

CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 9

Date: June 16, 2010

TO: Honorable Mayor and Members of the City Council

FROM: Edward N. Domingue, Director of Engineering Services
Jo Ann Case, Economic Development & Real Property Manager

SUBJECT: Lease Agreement Between the City of Escondido and Jacqueline Skay

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2010-106 approving a three-year lease agreement for a law office located at 220 S. Broadway in the City of Escondido.

FISCAL ANALYSIS:

In order to take it to a market rate, the proposed lease rate is based on a gradually increasing rent over a period of three years. A market rate rent study determined the rent should be \$1.35 per square foot without taxes, insurance, utilities and maintenance. The proposed lease recommends these terms: the lessee would pay 70% (\$.945 per square foot) in year-one, 85% (\$1.15 per square foot) in year-two and 100% (\$1.35 per square foot) in year-three.

PREVIOUS ACTION:

The City purchased this property, which is adjacent to the City's Main Library, in November 2000. Ms. Skay's pre-existing lease, from 1997, came with the property. A new one-year lease with the City was executed in 2002 and set a monthly rent of \$975 (\$.49 per square foot). Since that lease term ended, Ms. Skay remained a tenant on a month-to-month basis. There has been no increase in rent since 2002. The City was also paying for her utilities, janitorial service and performing landscape maintenance.

BACKGROUND:

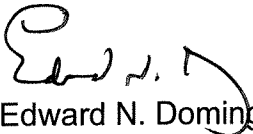
The City purchased properties adjacent to the Escondido Main Library for future library expansion. The buildings on these properties had several tenants with pre-existing leases that were negotiated with the former property owner; Ms. Skay's lease was one of them. She shares the building with another tenant. All of the City's three current tenants occupy two buildings and have rents that are far below current market rates, with Ms. Skay's being the lowest.

The City has been responsible for general maintenance and has been called out a number of times for various repairs. The current rates paid by the three tenants do not cover the costs for general and deferred maintenance. Because the buildings are getting older, and could have a relatively short life time, it is not financially prudent to invest in any major repairs. This building is in need of a roof replacement that would cost approximately \$16,000, and the leak only affects Ms. Skay, not the other tenant. There is a leak in the corner of one room only. Real Property has informed Ms. Skay that replacing the roof is cost prohibitive and a previous attempt to patch it costing \$2,000, did not solve the problem. Therefore, Real Property is recommending that Ms. Skay be given gradual increases to her rent and the ability to end the lease at anytime with a 60-day written notice. The gradual increase in rent and ability to terminate the lease in a relatively short period of time is intended to give her time to look elsewhere for suitable space.

Ms. Skay wrote a letter objecting to the increase and asked for a number of repairs including the roof. As a compromise, Real Property is proposing an increase of 70% of the market rate for the first year, rather than a 75% increase which was the initial recommendation. At 70%, the first year's monthly rent payment would be \$1884 (\$.945 per square foot) rather than the \$975 (\$.49 per square foot) she is paying now. This would appear to be a large increase, but she has been paying approximately half of what the other tenants have been paying and she had not been paying for her utilities or janitorial service, however, the other tenants were paying theirs. As of June 1st, the City discontinued paying her utilities and janitorial service and she has assumed responsibility for them. Ms. Skay is currently acquiring off-site storage for many of her records and she has rooms that she will not need in the future. Therefore, the lease provides terms by which she can vacate portions of the building and reduce the number of leased square feet. Staff is recommending to grant her request because she is a long-term tenant with a relatively short lease and she has made a significant investment in interior improvements at her own expense.

As the City's older commercial leases end their terms, Real Property is following Council direction to bring rents to a market rate. Also, leases ending their terms are being updated so the City is no longer paying expenses for utilities, landscape services, possessory interest tax, janitorial services, etc. which are generally paid by tenants, either as part of their rent rate or as a triple net expense. Since Ms. Skay is now paying her utilities and janitorial service, and she stated that she does not need landscape services, Real Property is recommending increasing her rent over the lease term rather than going to a market rate immediately.

Respectfully submitted,



Edward N. Domingue, P.E.
Director of Engineering Services



Jo Ann Case
Economic Development & Real Property Manager

RESOLUTION NO. 2010-106

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR AND CITY
CLERK TO EXECUTE, ON BEHALF OF THE
CITY, A LEASE AGREEMENT FOR OFFICE
SPACE AT 220 SOUTH BROADWAY IN THE
CITY OF ESCONDIDO

(Jacqueline Skay)

WHEREAS, certain real property located at 220 South Broadway has been leased to Jacqueline Skay on a month-to-month basis for a law office; and

WHEREAS, Jacqueline Skay, wishes to continue leasing the office space for her law office; and

WHEREAS, it is in the City's best interest to implement a graduated monthly rental rate over the three-year term of the new lease; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the Lease Agreement ("Agreement") with Jacqueline Skay.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. The Mayor and City Clerk are authorized to execute, on behalf of the City, the Agreement with Jacqueline Skay, in substantially the form attached to this resolution as Exhibit "A," and incorporated by this reference, and subject to final approval as to form by the City Attorney.

**CITY OF ESCONDIDO
LEASE AGREEMENT**

PREMISES:

220 South Broadway
Escondido, CA 92025
APN 233-091-02

LESSEE:

Jacqueline M. Skay

TERM: Three (3) Years

CITY OF ESCONDIDO
LEASE AGREEMENT INDEX

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A



CITY OF ESCONDIDO
LEASE AGREEMENT

This Agreement is made this _____ day of _____, 20____.

Between: CITY OF ESCONDIDO
a municipal corporation
201 N. Broadway
Escondido, California 92025
("CITY")

And: Jacqueline M. Skay
220 South Broadway
Escondido, CA 92025
("LESSEE")

WITNESS THAT WHEREAS:

- A. CITY desires to rent to LESSEE and LESSEE desires to rent from CITY certain public property located at 220 South Broadway, for the purpose of operating a law practice. The Property is described in Attachment A, which is incorporated by this reference.

NOW THEREFORE, it is mutually agreed by and between CITY and LESSEE as follows:

1. DEFINITION OF TERMS. The following words in this Lease Agreement shall have the significance attached to them in this Clause unless otherwise apparent from their context.
 - a. "Lease" means this Lease Agreement.
 - b. "Premises" means the real property described in Attachment A.
 - c. "Lease Administrator" means the City of Escondido-Real Property Agent, or upon written notice to LESSEE, such other person as shall be designated from time to time by CITY.

d. "LESSEE" means Jacquelyn Skay, and does not include her heirs, assigns, or successors-in-interest.

2. ADMINISTRATION. This Lease shall be administered on behalf of CITY by the Lease Administrator whose address is:

City of Escondido
Engineering – Real Property
201 North Broadway
Escondido, CA 92025

and on behalf of LESSEE by Jacqueline M. Skay, whose address is:

220 South Broadway
Escondido, CA 92025

3. TERM. The term of this Lease shall be three (3) years, commencing on July 1, 2010.

4. TERMINATION OF LEASE.

4.1 Each party shall have the right to terminate this Lease without cause for any reason by giving sixty (60) days prior written notice to the other party.

4.2 CITY shall have the right to terminate this Lease by giving seven (7) days prior written notice to LESSEE for any of the following events:

4.2.1 LESSEE'S failure to comply with the following clauses in this Lease:

Acceptance and Maintenance, Paragraph 13

Alterations, Paragraph 14

Use, Paragraph 15

Occupancy and Assignment, Paragraph 16

Conduct, Paragraph 17

Insurance, Paragraph 22

Americans with Disabilities Act (ADA), Paragraph 30

4.2.2 If the CITY discovers at any time during the lease term that the LESSEE or any other party has used, is using, or will use the Premises in an unlawful manner or for an unlawful purpose, or in any manner that is inconsistent with any provision of this Lease.

5. OPTIONS TO RENEW. Not Applicable to this lease.

6. VACATION OF PREMISES.

6.1 Upon termination of this Lease for any reason, LESSEE shall peaceably vacate and deliver the Premises to CITY in the same condition as LESSEE found them upon her acceptance of the Premises hereunder, excepting ordinary wear and tear and conditions caused by acts of God.

6.2 Upon such termination, LESSEE shall immediately:

6.2.1 Arrange and pay for the disconnection of all utilities and services ordered by LESSEE;

6.2.2 Provide a written statement to the Lease Administrator of LESSEE'S new address for purpose of refunding monies, if any, due LESSEE under this Lease; and

6.2.3 Deliver any keys for the Premises to the Lease Administrator or send said keys by certified mail to the address stated in Paragraph 2 above.

6.3 Upon written approval from the Real Property Manager or Agent ("Manager" "Agent"), Lessee shall have the option to vacate portions of the Premises as they no longer become needed. In the event Lessee desires to vacate any portion(s) of the Premises, the Manager or Agent, or his/her designated agent, shall inspect the Premises and verify that the proposed vacated portion(s) is/are no longer in use and free of any and all personal property. Upon the Manager's or Agent's written approval of any space vacated by Lessee, the Manager or Agent shall adjust the square footage and rent rate of the leased Premises accordingly, effective the month after the inspection.

7. RENT. In consideration of the possession and use of the Premises, LESSEE shall deliver and pay rent to CITY during the term of this Lease as follows:

A. \$1884 per month (\$.945 per square foot rent rate) from July 1, 2010 through May 31, 2011;

B. \$2293 per month (\$1.15 per square foot rent rate) beginning June 1, 2011 through May 31, 2012;

C. \$2,692 per month (\$1.35 per square foot rent rate) beginning June 1, 2012 through May 31, 2013.

All rental payments shall be due on or prior to the 5th day of each month. Lessee agrees and understands that if Lessee vacates any portion of the Premises under Section 6.3 of this Lease, the adjusted rent rate shall take effect the month after the Manager's, or her designated agent's, inspection and written approval.

8. LATE PAYMENT. Rental payments received after the 15th day of any month will be charged an additional 20% late payment fee.
9. COST OF LIVING ADJUSTMENT. Not applicable to this Lease.
10. SECURITY DEPOSIT. No security deposit shall be required under this Agreement.
11. UTILITIES PAYMENTS. LESSEE agrees to provide and pay for all utilities and services necessary for the occupancy and use of the Premises, including, but not limited to: gas, water, electricity, trash pickup, janitorial costs, any and all landscaping costs, sewage charges or septic service, telephone, television and internet.
12. TAXES, ASSESSMENTS, AND FEES.
 - 12.1 The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in LESSEE, LESSEE shall pay all personal property taxes levied on such interest. LESSEE shall be responsible for the payment of, and shall pay before delinquent, all taxes, assessments, and fees assessed or levied upon LESSEE, on said Premises or any interest therein, on any buildings, structures, machines, appliances, or other improvements of any nature whatsoever, or on any interest therein.
 - 12.2 LESSEE further agrees not to allow such taxes, assessments, or fees to become a lien against said Premises or any improvement thereon. Nothing herein contained shall be deemed to prevent or prohibit LESSEE from contesting the validity of amount of any such tax, assessment, or fee in any manner authorized by law.
13. ACCEPTANCE AND MAINTENANCE.

13.1 LESSEE hereby acknowledges that LESSEE has inspected the Premises, that LESSEE accepts said Premises "as is" and "where is."

13.2 LESSEE agrees to take good care of the Premises and all improvements, alterations, fixtures, and appurtenances thereon. LESSEE agrees to make all repairs in and about the Premises, including painting, which may be necessary to preserve them in good order and condition. Said repairs, if any, shall be made in a good and professional manner, and at least equal to the condition and quality of the repaired items at the inception of this Lease. LESSEE shall promptly pay the expenses of such repairs. LESSEE agrees to be solely responsible for all costs of maintenance and repair.

13.3 In the event LESSEE fails to properly maintain the Premises as required by CITY, then CITY may notify LESSEE in writing of said failure. In the event LESSEE fails to perform said maintenance within thirty (30) days after such notice by CITY, CITY may perform such maintenance, and the cost thereof including, but not limited to, the cost of labor, material, and equipment, shall be paid by LESSEE to CITY within ten (10) days from receipt by LESSEE of a cost statement from CITY.

13.4 Noncompliance by LESSEE with any provision of this Clause shall allow the CITY to immediately terminate this Lease, pursuant to Paragraph 4.2 above.

14. ALTERATIONS.

14.1 LESSEE shall not paint, alter, cut, add to, or otherwise change the appearance, structure, or condition of the Premises without the prior written consent of the Lease Administrator and only after obtaining applicable permits.

14.2 Any improvements made with the consent of the Lease Administrator shall become a fixture to the realty and shall remain on and be surrendered with the Premises upon termination of this Lease.

14.3 Noncompliance by LESSEE with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

15. USE. LESSEE agrees to use the Premises as follows:

- 15.1 As office space to be used in the practice of law in the State of California, in accordance with the provisions and requirements contained in any permits required by the City of Escondido Planning Division. The office space is for LESSEE and LESSEE'S staff and clients. LESSEE shall not use, nor permit said Premises, nor any part thereof, to be used for any purpose or purposes other than the purpose or purposes herein described, without the prior express written consent of CITY.
- 15.2 LESSEE shall not use, nor permit the use of, the Premises other than as described in Paragraph 15.1 above. In any case where LESSEE is, or should reasonably be, in doubt as to the propriety of any particular use, LESSEE may request, and will not be in breach or default if LESSEE abides by, the written determination of the Lease Administrator that such use is or is not permitted.
- 15.3 Noncompliance by LESSEE with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.
16. OCCUPANCY, ASSIGNMENT AND SUBLETTING. The Premises shall only be occupied by LESSEE except with prior express written consent of the Lease Administrator. LESSEE may not assign this Lease or any interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person except employees, agents and guests of LESSEE, to use or occupy the Premises or any part thereof, without the prior express written consent of the Lease Administrator in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the prior express written consent of the Lease Administrator. The Lease Administrator's approval shall not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community. LESSEE'S noncompliance with this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.
17. CONDUCT.

- 17.1 LESSEE and guests of LESSEE shall at all times conduct themselves in a quiet and dignified manner so as to cause no annoyance or inconvenience to neighbors of LESSEE.
- 17.2 LESSEE shall not violate, or permit the violation of, any CITY or County ordinance, or state or federal law, in or about the Premises.
- 17.3 Noncompliance by LESSEE with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.
18. PETS. No pets or livestock of any kind may be kept on the Premises without the prior written consent of the Lease Administrator.
19. NOTICES. Any notice required or permitted to be given by this Lease must either be personally served on the other party or served by certified mail, return receipt requested, to the addressee. Notices served by mail shall be sent to the address listed above in Paragraph 2. A change of either party's address must also be immediately served in the manner described above.
20. RIGHT OF INSPECTION. CITY reserves the right for its agents or employees to enter upon and inspect the Premises at any reasonable time to ascertain if LESSEE is complying with the provisions of this Lease.
21. RIGHT TO SHOW PREMISES. CITY reserves the right, during the last sixty (60) days of this Lease, or any extension thereof, to conduct an "open house" of the Premises in order to facilitate re-renting or selling the Premises. Said "open house" shall not exceed four hours total duration (maximum of two separate days), and when possible, to be scheduled from 3 p.m. to 5 p.m., Monday through Friday.
22. INSURANCE.
- 22.1 LESSEE must have insurance in the following amounts at all times during this Agreement:
- 22.1.1 General liability insurance with at least \$1 Million combined single-limit coverage per occurrence for bodily injury and property damage; and
- 22.1.2 Automobile liability insurance of \$1 Million combined single-limit per accident for bodily injury and property damage; and

- 22.1.3 Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship
- 22.2 Each insurance policy required above must be acceptable to the City Attorney:
- 22.2.1 Each policy must name the CITY specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation policy.
- 22.2.2 Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
- 22.2.3 All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
- 22.3 LESSEE agrees to deposit with CITY, on or before the effective date of this Lease, one Certificate of Insurance for each of the policy or policies necessary to satisfy the insurance provisions of this Lease and to keep such insurance in effect during the entire term of this Lease. Said Certificate of Insurance shall be reviewed by, and acceptable to, the City Attorney, prior to commencement of the Lease Term. LESSEE will also deposit with the CITY within sixty (60) days of the Effective Date of this Lease, an Additional Insured Endorsement naming CITY specifically and separately as a "additional insured", with the exception of the worker's compensation policy. The appropriate endorsements described in Paragraph 22.2 above shall follow within sixty (60) days. Noncompliance by LESSEE with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.
- 22.4 CITY shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the Lease Administrator, the insurance provisions in this Lease do not provide adequate protection for CITY and for members of the public using the Premises, CITY may require LESSEE to obtain insurance sufficient in coverage, form and amount to provide adequate protection from and against the kind and extent of risks which exist or are foreseeable at the

time a change in insurance is required. CITY'S requirements shall be reasonable, but shall be designed to assure adequate protection of the CITY'S interests. The Lease Administrator shall notify LESSEE in writing of changes in the insurance requirements and, if LESSEE does not deposit with CITY within sixty (60) days of receipt of such notice a new Certificate of Insurance for each policy or policies of insurance incorporating such changes, this Lease shall be deemed in default without further notice to LESSEE and may be forthwith terminated by the Lease Administrator, pursuant to Paragraph 4.2 above.

- 22.5 The procuring of such required policy or policies of insurance shall not be construed to limit LESSEE'S liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, LESSEE shall be obligated for the full and total amount of any damage, injury or loss attributable to any act or omission of it or its agents, customers or guests in connection with this Lease or with use or occupancy of the Premises.
- 22.6 Noncompliance by LESSEE with any provision of this Paragraph 22 shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.
23. INDEMNIFICATION. LESSEE shall defend, indemnify, and hold harmless CITY, its officers, agents, and employees from and against any and all claims, demands, and liabilities for loss of any kind or nature which CITY, its officers, agents, or employees may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons or damage to property as a result of, arising out of, or in any manner connected with this Agreement or with the occupancy and use of the Premises by LESSEE, its invitees, visitors, or any other persons whatsoever. LESSEE further agrees to pay any and all costs and expenses, including, but not limited to, court costs and reasonable attorney's fees incurred by CITY on account of any such claims, demands, or liabilities. However, the provisions of this Agreement shall not be construed to indemnify CITY for claims or acts arising from CITY'S sole negligence.
24. ATTORNEY'S FEES, COSTS AND EXPENSES. In the event litigation or other proceedings are required to enforce or interpret any provision of this Lease, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

25. NONDISCRIMINATION. LESSEE herein covenants that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of physical or mental disabilities, race, color, creed, religion, sex, marital status, national origin or ancestry in the use, occupancy, tenure or enjoyment of the leased Premises. LESSEE shall not establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, or use of occupancy by customers, tenants or vendees in the leased Premises.
26. SUPERSEDURE. This Lease, upon becoming effective, shall supersede any leases or rental agreements heretofore made or issued for the Premises between the CITY and LESSEE.
27. HAZARDOUS AND/OR CONTAMINATED SOIL AND MATERIAL. LESSEE will not place or permit to be placed materials and/or contaminated soils on the Premises which under federal, state, or local law, statute, ordinance, or regulations require special handling in collection, storage, treatment, and/or disposal. LESSEE also hereby covenants and agrees that, if at any time it is determined there are materials and/or contaminated soils located on the Premises which under any environmental requirement require special handling in collection, storage, treatment, or disposal, LESSEE shall notify CITY. Within thirty (30) days after written notice to CITY or from CITY, LESSEE shall commence to take and thereafter diligently complete, at LESSEE'S sole expense, such actions as may be necessary to comply with environmental requirements.
28. LAW TO GOVERN; VENUE. This Lease shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Diego, North County Branch. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Southern District of California, in San Diego.
29. SPECIAL PROVISIONS. LESSEE hereby acknowledges that LESSEE waives all rights to any form of relocation assistance provided for by local, state, or federal law to which LESSEE may be entitled by reason of this Lease.
30. AMERICANS WITH DISABILITIES ACT (ADA). It is the duty of the LESSEE while operating under this Lease to comply with all local, state, and federal laws, including, but not limited to, the Americans with Disabilities Act and to indemnify CITY from any

violation of any such laws. Failure to comply with a provision of local, state, or federal law is grounds for the Lease Administrator's immediate termination of this Lease.

IN WITNESS WHEREOF, the parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

CITY OF ESCONDIDO

Date: _____

By: _____
Mayor

Date: _____

By: _____
City Clerk

Date: _____

LESSEE
By: _____
Jacqueline M. Skay

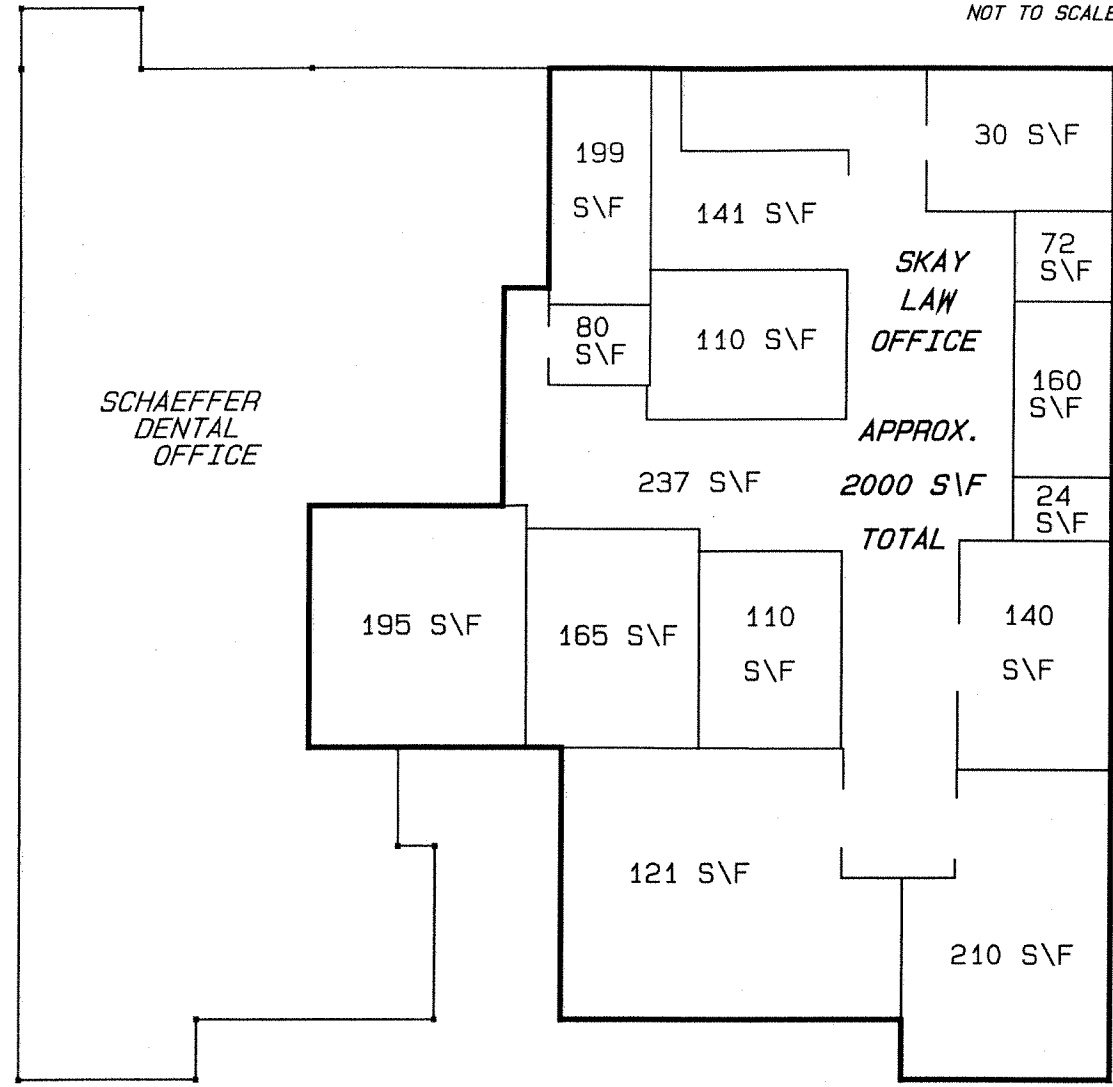
APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
Jeffrey R. Epp, City Attorney

By: _____


ATTACHMENT 'A'



NOT TO SCALE



BROADWAY

Prepared by:	ENGINEERING SERVICES 201 North Broadway, CA 92025 (760) 839-4651	
CITY OF ESCONDIDO ENGINEERING SERVICES		
SKAY LEASE SPACE 220 SOUTH BROADWAY	Date: 6-03-2010	SHEET: 1 OF 1