

Attachment 2

ATTACHMENT 2

First Amendment to the Lease

Project: APCD Casa Nueva
APN: 059-140-029
RP File: 003410
Agent: SF

FIRST AMENDMENT TO THE LEASE AGREEMENT

THIS FIRST AMENDMENT TO THE LEASE AGREEMENT (hereinafter, "Amendment") is made by and between:

COUNTY OF SANTA BARBARA, a political subdivision of the State of California, hereinafter referred to as "COUNTY,"

and

SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT, a special district, hereinafter referred to as "DISTRICT,"

with reference to the following:

WHEREAS, COUNTY is the owner of the property located at 260 North San Antonio Road, in the unincorporated area of Santa Barbara County, more particularly described as Assessor Parcel Number 059-140-029 (hereinafter "Property"), and the building thereon commonly known as the Casa Nueva Building (hereinafter "Building"), as shown on Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, COUNTY and DISTRICT entered into a non-binding Memorandum of Understanding (hereinafter "MOU") dated August 8, 2000, on file with the Clerk of the Board of Supervisors, in which COUNTY indicated its intention to lease to DISTRICT and DISTRICT indicated its intention to lease from COUNTY a portion of the Building at a base rent of \$1.30 per square foot more or less, depending upon COUNTY's payment for Certificates of Participation (hereinafter "COPs") issued to finance the construction of the Building; and

WHEREAS, COUNTY issued the COPs and the square footage cost of leasing the Building was based on the COUNTY's cost to amortize the COPs financing the building at approximately \$1.29 per square foot; and

WHEREAS, COUNTY and DISTRICT entered into a lease agreement on November 26, 2002 (hereinafter "Agreement"), for the purpose of leasing 14,139 square feet of the Building to DISTRICT to be used as commercial office space (hereinafter "Original Premises"); and

WHEREAS, DISTRICT desires to vacate a portion of its leased space (hereinafter "Relinquished Portion"), resulting in an overall reduction of its leased space from 14,139 square feet to 9,881 square feet (hereinafter "Reduced Premises"), as shown in Exhibit B, attached hereto and incorporated herein by reference, and extend the term of the Agreement; and

WHEREAS, the COPs were refunded in 2011 with private placement debt, which will be paid in full on December 1, 2020; and

WHEREAS, COUNTY and DISTRICT desire to amend the Agreement upon the terms and conditions set forth below.

NOW THEREFORE, in consideration of the premises, and the mutual covenants and conditions contained herein, LESSOR and COUNTY agree as follows:

1. **EFFECTIVE DATE**: This Amendment shall be effective upon final execution by COUNTY (hereinafter "Effective Date"). Except as otherwise set forth herein, the terms and provisions of this Amendment regarding the DISTRICT's reduction in leased premises and reduced rent shall be effective on the date that DISTRICT vacates and delivers to COUNTY that portion of its leased premises further identified below in Paragraph 2, **REDUCTION OF LEASED PREMISES**, (hereinafter "Reduced Premises Commencement Date"), which shall not occur prior to September 15, 2020.
2. **REDUCTION OF LEASED PREMISES**: Section 3, **LEASED PREMISES**, of the Agreement shall be modified and amended to provide that, upon the Reduced Premises Commencement Date, the portion of the Building leased by DISTRICT shall consist of 9,881 square feet of commercial office space.
3. **EXTENSION OF TERM**: Section 5, **CONVERSION TO YEAR-TO-YEAR**, is hereby deleted in its entirety and replaced with the following provision:
 5. **EXTENSION AND CONVERSION TO YEAR-TO-YEAR**: In the event this Agreement has not otherwise been terminated and DISTRICT is in compliance with all terms and conditions of this Agreement, DISTRICT shall have the option to extend the term of this Agreement for an additional seven (7) years (hereinafter "Extension Period"), upon written notice given to COUNTY at least sixty (60) days prior to the expiration of the initial term. For the Extension Period, DISTRICT shall pay to COUNTY the adjusted rent specified in Section 6.A.1., **Rent During Extension Period**.
Should DISTRICT occupy the Premises after the expiration date of the Extension Period, with the express or implied consent of COUNTY, such possession shall be construed as a tenancy from year-to-year (hereinafter "Annual Tenancy"), and DISTRICT shall provide the consideration specified in Section 6.A.2., **Rent During Annual Tenancy**. The Annual Tenancy may be terminated by either party upon ninety (90) days written notice given at any time during the year.
4. **RENT**: Section 6.A., **RENT**, of the Agreement is hereby deleted in its entirety and replaced with the following provision:
 - A. **RENT**: Rent shall be based on \$1.2928 per square foot per month, and shall be \$18,278.90 per month during the time that DISTRICT occupies the Original

Premises and \$12,774.16 per month during the time that DISTRICT occupies the Reduced Premises.

1. Rent During Extension Period: At least six (6) months prior to the expiration of the initial term of this Agreement, COUNTY shall perform an assessment of fair market rents for comparable sites similar in size and location, the purpose of which is to determine the then current fair market rental terms for the Reduced Premises. Upon completion of this assessment, COUNTY and DISTRICT shall agree in writing to the new monthly rental terms that shall go into effect upon commencement of the Extension Period. Each party agrees that it will use good faith bona fide efforts to determine the rent for the extension period. If the parties cannot agree upon a fair market rent at least four (4) months prior to the expiration of the initial term, either party may select a qualified Member of the Appraiser's Institute (MAI) familiar with the value of such real property rents to act as an arbitrator. The objecting party shall pay for the cost of the arbitrator's fee.

If both parties have not accepted the new fair market rental amount at least ninety (90) days prior to the expiration of the initial term, then DISTRICT shall not have the option to extend this Agreement as provided in Section 5, EXTENSION AND CONVERSION TO YEAR-TO-YEAR, and this Agreement shall terminate upon expiration of the initial term.

2. Rent During Annual Tenancy: At least six (6) months prior to the expiration of the Extension Period, COUNTY shall perform an assessment of fair market rents based on the terms and conditions set forth in paragraph 1 of this Section, Rent During Extension Period. COUNTY and DISTRICT shall agree in writing to the new monthly rental terms that shall go into effect upon commencement of the Annual Tenancy, and such rent shall increase annually by 3% thereafter.

If both parties have not accepted the new fair market rental amount at least ninety (90) days prior to the expiration of the Extension Period, then this Agreement shall terminate upon expiration of the Extension Period.

Rent shall not be subject to a cost of living adjustment except as provided herein and shall be payable in advance on or before the first (1st) day of each and every calendar month, except as provided herein. The rent due for any period, which is for less than one (1) calendar month shall be prorated, based upon a thirty (30) day month.

5. UTILITIES AND JANITORIAL SERVICES: Section 10, UTILITIES AND JANITORIAL SERVICES, of the Agreement is hereby modified and amended to add the following sentence at the end of the first paragraph, "Upon the Reduced Premises Commencement Date, DISTRICT's share shall be 9,881/28,274, or 35%."
6. REDUCTION IN LEASED SPACE: The first paragraph of Section 11, REDUCTION IN LEASED SPACE, is hereby deleted and replaced with the following paragraph:

“If DISTRICT wishes to decrease the amount of space it is leasing hereunder it may do so pursuant to this Section 11. At any time during the term of this Lease, upon one year advance notice in writing to COUNTY, DISTRICT may relinquish certain designated portions of its LEASED PREMISES to COUNTY as those portions are identified on Exhibit B (hereinafter “Functional Blocks”). Upon such election, the rent, Replacement Reserve and maintenance cost obligations due under this Agreement shall be reduced proportionately based upon the adjusted occupancy and space allocation, which calculations include the proportionate share of DISTRICT-SBCAG Common Areas and All Tenant Common Areas. In determining whether to relinquish Functional Blocks, DISTRICT shall have sole and absolute discretion and the consent of COUNTY shall not be required. In the event that all Functional Blocks have been relinquished by DISTRICT as set forth herein, this Agreement shall automatically terminate and DISTRICT shall be relieved of all further obligations hereunder. Minor changes in Functional Blocks may be made upon the mutual written consent of the Directors.”

7. **TERMINATION**: Section 26, *TERMINATION*, of the Agreement is hereby deleted in its entirety and replaced with the following provision:

26. This Agreement shall terminate and all rights of DISTRICT shall cease and DISTRICT shall quietly and peacefully deliver to COUNTY, possession and interest in the Premises and, upon such delivery, shall be relieved of all future liability:

- A. Upon either party’s written notice of termination to the other party at least ninety (90) days prior to the expiration of the Initial Term, which notice may be given without cause; or
- B. Upon either party’s written notice of termination to the other party at least ninety (90) days prior to the expiration of the Extension Period, which notice may be given without cause; or
- C. After commencement of the Annual Tenancy, upon ninety (90) days written notice given by either party, which notice may be given without cause; or
- D. Upon release of all Functional Blocks as set forth in Section 11, *REDUCTION IN LEASED SPACE*; or
- E. Upon the failure of either party to satisfy, observe, or perform any of the covenants, conditions, or reservations set forth in this Agreement and the expiration of the cure period as provided in Section 23, *DEFAULT*; or
- F. Upon the total destruction of the Building, as provided in Section 30, *DESTRUCTION OF THE PREMISES*.

8. **EXHIBITS**:

- A. Exhibit B is hereby deleted and replaced with the attached page titled “Exhibit B”, incorporated herein by reference.

B. Section 1, TOTAL OPERATING COSTS DEFINED, of Exhibit C is hereby modified and amended as follows:

1. The following sentence shall be added to the end of the third paragraph: "Upon the Reduced Premises Commencement Date, the Reduced Premises shall be defined as 9,881 square feet, which includes DISTRICT'S share of the common areas."

2. The fourth paragraph is hereby deleted and replaced with the following paragraph:

"Upon commencement of this Agreement, DISTRICT'S share of total operating costs shall be ½ and, upon the Reduced Premises Commencement Date, DISTRICT'S share of total operating costs shall be 35% (hereinafter "DISTRICT'S share"). DISTRICT'S share may be reduced pursuant to Section 11, *REDUCTION IN LEASED SPACE* hereof. If Functional Blocks, as defined in Section 11 and identified in Exhibit B, are relinquished, DISTRICT'S share shall be reduced proportionately."

9. **EXECUTION IN COUNTERPARTS**: This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall constitute one and the same instrument.

10. It is expressly understood that in all other respects, the terms and conditions of the original Agreement, dated November 26, 2002, shall remain in full force and effect.

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Project: APCD Casa Nueva
APN: 059-140-029
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Agent: SF

IN WITNESS WHEREOF, COUNTY and LESSOR have executed this Agreement to be effective on the date executed by COUNTY.

“DISTRICT”
SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT

ATTEST:

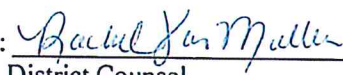
AERON ARLIN GENET
CLERK OF THE BOARD

By: 
Deputy

By: 
Director Das Williams, Chair

Date: 6/20/20

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL FOR DISTRICT

By: 
District Counsel

COUNTY SIGNATURES TO FOLLOW

Project: APCD Casa Nueva
APN: 059-140-029
RP File: 003410
Agent: SF

“COUNTY”

COUNTY OF SANTA BARBARA

ATTEST:
MONA MIYASATO
CLERK OF THE BOARD

GREGG HART, CHAIR
BOARD OF SUPERVISORS

By: _____
Deputy Clerk

Dated: _____

RECOMMENDED FOR APPROVAL:
JANETTE D. PELL, DIRECTOR
GENERAL SERVICES DEPARTMENT


for

By: 

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

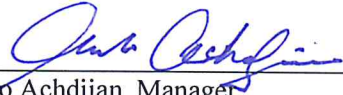
By: 
Scott Greenwood, Deputy County Counsel

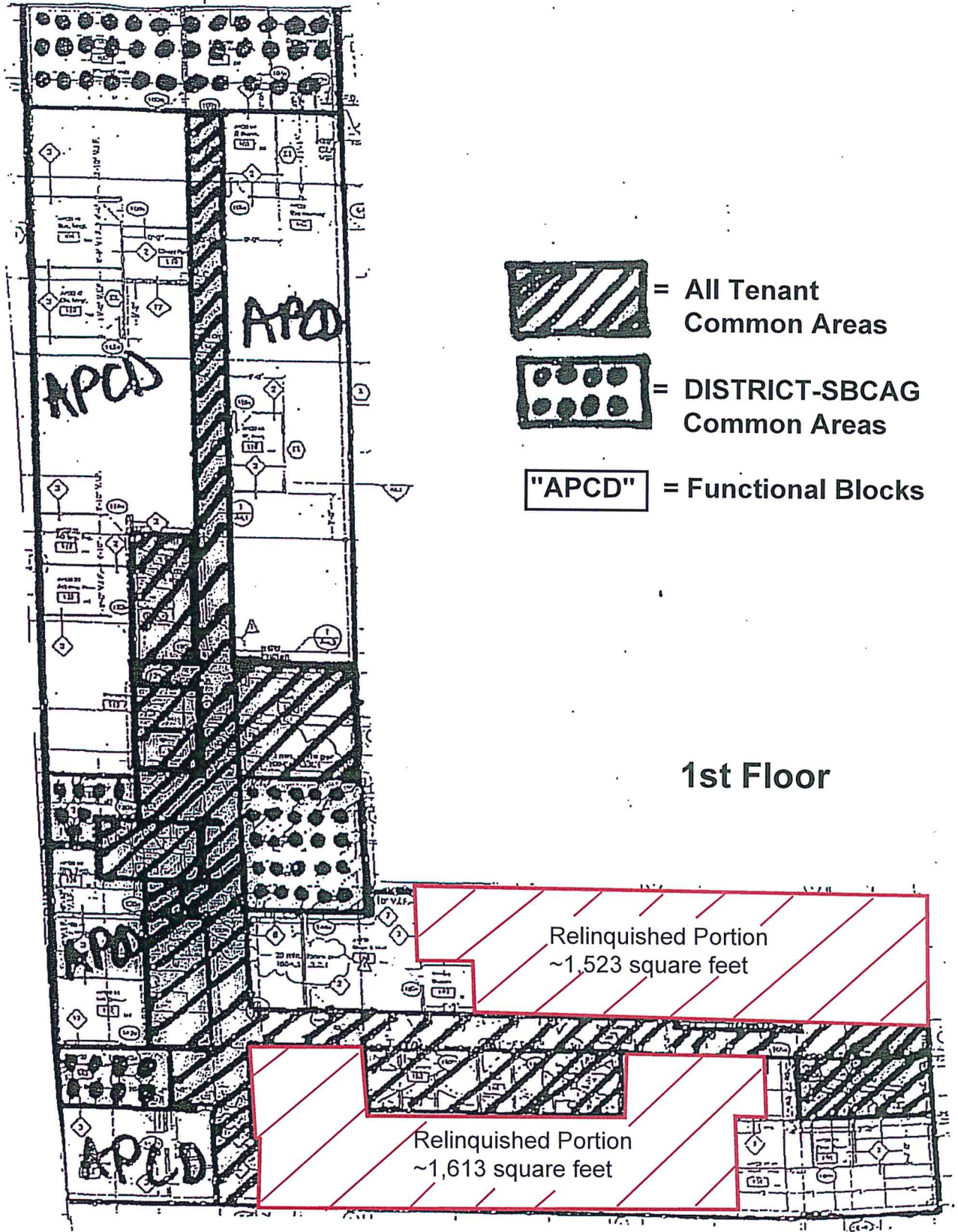
APPROVED AS TO ACCOUNTING FORM:
BETSY M. SCHAFFER, CPA, CPFO
AUDITOR-CONTROL I.F.R.

By: 
Deputy

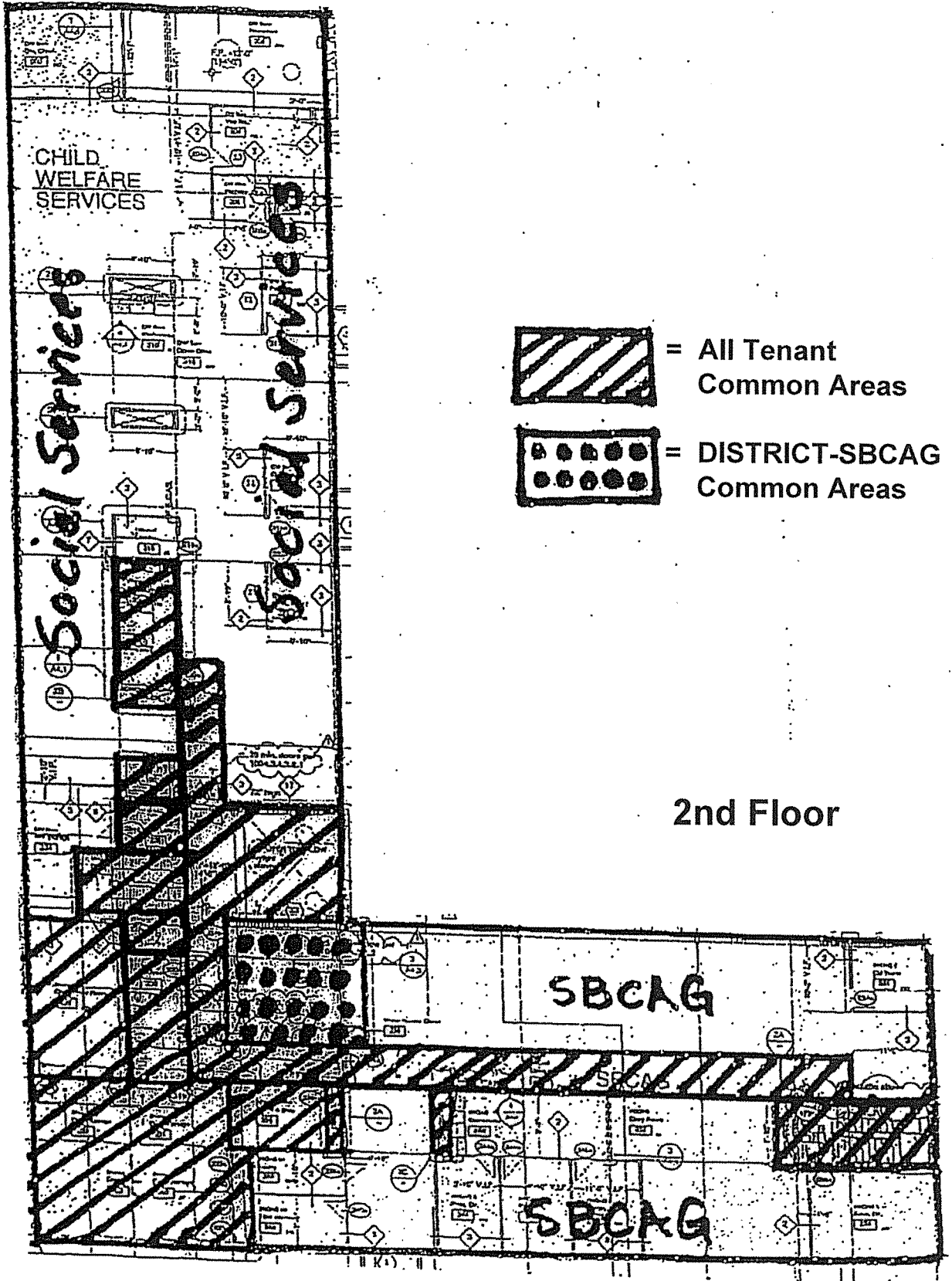
Digitally signed by C. Edwin Price, Jr.
Date: 2020.06.24 14:58:21 -07'00'

APPROVED:
Ray Aromatorio, Date: 2020.06.24
Risk Manager 09:42:10 -04'00'
By: _____
Ray Aromatorio, ARM, AIC
Risk Manager

APPROVED:
By: 
Carlo Achdjian, Manager
Real Property Division



1st Floor



2nd Floor

CASA NUEVA SPACE ALLOCATION

All Tenant Common Area:

	Square Footage	All Tenant Common Area
Gross Building	28,655	
Minus Lobby Air Space	- 387	
Usable Square Footage	28,268	
Minus Assignable Space	- 20,796	
Remainder	7,472	
Total All Tenant Common Area		7,472

Occupant Share of All Tenant Common Area:

Occupant	Original Square Footage	Reduced Premises Square Footage
SBCAG	1,581	1,581
Social Services	2,152	2,152
APCD	3,739	2,617
Relinquished Portion / Vacant		1,122
Total Square Footage	7,472	7,472

Total Leased Square Footage Per Agency:

Occupant	Original Occupancy		Reduced Premises Occupancy	
	Square Feet	% Occupied	Square Feet	% Occupied
Social Services				
Assignable Square Footage	5,998		5,998	
All Tenant Common Area Sq. Ft	2,152		2,152	
Total	8,150	29%	8,150	29%
SBCAG				
Assignable Square Footage	4,398		4,398	
All Tenant Common Area Sq. Ft	1,581		1,581	
Total	5,979	21%	5,979	21%
APCD				
Assignable Square Footage	10,400		7,264	
All Tenant Common Area Sq. Ft	3,739		2,617	
Total	14,139	50%	9,881	35%
Relinquished Portion / Vacant				
Assignable Square Footage			3,136	
All Tenant Common Area Sq. Ft			1,122	
Total		0%	4,258	15%
BUILDING TOTAL	28,268	100%	28,268	100%