Certifying Party shall pay the Requesting Party liquidated damages of two hundred fifty dollars ($250.00) per day for each day after the expiration of the fifteen (15) day period for delivery of an Estoppel Certificate until the date the Certifying Party delivers the Estoppel Certificate. A Requesting Party shall pay all the expenses (including Legal Costs) of the Certifying Party incurred in providing an Estoppel Certificate.

30. **HOLDOVER.** If Tenant continues to occupy the Premises after the Expiration Date, such occupancy shall not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise, nor give Tenant any right in or to the Premises after the Expiration Date. Tenant may not occupy the Premises after the Expiration Date without Landlord's consent, which may be given or withheld in Landlord's sole and absolute discretion. Tenant's occupancy of the Premises after the Expiration Date with Landlord's consent shall be a month-to-month tenancy and all other terms and conditions of this Lease shall continue in full force and effect, except that Landlord may then demand and receive Base Rent from Tenant equal to the then fair market Base Rent for the Premises' highest and best use, all as determined by Landlord. Landlord's acceptance of any Base Rent from Tenant after the Expiration Date shall not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise.

31. **MISCELLANEOUS.**

31.1 Prior Agreement Termination. As of the Commencement Date, all leases, right-of-entry permits, or other agreements between Landlord and Tenant concerning Tenant's entry upon, use, occupancy, or operation of the Premises, other than this Lease, are terminated, except as to any payments, rights, or remedies accrued to either Party under those agreements prior to the Commencement Date.

31.2 Compliance with Landlord Standard Contract Provisions. Tenant shall comply with all Landlord standard contract provisions set forth in **EXHIBIT D** attached to this Lease.

31.3 Third-Party Beneficiaries. There are no third-party beneficiaries of this Lease. Nothing in this Lease is intended nor shall be deemed to confer upon any Person, other than Landlord and Tenant, any right to enforce this Lease.

31.4 Modification. Each Modification of this Lease must be in a writing signed by both Parties.

31.5 Successors and Assigns. This Lease shall bind and benefit Landlord and Tenant and their respective permitted successors and assigns, but this Section 31.5 shall not limit, supersede, or Modify any Transfer restrictions in this Lease.

31.6 Costs and Expenses; Legal Costs. In the event of any litigation or dispute between the Parties, or claim made by either Party against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or Landlord's enforcement of this Lease following a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other Party to this Lease, the prevailing Party shall be entitled to reimbursement of its Legal Costs, with Default Interest, and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other Party's Default or Landlord Default.

31.7 No Waiver by Silence. All waivers of the provisions of this Lease must be in writing and signed by the Party making the waiver. Failure of either Party to complain of any act or omission of the other Party shall not be deemed a waiver by the non-complaining Party of any of its rights under this Lease. No waiver by either Party, at any time, express or implied, of any Default, Event of Default, or Landlord Default shall waive such Default, Event of Default, or Landlord Default at any other time or any other Default, Event of Default, or Landlord Default.

31.8 Performance Under Protest. If a dispute arises about performance of any obligation under this Lease, the Party against which such obligation is asserted shall have the right to perform the obligation under protest, which shall not be regarded as voluntary performance. A Party that has performed under protest may institute appropriate proceedings to recover any amount of money paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Default Rate.

31.9 Survival. All rights and obligations that by their nature are to be performed after any Expiration Date shall survive any such Expiration Date.

31.10 Accessibility Assessment. Landlord discloses to Tenant that the Premises have not been inspected by a Certified Access Specialist (CASp). Landlord further states:

> A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

31.11 Unavoidable Delay.

31.11.1 *Notice*. Performance by either Party under this Lease shall not be in Default or Landlord Default where any such Default or Landlord Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of the Unavoidable Delay; and (b) within twenty (20) days after the Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay when Notice is timely given under this Section 31.11.1, shall commence on the date the condition causing the Unavoidable Delay commences. If Notice is not timely given under this Section 31.11.1, then the extension of time for the Unavoidable Delay shall commence on the effective date of the Notice of the Unavoidable Delay under this Section 31.11.1 and shall continue until the end of the condition causing the Unavoidable Delay. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise its reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

31.11.2 *Assumption of Economic Risks*. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS LEASE SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS LEASE. ANYTHING IN THIS LEASE TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AGREEMENTS, AND REQUIREMENTS OF THIS LEASE. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE COMMENCEMENT DATE.

INITIALS OF AUTHORIZED LANDLORD REPRESENTATIVE(S)	INITIALS OF AUTHORIZED TENANT REPRESENTATIVE(S)

31.12 Captions. The captions of this Lease are for convenience of reference only and, in no way, affect this Lease.

31.13 Counterparts. This Lease may be signed in multiple counterpart originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

31.14 Warranty Against Payment of Consideration for Lease. Tenant represents and warrants that: (a) Tenant has not employed or retained any Person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Tenant; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Tenant or any of its agents, employees or representatives to any elected or appointed official or employee of Landlord in an attempt to secure this Lease or favorable terms or conditions for this Lease. Breach of the representations or warranties of this Section 31.14 shall entitle Landlord to terminate this Lease, in Landlord's sole and absolute discretion, by Notice to Tenant. Upon any such termination of this Lease, Tenant shall immediately refund all payments made to or on behalf of Tenant by Landlord under this Lease or otherwise related to the Premises, prior to the date of any such termination.

31.15 Relationship of Parties. The Parties each intend and agree that Landlord and Tenant are independent contracting entities and do not intend by this Lease to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

31.16 Survival of Lease. All the provisions of this Lease shall be applicable to any dispute between the Parties arising from this Lease, whether prior to or following any Expiration Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Lease relating to dispute resolution or remedies shall survive any Expiration Date.

31.17 Non-liability of Officials, Employees and Agents. No Landlord Party (other than Landlord itself) shall be personally liable to Tenant, or any successor in interest of Tenant, in the event of any Landlord Default or breach by Landlord under this Lease or for any amount of money that may be or become due to Tenant or any successor in interest of Tenant, on any obligations under the terms or conditions of this Lease.

31.18 No Other Representations or Warranties. Except as expressly set forth in this Lease, no Party makes any representation or warranty material to this Lease to any other Party.

31.19 Tax Consequences. Tenant acknowledges and agrees that it shall bear all responsibilities, liabilities, costs, and expenses connected in any way with any tax consequences experienced by Tenant related to this Lease.

31.20 Time of the Essence. As to the performance of each obligation under this Lease of which time is a component, performance of such obligation within the time specified is of the essence.

31.21 Time Period Calculation. Unless otherwise specified, all references to time periods in this Lease measured in days shall be to consecutive calendar days, all references to time periods in this Lease measured in months shall be to consecutive calendar months and all references to time periods in this Lease measured in Lease Years shall be to consecutive Lease Years. All

references to time periods in this Lease measured in Business Days shall be to consecutive Business Days.

31.22 Entire Agreement. This Lease (including the exhibits attached to this Lease) and the documents referenced in this Lease contain all the terms, covenants, and conditions between the Parties regarding the Premises. The Parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises.

31.23 Governing Law. This Lease, its interpretation and performance, the relationship between the Parties, and all disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to conflict of laws statutes or principles.

31.24 Partial Invalidity. If any term or provision of this Lease or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be fully enforced Law allows.

31.25 Interpretation Principles. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Lease. The Parties both participated substantially in negotiation, drafting, and revision of this Lease, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Lease may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each collective noun used in this Lease shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord's option, any Modification violating this Lease), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar governmental requirement refers to each as amended, modified, renumbered, superseded, or succeeded, from time to time.

31.26 Survival of Conditions to Approval. Whenever this Lease requires certain conditions to be satisfied prior to or concurrent with the issuance of any consent or approval by Landlord or Landlord reasonably imposes any conditions to any Landlord consent or approval under this Lease, or where this Lease allows Tenant to take any action without Landlord's prior consent or approval, subject to the satisfaction of certain conditions, the intent and requirement of this Lease is that Tenant shall cause all such conditions to remain satisfied at all times following the granting of such consent or approval by Landlord or the taking of an action by Tenant without Landlord's consent or approval, for the duration of the matter or activity that is subject to such conditions.

31.27 Reasonableness. Wherever this Lease states that a Party shall not unreasonably withhold any consent or approval or a matter is reasonably acceptable to a Party or some other similar phrase, then: (a) such consent or approval shall not be unreasonably withheld, delayed or

conditioned; (b) no withholding of consent or approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and (if reasonably possible) indicating specific reasonable changes in the proposal under consideration that would make it acceptable (if any); and (c) if a Party grants its consent or approval (or fails to object) to any matter, this shall not waive its right to require such consent or approval for any further or similar matter.

31.28 Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or under this Lease by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

31.29 Exhibits. All the exhibits attached to this Lease are incorporated into this Lease by reference and described as follows:

EXHIBIT A	Premises Description and Depiction.
EXHIBIT B	Notice Addresses.
EXHIBIT C	Insurance Requirements.
EXHIBIT D	Landlord Standard Contract Provisions.
EXHIBIT E	Prevailing Wage Requirements
EXHIBIT F	Operating Hours

[Remainder of page intentionally blank. Signatures appear on the immediately following page.]

SIGNATURE PAGE
TO
LEASE
(4704 College Avenue, San Diego, CA 92115)

Landlord and Tenant sign and enter into this Lease by and through the signatures of their respective authorized representative(s) set forth below, as of the Commencement Date.

LANDLORD:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Lucy Contreras, Deputy Director
Department of Real Estate and Airport Management

Approved as to form on
_____.

MARA W. ELLIOTT,
City Attorney

By: _____
Michael Park
Deputy City Attorney

TENANT:

College Area Economic Development Corporation, a California corporation

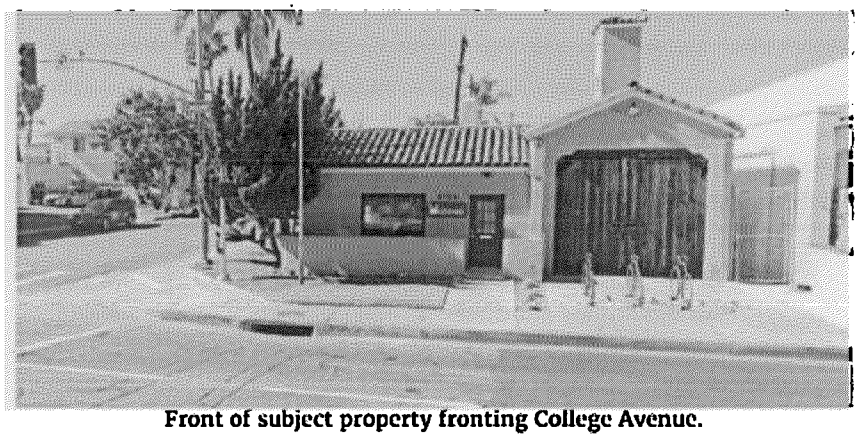
By: _____
Name: Jim Schneider
Title: Executive Director

EXHIBIT A
TO
LEASE
(4704 College Avenue, San Diego, CA 92115)

4704 COLLEGE AVENUE DESCRIPTION AND DEPICTION

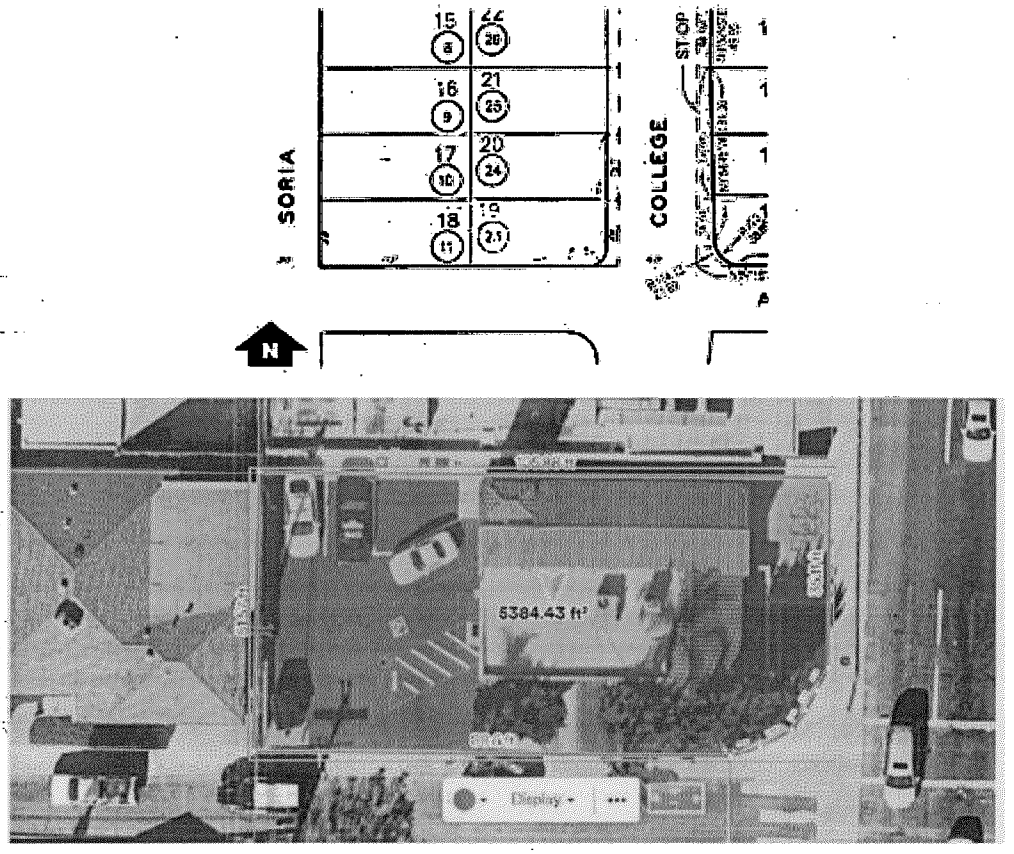
City-owned real property with the street address of 4704 College Avenue, San Diego, CA 92115 consisting of approximately five thousand three hundred eighty-two (5,382) square feet of land (APN 760-253-12-00) and a one thousand five hundred thirty-four (1,534) square foot building (APN 467-402-23-00). The subject property is on the northwest corner of College Avenue and Adams Avenue and has vehicular access to its parking area from Adams Avenue. The legal description of the building is described as follows:

Lot 19, Block 3, Book 467-40, Map 1996 – El Retiro, City of San Diego, County of San Diego, State of California



Front of subject property fronting College Avenue.

Subject parking area and south side of building (building to the right of the parking area) fronting Adams Avenue.



A - 2
Premises Description

EXHIBIT B
TO
LEASE
(4704 College Avenue, San Diego, CA 92115)

NOTICE ADDRESSES

Tenant:

College Area Economic Development Corporation
Attention: Executive Director, Economic Development Corporation
4704 College Avenue
San Diego, California 92115
(619) 582-1093

Landlord:

The City of San Diego
Attention: Director, Department of Real Estate and Airport Management
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

EXHIBIT C
TO
LEASE
(4704 College Avenue, San Diego, CA 92115)

INSURANCE REQUIREMENTS

1. **Required Insurance Coverage.** Tenant shall maintain all the following insurance policies:

1.1. *Automobile Liability Insurance.* Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Tenant, with minimum limits for bodily injury and property damage of Two Million Dollars ($2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by Landlord, which pre-approval shall not be unreasonably withheld.

1.2. *Liability Insurance.* Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the Premises or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars ($2,000,000) for any one occurrence and Four Million Dollars ($4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the Premises.

1.3. *Property Insurance.* Insurance providing coverage for the Premises and all improvements on or to the Premises against loss, damage, or destruction by fire or other hazards encompassed under Cause of Loss – Special Form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Premises, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.

1.4. *Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy, with a minimum liability limit of One Million Dollars ($1,000,000) per accident for bodily injury, or disease, covering all employees of Tenant.

1.5. *Contractors Pollution Liability Insurance.* If the Permitted Use includes sampling, testing, geotechnical boring, construction, or installation activities below the surface of

the Property (collectively, "Subsurface Work"), Contractors Pollution Liability insurance against claims arising from pollution conditions or site environmental conditions, including ongoing operations performed by Tenant or on Tenant's behalf, Tenant's products, Tenant's work (including Tenant's completed operations performed by Tenant or on Tenant's behalf), or premises owned, leased, controlled, or used by Tenant, with minimum liability limits of Two Million Dollars ($2,000,000) for any one claim or occurrence and Four Million Dollars ($4,000,000) aggregate per policy period of one year. All costs of defense covered by the Contractors Pollution Liability Insurance shall be outside the policy's liability limits. The deductible for Contractors Pollution Liability Insurance may not exceed Twenty-Five Thousand Dollars ($25,000) per claim unless and until Tenant obtains City's separate written approval of a higher deductible amount. With City's separate prior written approval, Tenant may satisfy its obligation to maintain Contractors Pollution Liability Insurance through its subcontractor that will perform the Subsurface Work maintaining Contractors Pollution Liability Insurance as required under these Insurance Requirements (defined below). When Tenant requests City's approval to use its subcontractor's Contractors Pollution Liability Insurance, Tenant shall certify to City that all Subsurface Work requiring Contractors Pollution Liability Insurance under these Insurance Requirements will be performed exclusively by the subcontractor that will maintain the Contractors Pollution Liability Insurance and provide City with a copy of its subcontractor's Contractors Pollution Liability Insurance policy. Policies issued on a claims made basis must be issued before any work commences, be maintained for the duration of all work and include a 12-month extended claims discovery period applicable to all work or the policy or policies must be maintained for at least 12 months after completion of all the work without advancing the retroactive date.

2. **Nature of Insurance.** The contents of this **EXHIBIT C** are sometimes referred to as the "**Insurance Requirements.**" All Liability Insurance, Automobile Liability Insurance, Property Insurance, Workers Compensation Insurance, and Contractors Pollution Liability Insurance (if required) policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.

3. **Policy Requirements and Endorsements.** All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:

3.1. *Insured.* Liability Insurance and Contractors Pollution Liability Insurance policies shall name the Landlord Parties as "additional insured." The coverage afforded to the Landlord Parties shall be at least as broad as that afforded to Tenant regarding the

Premises and may not contain any terms, conditions, exclusions, or limitations applicable to the Landlord Parties that do not apply to Tenant.

3.2. *Primary Coverage.* All insurance coverage maintained by Tenant shall be primary to all insurance or self-insurance maintained by the Landlord Parties and all insurance or self-insurance maintained by the Landlord Parties shall be excess of all insurance maintained by Tenant and shall not contribute with any insurance maintained by Tenant.

3.3. *Contractual Liability.* Liability Insurance and Contractors Pollution Liability Insurance policies shall contain contractual liability coverage for Tenant's Indemnity obligations under this Lease. Tenant's maintaining or failing to maintain such contractual liability coverage shall not relieve Tenant from nor satisfy any Indemnity obligation of Tenant under this Lease.

3.4. *Deliveries to Landlord.* Evidence of Tenant's maintenance of all insurance policies required by these Insurance Requirements shall be delivered to Landlord before the Commencement Date. No later than ten (10) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Tenant shall deliver to Landlord evidence of Tenant's maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after sixty (60) days' advance Notice of such action to Landlord. Phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the Landlord Parties pursuant to these Insurance Requirements.

3.5. *Waiver of Certain Claims.* Tenant shall cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the Landlord Parties, if not originally in the policy. To the extent Tenant obtains an insurance policy covering both the Tenant Parties and the Landlord Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. **"Waiver of Subrogation"** means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the Landlord Parties for any loss such insurance policy covers.

3.6. *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.

3.7. *No Claims Made Coverage*. None of the insurance coverage required by these Insurance Requirements, except Contractors Pollution Liability Insurance, may be written on a claims-made basis.

3.8. *Fully Paid and Non-Assessable*. All insurance maintained by Tenant in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.

3.9. *Separation of Insured*. All Liability Insurance, Contractors Pollution Liability Insurance, and Automobile Liability Insurance shall provide for separation of insured for Tenant and the City Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.

3.10. *Deductibles and Self-Insured Retentions*. All deductibles or self-insured retentions under insurance policies issued in satisfaction of these Insurance Requirements shall be declared to and approved by Landlord. Tenant shall pay all such deductibles or self-insured retentions regarding the Landlord Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Tenant fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, Landlord may pay the unpaid portion of such self-insured retention, in Landlord's sole and absolute discretion. All amounts of money paid by Landlord toward self-insured retentions regarding insurance policies covering the Landlord Parties pursuant to these Insurance Requirements shall be reimbursed to Landlord by Tenant in the same manner that insurance costs are reimbursable to Landlord from Tenant pursuant to Section 4 of these Insurance Requirements.

3.11. *No Separate Insurance*. Tenant shall not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the Landlord Parties are made additional insured under such insurance coverage.

4. **Insurance Independent of Indemnification**. These Insurance Requirements are independent of the Parties' Indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Lease, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude City from taking such other actions as are available to Landlord under any other provision of this Lease or otherwise at law or in equity.

1. **City Option to Obtain Coverage**. During the continuance of an Event of Default arising from the failure of Tenant to maintain any insurance coverage required by these Insurance Requirements, Landlord may, in Landlord's sole and absolute discretion, purchase such required insurance coverage. Landlord shall be entitled to immediate payment from Tenant of all premiums and associated reasonable costs paid by Landlord to obtain such insurance coverage. Each amount of money becoming due and payable to Landlord under this Section

4 that is not paid within fifteen (15) days after Notice from Landlord with an explanation of the amount owed, will accrue Default Interest from the date incurred until paid. Election by Landlord to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Tenant shall not relieve Tenant of any Default or Event of Default or Tenant's obligation to obtain and maintain any insurance coverage required by these Insurance Requirements.

EXHIBIT D
TO
LEASE
(4704 College Avenue, San Diego, CA 92115)

LANDLORD STANDARD CONTRACT PROVISIONS

1. **Tenant Certifications of Compliance.** By signing this Lease, Tenant agrees and certifies that Tenant is aware of, and will comply with, all the following requirements in performance of this Lease:

1.1 Council Policy 100-04 Americans with Disabilities Act ("**ADA**") Requirements. Tenant will comply with the Landlord's ADA requirements under Council Policy 100-04, which is incorporated into this Lease by this reference. Tenant agrees that all subcontracts relating to this Lease or the Premises will contain the subcontractor's agreement to abide by the provisions of Council Policy 100-04.

1.2 Equal Benefits Ordinance. Unless an exception applies, Tenant shall comply with the "Equal Benefits Ordinance" codified in San Diego Municipal Code ("**SDMC**") section 22.4308.

1.3 Equal Pay Ordinance. Unless an exception applies, Tenant shall comply with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. Tenant shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of Tenant to the same extent as it would apply to Tenant. Tenant shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.4 Product Endorsement. Tenant shall comply with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to Landlord as a user of a good or service must have the prior written approval of the Mayor.

1.5 Business Tax Certificate. Unless the City Treasurer determines in writing that Tenant is exempt from the payment of business tax, Tenant is required to obtain a City business tax certificate and provide a copy of such certificate to Landlord before commencing the Permitted Use.

1.6 Employment of Landlord Staff. Under Council Policy 300-11, if Tenant employs an individual, who, within 12 months immediately preceding such employment, did, in the individual's capacity as a Landlord officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the Council in connection with the entry into this Lease, Landlord, in its sole and absolute discretion, shall have the right to unilaterally and immediately terminate this Lease by notice to Tenant.

1.1 Zero Emissions Municipal Buildings and Operation Policy. Tenant will comply with all requirements of Council Policy 900-03, as amended from time to time, which are incorporated into this Lease by this reference.

EXHIBIT E
TO
LEASE
(4704 College Avenue, San Diego, CA 92115)

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGES.** Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Lease cumulatively exceeding $25,000 and alteration, demolition, repair and maintenance work performed, or funded under this Lease cumulatively exceeding $15,000 is subject to the State prevailing wage law set forth in State Labor Code sections 1720 through 1862, and in undertaking any and all such work, Tenant and Tenant's contractors and subcontractors shall comply with State Labor Code sections 1720 through 1862 and the requirements set forth in this **EXHIBIT E** (collectively, **"Prevailing Wage Law"**). This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" under San Diego Municipal Code sections 22.4201 through 22.4245 (**"LWO"**). If both Prevailing Wage Law and the LWO are applicable to particular work, Tenant and Tenant's contractors and subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

1.1 Compliance with Prevailing Wage Requirements. Under Prevailing Wage Law, Tenant and Tenant's contractors and subcontractors shall all ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations (**"DIR"**), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

1.1.1 Copies of the prevailing rate of per diem wages are on file with Landlord and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Tenant and Tenant's contractors and subcontractors shall all post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to all interested Persons upon request. Tenant and Tenant's contractors and subcontractors shall all deliver evidence of the required job site posting to Landlord, within five (5) days after such posting.

1.1.2 The wage rates determined by DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the Term. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate shall become effective on the date following the expiration date of the previous wage rate and shall apply to this Lease in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate shall apply to this Lease on the date

Term Sheet for College Area Economic Development Corporation Long Term Lease Renewal

Description of the Project:	*The College Area Economic Development Corporation, dba "College Area Business District" is a 501(c)3 non-profit corporation serving business and commercial property owners in the Business Improvement District (BID) and the College Heights Maintenance Assessment District (MAD). They promote the district as a shopping/dining destination, communicate with media outlets, and create networking opportunities. Office conference room and desks available to public. Responsible for aesthetic maintenance within the MAD boundaries, they maintain median landscaping, sidewalk washing and trash removal.*
Type of Agreement Needed:	*Non-profit lease renewal* ***10-year lease renewal***
Names of the parties:	*College Area Development Corporation*
Address/location:	*4704 College Avenue, SD, CA 92115*
Assessor's Parcel No(s):	*4674022300*
Property Area/Size:	*Lot: 5,184 sq. ft. Building: 1,534 sq. ft.*
Use:	*MAD contract scope of work includes but is not limited to:* • *Landscaping maintenance.* • *Sidewalk sweeping/washing.* • *Emptying public trash bins.* • *Removing graffiti in public right of way.* • *Seasonal enhancements.* *BID responsibilities include but are not limited to:* • *Promotional events, ribbon cutting ceremonies.* • *Communicate with media.* • *Public networking.* • *Public educational workshops.* • *Conference room with desks for public use.*
Commencement Date:	*Lease expired February 28th, 2024. Holdover status. As soon as possible.*
Duration/Term:	*10-year lease renewal.*
Payment (rent):	*Non-profit payment. Calculation below for all non-profit leases are the same.* *The rent is subject to adjustment on each anniversary of the Effective Date. The rent adjustment will be based on percentage increases in the Consumer Price Index (CPI) pursuant to the CPI Adjustment Computation below.* *The index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, California. If the CPI is no longer published, the index for adjustment shall be determined by the CITY. If a*

rent adjustment is calculated using an index from a different base year than

1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, CITY may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then be the "CPI" under this Lease.

In no event shall any adjusted rent be less than the rent in existence immediately prior to the adjustment date. CITY's failure to deliver timely notice of any rent adjustment shall not constitute a waiver by CITY of its rights hereunder.

CPI Adjustment Computation

The rent for each adjustment period shall be calculated as follows: The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below.

The "base index" denominator for the calculation is 178.500. This is a fixed number representing the three (3) month average of the CPI indices for the months of July, August and September 2001.

The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of the CPI indices for the months of July, August and September of the calendar year preceding the adjustment date.

The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount of two thousand five hundred dollars ($2,500).

Example Calculation:

(CURRENT INDEX ÷ BASE INDEX) X BASE FIGURE = NEW RENT AMOUNT

Current Index (Third Quarter 2023)

323.655 ÷

Base Index (Third Quarter 2001)

178.500 =

Adjustment Multiplier *1.813*

The base figure is then multiplied by the adjustment multiplier to determine the new rent. Using the foregoing example, the adjusted rent is calculated as follows:

$2,500.00 (Base Figure)

	X 1.813 *(Adjustment Multiplier)* *$4,532.50* *(Adjusted Rent)*
User Fee:	*$5,000 Long Term Renewal processing fee.*
Anything unique/specific to this property/transaction:	*No.*

Department of Real Estate
and Airport Management

RESTRICTED APPRAISAL REPORT – MARKET VALUE ESTIMATE

TO Charlotte Alexander, Management Trainee, City of San Diego Department of Real Estate and Airport Management

FROM Michael D. Keagy, MAI – Principal Appraiser/Program Manager, Valuations City of San Diego Department of Real Estate and Airport Management

PROPERTY 4704 College Avenue, San Diego, CA 92115 (APN 467-402-23). A 5,382 SF (0.12 acres) parcel improved with a 1,534 SF commercial building occupied by the College Area Economic Development Corporation.

Dear Ms. Alexander,

This Restricted Appraisal Report is provided based on your recent request. Its purpose is to estimate the market value of the subject property. The following conclusions are based on our investigation and examination of the property, data gathered by us, data provided by various parties, and on our experience and judgment as real estate appraisers. I am communicating my conclusions in this Restricted Appraisal Report format as defined in the Uniform Standards of Professional Appraisal Practice (USPAP). The depth of discussion in this report is specific to the needs of the City of San Diego Department of Real Estate and Airport Management (DREAM), the client and intended user. This format briefly summarizes the investigation, data, and relevant analysis, and may not be completely understood by others without information contained in my work file. The intended use of this Restricted Appraisal Report is to provide an estimated market value to aid with internal decision-making processes.

Details of this Restricted Appraisal Report are summarized as follows:

Effective Date of the Appraisal:	April 15, 2024
Date of Report:	May 2, 2024
Interest Appraised:	Fee Simple
Purpose of the Appraisal:	Estimate the market value of the subject property.
Market Value Conclusion:	$959,000

To the best of our knowledge, statements contained in this report are accurate; however, all conclusions are made subject to the Limiting Conditions and Assumptions. This report complies with the *Uniform Standards of Professional Appraisal Practice* (USPAP) adopted by the Appraisal Foundation, and Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA)(12 U.S. C. 3331 et seq.).

The subject property is a 5,382 SF (0.12 acres) parcel improved with a 1,534 SF commercial building occupied by the College Area Economic Development Corporation. It is owned by the City of San Diego and was originally constructed as a Fire Station in 1934, which closed in 1977. It has been occupied by the College Area Economic Development Corporation, a non-profit corporation, serving the area as a small business advocacy organization helping business owners and commercial property owners, since early 1996. It was significantly remodeled/renovated by the current tenant in 2006. The most recent Public Purpose Lease expired in 2023, and the tenant is currently in holdover status. The purpose of this restricted

appraisal report is to aid the City in facilitating a 10-year extension of the current/previous Public Purpose Lease.

Extraordinary Assumptions[1]

1. None.

MARKET VALUE DEFINITION

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress[2]

INTENDED USE OF APPRAISAL

This appraisal will be used to aid the client with internal decision-making processes and assist in facilitating a 10-year extension of the current/previous Public Purpose Lease with the current tenant, the College Area Economic Development Corporation.

CLIENT AND INTENDED USER

Department of Real Estate and Airport Management (DREAM)

PROPERTY RIGHTS APPRAISED

The property rights appraised in this analysis are the fee simple interest.

SCOPE OF WORK

The scope of work in an appraisal assignment involves the type of data and extent of research and analysis that were performed to develop the appraisal. The depth of discussion contained in this report is specific to the needs of the client for the intended use stated above. The scope of work in this assignment included the following:

- Reviewing the internal appraisal request, historic site documentation, proposed lease agreement and site inspection notes from Lease Administration
- Obtaining Assessor information
- Researching city of San Diego resources for the zoning designation/permitted uses
- Searches were made for comparable land transactions
- Prepared a Restricted Appraisal Report

IDENTIFICATION OF THE PROPERTY

The subject property is a 5,382 SF (0.12 acres) parcel improved with a 1,534 SF commercial building (APN 467-402-23). It was originally constructed as a Fire Station in 1934, and has been used for commercial uses, by the current tenant, since early 1996. Despite this, it is currently zoned RS-1-7, by the City of San Diego. It is bordered by residential and commercial properties and has characteristics of office, retail (busy street and good visibility), and single-family residential use (exterior appearance, kitchen area and garage[3]).

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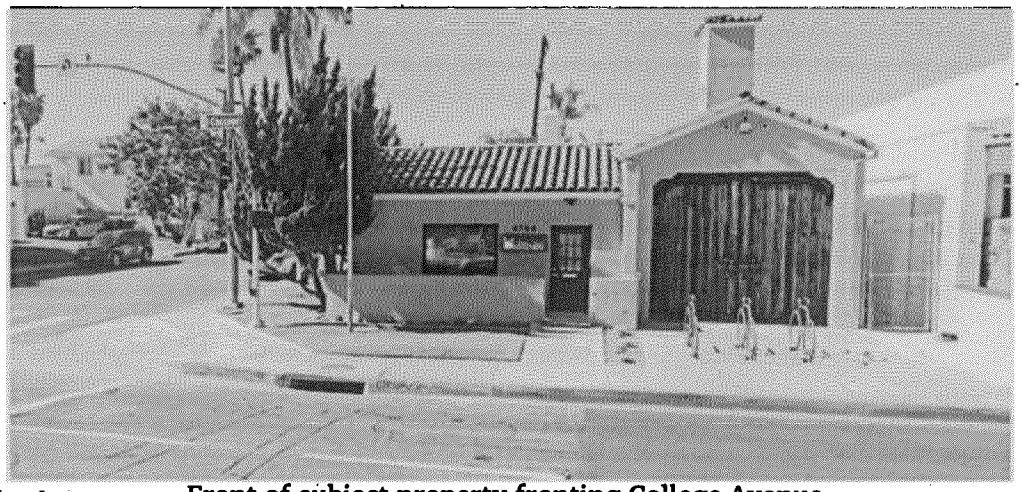
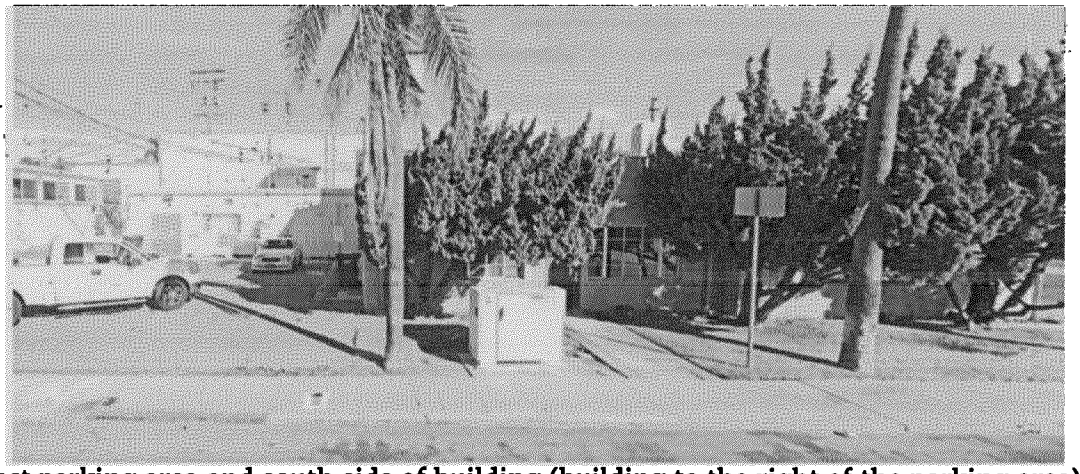
[1] Extraordinary assumptions may have an impact on the assignment results.
[2] Source: The Dictionary of Real Estate Appraisal, 6th Edition
[3] The interior of the garage was built-out to typical office area; however, the exterior garage door is still there and appears to be operable but there is no curb cut on College Avenue. Despite this, the open parking spaces off Adams Avenue is sufficient for residential uses in this area.

It is on the northwest corner of College Avenue (a major thoroughfare) and Adams Avenue (lightly trafficked residential street). Therefore, the building is versatile, this is addressed in the analysis by using comparables that include commercial (pure office, pure retail, and similarly a combination of both), pure residential, and similar commercial use with residential zoning. The subject's street views, provided via Google Street View, are shown below:



Front of subject property fronting College Avenue.



Subject parking area and south side of building (building to the right of the parking area) fronting Adams Avenue.

LEGAL DESCRIPTION

The subject property is APN 467-402-23, which is legally described as follows:

> Lot 19, Block 3, Book 467-40, Map 1996 – El Retiro, city of San Diego, county of San Diego, state of California.

CURRENT OWNERSHIP

According to tax records, the subject is currently owned by City of San Diego.

ACCESS/STREET

The subject property is on the northwest corner of College Avenue and Adams Avenue and has vehicular access to its parking area from Adams Avenue. College Avenue is a two-way, four-lane, asphalt-paved street with concrete curbs, gutters and sidewalks. Adams Avenue is a two-way, two-lane, asphalt-paved street with concrete curbs, gutters and sidewalks. Both streets have parallel parking on both sides and appear to be well-maintained.

EASEMENTS AND ENCROACHMENTS

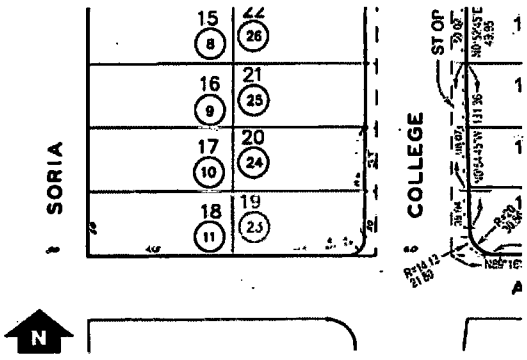
No title report was provided; however, there were no apparent adverse easements or encroachments noted. This analysis is made under the assumption that no other significant adverse title issues exist.

SURROUNDING LAND USES

North:	Commercial (police museum) and residential
East:	Religious facilities (across street)
South:	Commercial/residential (across street)
West:	Residential

AREA AND SHAPE

According to MLS Tax Suite, the subject parcel has a total estimated area of 5,382 SF[4] (0.12 acres), and is basically rectangular in shape, as shown in the following plat map:



TOPOGRAPHY

The subject parcel is generally level.

DRAINAGE

Drainage appears adequate.

UTILITIES AND SERVICE

Utilities, including gas, electricity, water, sewer, and telephone, are available to the subject site. Utility costs are comparable to the rest of San Diego County.

[4] RealQuest reports the parcel size of 5,201 SF; however, appraisers measured the parcel in NearMaps to be 5,384 SF, which is consistent with MLS Tax Suite. As such, the size of 5,382 SF is considered reliable and is used throughout the report.

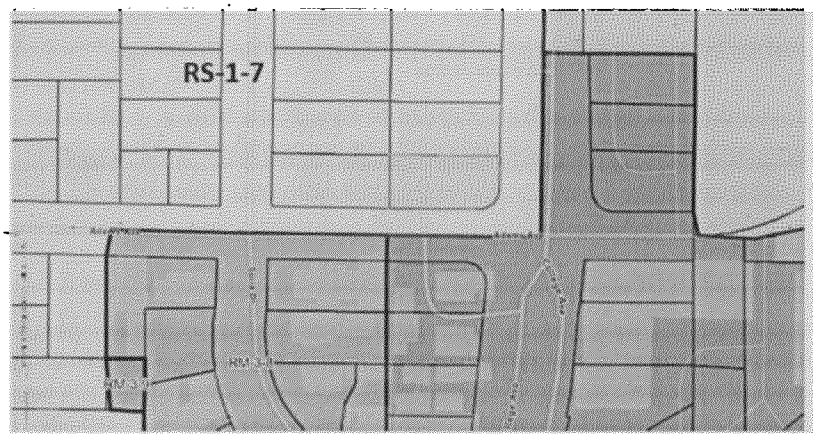
PROPERTY HISTORY

No known sales or listings of the subject have occurred in the past 36 months.

LAND USE REGULATIONS

Zoning

The subject is zoned RS-1-7: Residential Single Unit, by the City of San Diego, as shown in the following zoning map:



The purpose of the RS zone "is to provide appropriate regulations for the development of single dwelling units that accommodate a variety of lot sizes and residential dwelling types, and which promote neighborhood quality, character, and livability. It is intended that these zones provide for flexibility in development regulations that allow reasonable use of property while minimizing adverse impacts to adjacent properties.[5] RS-1-7 requires minimum 5,000 SF lots. Permitted uses in this zone are primarily single dwelling units including residential and transitional housing for 6 or fewer persons and include home occupations along with a few other residential type uses with limitations.

Relevant development criteria for the subject's zone are listed as follows:

Min. Lot Area:	5,000 SF
Min. Lot Dimensions	
Street Frontage:	50 feet
Width (Interior):	50 feet
Width (Corner):	55 feet
Depth:	95 feet
Setbacks	
Front:	15 feet
Side:	0.08 multiplied by actual lot width
Rear:	13 feet

Based on the above, the subject's current commercial use appears to be legally non-conforming due to the commercial use being established prior to the current residential zone. However, appraisers are not experts in the interpretation of complex zoning ordinances and the determination of compliance is beyond the scope of work of real estate appraisal.

[5] City of San Diego Municipal Code version dated March 2024

Community Plan/Land Use

The subject is in the City of San Diego, College Area Community Plan and its General Plan Land Use Designation is Residential, Institutional & Public and Semi-Public Facilities.

HIGHEST & BEST USE

The subject building is legally permissible and physically possible, evidenced by its existence. The ability to construct additional square footage is limited by the site size, zoning, and current layout.

For a development to be financially feasible, the value of the property "as improved" must be greater than its value "as vacant." Though no detailed land value estimate is made, the land value would need to be higher than $178/site SF ($959,000 ÷ 5,382 site SF). Though no detailed land value estimate is made, single-family home sites in the subject's area are known to be less than $178/site SF. Therefore, the improvements are financially feasible and are the maximally productive use.

IMPROVEMENT DESCRIPTION

The subject is improved with a 1,534 SF stucco building (refer to the Property Inspection Report from the leasing agent's inspection on 3/5/24 in the Addendum). It has painted drywall walls and ceilings and flooring is a mix of tile and commercial carpet. There is a kitchen area, typical restrooms, and HVAC. In addition, there is an asphalt-paved parking lot with 4 striped spaces (one is a handicap space) resulting in a parking ratio of 2.6/1,000 SF [4 spaces/ (1,534 SF/1,000 SF)]. It is considered to be an average quality building in average overall condition.

VALUATION METHODOLOGY

All three traditional approaches to value are considered: the cost, sales comparison, and income approaches. The subject is a unique property since it was constructed as a fire station, subsequently used for a commercial use, and is zoned RS-1-7: Residential Single Unit, by the City of San Diego. The cost and income approaches are not used since they do not emulate the evaluation methodology of typical buyers of this type of property in this area. In addition, the cost approach is not used due to the difficulty and subjectivity associated with estimating accurate depreciation. Therefore, only the sales comparison approach is used in this report.

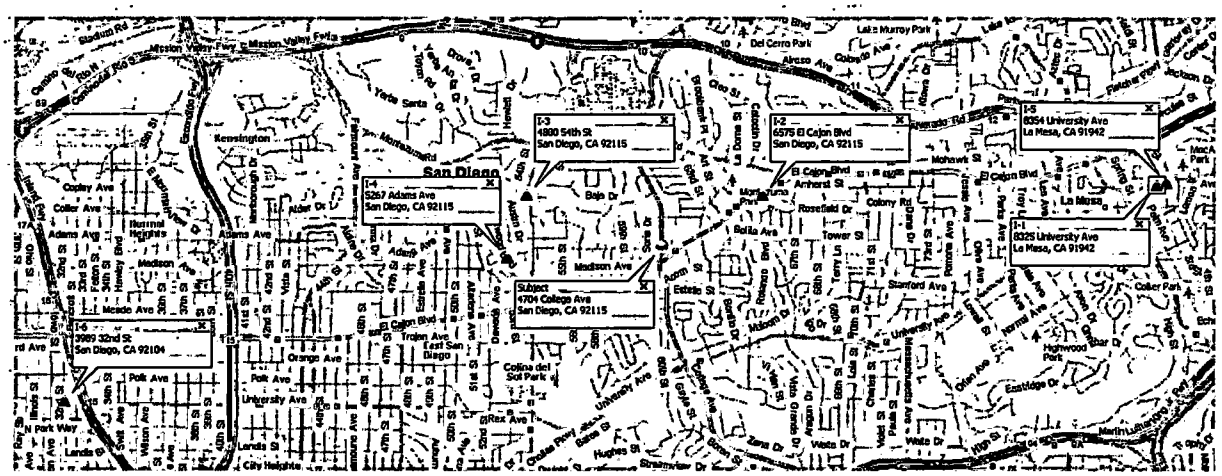
The sales comparison approach is based on the assumption that an informed purchaser will pay no more for a property than the cost of acquiring an existing property with equal utility. When this approach is applied, market value is estimated by comparing the sale prices of recent transactions involving properties similar to the subject. Any dissimilarities are resolved with appropriate adjustments.

SALES COMPARISON APPROACH

Steps in the sales comparison approach include assembling and verifying the sales, comparing them to the subject, and adjusting for differences based on other market-derived data. The subject is analyzed on a building price-per-square-foot basis. This unit of comparison is used because it best reflects the valuation methodology of typical buyers in the marketplace. Once the adjustments have been made, the sales indicate a range of values from which a final estimate is derived.

Making specific adjustments for building size within the grid is difficult because impacts from size tend to be non-linear.[6] As such, this analysis considers the comparables graphically which illuminates the impact from the law of decreasing returns (the tendency for larger buildings to sell for less per SF and smaller buildings to sell for more per SF). Thus, the impact due to differences in size is considered in the reconciliation.

As previously discussed, the subject property is unique. It is bordered by residential/commercial properties, is considered to have characteristics of office, retail (busy street and good visibility), and a single-family residential use (zoning, exterior appearance, kitchen area and garage[7]). Therefore, the building is versatile and the comparables used include commercial (pure office, pure retail, and similarly a combination of both), pure residential, and similar commercial use with residential zoning. The comparables used are considered the best available and are shown on the following location map:



Refer to the Land Comparable Adjustment Grid on the following page.

[6] This means the impact from size differences vary in scale over the range of sizes. For example, a difference of 1,000 SF in size will typically be far more significant to a 4,000 SF building than say a 40,000 SF building. Thus, applying one adjustment figure or percentage over a range of sizes will result in flawed results. Looking at it graphically allows the relationship to be easily and quickly understood.

[7] The interior of the garage was built-out to typical office area; however, the exterior garage door is still there and appears to be operable but there is no curb cut on College Avenue. Despite this, the open parking spaces off Adams Avenue is sufficient for residential uses in this area.

IMPROVED SALE COMPARABLE ADJUSTMENT GRID

	Subject	I-1	I-2	I-3	I-4	I-5	I-6
Address	4704 College Ave San Diego, CA 92115	8325 University Ave La Mesa, CA 91942	6575 El Cajon Blvd San Diego, CA 92115	4880 54th St San Diego, CA 92115	5267 Adams Ave San Diego, CA 92115	8354 University Ave La Mesa, CA 91942	3989 32nd St San Diego, CA 92104
APN	467-402-23	494-771-01	468-230-44	466-890-11	466-530-12	494-160-10	446-433-01
Property Type	Commercial	Commercial	Commercial	Residential	Residential	Commercial/Resid.	Medical Office
Document Number	–	24-7503	23-173747	23-235696	23-233800	22-407090	22-236011
Sale Date (COE)	–	1/10/24	7/3/23	8/30/23	8/28/23	10/21/22	6/3/22
Sale Date (Off Market)	–	11/26/23	5/19/23	7/16/23	7/14/23	9/6/22	4/19/22
Type of Buyer	–	Owner-user	Owner-user	Investor	Owner-user	Owner-user	Owner-user
Location	Average	Inferior	Average	Average	Average	Inferior	Slt. Superior
Zoning	RS-1-7	RB-D-MU	CUPD-CU-2-3	RS-1-7	RS-1-7	RB-D-MU	RM-3-9
Year Built	1934; remodeled 2006	1945; updated since	1946; updated since	1965; updated since	1964; recently remodeled	1931; recently renovated	1926; updated since
Effective Age	20	20	30	25	20	20	30
Quality/Appeal	Average	Average	Average	Average	Average	Average	Average
Lot Size (Acres)	0.12	0.15	0.06	0.22	0.33	0.18	0.06
Lot Size (SF)	5,382	6,534	2,614	9,800	14,400	7,841	2,679
Parking Ratio (/1,000 SF)	2.6	2.9	0.7	2.4	1.9	5.6	4.2
Effective Size (Rentable SF)	1,534	1,360	1,482	1,671	2,145	1,425	1,198
Indicated Cap Rate	–	–	–	–	–	–	–
Price	–	$933,000	$650,000	$875,000	$950,000	$1,020,000	$850,000
Price/SF	–	**$686.03**	**$438.60**	**$523.64**	**$442.89**	**$715.79**	**$709.52**
Property Rights							
Adj Price		$686.03	$438.60	$523.64	$442.89	$715.79	$709.52
Financing Terms							
Adj Price		$686.03	$438.60	$523.64	$442.89	$715.79	$709.52
Conditions of Sale							
Adj Price		$686.03	$438.60	$523.64	$442.89	$715.79	$709.52
Costs Immed. After Purchase							
Adj Price		$686.03	$438.60	$523.64	$442.89	$715.79	$709.52
Market Conditions							
Adj Price		$686.03	$438.60	$523.64	$442.89	$715.79	$709.52
Property Adjustments							
Location	–	10.0%				10.0%	-5.0%
Zoning	–						
Age/Condition	–	0.0%	10.0%	5.0%	0.0%	0.0%	10.0%
Quality/Appeal	–						
FAR/Parking	–	-0.8%	4.8%	0.5%	1.9%	-7.5%	-3.9%
Total		**9.2%**	**14.8%**	**5.5%**	**1.9%**	**2.5%**	**1.1%**
Adjusted Price/SF		**$748.91**	**$503.65**	**$552.62**	**$451.11**	**$733.57**	**$717.21**
Gross Adjustment		10.8%	14.8%	5.5%	1.9%	17.5%	18.9%

Discussion of Adjustments

All of the comparable market data were arm's-length transactions with no known undue stimulus. These comparables are considered similar to the subject in all respects, except the following:

Market Conditions

Based on appraisers' experience and discussions with brokers, who are familiar with the commercial and residential market in the subject's market area, the real estate market was basically stable from early 2022 (estimated January 1, 2022) through the date of value (April 15, 2024). Based on the above, no market adjustments are made for the comparables used.

Location

Comparables I-1 and I-5 are inferior to the subject in terms of location and are adjusted upward. Comparable I-6 is slightly superior in terms of location and is adjusted downward.

Zoning

All of the comparables except I-2 are either residential or residential business (RB) zoned. Comparable I-2 is primarily commercial with residential uses allowed as part of a mixed-use development. Despite this, no specific zoning adjustments are made since this is considered in the reconciliation.

Age/Condition

Age adjustments are based on effective age, which considers the age and condition. The adjustment is made at 1.0% per year[8] difference in effective age, shown as follows:

	Subject	I-1	I-2	I-3	I-4	I-5	I-6
Effective Age	20	20	30	25	20	20	30
Diff. from Subject (yrs)	--	0	10	5	0	0	10
Adjustment (%/yr)	--	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%
Adjustment (%)	--	0.0%	10.0%	5.0%	0.0%	0.0%	10.0%

Quality/Appeal

The comparables are all considered similar to the subject in terms of overall quality and appeal and no adjustment is made.

FAR/Parking

FAR and parking are considered collectively here as these types of properties typically use any excess land for parking (or at least have that option). FAR/Parking adjustments are made at an adjustment of 2.0% of the percentage difference in parking ratio.[9] Adjustments are shown as follows:

[8] The adjustment amount is derived using paired sales analysis. Specifically, it is that dollar amount which results in the adjusted prices of the comparables being most highly correlated.

[9] Ibid.

	Subject	I-1	I-2	I-3	I-4	I-5	I-6
Price/SF	--	$686.03	$438.60	$523.64	$442.89	$715.79	$709.52
Parking Ratio	2.6	2.9	0.7	2.4	1.9	5.6	4.2
Diff. from Subject	--	-0.3	1.9	0.2	0.7	-3.0	-1.6
Adj (%/car/1,000 SF)	--	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Adjustment (%)	--	-0.8%	4.8%	0.5%	1.9%	-7.5%	-3.9%

Discussion of Law of Decreasing Returns and Reconciliation

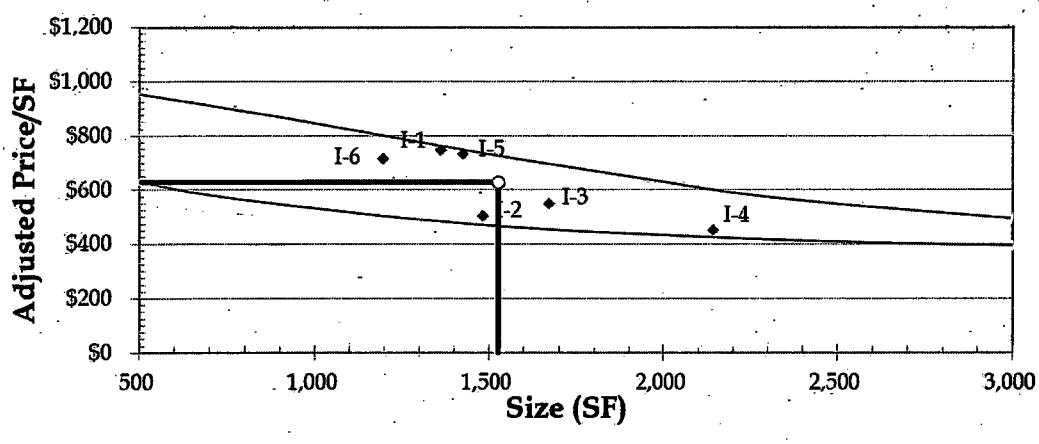
The closed sales indicate the following adjusted prices/SF:

Minimum	$451.11
Maximum	$748.91
Average	$617.85

This range is partly due to the law of decreasing returns, defined as follows:

> The premise that additional expenditures beyond a certain point (the point of decreasing returns) will not yield a return commensurate with the additional investment.[10]

This means that when the building size increases, each additional SF tends to contribute a declining price/SF. This tendency is illustrated best by plotting these sales based on size and price/SF, as follows:



The trend band above indicates the upper and lower ranges of the adjusted sale price of the comparables used. The price/SF tends to decline as the size increases, which is typical and expected. As shown above, an estimate for the subject is obtained by plotting the subject's size within the trend band. Most consideration is given to comparables I-1, I-3 and I-4. I-1 is the most recent sale and is a commercial use with a residential business zone, and I-3 and I-4 have the lowest gross adjustment amounts and are in the same zone as the subject (RS-1-7). The remaining comparables are considered

[10] *Dictionary*, 161.

supportive. As such, the estimate is made toward the middle of the range, at $625/SF. Using this figure, the subject's estimated value is summarized as follows:

$625/SF x 1,534 SF = $958,750, rounded to $959,000

As shown above, the estimated market value of the fee simple interest in the subject, by the sales comparison approach, as of April 15, 2024, is concluded at **$959,000.**

Thank you for the opportunity of submitting this report.

Sincerely,

Michael D. Keagy, MAI
CA Certificate No. AG025851

Erica Manning
CA Certificate No. AG043689

ASSUMPTIONS AND LIMITING CONDITIONS

1. This is a restricted appraisal report which is intended to comply with the reporting requirements set forth under Standard Rule 2-2c of the Uniform Standards of Professional Appraisal Practice. It does not include discussions of the data, reasoning, and analyses that were used in the appraisal process to develop opinions of value. Supporting documentation is retained in our files. The opinions expressed in this restricted use report may not be understood properly without additional information in the work file. The information contained in this report is specific to the needs of the client and for the intended use stated in this report. The appraiser is not responsible for unauthorized use of this report or its use by third parties.
2. The information furnished by others is believed to be true, correct, and reliable. A reasonable effort was made to verify such information; however, no warranty is given for its accuracy.
3. No responsibility is assumed for matters legal in character such as the legal description or title considerations such as title defects, liens, encroachments or overlapping boundaries other than those addressed in the appraisal. No opinion is rendered as to title which is assumed to be in fee simple interest as of the date of value unless otherwise noted.
4. Title is assumed to be marketable and free and clear of all liens and encumbrances, easements, and restrictions except those specifically discussed in the report. Responsible ownership and competent property management are assumed.
5. Soils engineering studies were not provided. It is assumed that there are no hidden or unapparent conditions which would render the property more or less valuable. No responsibility is assumed for such conditions or for engineering which might be required to discover such conditions.
6. Existence of hazardous materials was not observed by the appraisers. The appraisers, however, are not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, and other potentially hazardous materials may affect the value of the subject property. No responsibility is assumed for such conditions or for any expertise or engineering knowledge required. The intended user is urged to retain an expert in this field if there are concerns.
7. It is assumed that there are no environmental or ecological factors that will prevent continued use of the existing improvements.
8. No warranty is made as to the seismic stability of the subject property.
9. Disclosure of the contents of this appraisal report is governed by the By-Laws and Regulations of the Appraisal Institute. Neither all nor part of the contents of this report (especially any conclusions of value, the identity of the appraisers, or any reference to the Appraisal Institute or the MAI designation) shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent.
10. Submission of this report constitutes completion of the services authorized. By reason of this appraisal, we are not required to give further consultation, depositions, testimony, or be in attendance in court with reference to the subject, unless arrangements have been previously made and the client agrees to provide customary compensation.

EXTRAORDINARY ASSUMPTIONS[11]

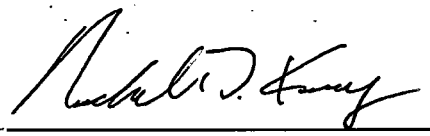
1. None.

[11] Extraordinary assumptions may have an impact on the assignment results.

CERTIFICATION

I certify, to the best of my knowledge and belief that:

1. The statements of fact contained in this report are true and correct.
2. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
3. I have not performed services, as an appraiser, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this report.
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
8. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute.
9. I have not personally inspected the subject property of this Appraisal Report.
10. No one aside from the signers of this report provided significant professional assistance to the individual signers in the preparation of this Appraisal Report.
11. As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute.
12. Use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.



Michael D. Keagy, MAI

California Certified General Appraiser No. AG025851

CERTIFICATION: ERICA MANNING

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice.*
8. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute.
9. I have not personally inspected the subject property of this Appraisal Report.
10. No one aside from the signers of this report provided significant professional assistance to the individual signers in the preparation of this Appraisal Report.
11. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
12. The appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.
13. I have not performed any services regarding the subject property within the prior three years, as an appraiser or in any other capacity.

Erica Manning

Erica Manning

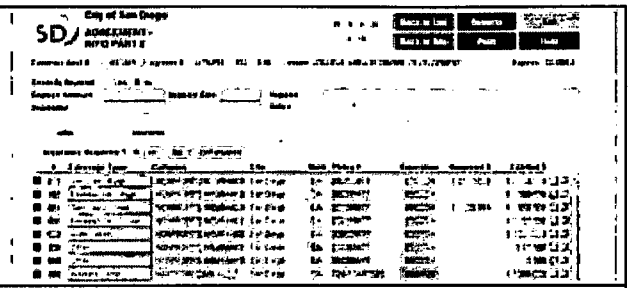
Certified General Real Estate Appraiser No. AG043689

Addendum A: SUBJECT BACKUP

[redacted]

PROPERTY INSPECTION REPORT

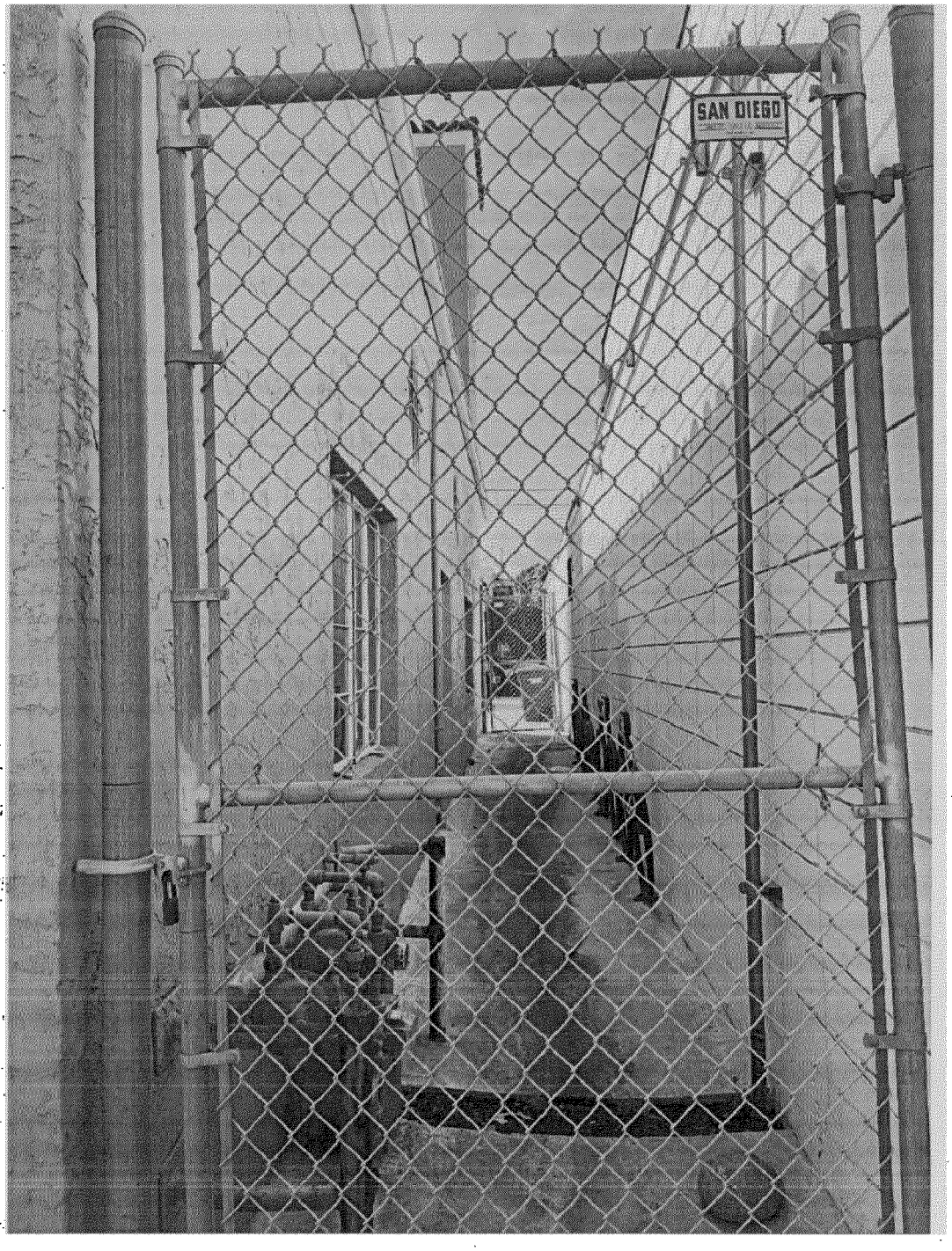
DATE OF INSPECTION	03/05/2024
TENANT NAME	College Area Economic Development Corporation
LEASE ID	Q702PM-002-B00
INSURANCE UP TO DATE?	Yes: X No: General Liability Aggregate Non-Profit Insurance Required $2,000,000M. Carried $3,000,000M. Excess/Umbrella Aggregate Non-Profit Insurance Carried $1,000,000M. General Liability Occurrence Non-Profit Insurance Required $1,000,000M. Carried $1,000,000M. Excess Umbrella Insurance Non-Profit Insurance Carried $1,000,000M. Auto Liability Non-Profit Insurance Carried $1,000,000M. Other Non-Profit Insurance $27,5000 Other Non-Profit Insurance $500

	
RENT PAID UP TO DATE?	Yes No X Non-Profit lease agreement
RENT ADJUSTMENT CURRENT?	Yes X No
CONTACT NAME	Jim Schneider Executive Director (619)-582-1093 jim@collegeareasd.com
CONTACT TELEPHONE NUMBER/EMAIL	Jim Schneider Executive Director (619)-582-1093 jim@collegeareasd.com
LOCATION/ADDRESS OF PROPERTY	4704 College Avenue, San Diego, CA. 92115
INSPECTION TEAM MEMBERS	Charlotte Alexander & Koy Nichols
TENANT IMPROVEMENT DRAWING DISCREPANCIES	None.
CURRENT PROJECT UNDER CONSTRUCTION	No current construction projects. Repairs and ongoing maintenance scheduled.
STRUCTURES IN NEED OF PAINTING/REFURBISHMENT	Wooden shed.
PARKING LOT CONDITION	Good.
SIGN CONDITION	Good.
JUNK/DEBRIS OR OTHER UNSIGHTLY OUTSIDE STORAGE	None.

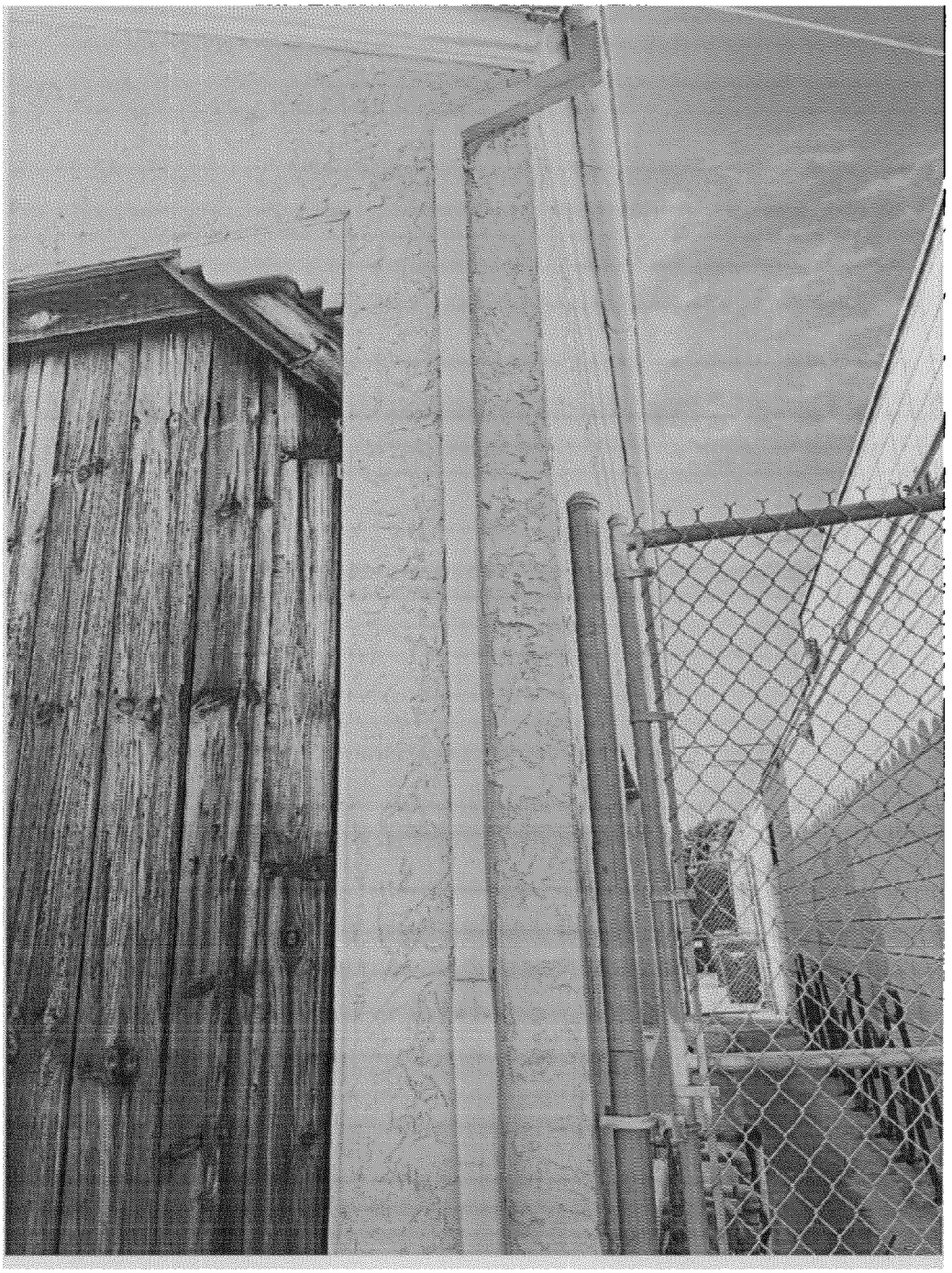
LANDSCAPING NEEDING MAINTENANCE	None. Possible replacement of grass with artificial turf.
SUSPECTED UNAUTHORIZED STRUCTURES	None.
SUSPECTED UNAUTHORIZED SIGNS AND BANNERS	None.

SUSPECTED HAZARDOUS MATERIALS	None.
SUSPECTED ACTIVITIES DETRIMENTAL TO ENVIRONMENT (INCLUDING STORMWATER ISSUES	None.
SUSPECTED UNAUTHORIZED ACTIVITIES/UNSAFE CONDITIONS	None.
OTHER CONDITIONS THAT MAY GENERATE PUBLIC, ADJACENT PROPERTY OWNER/TENANT, COUNCIL MEMBER OR OTHER GOVERNMENTAL AGENCY COMPLAINTS:	None.
SUBLEASE TENANTS	None.
GENERAL COMMENTS	Property is in good condition. Ongoing maintenance and window replacement.
FOLLOW UP/ACTION ITEMS:	Continue monitoring of window replacement and ongoing maintenance.

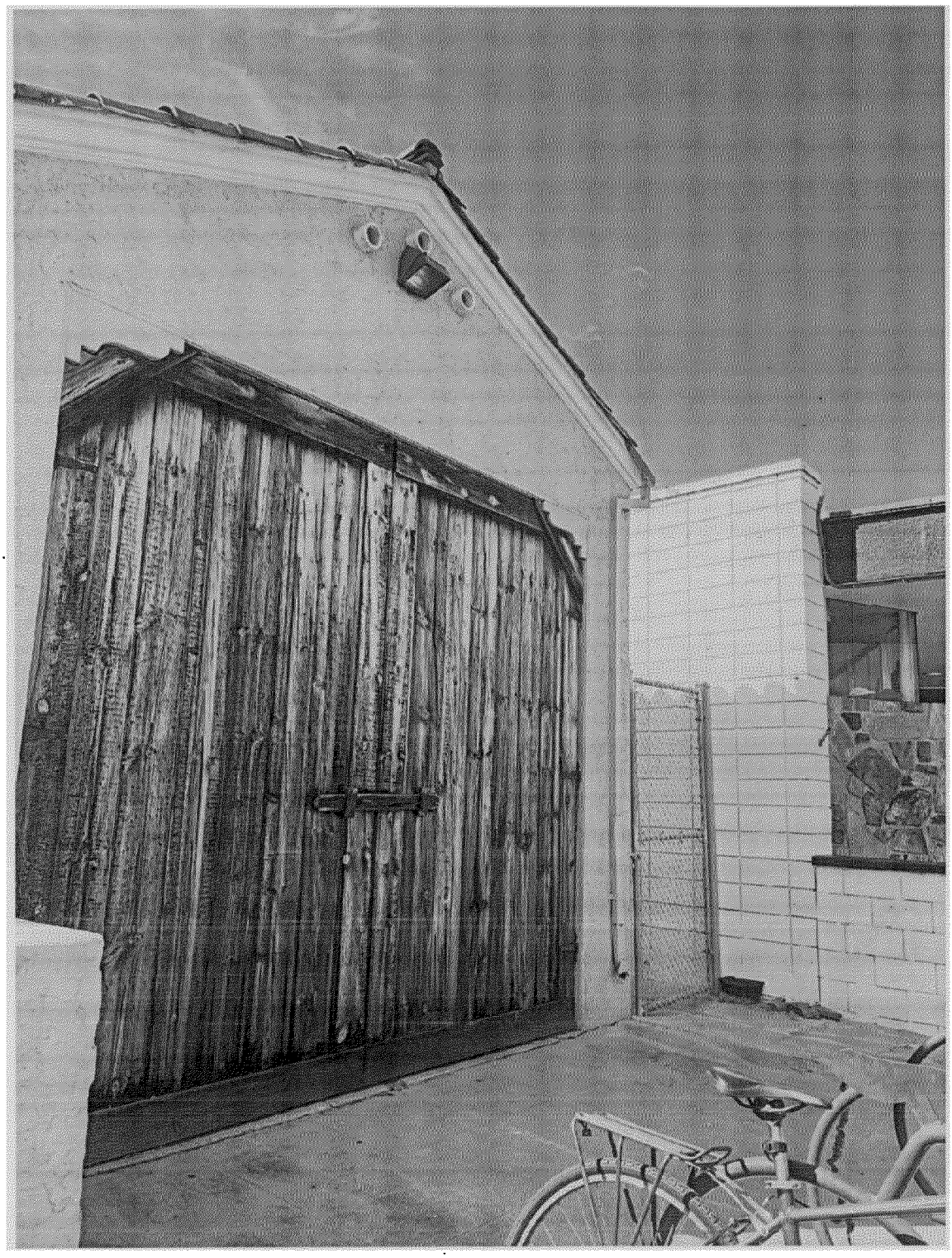
Attached please find site visit photos from March 5th, 2024.



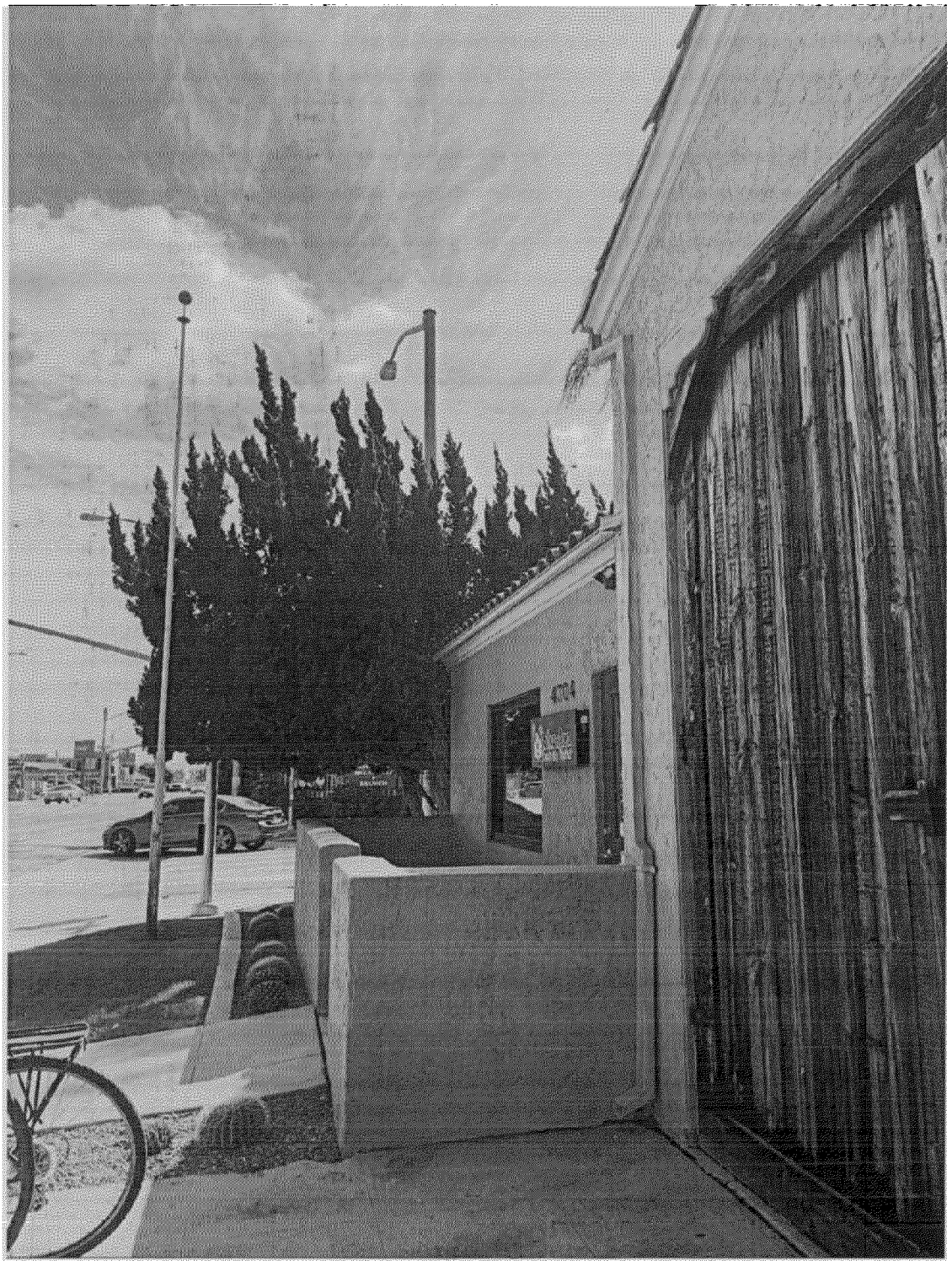
Interior locked and fenced path between buildings. Utility meters. First floor casement window.



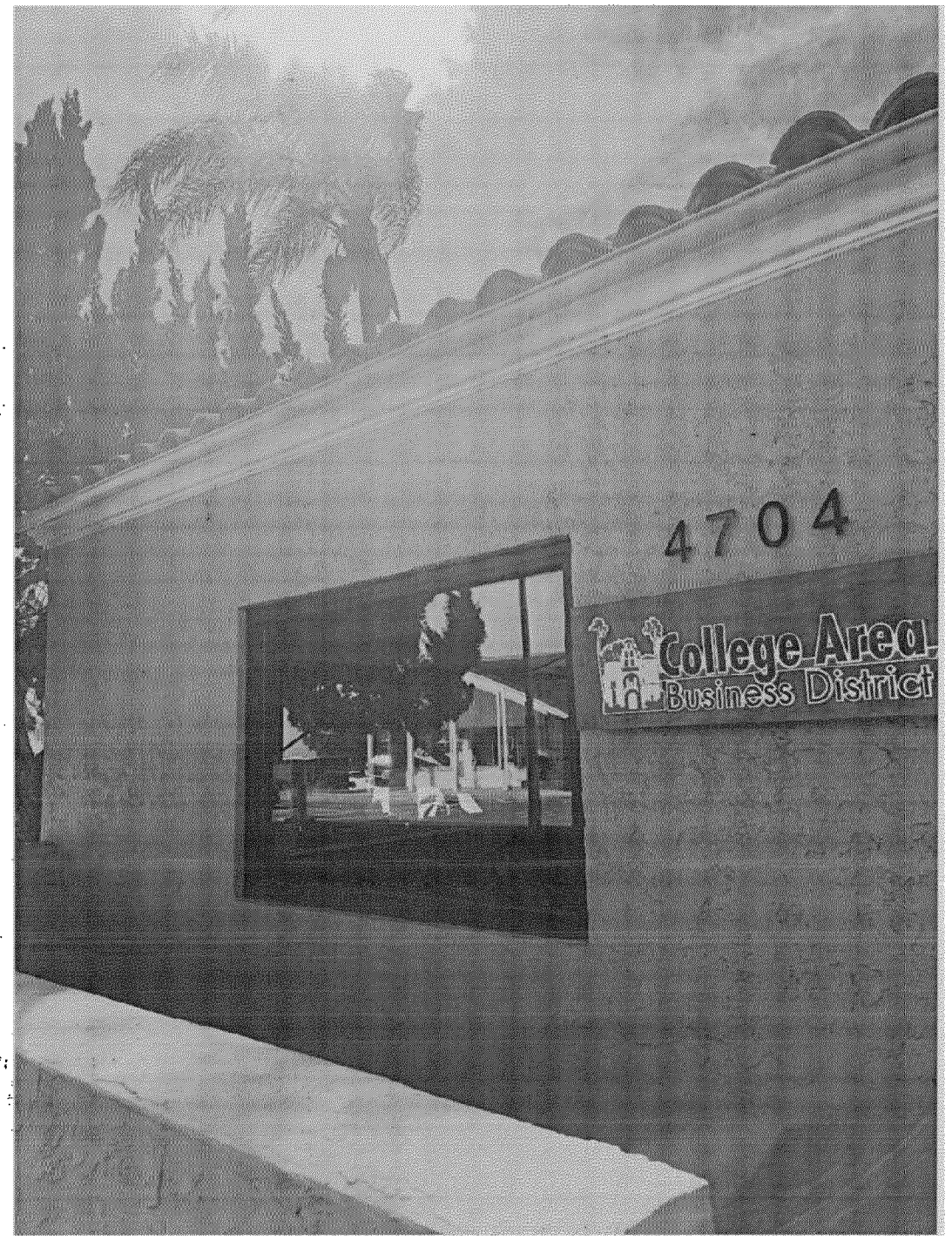
Exposed wood on shed.



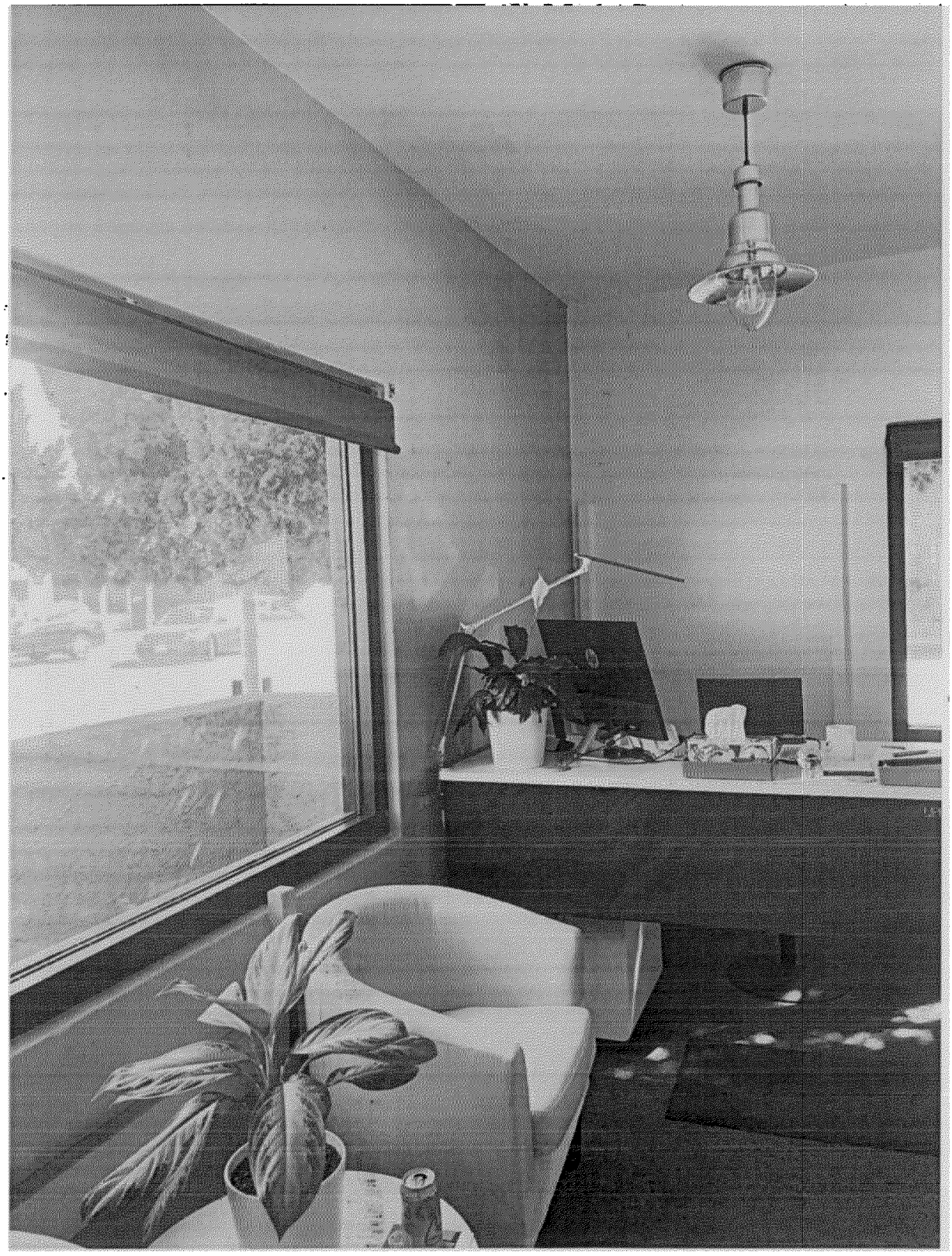
Wooden shed and Bike Port Area.



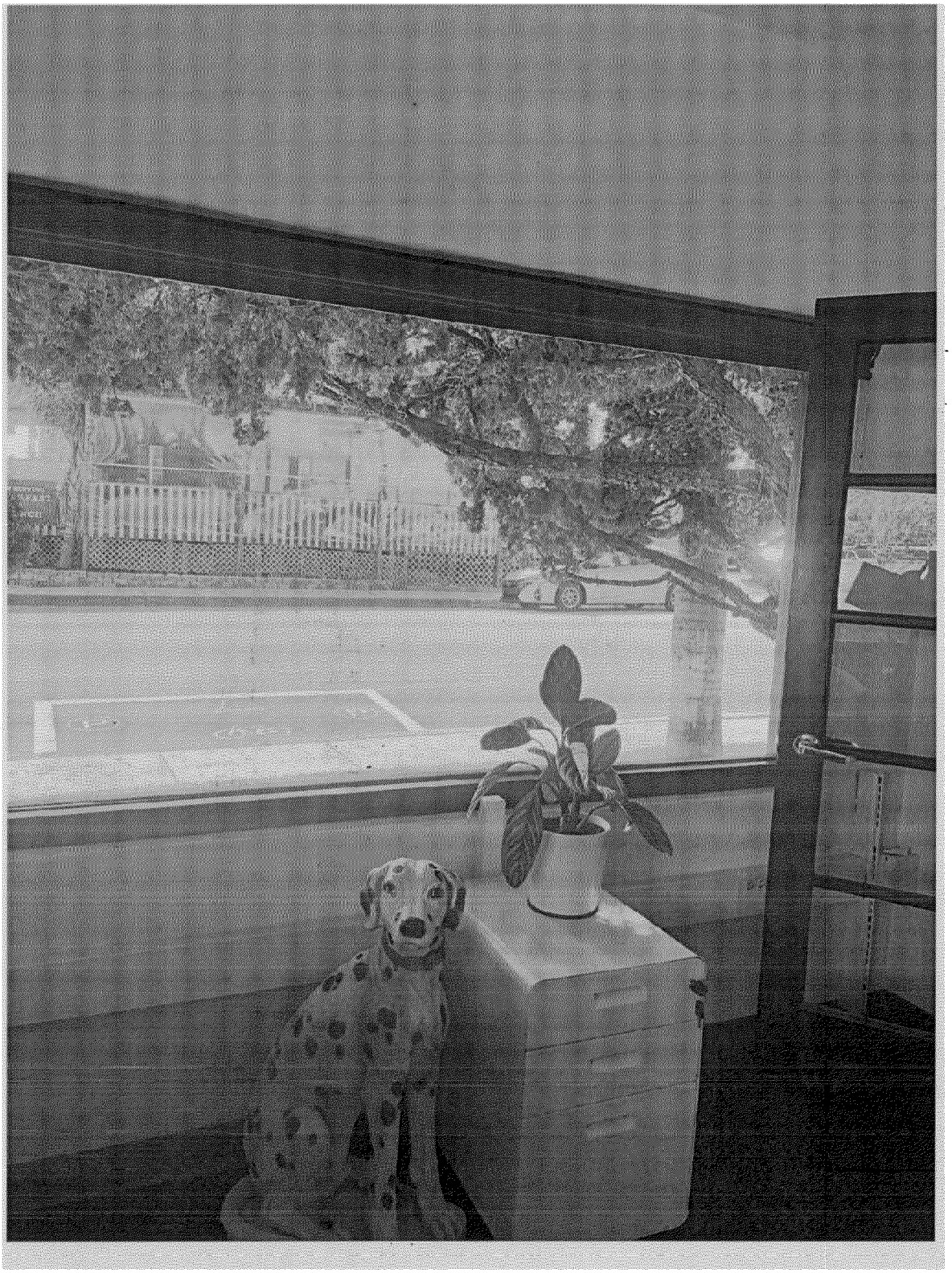
Building with street frontage Clear signage and address numerals. Wooden shed frontage.



College Area Business District sign and street numerals. Metal cased window.

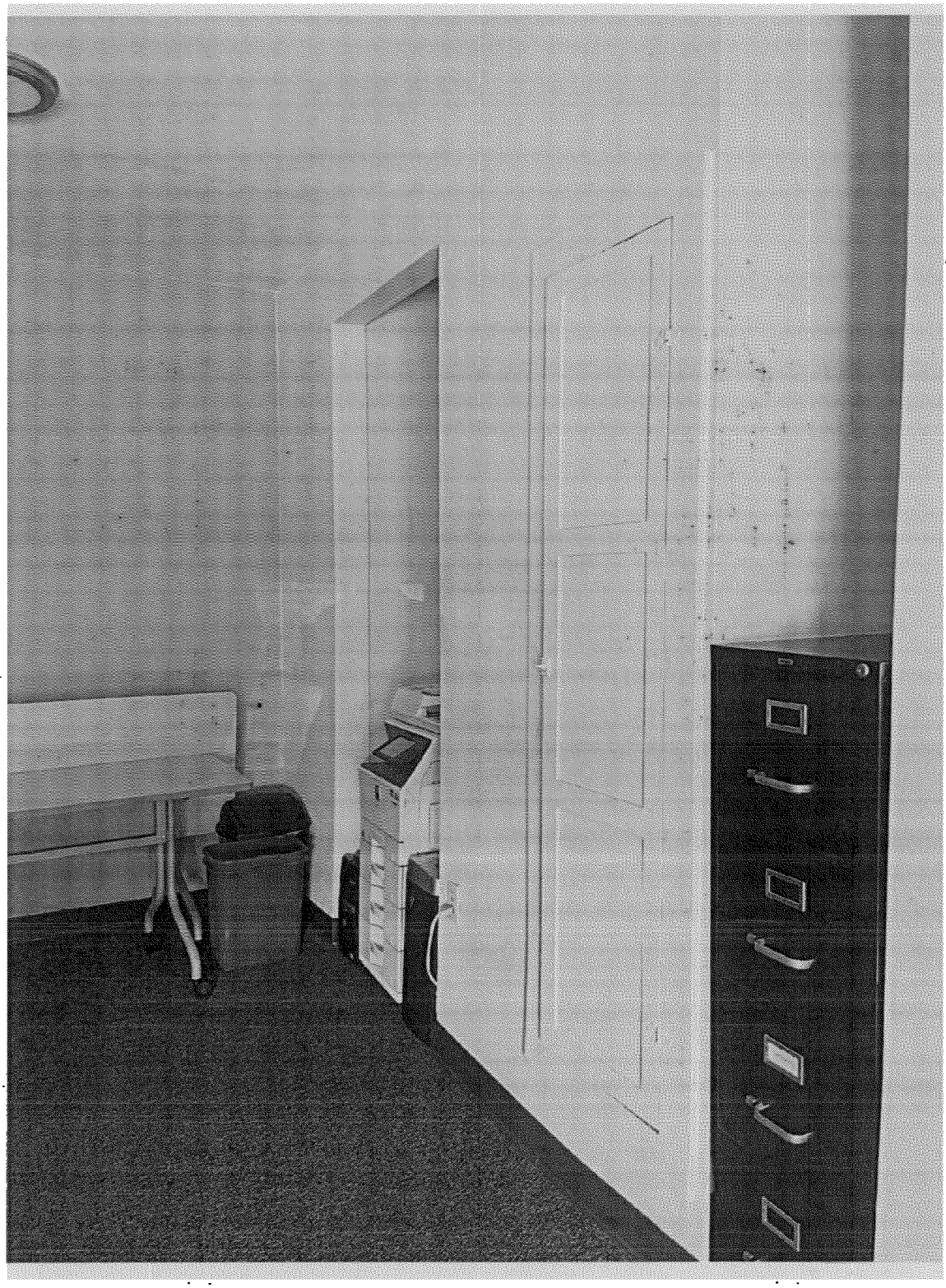


Office Area. Windows facing streets.

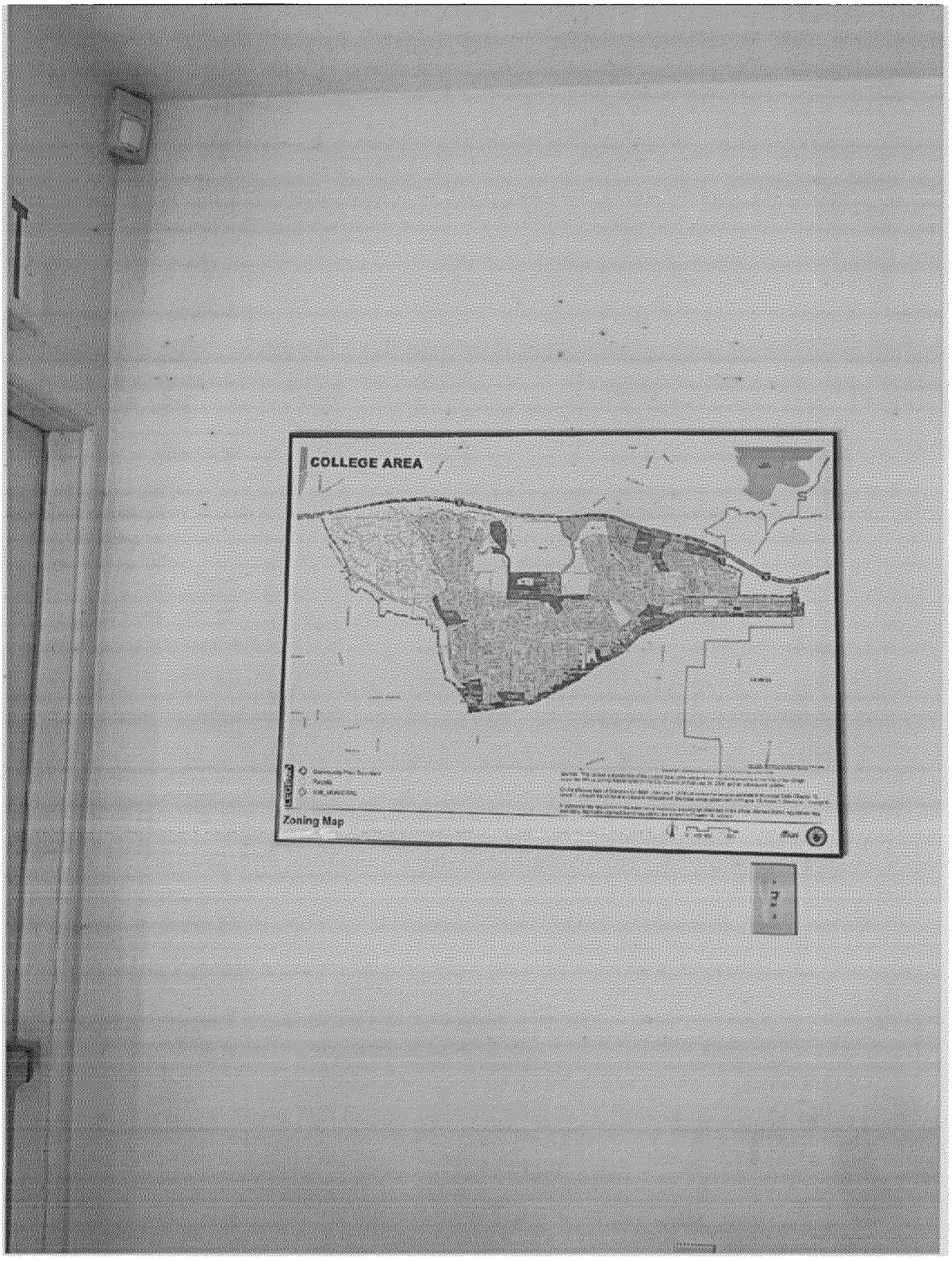


Dual paned energy efficient windows.

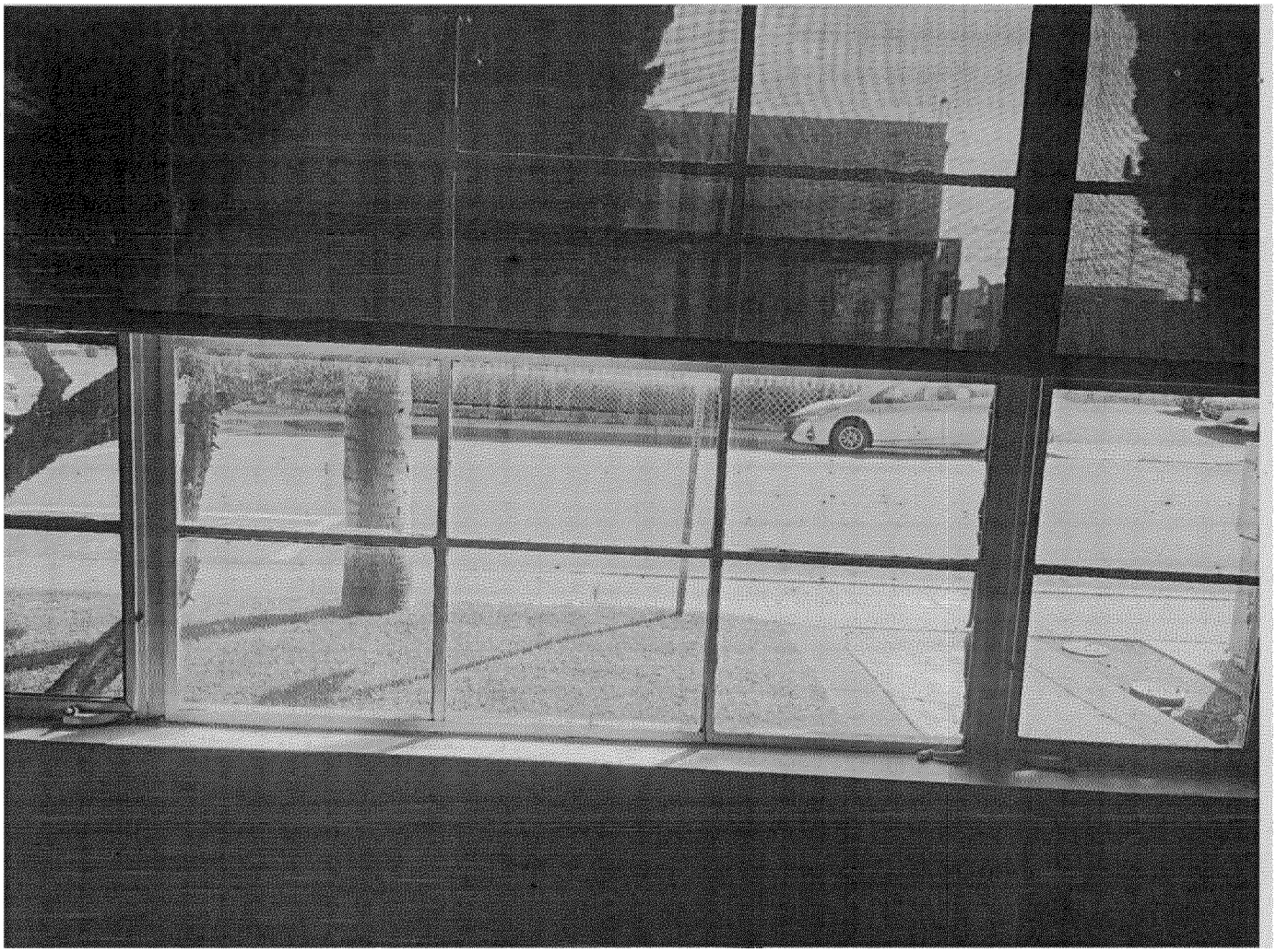
College Area Business District Conference Room. Available for public use.



Printer and Filing Storage.

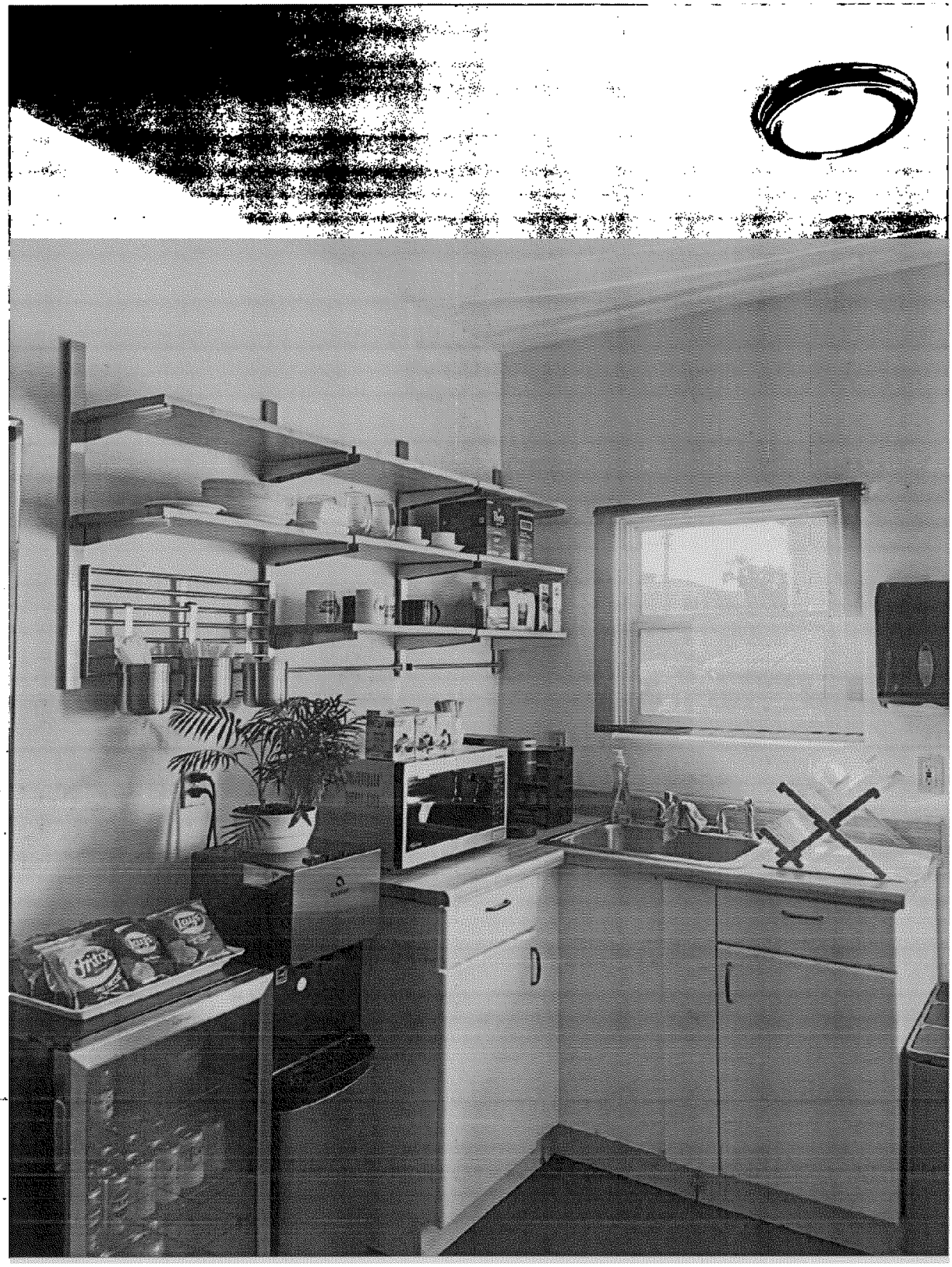


College Area Zoning Map.

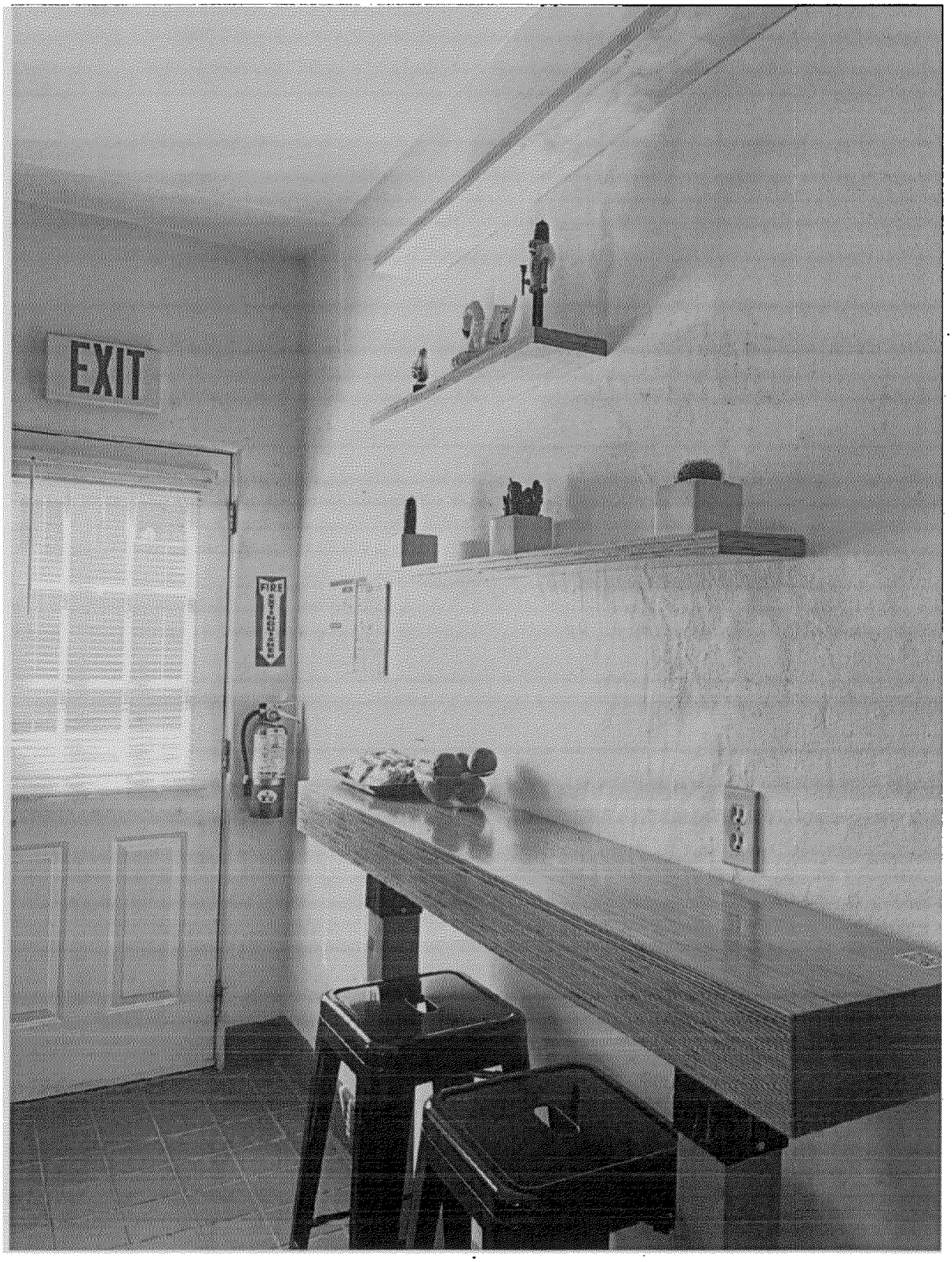


Dated single pane window. Will be replaced with dual paned energy efficient window.

New Renovated Window Model.



Kitchen.

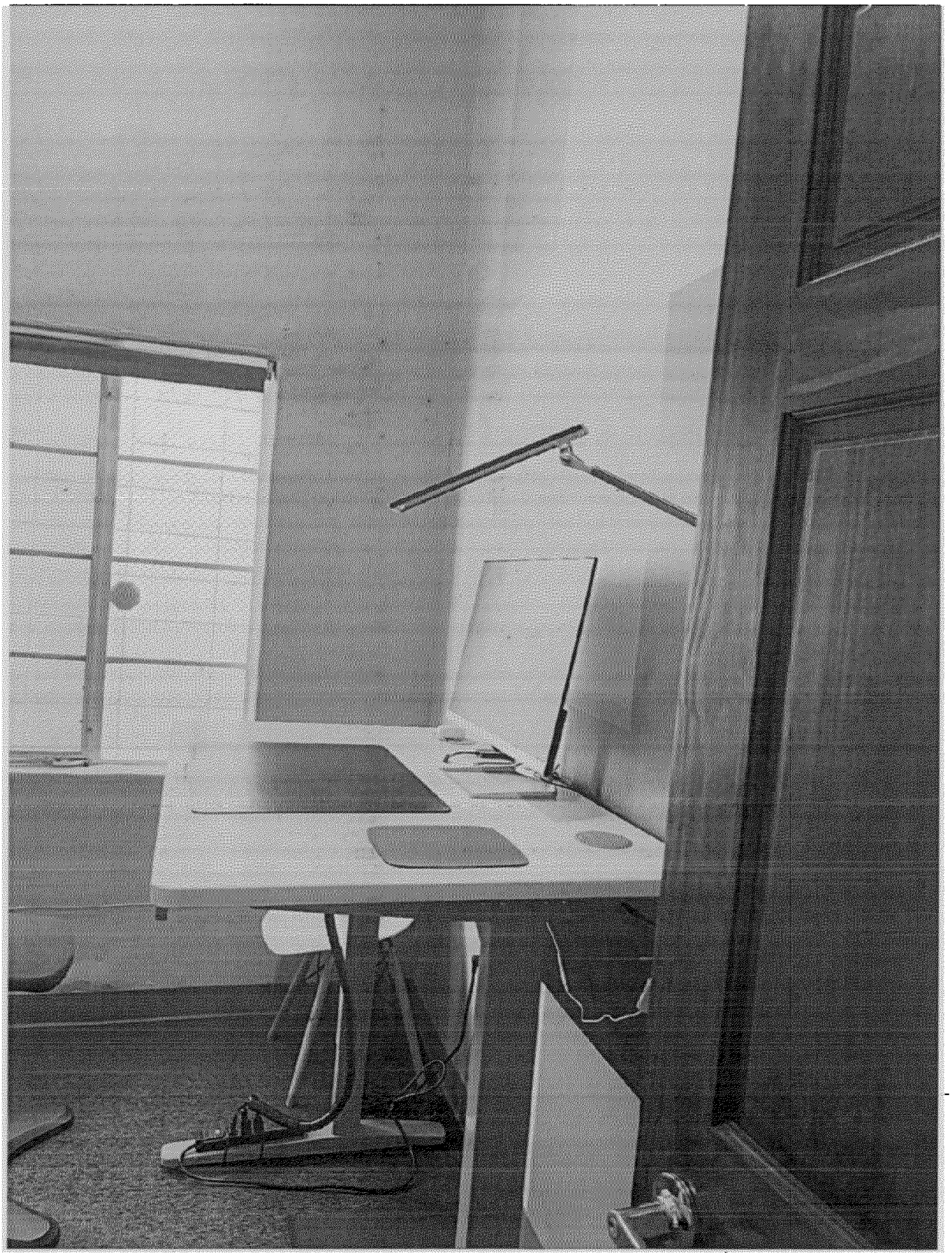


Clearly marked Fire Extinguisher and Exit. Single paned window on door.

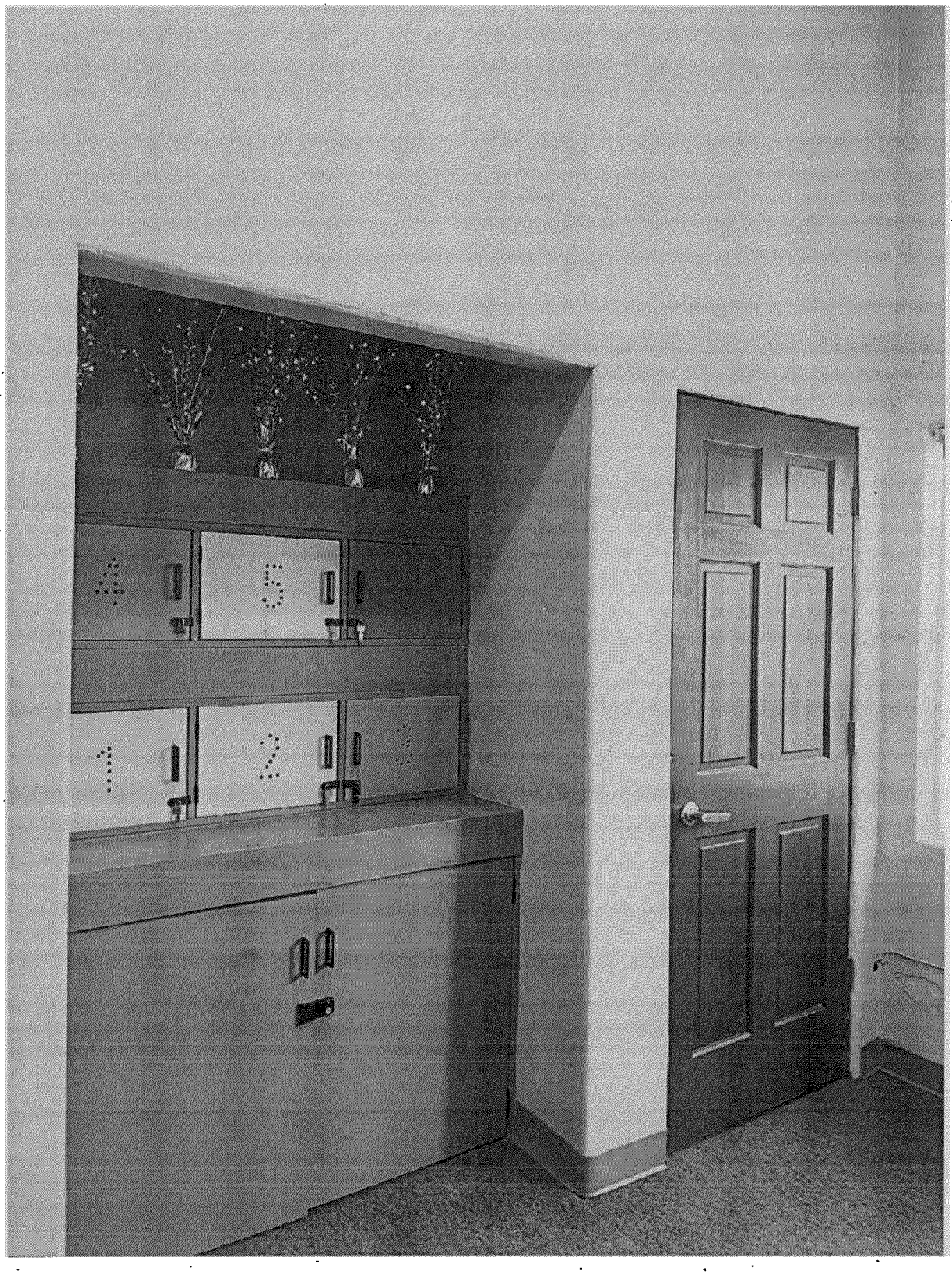
Tiled bathroom.

Single paned window. Will be replaced with dual paned energy efficient window.

Gender neutral bathroom.

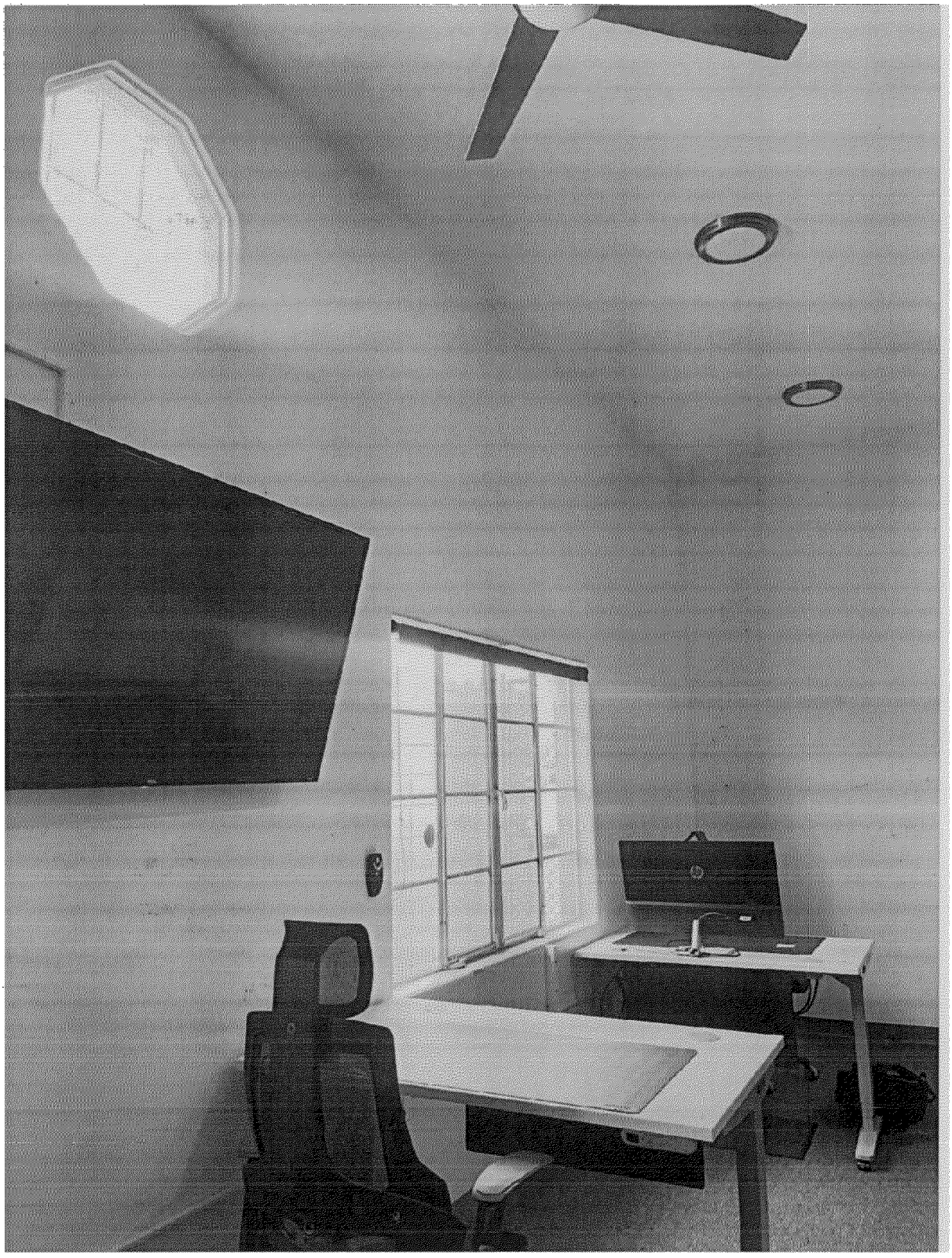


Desk for public use.

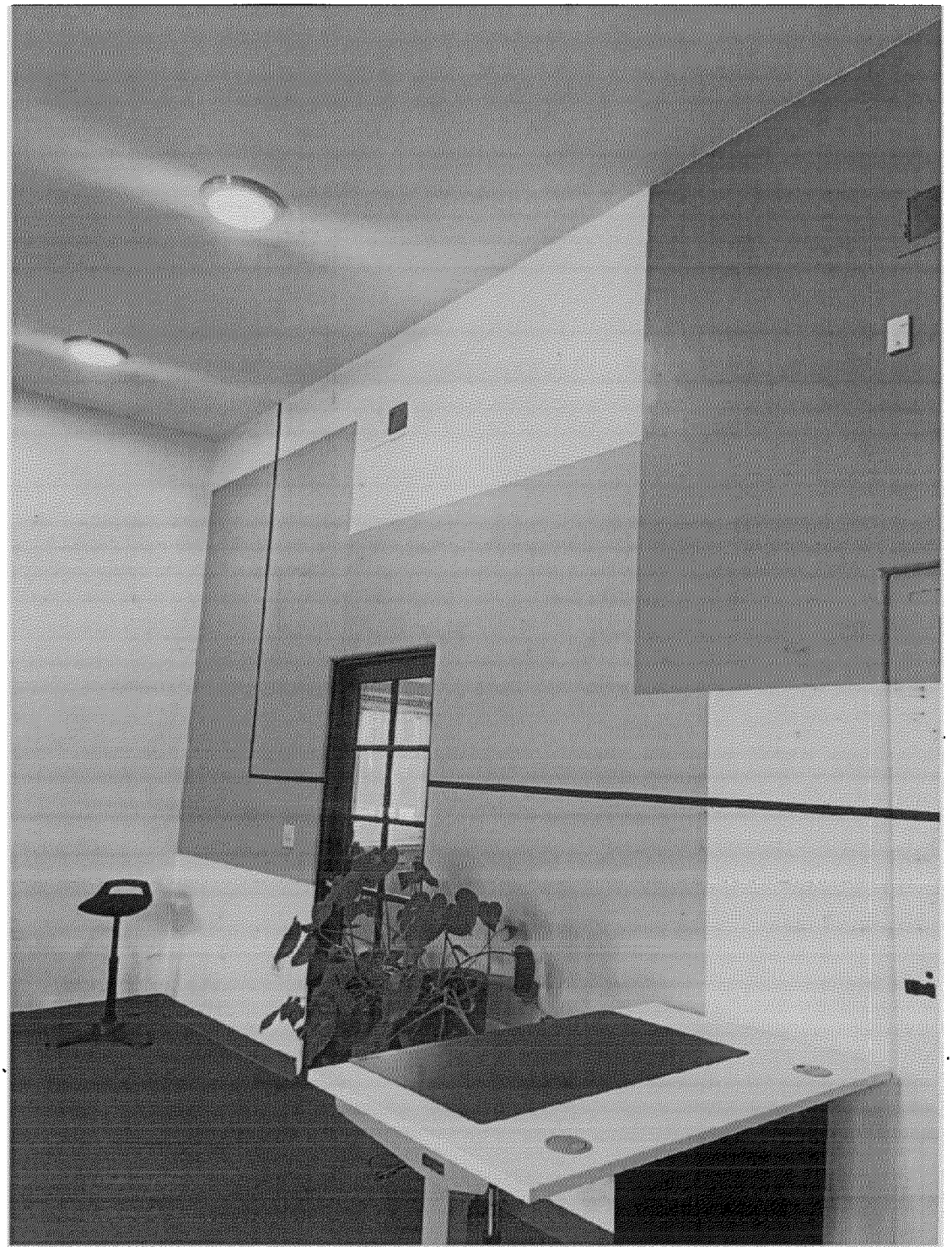


Public use lockers.

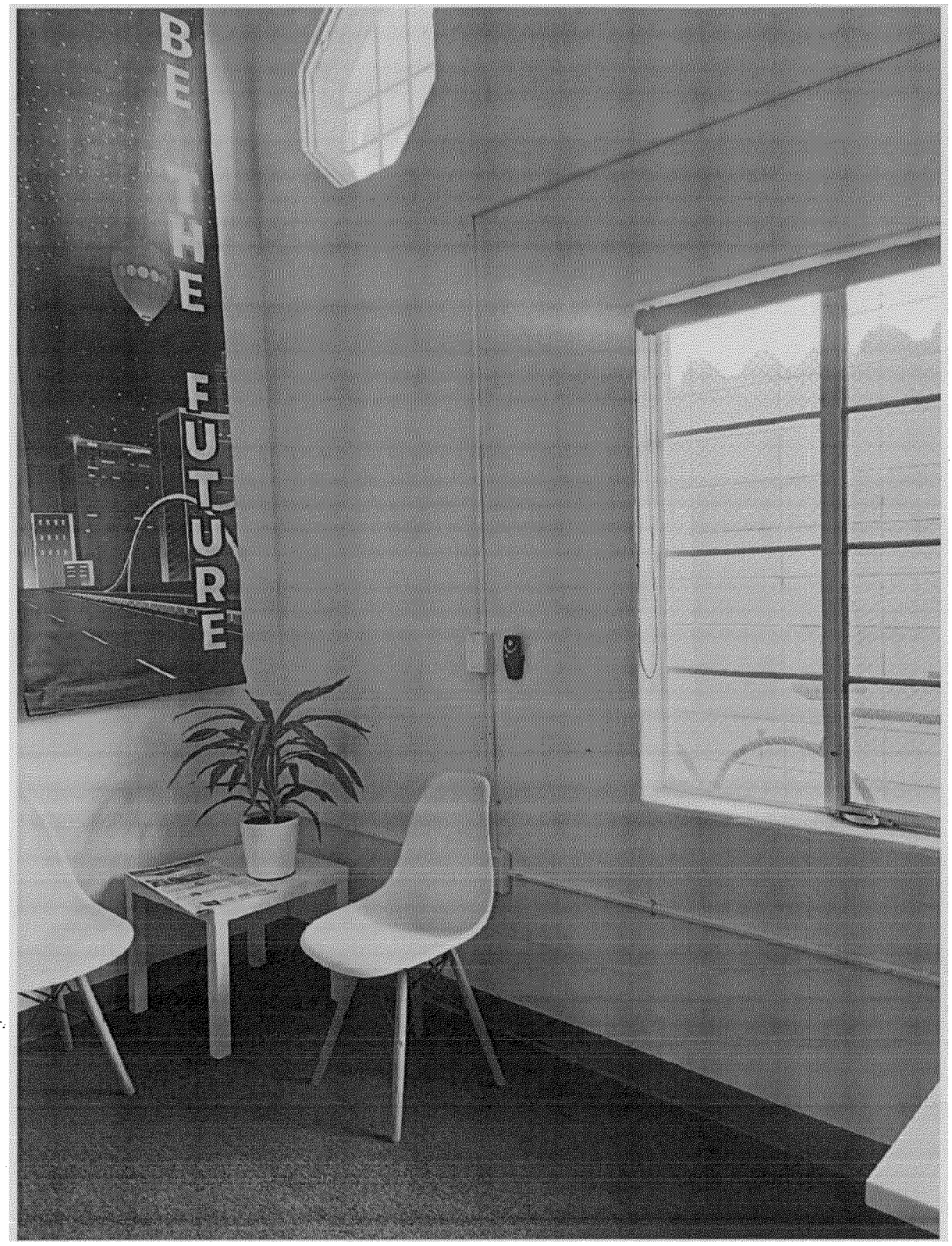
Storage Unit.



Public study room. Single paned window will be replaced with dual paned energy efficient window.

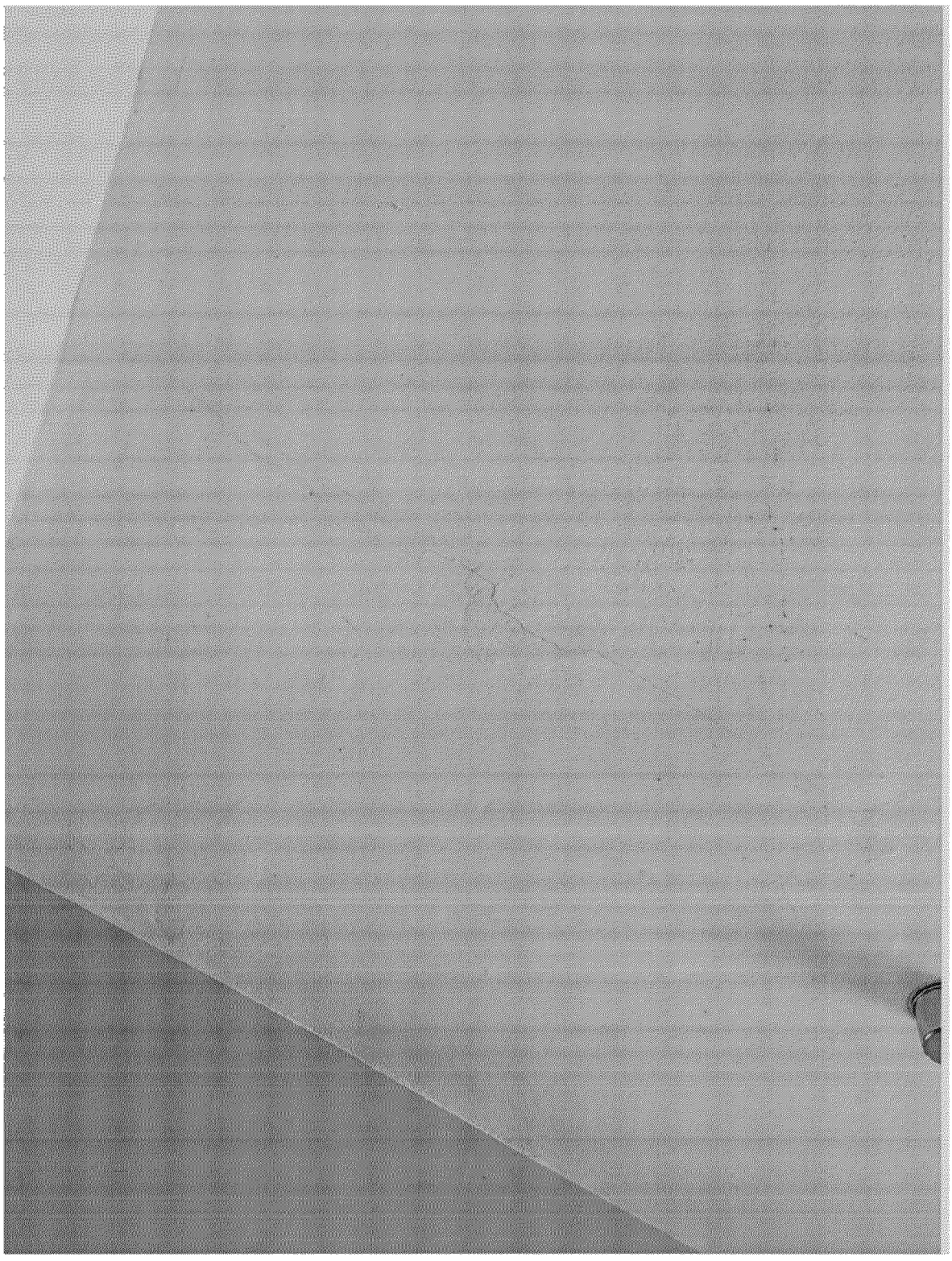


Study Room Area.

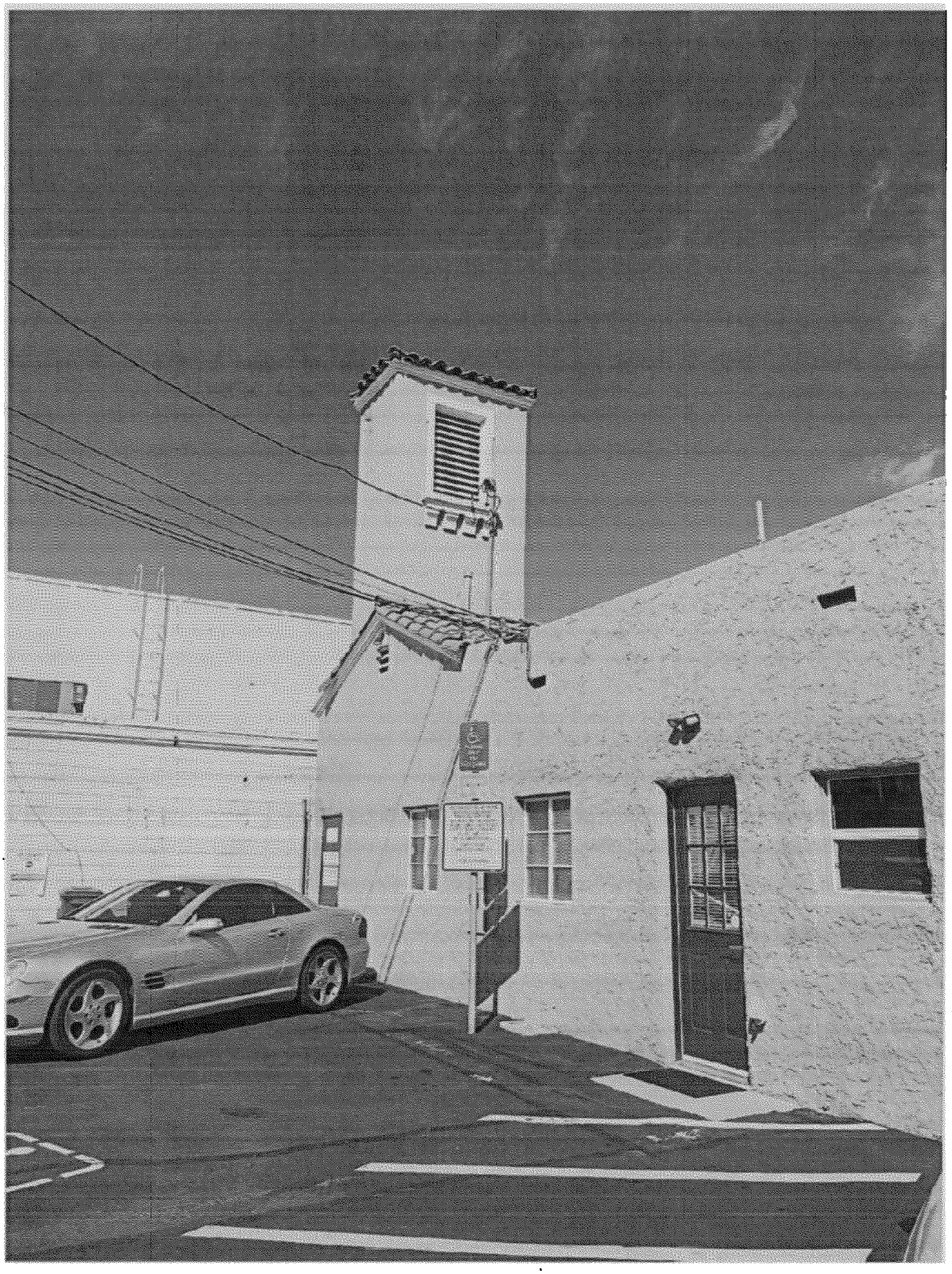


Chairs in Study Room. Window will be replaced.

Frayed carpeting. Will be replaced.



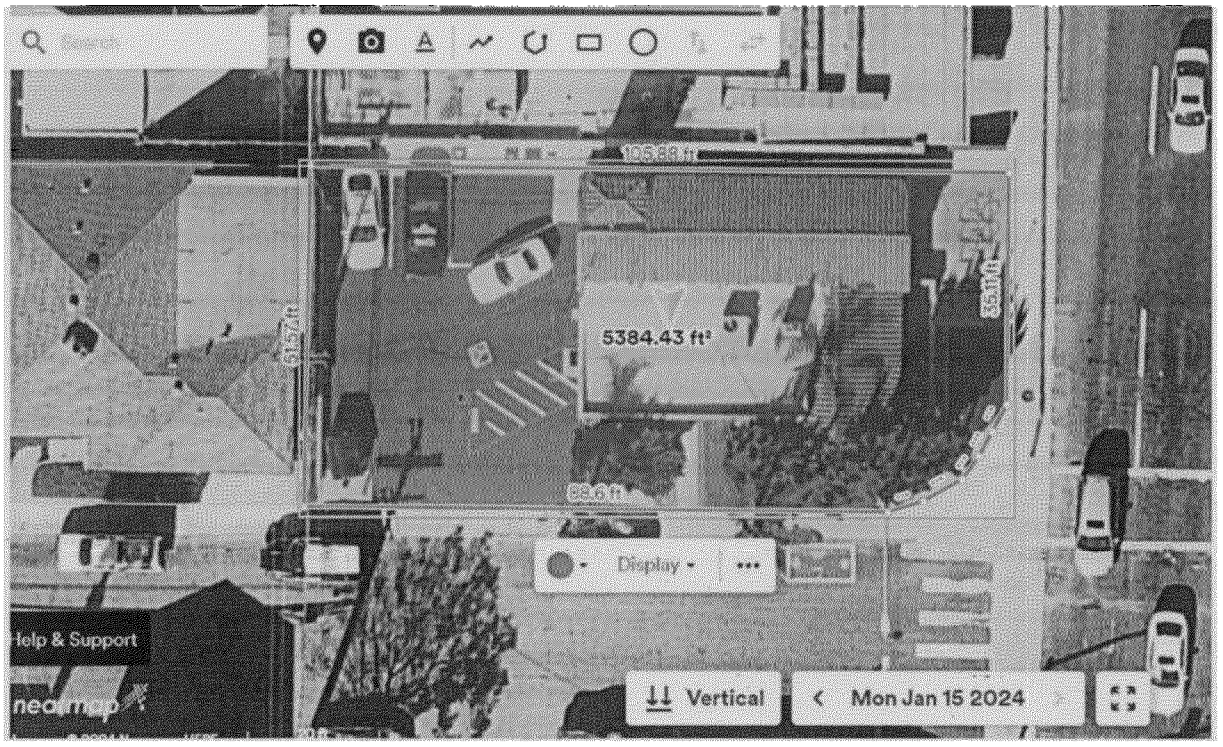
Cracked and patched ceiling.



Back of building with onsite parking.

Parking Lot Area.

NEARMAPS: AERIAL DIAGRAM WITH MEASUREMENTS



Date of Notice: July 17, 2024

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

CITY PLANNING DEPARTMENT

PROJECT NAME/NUMBER: College Area Economic Development Corporation Long Term Lease

COMMUNITY PLAN AREA: College Area
COUNCIL DISTRICT: 9
LOCATION: 4704 College Avenue, San Diego, CA 92115

PROJECT DESCRIPTION: Lease renewal between the City of San Diego (City) and College Area Economic Development Corporation (dba College Area Business District; Lessee) for the City-owned Premises located at 4704 College Avenue, San Diego, CA 92115. The College Area Business District Is a 501(c)3 non-profit corporation serving business and commercial property owners within the College Area Business Improvement District (BID); and manages contracts associated with the existing College Heights Maintenance Assessment District. The Lessee is permitted to utilize the Premises to conduct regular business operations and provide technical assistance to help small business owners within the College Area BID increase their exposure to economic opportunities. The Premises is also available to community groups within the College Area Community Planning Area for meetings and gatherings. The City may approve in writing additional allowed uses that are in compliance with the primary purpose of activities for the general public, from time to time and at the City's sole discretion. The Lessee is responsible for the maintenance, repair, reconstruction, and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Premises, now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the Premises.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: Categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15304 (Minor Alterations to Land)

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:
The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to CEQA Guidelines Section 15301 (Existing Facilities), which exempts the operation, repair, maintenance, permitting, leasing, licensing, or

minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former; Section 15302 (Replacement or Reconstruction) which exempts the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced; and Section 15304 (Minor Alterations to Land) which exempts minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry or agricultural purposes. The exceptions listed in CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

CITY CONTACT: Charlotte Alexander, Associate Property Agent, Economic Development Department

MAILING ADDRESS: 1200 Third Avenue Suite 1700, San Diego, CA 92101

PHONE NUMBER/E-MAIL: Office: (619) 236-6049; Mobile: (858) 630-8929 / caalexander@sandiego.gov

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On July 17, 2024, the City of San Diego made the above-referenced environmental determination pursuant to CEQA. This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal the CEQA determination to the City Council must be filed with the Office of the Clerk within five (5) business days from the date of the posting of this Notice **(July 24, 2024)**. Appeals to the City Clerk must be filed via e-mail or in-person as follows:

1. Appeals filed via Email: The Environmental Determination Appeal Application Form DS-3031can be obtained at https://www.sandiego.gov/sites/default/files/legacy/development-services/pdf/industry/forms/ds3031.pdf. Send the completed appeal form (including grounds for appeal and supporting documentation in pdf format) by email to Hearings1@sandiego.gov by 5:00p.m. on the last day of the appeal period; your email appeal will be acknowledged within 24 business hours. You must separately mail the appeal fee by check payable to the City Treasurer to: City Clerk/Appeal, MS 2A, 202 C Street, San Diego, CA 92101. The appeal filing fee must be United States Postal Service (USPS) postmarked before or on the final date of the appeal.

2. Appeals filed In-Person: The Environmental Determination Appeal Application Form DS-3031 can be obtained at: https://www.sandiego.gov/sites/default/files/legacy/development-services/pdf/industry/forms/ds3031.pdf. Bring the fully completed appeal application DS-3031 (including grounds for appeal and supporting documentation) to the City Administration Building— Public Information Counter (Open 8:00am to 5:00pm Monday through Friday excluding City approved holidays), 1st Floor Lobby, located at 202 C Street, San Diego, CA 92101, by 5:00pm on the last day of the appeal period. The completed appeal form shall include the required appeal fee, with a check payable to: City Treasurer.

The appeal application can also be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED ON THE CITY'S CEQA WEBSITE

POSTED: 7/17/2024

REMOVED: 7/24/2024

POSTED: E. Ramirez Manriquez

The City of San Diego

Staff Report

DATE ISSUED: December 3, 2024

TO: City Council

FROM: Economic Development Department – Real Estate Division

SUBJECT: Ten (10) year Non-Profit Lease between the City of San Diego and College Area Economic Development Corporation, a California Non-Profit Public Benefit Corporation for City-owned real property located at 4704 College Avenue, San Diego, California, 92115.

Primary Contact:	Christina Bibler	Phone: (619) 236-6421
Secondary Contact:	Charlotte Alexander	Phone: (619) 236-6049

Council District(s): 9

OVERVIEW:

This action is to approve a Ten (10) year Non-Profit Lease (Lease) **(Attachment A),** with the College Area Economic Development Corporation, a California Non-Profit Public Benefit Corporation, for City-owned real property consisting of approximately five thousand three hundred eighty-two (5,382) square feet of land and a one thousand five hundred thirty-four (1,534) square foot commercial building, located at 4704 College Avenue, San Diego, CA, 92115 (APN 467-402-23).

The previous Lease expired in 2023, and the Tenant is currently in holdover status.

PROPOSED ACTIONS:

1. Authorize the Mayor or designee to enter a Ten (10) year Non-Profit Lease with the College Area Economic Development Corporation, a California Non-Profit Public Benefit Corporation, for the City-owned real property consisting of 5,382 square feet of land and a 1,534 square foot building, located at 4704 College Avenue, San Diego, CA 92115 (APN 467-402-23).

2. Authorize the Chief Financial Officer to accept and deposit the annually adjusted Base Rent into the General Fund 100000.

3. Declare that the Lease is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities), which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing

public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use; Section 15302 (Replacement or Reconstruction) which exempts the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced; and Section 15304 (Minor Alterations to Land) which exempts minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry or agricultural purposes.

4. Declare that no exception to the application of a categorical exemption under CEQA Guidelines Section 15300.2 applies to the Lease.

DISCUSSION OF ITEM:

Background:

The City owned property, originally a fire station, has been occupied by the College Area Economic Development Corporation since early 1996. A long-term Tenant in good standing, they significantly renovated the building in 2006, to better serve the public by providing an energy efficient and renovated space for the Community to meet, network and work. Under the new Lease, the College Area Economic Development Corporation will complete additional and ongoing renovations in furtherance of their public purpose mission. Governed by an elected 17-member volunteer Board of Directors, they also use the building to engage the public through various events, such as Bingo nights, and their annual Awards event. This Lease serves the public purpose by providing a renovated and centrally located building, open to all community members, which in turn fosters strong community relations between residents, the business community, and the public.

Lease:

Staff negotiated a Ten (10) year Lease under the following basic terms and conditions:

Premises:	5,382 sq. ft. of land and a 1,534 sq. ft. building located at 4704 College Avenue, San Diego, CA, 92115.
Use:	Provide space to conduct business and provide technical assistance helping small business owners within the College Area BID flourish and increase economic opportunities. Also provides community space to the community and non-profit organizations for meetings, gatherings, and study.
Term:	Ten (10) years
Rent:	Tenant shall pay an annual non-profit administrative fee of $4,532.50 adjusted annually by 4%. If the CPI Adjustment Factor is greater than 4% then the CPI Adjustment factor will be used.
Maintenance:	The Lessee is to assume full responsibility and costs for Property repairs, improvements, operations, and maintenance.
Appraisal:	As of November 4th, 2024, the market value for the Property was $977,000 **(Attachment B).**

Public Purpose:

The new Lease serves a valid public purpose because it allows the College Area Economic Development Corporation to continue providing an asset to the community, by:

- Promoting the area as a destination for the public to visit, shop, dine and participate in community enhancing activities,
- Offering space for community meetings, gatherings, and workshops,
- Organizing volunteers and sponsors from local businesses for public events hosted by various community groups,
- Coordinating community volunteers to assist with the design and painting of public art projects, including community enhancing outdoor wall murals,
- Engaging the community through public events such as BINGO Nights, Annual Awards and Taste of College Area, and
- Fostering and building relationships between the public, residents, and businesses, building a sense of community throughout City of San Diego neighborhoods,
- Maintaining an actively updated public website for the public benefit.

Background and Proposal:

Organized in 1996, the College Area Economic Development Corporation commonly known as the College Area Business District, a 501(c)(3) non-profit business advocacy organization, manages the College Area BID and College Heights MAD through separate City of San Diego contracts.

The City has leased this City-owned real property to the College Area Business District, currently a tenant in good standing, in furtherance of the BID/MAD mission to support the entire College Area community, including local business and commercial property owners. The proposed new Ten (10) year Lease between the City and the College Area Economic Development Corporation will allow them to continue their operation and maintenance of the premises, in service of the BID/MAD mission.

Surplus Land Act:

The California Legislature Enacted Assembly Bill (AB) 1486, effective January 1, 2020, which made substantial amendments to the Surplus Land Act (California Government Code sections 54220 through 54234) (as amended, SLA). The SLA was further amended by AB 480 and SB 229 and 34, effective January 1, 2024, and is generally intended to regulate local agencies' disposition of surplus land (i.e., land not needed for the local agency's use) to make it first available for potential acquisition by affordable housing sponsors or other local public entities. In April 2021, the California Department of Housing and Community Development (HCD) issued Guidelines to assist with the implementation of the SLA. Section 102(h) of the SLA Guidelines, which has been codified and superseded by SLA section 54221(d), defines the term "dispose" to exclude from the SLA process (1) any lease of land on which no development or demolition will occur or (2) any lease which has a term that is less than fifteen years, including any extensions, amendments, or options. HCD has confirmed that the Lease involves no development or demolition and is therefore not subject to the Surplus Land Act under 54221(d)(1) and (2).

City of San Diego Strategic Plan:

This action relates to the Strategic Plan's Priority Area: Protect & Enrich Every Neighborhood and Foster Regional Prosperity. Additionally, the proposed action supports implementation of the Economic Development Strategy Framework of "Strengthening Neighborhoods" and "Supporting

Small Businesses". The Lease directly relates to the City's implementation and encouragement of Business Improvement Districts and Maintenance Assessment Districts, as administered by the Economic Development Department. The College Area Business District continues to experience new commercial investment. New and existing businesses are upgrading to new locations and participating in the City's Storefront Improvement Program and new development coming to the College Area commercial corridors. This new investment demonstrates that the College Area remains a valuable place for higher return on commercial investments. Additionally, the Business Improvement District program supports dynamic neighborhoods that incorporate mobility, connectivity, and sustainability by fostering resilient and economically prosperous neighborhoods.

Fiscal Considerations:
Lessee will be responsible for the Annual Non-Profit Administrative Fee of $4,532.50 adjusted annually by 4%. If the CPI Adjustment Factor for all Urban-Consumers published for the San Diego-Carlsbad Metropolitan Statistical Area is greater than 4% it will be used instead.

Climate Action Plan Implementation:
The proposed action supports the implementation of the Climate Action Plan's Strategy 3 regarding Mobility and Land Use. Specifically, BIDs activate commercial districts in 18 neighborhoods. Their economic success is fundamental to supporting the General Plan City of Villages Strategy by limiting vehicle miles traveled through job growth and increased commercial opportunities near residential areas. The Business Improvement District program supports a broader and intentional geographic distribution of economic activity. Numerous compact and walkable business districts contribute to the success of mode shift efforts to mass transit, walking, and bicycle. Additionally, the Tenant will comply with all requirements of Council Policy 900-03, the Zero Emissions Municipal Buildings and Operations Policy (ZEMBOP).

Equal Opportunity Contracting Information (if applicable):
N/A – There is no contract associated with this action.

Environmental Impact:
The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to CEQA Guidelines Section 15301 (Existing Facilities), which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former; Section 15302 (Replacement or Reconstruction) which exempts the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced; and Section 15304 (Minor Alterations to Land) which exempts minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry or agricultural purposes. The exceptions listed in CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

On July 17, 2024, City Planning Department staff posted a NORA on the City website with the environmental determination above. On July 24, 2024, the NORA was removed and no appeals were received.

Previous Council and/or Committee Actions:
This item will be heard at the Land Use and Housing Committee prior to Council.

Key Stakeholders and Community Outreach Efforts:
Business owners, commercial property owners and all community members in the College Area BID and College Heights MAD. Citizens of San Diego.

Charter Section 225 Disclosure of Business Interests
The College Area Economic Development Corporation is a non-profit public benefit corporation and does not have natural persons who are owners who will receive more than 10% of the contracted amount of the lease or who owns more than 10% of the entity contracting with the City.

Attachments:
Attachment A: Lease
Attachment B: Restricted Appraisal dated October 28, 2024

Christina Bibler	**Casey Smith**
Director, Economic Development	Deputy Chief Operating Officer

Department of Real Estate and Airport Management

DREAM SERVICES REQUEST (DSR)

The DREAM Services Request (DSR) should be used by all departments requesting services from DREAM. Examples of DREAM services may include, but are not limited to:

- Negotiation of new real estate agreements
- Requests to initiate of solicitations for property your Department owns
- Property or agreement inquires or research
- Requests to acquire a parcel on behalf of your Department
- Requests to dispose of a parcel your Department owns
- Appraisal/valuation services
- Requests for new or relocated office space (requires Executive approval)

A complete DSR form will provide DREAM with the ability to track and evaluate Department requests and advise on next steps in a timely manner as well as ensure that requests are being addressed by the appropriate DREAM representative.

Please follow the steps below to initiate your service request:

Step 1: Complete the DSR
Step 2: Obtain your Department Director's signature (and Executive, as necessary)
Step 3: Submit the DSR along with any relevant background /documents to: dsr@sandiego.gov
Step 4: Once submitted, you will receive a confirmation e-mail.
Step 5: Your request will be logged, assigned to a DREAM team member and they will contact you within 3-5 business days.

Department of Real Estate and Airport Management

DREAM SERVICES REQUEST (DSR)

REQUEST FOR: DREAM TEAM: Valuations

DATE OF REQUEST: 03/15/24

URGENT ☐ ROUTINE ☑

REQUESTOR NAME: Charlotte Alexander

REQUESTING DEPARTMENT: Real Estate

FUND #:

GL ACCOUNT#:

COST CENTER #:

WBS or IO #:

SUBJECT: College Area Economic Development Corporation

PROPERTY ADDRESS: 4704 College Avenue

COUNCIL DISTRICT: D9

DETAILED DESCRIPTION OF DREAM SERVICE REQUEST:

Property appraisal for a City owned building. The City of San Diego wants a 10 year lease with College Area Economic Development Corporation. The College Area Economic Development Corporation, commonly known as "College Area Business District" is a 501(c) 3 non-profit corporation serving as a small business advocacy organization meeting the needs of the business owners and commercial property owners in the Business Improvement District (BID) and the College Heights Maintenance Assessment District (MAD).

MAYORAL OR COUNCIL PRIORITY: No

PLEASE DESCRIBE:

SIGNATURE OF DIRECTOR AUTHORIZING REQUEST

SIGNATURE OF AUTHORIZING EXECUTIVE (As Needed)

PLEASE SUBMIT ANY ATTACHMENTS RELEVANT TO YOUR DSR TO:
DSR@SANDIEGO.GOV

Briefing Notes: College Area Economic Development Corporation 10 Year Lease Agreement, 4704 College Avenue, San Diego CA 92115

Originally a Fire Station, now a Hub for Economic Growth in the College Area

College Business District Small Business Community Workshop

The Little Flower Shop Ribbon Cutting Ceremony

Background

- **1996 College Area BID enacted.**
- **Originally a Fire Station – now a community meeting center and catalyst for College Area economic development.**
- **College Area EDC upgrades property increasing energy efficiency and functionality.**
- **College Area EDC financially responsible for property maintenance, repair, and operation.**

Key Lease Terms for New Proposed Lease

- **Premises: 4704 College Avenue, San Diego CA 92115 Council District 9**
- **Use: Provide Small Business Owners Economic Advisory Services in Support of College Area BID/MAD**
- **Term: 10 years and no option to extend.**
- **Rent: Annual Non-Profit 2024 Administrative Fee - $4,532.50, with annual 4% increase. If CPI adjustment is greater than 4% then the CPI will be used instead.**
- **Maintenance: Tenant assumes full responsibility and costs for maintenance, repairs & improvements.**
- **Appraisal: As of November 4th, 2024 – Market Value $997,000**

7/25/2024

SD City Planning

Attachment B

Environmental Determination (NORA)	
Environmental Planner	Edgar Ramirez Manriquez (EdgarR@sandiego.gov)
Project Name	College Area Economic Development Corporation Long Term Lease
Environmental Determination	This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15304 (Minor Alterations to Land)
Date NORA Posted	7/17/2024
Date NORA Removed	7/24/2024

The City of SAN DIEGO

Department of Real Estate and Airport Management

Lease Letter of Intent – College Area Economic Development Corporation
March 8, 2024

Premises

4704 College Avenue San Diego, CA 92115 (APN 467-402-23-00 and 760-253-12-00)

Proposed Use

The College Area Economic Development Corporation, commonly known as "College Area Business District" is a 501(c)3 non-profit corporation serving as a small business advocacy organization meeting the needs of the business owners and commercial property owners in the Business Improvement District (BID) and the College Heights Maintenance Assessment District (MAD). Responsible for promoting the district as a shopping and dining destination, they engage in many promotional activities including press release creation, communication with media outlets, networking and social event production and ribbon cutting ceremonies. An office conference room is offered as a community meeting place and desks are open to the public for use. In support of their mission, they are also responsible for aesthetic maintenance within the MAD boundaries. Their responsibilities include all median landscaping and maintenance, sidewalk sweeping and washing, public trash receptacle emptying, graffiti removal and seasonal enhancements.

Daily services and programs at the College Area Economic Development Corporation would include, but not be limited to:

- **Manages contracts for College Heights Maintenance District Assessment (MAD) and Business Improvement District (BID)**

- **The MAD responsibilities include maintaining the aesthetics & boundaries of College Heights MAD (El Cajon Boulevard between Dayton Street and 73rd Street)**

- The specific scope work within the MAD contract includes but is not limited to:
  - Landscaping maintenance
  - Sidewalk sweeping and power washing
  - Emptying public trash receptacles
  - Removing graffiti in public right of way
  - Hanging seasonal street light pole banners
  - Maintaining the hanging flower baskets

1200 Third Avenue, MS 51-A
San Diego, CA 92101

T (619) 236-6020
sandiego.gov

Under College Area Business Improvement District (BID) the responsibilities include but are not limited to:

- Promoting the College Area and its businesses as a destination for visitors and residents
- Hosting public special events
- Writing & distributing press releases to local news media
- Hosting regular community socials
- Hosting grand opening ribbon cutting ceremonies
- Hosting educational workshops custom designed for member businesses
- Assisting member businesses with issues that affect their success
- Office conference room offered for community meetings
- Office desks offered for public use

Rehabilitation Scope

Primary funding sources derive from Business Improvement District (BID) and Maintenance Assessment District (MAD) management under the City of San Diego Public Purpose Lease. These funding sources have been in **place since 1996 (BID) and 2008 (MAD)** based on strong success with budgeting and payment of creditors and vendors.

Additional funding sources are continuously sourced to ensure operations and technical expertise are maintained and that the facility is upgraded as needed.

Recently completed projects include installation of new energy efficient interior lighting, minor kitchen remodeling, facility interior and exterior painting, replacement of minor landscaping modifications, replaced kitchen and bathroom faucets with shut-off valves and replacement of building signage and address numbers. Current projects include energy efficient window installation, new carpeting. The parking lot was resurfaced (completed in February 2023). The investment of these current projects is approximately $15,000.

Additional updating and/or repair projects will be identified each fiscal year as we identify and apply for appropriate funding sources for the necessary updating/ upgrading projects.

Project Cost Estimate

Costs and priority of rehabilitation projects are dependent upon the needs of the facility and available funding. Projects are reviewed on an annual basis or as needed. The facility has been well maintained throughout the time of tenancy, so the facility is in excellent condition.

The College Area Economic Development Corporation plans to continue to update the building with regular maintenance. Additionally, the organization has plans to continue to update the facility for the safe and healthy use by the employees and the public. Over the ensuing 10 years, here is an estimated time line for expected capital improvements by Fiscal Year.

Repairs/Maintenance

LESSEE operates and administers the College Heights Maintenance Assessment District (MAD) and College Area Business Improvement District (BID) under contracts with the City of San Diego, providing general office administration, marketing, and other promotional support to generate business and to promote public improvement and beautification projects within the College Area BID & MAD ("BID and MAD Services").

Repairs and maintenance of the facility are reviewed regularly. Currently the schedule for the regular maintenance includes:

- Janitorial cleaning of the entire facility interior - weekly
- Preventative maintenance of the HVAC system - every 6 months
- Plumbing issues are addressed immediately – ongoing as needed
- Landscaping Maintenance – weekly
- Trim trees and palms – annually
- Fire extinguisher maintenance – annually

Capital Improvement Plan Time Line (Fiscal Years)

2024

- **Replace 4 Windows** ($4,900) – 2 windows were replaced with dual glazed energy efficient windows in 2022. We are currently replacing 4 windows with dual glazed energy efficient windows. The plan is to continue to replace he remaining 3 windows in the next couple of years.
- **Repair or Replace Office Lighting** ($300) 2 of the light fixtures in the office are not working properly, these are to be repaired or replaced.

2025

- **Repair Roof Leaks ($5000-$10,000)** – During the recent heavy rains, roof leaks were identified. There are requests for qualified companies to review and offer estimates for the repairs.
- **Clean Gutters and Downpipes ($3,000)** – During the recent heavy rains, the gutters and downpipes showed signs of being in need of cleaning. There are requests for qualified companies to review and offer estimates for the cleaning.
- **Steam Clean Tile Floors and Grout ($700)** – The tile floors of the building have been cleaned weekly, however, to ensure a healthy and safe environment, we will have the tile floors steam cleaned.
- **Install Sound Reduction in Coworker Space ($1,500)** – The shared desk spaces are in a room with high ceilings and sounds echo, which is distracting to those who use the space. Sound deadening will help to reduce the "bounce" of sounds within the room for a quieter, more effective shared space.

2026

- **Replace 3 Windows** Kitchen & Bathroom ($4,500) – replacing the windows with dual glazed energy efficient windows. With these replaced, all windows will be upgraded to dual glazed energy efficient windows.
- **Replace Water Heater** ($2,000) – The water heater has not been in disrepair, however, given the age of the unit (20 years), the expectation is that it will need to be replaced this year.
- **Repair Wood Firehouse Door** ($500) – minor repairs will be done to the weathered wood on the faux Firehouse door on the front of the building. The expectation is that the wood will be replaced within the next 2 years.

2027

- **Replace Kitchen Cabinets, Countertops & Sink** (Estimated $5,000) – The kitchen area has been updated with new energy efficient LED lighting fixtures and new shelving replaced the wall cabinets. The base cabinets, sink and countertop will be redesigned and replaced to accommodate the shared space of the building offering more seating for work breaks lunch breaks.
- **Paint all Interior Walls and Ceilings** (Estimated $9,000) – The interior walls of the building were recently painted (2019) and the expectation is to have the interior repainted after 8 years of wear and tear.
- **Purchase & Install New Light Fixture in Bathroom** (Estimated ($300) – All of the other fixtures in the building have been upgraded with energy efficient LED fixtures. This is the single light fixture that needs to be updated and will be completed before the interior painting is completed.

2028

- **Replace Wood Firehouse Door** ($5,000) – The decorative wood faux fire station door is expected to be weathered to the point of needing to be replaced. New wood will be applied to match the existing appearance to keep the historic aesthetic value of the building.
- **Replace Interior Carpet** (Estimated $5,000- $8,000) – Carpeting throughout the office, conference room and shared workspace is expected to be well worn and ready for replacement. All carpeting will be replaced with similar to the existing heavy-wear carpeting.

2029

- **Install Xeriscape Landscaping** ($10,000) – Xeriscape landscape will reduce the cost of maintenance and water use and enhance the appearance of the property using native plants. Some hardscape (small patio) may be included for the shared space users to take advantage of the outdoor temperate climate during the warmer months.

2030

- **Replace HVAC** (Estimated $15,000 - $20,000) – The expectation is to have the HVAC unit to be beyond it useful life at this time. The unit will be replaced (if necessary and under the guidance of HVAC professionals) with a more energy efficient unit.

2031

- **Replace Bathroom Sinks & Toilets** (Estimated $3,000) - The expectation is to have these fixtures to be beyond their useful life at this time. The fixtures will be replaced with low-water use units to reduce water use and associated costs.

2032

- **Replace 3 Entry Doors & Locks** (Estimated $2,500) - The expectation is that these doors will be beyond their useful life at this time. The doors will be replaced with energy efficient doors matching the existing doors. The locks may also need to be replaced at this time, and the expectation is to include new locks with the doors.

2033

- **Repair Stucco & Paint Exterior** ($10,000) – The expectation is that the exterior paint will need to be repainted after 15 years. Any repairs to the stucco walls will be patched and repainted with the style appropriate for the building's architecture.

2034

- **Funds will be reserved** for any unplanned or unexpected necessary repairs required to maintain the appearance and function of the building.

2035

- **Funds will be reserved** for any unplanned or unexpected necessary repairs required to maintain the appearance and function of the building.

Utilities

LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the operation of and activities on the Premises.

Janitorial

Current schedule for cleaning & janitorial work of the entire facility interior is completed weekly

Lease Term

10-year term

Rent

Lessee shall pay to City rent per year paid annually in advance. Lessee shall pay the rent for the first year of the Term within (30) days of the Effective Date, and thereafter rent will be paid on or before each anniversary of the Effective Date. The rent shall be subject to adjustment annually as provided below.

CPI Adjustments

The rent is subject to adjustment on each anniversary of the Effective Date. The rent adjustment will be based on percentage increases in the Consumer Price Index (CPI) pursuant to the CPI Adjustment Computation below.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, California. If the CPI is no longer published, the index for adjustment shall be determined by the CITY. If a rent adjustment is calculated using an index from a different base year than

1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, CITY may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then be the "CPI" under this Lease.

In no event shall any adjusted rent be less than the rent in existence immediately prior to the adjustment date. CITY's failure to deliver timely notice of any rent adjustment shall not constitute a waiver by CITY of its rights hereunder.

CPI Adjustment Computation

The rent for each adjustment period shall be calculated as follows:
The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below.

The "base index" denominator for the calculation is 178.500. This is a fixed number representing the three (3) month average of the CPI indices for the months of July, August and September 2001.

The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of the CPI indices for the months of July, August and September of the calendar year preceding the adjustment date.

The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount of two thousand five hundred dollars ($2,500).

Example Calculation:
(CURRENT INDEX ÷ BASE INDEX) X BASE FIGURE = NEW RENT AMOUNT

Current Index (Third Quarter 2023)	323.655 ÷
Base Index (Third Quarter 2001)	178.500 =
Adjustment Multiplier	1.813

The base figure is then multiplied by the adjustment multiplier to determine the new rent. Using the foregoing example, the adjusted rent is calculated as follows:

$2,500.00	(Base Figure)
X 1.813	(Adjustment Multiplier)
$4,532.50	(Adjusted Rent)