

**CITY OF COSTA MESA
LEASE AGREEMENT
WITH
COSTA MESA HISTORICAL SOCIETY**

This Agreement is made and entered into this 1st day of January 2017, by and between the CITY OF COSTA MESA, a California municipal corporation ("CITY") and COSTA MESA HISTORICAL SOCIETY, a California non-profit corporation ("TENANT").

1. PREMISES.

CITY hereby leases to TENANT and TENANT hereby leases from CITY, on the terms and conditions hereinafter set forth, those certain real properties listed on Exhibit A attached hereto and incorporated herein by this reference ("PREMISES").

2. TERM.

The term of this Agreement shall be five years commencing on January 1, 2017, and ending on December 31, 2022, unless terminated at an earlier time as herein provided. At the end of the term, the Agreement shall be automatically extended for an additional one (1) year term, up to five (5) additional years, unless otherwise terminated by either TENANT or CITY.

3. RENT.

TENANT shall pay to CITY as rent for the PREMISES One Dollar (\$1) per year, in advance, on the first day of each year during the term of this Agreement. Rent shall be payable without notice or demand and without any deduction, off-set, or abatement.

4. USE.

A. TENANT shall use the PREMISES only for the purpose of meetings and other similar activities and functions associated with the Costa Mesa Historical Society. Use may consist of, but is not limited to, tours, historical education, research and photography. TENANT shall not use or permit the use of the PREMISES for any other purpose without CITY'S prior written consent. TENANT shall comply with all laws concerning the PREMISES or TENANT'S use of the PREMISES including, without limitation, the obligation, at TENANT'S cost, to alter, maintain or restore the PREMISES in compliance and conformity with all laws relating to the condition, use, or occupancy of the PREMISES by TENANT during the term of this Agreement. TENANT shall not use or permit the use of the PREMISES in any manner that will tend to create waste or a nuisance or, if there shall be more than one tenant of the building containing the PREMISES, which shall unreasonably disturb any other tenant.

B. TENANT hereby accepts the PREMISES in their condition existing as of the date that TENANT possesses the PREMISES subject to all applicable zoning, municipal, county and state laws, ordinances, regulations governing or regulating the use of the PREMISES and accepts this Agreement subject thereto and to all matters disclosed thereby. TENANT hereby acknowledges that CITY has not made any representation or warranty to TENANT as to the suitability of the PREMISES for the conduct of TENANT'S business.

C. When scheduling events, CITY shall have priority over TENANT for the use of the PREMISES. TENANT shall have priority over third party rentals for the PREMISES. CITY

shall notify TENANT in writing when Estancia Park has been rented by a third party with more than 50 guests. TENANT shall notify CITY, in writing, when TENANT has scheduled any special events. Notice shall be made to CITY and/or TENANT as noted in Section 15 of this Agreement as soon as practical, but not less than 14 days prior to the event when possible.

D. TENANT shall be allowed to charge a rental fee for the use of the PREMISES and to keep those rental fees. TENANT shall publish a fee schedule on or before July 1 of each year and submit to the City for approval. CITY retains the right to modify or eliminate the fees at any time by giving written notice to TENANT not less than 30 days prior to the change.

5. TAXES.

TENANT shall pay prior to the delinquency all taxes assessed against and levied upon the trade fixtures, furnishings, equipment and other personal property of TENANT contained in the PREMISES. If any of TENANT'S said personal property shall be assessed with CITY'S property, TENANT shall pay to CITY the taxes attributable to TENANT within ten (10) days after receipt of a written statement from CITY setting forth the applicable taxes. CITY shall notify TENANT in a timely manner of any assessment or tax on the PREMISES. TENANT shall promptly notify CITY of any errors contained in the assessment or tax notice. Failure to pay the subject taxes shall constitute a default of the Agreement as provided in Paragraph 12 herein.

6. UTILITIES.

TENANT shall make all arrangements and pay for all telephone services supplied to the PREMISES. CITY shall provide, at no cost to TENANT the following utility services to the PREMISES: Gas, electricity, water, security alarm, trash and sewer service to Location 1, and one cellular telephone to Location 2. TENANT shall at all times maintain the thermostats at Federal Law Energy Saving Level.

7. MAINTENANCE AND REPAIRS.

A. CITY'S OBLIGATIONS. Except as provided in Paragraph 10, and except for damages caused by any negligent or intentional act or omission of TENANT or its agents, employees or invitees, CITY shall keep in good condition and repair the foundations, structural interior walls, exterior walls, roof, existing electrical, plumbing including repair of damaged, broken or clogged toilets, security alarm, trash service to building and HVAC systems of the PREMISES. CITY shall also maintain the landscaping and other CITY installed improvements, landings, balconies, interior and exterior doors and windows (including glass) of which the PREMISES are a part. CITY shall provide for pest control services to the PREMISES.

B. TENANT'S OBLIGATIONS. Subject to the provisions of Subparagraph A above and Paragraph 10, TENANT, at its sole cost and expense, shall maintain the interior of PREMISES and every part thereof, in a clean and neat condition, including, but not limited to, general cleaning of facility and restroom, including stocking of restroom supplies, soap and paper products. TENANT shall be responsible for removal of trash from PREMISES and deposit into CITY provided receptacles. TENANT owns and is responsible for maintenance and repair of all personal property, displays, exhibits, research material, display cases, storage, and all office furniture and equipment. If TENANT fails to perform TENANT'S obligations as stated herein, CITY may, at its option, enter the PREMISES ten (10) days after delivering written notice to TENANT, put the same in good order, condition and repair, and require reimbursement from TENANT for the costs.

8. ALTERATIONS AND ADDITIONS.

A. TENANT shall not, without CITY'S prior written consent, make any alterations, improvements or additions in or about the PREMISES. TENANT, at CITY'S option, may be required by CITY to remove any such alterations, improvements, or additions at the expiration of the term of this Agreement and to restore the PREMISES to their prior condition by giving TENANT thirty (30) days' written notice prior to the expiration of the term.

B. TENANT shall notify CITY in writing at least thirty (30) days prior to the commencement of any work relating to the alterations, additions, or improvements affecting the PREMISES. Work shall not commence until written approval has been obtained from CITY. Such approval and any special conditions pertaining to the work required of TENANT by CITY shall be signed by the parties and made a part of this Agreement. Permits and licenses necessary for the work shall also be obtained prior to commencement of the work.

C. TENANT shall pay, when due, all claims for labor and materials ordered by and furnished to or for TENANT at or for use in the PREMISES. TENANT shall not permit any mechanic's liens or materialmen's liens to be levied against the PREMISES for any labor or material furnished to TENANT or claimed to have been furnished to TENANT or TENANT'S agents or contractors in connection with work of any character performed or claimed to have been performed on the PREMISES by or at the direction of TENANT.

D. Unless CITY requires their removal as set forth above, all alterations, improvements or additions which are made on the PREMISES by TENANT shall become the property of CITY and remain upon and be surrendered with the PREMISES at the expiration of the term of this Agreement. Notwithstanding the provisions of this paragraph, TENANT'S trade fixtures, furniture, equipment and other machineries other than that which is affixed to the PREMISES so that it cannot be removed without material or structural damage to the PREMISES shall remain the property of TENANT and be removed by TENANT at the expiration of the term of this Agreement.

9. INSURANCE.

A. TENANT shall provide and maintain the following forms and minimum amounts of insurance during the term of this Agreement:

1) **Liability:** Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions, which includes for invitee coverage and also does not have any reservation of rights known to TENANT:

a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."

b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."

c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

2) **Workers' Compensation:** A program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the State of California now in force and any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof.

3) **Property Coverage:** Personal property insurance covering the PREMISES for the actual cash value against the hazards of fire, theft burglary vandalism and malicious mischief.

B. TENANT shall provide to CITY certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by CITY. Failure of TENANT to procure or maintain required insurance shall constitute a material breach of contract upon which CITY may immediately terminate this Agreement. Nothing in this Paragraph shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which TENANT may be held responsible for payments of damages to persons or property.

10. INDEMNITY.

TENANT shall defend, indemnify and hold harmless CITY, its elected officials, officers, agents, and employees ("Indemnitees"), from and against any and all claims, actions, suits or other legal proceedings arising from the use or occupancy of TENANT, its employees, agents, invitees, or volunteers ("Indemnitors") of the PREMISES or from the conduct of TENANT'S business or from any activity, work, or things which may be permitted or suffered by TENANT in or about the PREMISES including all damages, costs, attorney's fees, expenses and liabilities incurred in the defense of any claim or action or proceeding arising therefrom. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by Indemnitors but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Indemnitors and/or whenever any claim, action, complaint or suit asserts liability against the Indemnitees based upon the acts or omissions of Indemnitors, whether or not Indemnitors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, Indemnitors shall not be liable for the defense or indemnification of claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the Indemnitees.

11. ASSIGNMENT.

TENANT shall not voluntarily or by operation of law assign, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of TENANT'S interest in this Agreement or in the PREMISES without CITY'S prior written consent. Any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void and shall constitute a

breach of this Agreement and cause for termination of this Agreement. Regardless of CITY'S consent, no subletting or assignment shall release TENANT of TENANT'S obligation to pay the rent and to perform all other obligations to be performed by TENANT hereunder for the term of this Agreement.

12. DEFAULT.

A. The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by TENANT:

1) Failure to pay rent when due, if the failure continues for five (5) days after written notice has been given to TENANT.

2) Failure to pay taxes on TENANTS property, when due, if the failure continues for ten (10) days after written notice has been given to TENANT.

3) Abandonment and vacation of the PREMISES (failure to occupy the PREMISES for fourteen (14) consecutive days shall be deemed an abandonment and vacation).

4) Failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after written notice thereof has been given to TENANT by CITY.

Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that TENANT perform the provisions of this Agreement or pay the rent that is in arrears as the case may be, within the applicable period of time. No such notice shall be deemed a forfeiture or a termination of this Agreement unless CITY so elects in the notice.

B. If TENANT commits a default under this Agreement, CITY may, at its option, terminate TENANT'S right to possession of the PREMISES upon thirty (30) days' written notice to TENANT. In the event of such termination, CITY has the right to recover from TENANT the amount, including, but not limited to court costs and attorney's fees, necessary to compensate CITY for the eviction of TENANT and all detriment and damages proximately caused by TENANT'S default. These remedies are not exclusive, but are cumulative and in addition to any remedies now or hereafter allowed by law.

13. SIGNS.

TENANT shall not have the right to place, construct or maintain any sign, advertisement, awning, banner, or other exterior decorations on the building or other improvements that are a part of the PREMISES without CITY'S prior written consent in compliance with applicable law, including the Costa Mesa Municipal Code.

14. SURRENDER.

A. Upon the termination of this Agreement, TENANT shall surrender the PREMISES to CITY in good condition, broom clean, ordinary wear and tear excepted. TENANT shall repair, at its sole cost, any damage to the PREMISES occasioned by its use thereof, or by the removal of TENANT'S trade fixtures, furnishing and equipment, which repair shall include the patching and filling of holes and repair of structural damage. TENANT shall remove, at its sole cost, all of

its personal property and fixtures on the PREMISES prior to the expiration of the term of this Agreement and, if required by CITY pursuant to Paragraph 9, above, any alterations, improvements or additions made by TENANT to the PREMISES. If TENANT fails to surrender the PREMISES to CITY on the expiration of the Agreement as required by this paragraph, TENANT shall defend, indemnify and hold CITY harmless from all damages resulting from TENANT'S failure to vacate the PREMISES, including, without limitation, claims made by any succeeding tenant resulting from TENANT'S failure to surrender the PREMISES.

B. In the event CITY determines that TENANT'S use of the PREMISES constitutes a violation of law, a nuisance or waste, TENANT shall surrender the PREMISES on three (3) days' written notice, and TENANT shall defend, indemnify and hold CITY harmless from all damages resulting from CITY'S efforts to abate such activities.

15. PERMITS AND LICENSES.

TENANT shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with its operations on the PREMISES, or in connection with any improvements it may construct on the PREMISES. No permit approval or consent given hereunder by CITY in its governmental capacity shall affect or limit TENANT'S obligations hereunder, nor shall any approvals or consents given by CITY, as a party to this AGREEMENT, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

16. HAZARDOUS MATERIALS.

A. As used herein the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity, including without limitation, CITY acting in its governmental capacity, the State of California or the United States Government.

B. TENANT shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the PREMISES, except as may specifically authorized by CITY in writing. Any such authorization by CITY shall not alter or reduce TENANT'S obligations under this section, including but not limited to its duty to indemnify and defend CITY, for any contamination which may occur as a result of TENANT'S use of the authorized material. In light of the preceding limitations, CITY hereby authorizes TENANT'S use of pool cleaning and maintenance supplies on the PREMISES.

C. If TENANT breaches the obligations stated herein, or if contamination of the PREMISES by Hazardous Materials otherwise occurs for which TENANT is legally liable to CITY for damage resulting therefrom, then TENANT shall indemnify, defend and hold CITY harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including without limitation, diminution in value of the PREMISES, damages for the loss or restriction on use of rentable or usable space or any amenity of the PREMISES, damages arising from any adverse impact on marketing of space in the PREMISES or portion of any building of which the PREMISES is a part, and sums paid in settlement of claims, clean up or remediation costs, attorneys fees, consultant fees and expert witness fees) which arise during or after the term as a result of such contamination.

D. This indemnification includes without limitation, costs incurred by CITY in connection with any investigation of site conditions or any cleanup, remedial, removal or

restoration work required by any federal, state or local governmental entity because of Hazardous Material being present in the soil or ground water or under the PREMISES. TENANT shall promptly take all actions at its sole cost and expense as are necessary to clean, remove and restore the PREMISES to its condition prior to the introduction of such Hazardous Material by TENANT, provided TENANT shall first have obtained CITY's approval and the approval of any necessary governmental entities.

17. NOTICES.

Any demand, notice or declaration provided for under this Agreement shall be in writing and served either personally or sent by registered or certified United States mail, postage prepaid, addressed to the parties as set forth below:

CITY
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628
Attn: Justin Martin, Recreation Manager

TENANT
COSTA MESA HISTORICAL
ANAHEIM AVE. SOCIETY
COSTA MESA, CA
President, CM Historical Society 92627

Such notice shall be deemed to be received within forty-eight (48) hours from the time of mailing, if mailed as provided for in this paragraph.

18. INSPECTIONS.

CITY shall have the right to enter the PREMISES at reasonable times for the purpose of inspecting same, showing the same to prospective purchasers or lenders, and making such alterations, repairs, improvements or additions to the PREMISES or to the building of which the PREMISES are a part as CITY may deem necessary or desirable.

19. WAIVERS.

No waiver by CITY of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by TENANT of the same or any other provision. CITY'S consent to or approval of any act shall not be deemed to render unnecessary the obtaining of CITY'S consent to or approval of any subsequent act by TENANT. The acceptance of rent hereunder by CITY shall not be a waiver of any preceding breach by TENANT of any provision hereof, other than the failure of TENANT to pay the particular rent so accepted, regardless of CITY'S knowledge of such preceding breach at the time of its acceptance of such rent.

20. PRIOR AGREEMENTS.

This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification.

21. SEVERABILITY.

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions hereof unenforceable, invalid or illegal.

22. TERMINATION.

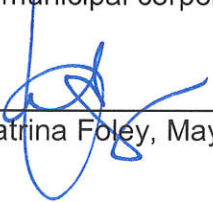
Except as provided in Paragraph 14(b), either party may terminate this Agreement by giving the other written notice no fewer than thirty (30) days in advance of such termination and in accordance with the provisions for giving notice as set forth in Paragraph 15.

23. HOLDOVER.

If, after the expiration of this lease, TENANT remains in possession of the PREMISES, TENANT shall be a tenant from month to month and shall be governed by the terms and conditions of this Agreement.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation



Katrina Foley, Mayor

COSTA MESA HISTORICAL SOCIETY



Name and Title *on behalf of*
Treasurer Costa Mesa
Historical Society

Social Security or Taxpayer ID Number

Exhibit A

Locations of facilities leased to the Costa Mesa Historical Society, subject to this Agreement

Location 1: Historical Society Building Premises: a portion of that certain real property, the building having the address of **1870 Anaheim Avenue**, located thereon situated in the City of Costa Mesa, County of Orange, State of California, (Assessor's Parcel Number 424-221-21) including any applicable easements for access and utilities attached hereto.

Location 2: Diego Sepulveda Adobe aka Estancia Adobe Premises: a portion of that certain real property the building having the address of **1900 Adams Avenue** (within Estancia Park), located thereon situated in the City of Costa Mesa, County of Orange, State of California (Assessor's Parcel Number 139-351-28), including any applicable easements for access and utilities attached hereto.

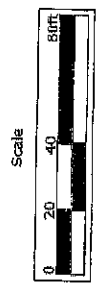
1870 Anaheim Avenue

Costa Mesa Historical Society

LOCATION 1



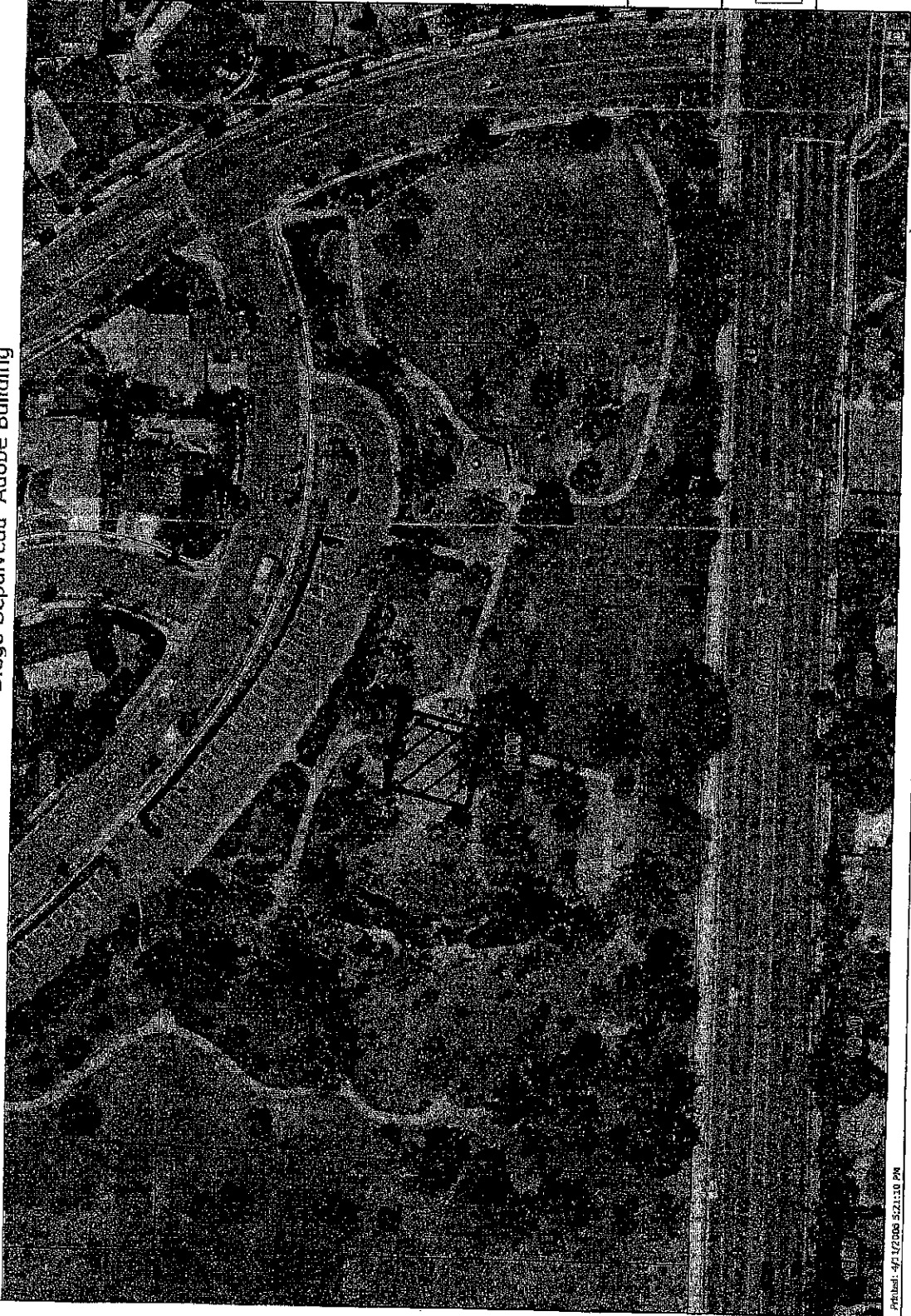
- Legend**
- Parcel Addresses
 - Parcel Addresses
 - Street Names
 - Parcel Edges
 - Ortho Photography



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1900 Adams Avenue
Diego Sepulveda Adobe Building

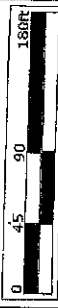
LOCATION 2



- Legend**
- Parcel Addresses
 - Street Names
 - Parcel Lines
 - Aerial Photography



Scale



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