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THE CITY OF SAN DIEGO

AND

MERZIOTIS PROPERTIES D.B.A. ARGUS II RESTAURANT

PERCENTAGE RATE LEASE

Commencing: _____

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SAN DIEGO, CALIFORNIA

LEASE OUTLINE
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**CITY OF SAN DIEGO
PERCENTAGE RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and MERZIOTIS PROPERTIES, INC. d.b.a. ARGUS II Restaurant, a California corporation, hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described as 4144 sq. ft. in Building 2002 at Brown Field Airport, as shown in Section 10.2, Ground Layout, on Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of operating and maintaining a restaurant/coffee shop and a public cocktail lounge with the right to sell alcoholic beverages, provide catering services, the sale of sundry items, all in accordance with the General Development Plan described in 6.12 below, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Competent Management. Throughout the term of this Lease Agreement, LESSEE shall provide competent management of the leased premises, for the uses as outlined in paragraph 1.2, to the satisfaction of the City Manager. LESSEE also agrees to obtain and maintain during the entire period of this lease, all permits and approvals for all City, County, State and Federal agencies that may or may not have an interest in this operation.

- 1.7 Parking. All parking for customers and employees will be in the airport public parking lot. There shall be no overnight parking nor storage of vehicles or boats on Airport premises without the approval of the Deputy Director/Airports.
- 1.8 Operation of Facilities. A regular schedule of days and hours of operation shall be followed by LESSEE to best serve the public as set forth in Section 10.5; Schedule of Days and Hours of Operation, hereof. Any changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representative. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be ten (10) years commencing on the first day of the month following approval by the City Council. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Council.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting LESSEE'S failure to execute this lease provision and the notice will be conclusive evidence of the termination of this lease and all LESSEE'S rights to the premises.

SECTION 3: RENT

- 3.1 Time and Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- A. Minimum Rent. The annual minimum rent established for the first two and one half years (2 1/2 yrs) following the effective date of this lease is NINETEEN THOUSAND TWO HUNDRED FORTY-THREE DOLLARS (\$19,243) which is ONE THOUSAND SIX HUNDRED AND THREE DOLLARS AND 58/00 (\$1,603.58) on a monthly basis.

If the minimum rent is greater than the percentage rent on a calendar month basis, then 1/12 of the annual minimum rent is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the last day of the calendar month when percentage rents are due pursuant to Section 3.3 Payment Procedures, hereof.

Provided however, in the event that the combined total percentage rent payments and monthly installments during any lease year equal or exceed the required annual minimum rent for that year, then for the balance of such year, LESSEE shall discontinue paying monthly installments of the minimum rent and shall continue paying only percentage rents until the beginning of the ensuing lease year. Provided further, in the event minimum rents paid plus percentage rents paid exceed the annual minimum rent and also exceed the rent which would have been paid if the percentage rent had been paid on total gross income, the excess of the annual minimum rent or percentage rent, whichever is greater, shall be credited against the next payable rent as it becomes due. It is the intent of this provision that LESSEE

shall pay monthly installments of the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term shall prevail on an annual basis.

- B. Minimum Rent Adjustment. Effective at the beginning of the first day of the 31st month of this lease and at the beginning of each two and one-half year period thereafter, during the term, including any extension, the annual minimum rent for the succeeding two and one-half year period shall be adjusted to eighty percent (80%) of the annual rent LESSEE paid to City (or rent accrued) during the 12 months preceding the adjustment date. Said annual minimum rent shall then be divided by twelve (12) to establish the new monthly minimum rent. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly minimum rents at the prior rate. Any additional rents determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to CITY within thirty (30) days following written notice. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent requirement in effect immediately prior to the adjustment date.
- C. Percentage Rents. Percentage rents will be calculated on a calendar month basis and will consist of the following percentages of the gross income resulting from the use of the premises:

Percentages

Business Activities

Five Percent (5%)

of all gross income derived from all operations except;

Eight Percent (8%)

of all gross income derived from the sale of alcoholic beverages;

Twenty-Five Percent (25%) of commissions or any other compensation paid to LESSEE or sublessees for the right to install or operate coin-operated vending, game or service machines or devices on the premises, including telephones;

Ten Percent (10%) of the gross income from any such coin-operated machines or devices owned, rented or leased by LESSEE or sublessees for use on the premises;

Twenty Percent (20%) of gross income from any unauthorized activity conducted on the leasehold premises:

The City Manager in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2, Uses, hereof, as may be approved in writing by the City Manager prior to the commencement of such other service(s) or operation(s). Provided, however, any approval by the City Manager shall be subject to the requirements of Section 3.7, Unauthorized Use Charge, hereof.

D. Percentage Rents on Gratuities and Trade-Outs. Percentage rents charged on gratuities (services performed for free) and trade-outs shall be calculated on a value equal to the gross income that LESSEE would have normally received for such services.

3.3 Payment Procedures. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

A. One-twelfth of the annual minimum rent until the full annual rent is achieved in any lease year.

- B. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.
- C. The percentage rental due the CITY, computed and totaled.
- D. The accumulated total of all rents previously paid for the current lease year.
- E. Payment in the greater of the two following amounts:

One-twelfth of the annual minimum rent or the total percentage rent due the CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this lease and whether or not a separate percentage rent was established by CITY):

1. Sublease commencement date.
2. Physical occupancy date.
3. Earliest activity date (sale of goods, solicitation of business, construction or alterations, etc.).

- 3.4 Gross Income. "Gross Income" or "gross receipts" as used in this lease shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or

licensee, or their agents and all gross income received by any sublessee, permittee or licensee or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease.

- 3.5 Security Deposit. A security deposit shall be paid to the CITY by LESSEE in the sum of ONE THOUSAND SIX HUNDRED AND FOUR DOLLARS (\$1,604) on or before the commencement date of this lease. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants and conditions of this lease.

The security deposit shall take one of the forms set out below:

- A. Cash. Cash deposits shall be deposited with CITY and CITY shall not be liable to LESSEE for any interest thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.
- B. Instrument(s) of Credit. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment, and agree that any or all funds shall be paid to CITY upon demand by CITY. The financial institution and the form of any instrument pledging the funds must be approved by CITY.

LESSEE will maintain the required security deposit throughout the lease term and for ninety (90) days thereafter unless previously released by CITY. Failure to do so shall be considered a default and is grounds for immediate termination of this lease.

In the event CITY utilizes all or any portion of the security deposit, LESSEE shall reimburse the deposit within ten (10) days of notice from CITY to bring the security deposit up to the full specified amount.

The security or any balance thereof will be returned to LESSEE within ninety (90) days following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants and conditions hereof.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon sixty (60) days' prior written notice from CITY of such required increase.

3.6 Delinquent Rent and Audit Deficiency(s) Fees. If LESSEE fails to pay the rent when due, LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed to by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. A ten percent (10%) audit deficiency fee will be added to any unpaid rent found due to an audit.

3.7 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments, and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

3.8 Inspection of Records.

A. Records. LESSEE shall at all times during the term of this lease, keep or cause to be kept true and complete books, records and accounts of all financial transactions in the operation of all business conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register taps, purchase invoices or other documents as necessary to all CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash register or other comparable devices which display to the customer the amount of the transaction and automatically issues a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be

read and recorded at the beginning and end of each business day.

In the event of admissions charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- B. Financial Information. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rent paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE.
- C. Right to Inspect. All LESSEE'S books of account, records and supporting documentation, as described under Section 3.8A Records will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of the LESSEE, its agents, sublessees, concessionaires and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state of federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

- D. Audit Cost. The full cost of the CITY'S audit (s) will be borne by CITY unless one or both of the following conditions exist, in which case LESSEE hereby agrees to pay CITY'S cost of audit (s).

1. The audit (s) reveals an underpayment of more than five percent or more than \$10,000, whichever is less, between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit(s), or
2. LESSEE has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this section hereof.

LESSEE shall pay and deficiency determined by audit(s) plus interest on such amount as defined in Section 3.6, Delinquent Rent and Audit Deficiency(s) Fees, hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- E. Default. LESSEE'S failure to keep complete and accurate records by means of double entry bookkeeping and make them available to CITY inspection is, like all other failures to comply with covenants of this lease, a breach of this lease and cause for termination.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall 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 written consent of the City Manager 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 written consent of the City Manager.

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease or assignment, that the proposed sublessee or assignee pay additional rent to CITY to equal the full fair market rent justifiable at the date of such proposed sublease or assignment and that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current.

4.3 Defaults.

A. Default. In the event that:

1. LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
2. LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
3. LESSEE shall be adjudicated a bankrupt; or
4. LESSEE shall make a general assignment for the benefit of creditors;

Then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights

through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.3a.(1), Defaults, hereof, is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

B. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

C. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default

is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.4 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- A. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- B. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- C. In the event of a partial taking, if, in the opinion of CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- D. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- E. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- F. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not

impose any liability upon CITY for inverse condemnation.

- 4.5 Control by Specified Individuals or Entities. The corporation named herein as LESSEE shall remain owned and controlled by Mr. George Merziotis at least to the extent of 51 percent of the issued stock of said corporation, and they shall, as co-executives actively administer and supervise the business enterprise on the premises. Provided, however, in the event that any of the above-named persons shall become incapacitated, then the other shall continue in such active administration and supervision. In the event all parties are incapacitated, then the stockholders shall select a manager acceptable to CITY to so administer and supervise the lease operations. Sale or transfer of stock, or divestment of any interest in said corporation by the above-named persons in excess of 49 percent shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.2 Assignment & Subletting, hereof, provided, however that the stock of any stockholder may be assigned to his or her spouse or direct lineal heirs upon notification in writing to CITY.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE shall at all times assume the defense of, relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:
- A. Any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises;
 - B. Any operation, use, or occupation conducted on the premises;
 - C. Any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
 - D. Any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.2 Insurance.

- A. LESSEE shall take out and maintain at all times during the term of this lease insurance at its sole expense, public liability and property damage liability insurance coverage, including liquor legal liability insurance, in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises. Said policy will include fire legal liability with a limit of \$100,000.00 per occurrence, it being LESSEE'S liability for damages as provided for in this coverage is limited to \$100,000.00.
- B. LESSEE'S responsibility to maintain said insurance also includes the following:
1. Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A certificate of insurance or a copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
 2. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also

agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.

3. Accident Reports. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
4. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises, including the public bathrooms in Building 2002, shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said

damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects in the premises.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe,

healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

- 6.3 Maintenance. Except as hereinafter provided, LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises, including all City owned equipment, as listed in Section 10.6 Description and Listing of City-owned Property and responsible for cleaning and maintaining a portion of the public bathrooms located in Building 2002 and as further outlined in Section 10.2, Exhibit A, throughout the term of the lease. LESSEE will perform all such repairs and replacements necessary to maintain and preserve the premises and related City owned equipment, in a decent, safe, healthy and sanitary condition satisfactory to CITY and in compliance with all applicable laws. The CITY shall maintain the exterior walls and roof of the premises. All applicable codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs and replacements on the premises.
- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.5 Utilities. LESSEE agrees to order, obtain, and pay all permits for use of the propane gas tank outside the premises. Except as hereinafter provided, LESSEE agrees to order, obtain and pay for all utilities necessary for operation of the premises. City shall provide reasonable amounts of water for use on the leased premises. The city Manager shall have sole and absolute discretion to determine what constitutes a "reasonable amount" for purposes of this paragraph.

- 6.6 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- A. Take all actions necessary to record a valid release of lien, or
 - B. File with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.7 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

- 6.8 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.9 Ownership of Improvements and Personal Property.

- A. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S

option, CITY'S property, free of all liens and claims except as otherwise provided in this lease.

- B. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or One-Hundred-Eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- C. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- D. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- E. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- F. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence

of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

6.11 Hazardous/Toxic Waste. LESSEE will not allow the installation of underground storage tanks or release of hazardous substances in, on, or under or from the premises. Other than approved agricultural chemicals, i.e., insecticides, pesticides, herbicides and fungicides applied in accordance with all applicable regulations, LESSEE will not allow the installation or release of hazardous substances in, on, under or from the premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's Office as City Clerk Document No. 769704.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify and hold the CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including, but not limited to, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe, that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided however, if LESSEE knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition,

LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property in violation of any applicable laws.

If at any time within the twelve (12) months before the expiration or earlier termination of this lease, CITY reasonably determines that LESSEE may have caused a release of hazardous substances on the property, then LESSEE at the CITY'S sole option shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, County, State, or Federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all cost and expense incurred.

- 6.12 Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the Development Plan are described in Section 10.3, hereof. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by City.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- A. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by

United States mail, postage prepaid, addressed to LESSEE and to CITY as follows:

CITY: City of San Diego
Attention: Deputy Director, Airports
1424 Continental Street
San Diego, CA 92173

LESSEE: Merziotis Properties Inc.
927 Seacoast Drive
Imperial Beach, CA 91932

or to any mortgagee, trustee, or beneficiary as applicable, at such appropriate address designated in writing by the respective party.

- B. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.
- 7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status or physical disability in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.5 Equal Opportunity. LESSEE shall comply with TITLE VII of the Civil Rights Act of 1964, as amended: Executive Orders 11246, 11375 and 12086: the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition,

or place of birth. Upon CITY request, LESSEE will submit a current Workforce Report and if required an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the CITY'S goals for the employment of African American, American Indians, Asians, Filipinos, Latinos, Women and people with disabilities. Further, LESSEE will cause the foregoing provisions to be inserted in all subleases and all subcontracts for any work covered by this lease so that such provisions will be binding upon each sublease and subcontractor.

LESSEE understands that failure to comply with the requirements listed above and/or submitting false information in response to these requirements may result in termination of this lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

LESSEE acknowledges that the CITY seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE is encouraged to solicit applications for employment, bids and proposals for subcontractors and work associated with this lease from local residents and firms as opportunities occur. LESSEE is encouraged to hire qualified local residents and firms.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this

agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988 by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances is prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
 - B. Establishing a drug-free awareness program to inform employees about all of the following:
 - 1. The dangers of drug abuse in the workplace.

2. The LESSEE'S policy of maintaining a drug-free workplace.
 3. Any available drug counseling, rehabilitation, and employees assistance programs.
 4. The penalties that may be imposed upon employees for drug abuse violations.
- C. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA) and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- A. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensations, benefits, discipline, layoffs and termination of employment.
- B. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.
- C. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- D. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of the LESSEE.
- E. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and

sublessee shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

- 7.14 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.15 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payments whatsoever upon termination of this lease.
- 7.16 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 7.17 Warranty. CITY does not warrant that said premises are suitable for the purposes for which they are leased as stated herein.
- 7.18 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on the 17th day of January 1983 with Merziotis Properties, Inc., City Clerk Document No. RR 257793, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

SECTION 8: AIRPORT PROVISIONS

- 8.1 LESSEE Use to Conform with Law and Other Rules. LESSEE is granted the nonexclusive use of all public airport facilities including, but not limited to, taxis, runways, aprons, navigational aids and other facilities related to the normal function of any aircraft under LESSEE'S or its sublessee's control. LESSEE agrees that such use shall be in accord with existing or future laws, rules and regulations of the United States of America, the State of California and CITY in regard to their aviation and air navigation authority.

- 8.2 LESSEE Use and Construction to Conform with Federal Aviation Regulations. LESSEE agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.
- 8.3 LESSEE'S Noninterference with Aircraft. LESSEE and LESSEE'S successors, assigns and sublessees agree not to use the premises in any manner or act in any manner that might interfere with any aircraft landing or taking off from Brown Field Airport or otherwise create a hazard. If this covenant is breached in any way, CITY reserves the right to enter the premises and abate or eliminate the interference at the expense of LESSEE.
- 8.4 Lease Subordinate to CITY-United States Agreements. This lease shall be subordinate to the terms of any existing or future agreements between CITY and the United States, or to any United States legal requirement relative to the development, operation or maintenance of the airport.
- 8.5 Height Limitation. LESSEE and LESSEE'S successors, sublessees and assigns agree not to erect or permit any structure or tree on the premises to reach a mean sea level elevation of 544 feet. If this covenant is breached in any way, CITY reserves the right to enter the premises and remove the structure, object, or tree, at the expense of LESSEE.
- 8.6 Right of Flight Easement. CITY and its successors and assigns reserve a right of flight for the passage of aircraft in the air space above the premises, for the benefit and use of the public. This right includes the right to make noise inherent in the operation of existing or future aircraft that operate in any way on or near Brown Field Airport.
- 8.7 War or National Emergency. In the event of war or national emergency, this lease and all of its provisions shall be subject to any United States Government right, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of Brown Field Airport.
- 8.8 Airport Development. CITY reserves the right to further develop, change or improve the airport and its routes and landing areas as CITY sees fit, without LESSEE

interference or hindrance and regardless of LESSEE'S views and desires.

8.9 Nonexclusive Right. LESSEE understands and agrees that nothing in this lease shall be construed to grant or authorize an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 (Title 49, Section 1349 of the United States Code).

8.10 Landing Area Maintenance. CITY reserves the right, but not the obligation, to maintain and repair the airport landing area and all other public facilities. CITY also has the right to direct and control all LESSEE activities affecting the maintenance and repair of these facilities.

8.11 FAA Nondiscrimination Covenant.

A. LESSEE and LESSEE'S representatives, successors, sublessees and assigns agree, as part of the consideration that:

1. No person shall be denied benefits, participation or subjected to discrimination in the use of facilities on the premises based on race, color, sex or national origin.
2. No person shall be denied benefits, excluded from participation in or subject to discrimination in the construction of any improvements nor the furnishing of any services on the premises, based on race, color, sex or national origin.
3. LESSEE shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," as now exists or may be amended in the future.

B. If any of the provisions are breached, CITY may terminate the lease and reenter and repossess the premises as if this lease had never been made. This provision is not effective until the procedures of 49 CFR Part 21 are allowed and completed, including expiration of appeal rights.

- C. LESSEE agrees to furnish accommodations and services on a fair and equal basis to all users and will charge fair, reasonable and equal prices for each item or service. LESSEE is allowed to make reasonable and nondiscriminatory discounts, rebates or similar price reductions to volume purchasers. If LESSEE does not comply with this provision, CITY has the right to terminate this lease agreement, without liability, or either CITY or the United States may judicially enforce this entire covenant.
- D. LESSEE agrees to include the entire covenant in any sublease or lease agreement by which LESSEE grants any right or privilege to any firm, corporation or person providing services or accommodations to the public on the leased premises.
- 8.12 Equal Opportunity. LESSEE, LESSEE'S successors, assigns, sublessees, and any suborganizations agree to undertake an equal opportunity program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to insure that no person shall be excluded from any employment program or opportunity, nor be denied any service described, based on race, creed, color, national origin or sex.
- 8.13 CITY to Mitigate Impacts of Subordination by Termination or Extension. If subordination agreements between CITY and the United States of America result in LESSEE'S inability to operate as a business on the premises, or if the business operations permitted under this agreement are materially affected during a period of subordination, CITY, upon written request from LESSEE, will terminate this lease or extend the term of this lease for the period of time that LESSEE'S operation is affected, and no rent shall accrue during any period of inoperation.
- 8.14 Employee Conduct. LESSEE shall be responsible for the conduct of any employee on the entire property, if that employee is on airport property during any period of employment.
- 8.15 Subordination to Brown Field Quitclaim Deed. LESSEE agrees that this lease agreement is subordinate to the provisions of the Brown Field Quitclaim Deed to CITY.
- 8.16 Minority Business Policy. If LESSEE receives any federal funds governed by Title 49, Code of Federal Regulations, Part 23, LESSEE agrees that it and its contractor will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. LESSEE and LESSEE'S contractors agree not to discriminate on the basis of race, color, national

origin or sex in the award and performance of any Federal Department of Transportation-assisted contracts.

- 8.17 CITY Termination. If CITY should require the premises in connection with the future expansion, operation or modification or discontinuance of the Airport, CITY may terminate this lease by giving 180 days written notice.

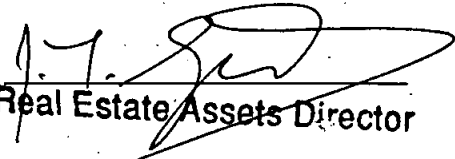
SECTION 9: SIGNATURE

9.1 Signature Page:

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through its City Manager, and be LESSEE, acting by and through its lawfully authorized officers.

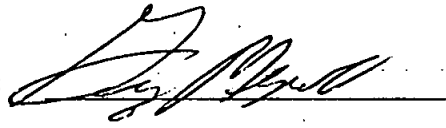
THE CITY OF SAN DIEGO

Date: MAY 15 1995

By: 
Real Estate Assets Director

LESSEE:
MERZIOTIS PROPERTIES,
INC. DBA ARGUS II

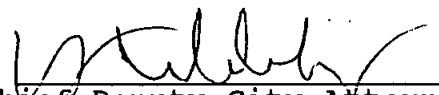
Date: 12-30-99

By: 

By: _____

APPROVED as to form and legality this 22 day of May, 1995

JOHN W. WITT, City Attorney

By: 
Chief Deputy City Attorney

DEVELOPMENT AND ENVIRONMENTAL PLANNING
ENVIRONMENTAL CLEARANCE

Jane Myro 3/29/95
Name/Date

DWE:de:(2)
12-12-94
ARGUS

SECTION 10: EXHIBITS

10.1 Parcel Maps

Phase 1:

Lessee will complete improvements 1 through 5 in Phase One of the development plan. All improvements listed below will be accomplished within the times listed. Failure to perform any or all of the items included in this development plan may result in termination of the lease:

1. Install new doorway in hallway including all frames and related hardware.
2. Install new door, including all frames and hardware, between the two sections of the men's room.
3. Replace restaurant signs.
4. Replace bar sign.
5. Run electrical connection from restaurant to airport entrance for and to improve Airport signage and Airport entrance lighting.

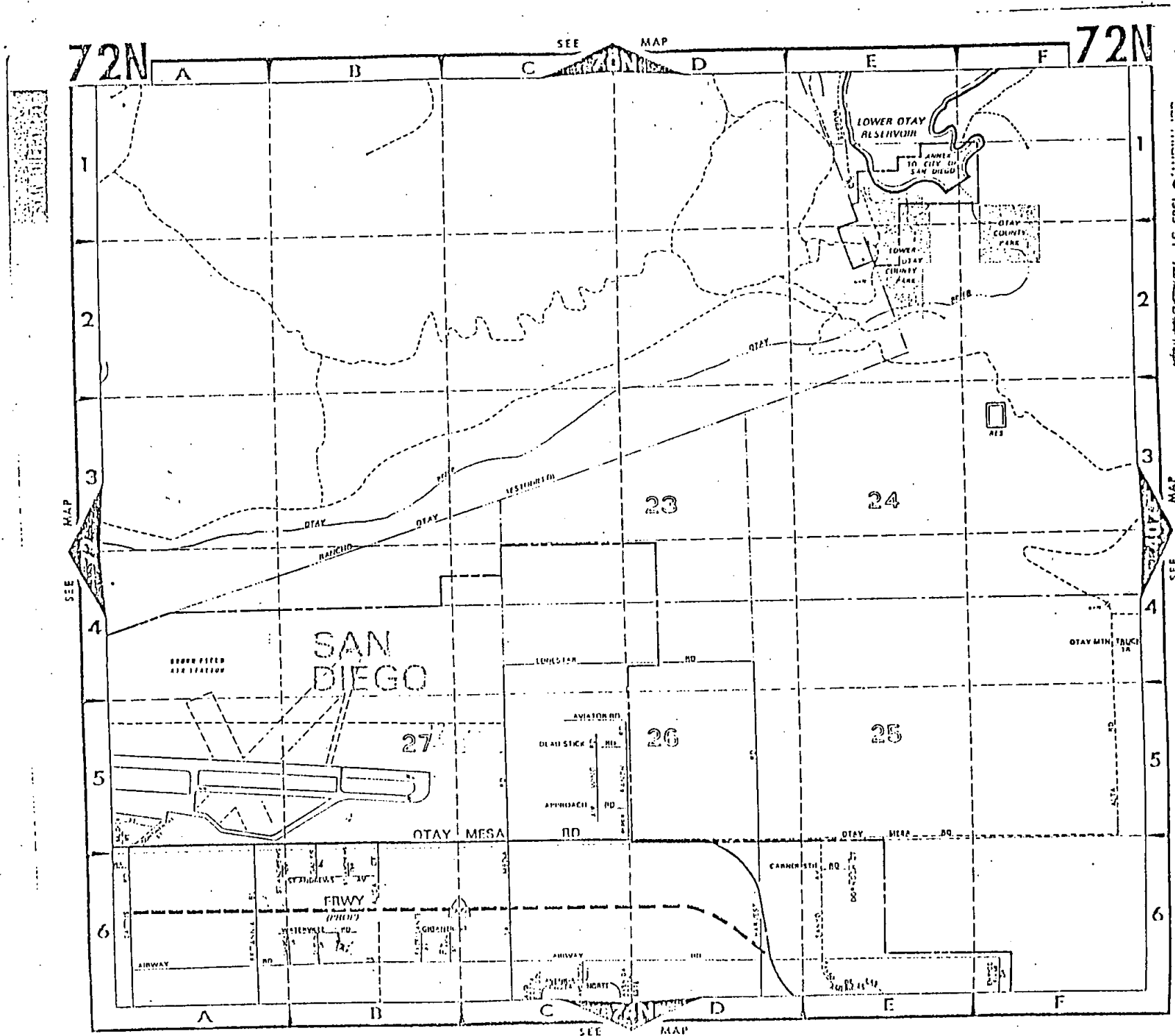
All Phase One improvements will be completed no later than 60 days following lease approval with the exception of Item 5, which will be completed as soon as a new airport entrance sign has been approved by the City and in no case later than 12 months following lease approval. Lessee and Lessor understand that the current airport entrance may be relocated in the future. That the proposed relocation of the entrance to the Airport will have no effect on the current signage improvements required under this lease. Lessee will secure all permits and approvals for all improvements covered under this lease all at no cost to the City.

All Phase One improvements listed above are outlined on the attached Section 10.3, Exhibit A. Final location and design will depend on approval of Deputy Director/Airports. Final approval will be not later than 60 days following lease approval with all work completed not later than 120 days following lease approval by City Council.

LESSEE will obtain all permits and approvals and will supply all materials to complete these items. All improvements must be submitted for approved to the Deputy Director/Airports.

Phase 2:

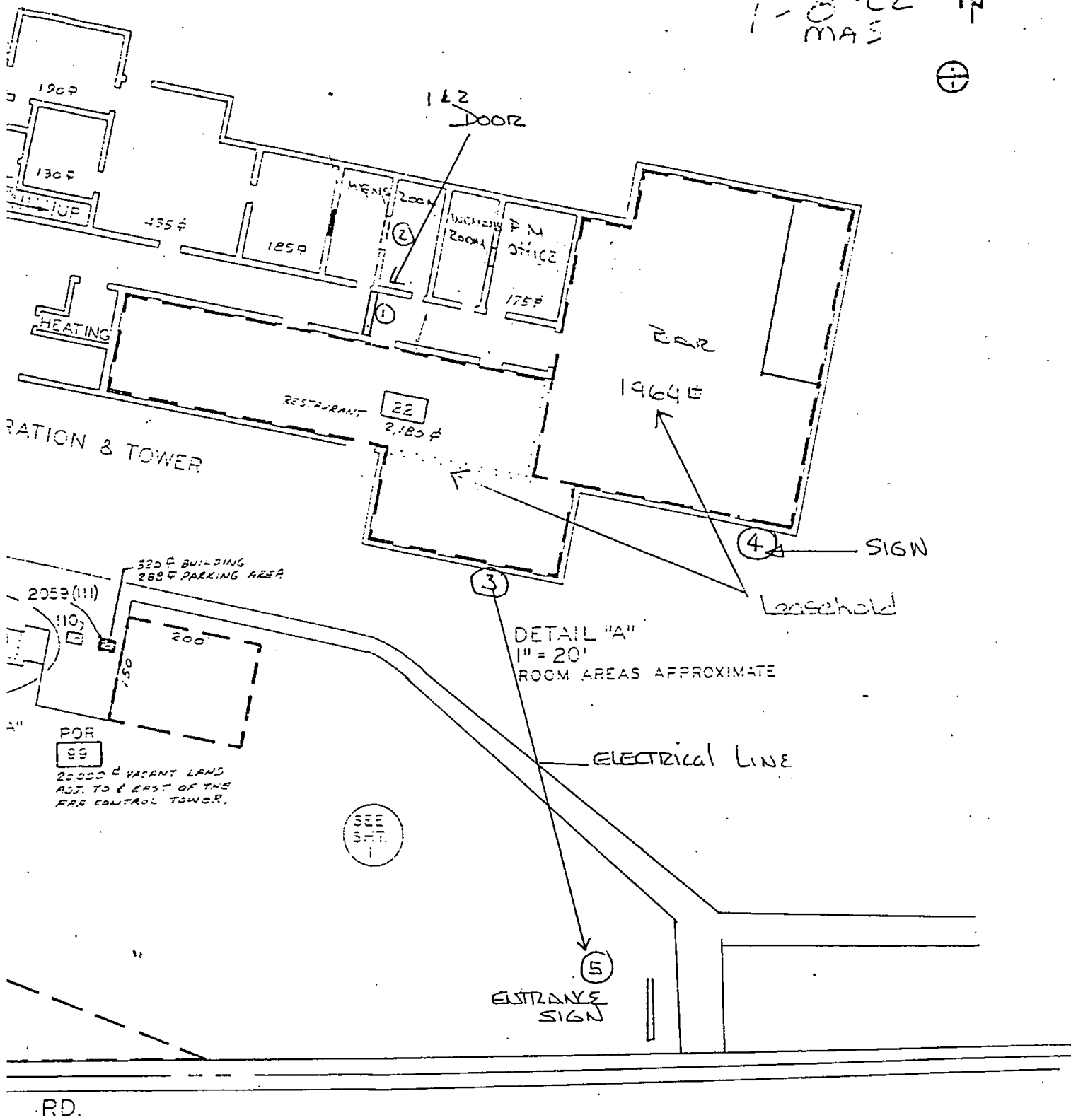
Phase Two of this development plan is for LESSEE and City to enter into negotiations for a new lease, that will include terms and conditions to either remodel the existing premises or to construct a new facility to include a restaurant and to secure an operator, such as a major restaurant chain (Denny's, Carrows, Hungry Hunter, etc.) with the emphasis of the decor to be aviation



43-05
760-108

1" = 200'

1-6-82
MAE



10.3

BROWN FIELD - SHT. 3 OF 3

Not To Scale

Exhibit "A"

related. Any new lease will require City Council approval and the City Council has absolute authority to approval any new lease. Once a new lease is approved this lease will be terminated.

Phase Two may commence when one or more of the following events occur or are scheduled to occur.

1. Airport will install an upgraded instrument approach to augment the Brown Field Airport VOR-A approach or,
2. Receipts to LESSEE average \$37,500 a month for a 6-month period or,
3. Airport commences the development of Fixed Base Operator (FBO) leaseholds and/or commences development of the Brown Field Airport Industrial Airpark or,
4. Building 2002 (current restaurant location) is condemned and a new location for the restaurant is required.

10.4 Corporate Name

MERZIOTIS PROPERTIES INC.

I, Cathleen Merziotis, certify that I am the Assistant Secretary of the named in the attached agreement; that George Merziotis, who signed this agreement on behalf of the corporation, was then President of said corporation; that said agreement was duly signed for and on behalf of said corporation by authority of its governing body.

BY Cathleen Merziotis

CORPORATE SEAL

[Signature]

10.5

Schedule of Days and Hours of Operation.

The coffee shop shall maintain the following hours:

Open: 6:00 a.m. Monday - Friday
Close: 4:00 p.m. Monday - Friday
Open: 7:00 a.m. Saturday & Sunday
Close: 3:00 p.m. Saturday & Sunday

The bar shall maintain the following hours:

Open: 4:00 p.m. Monday - Sunday
Close: 2:00 a.m. Monday - Saturday
Closed: Sunday

When the coffee shop is closed, the bar patrons will be served sandwiches, sodas and chips or similar items that do not require use of the cooking facilities.

10.6

Description and Listing of City-owned Property The following list of City-owned equipment is located on the premises. LESSEE agrees to maintain and keep in good working order the following City-owned property:

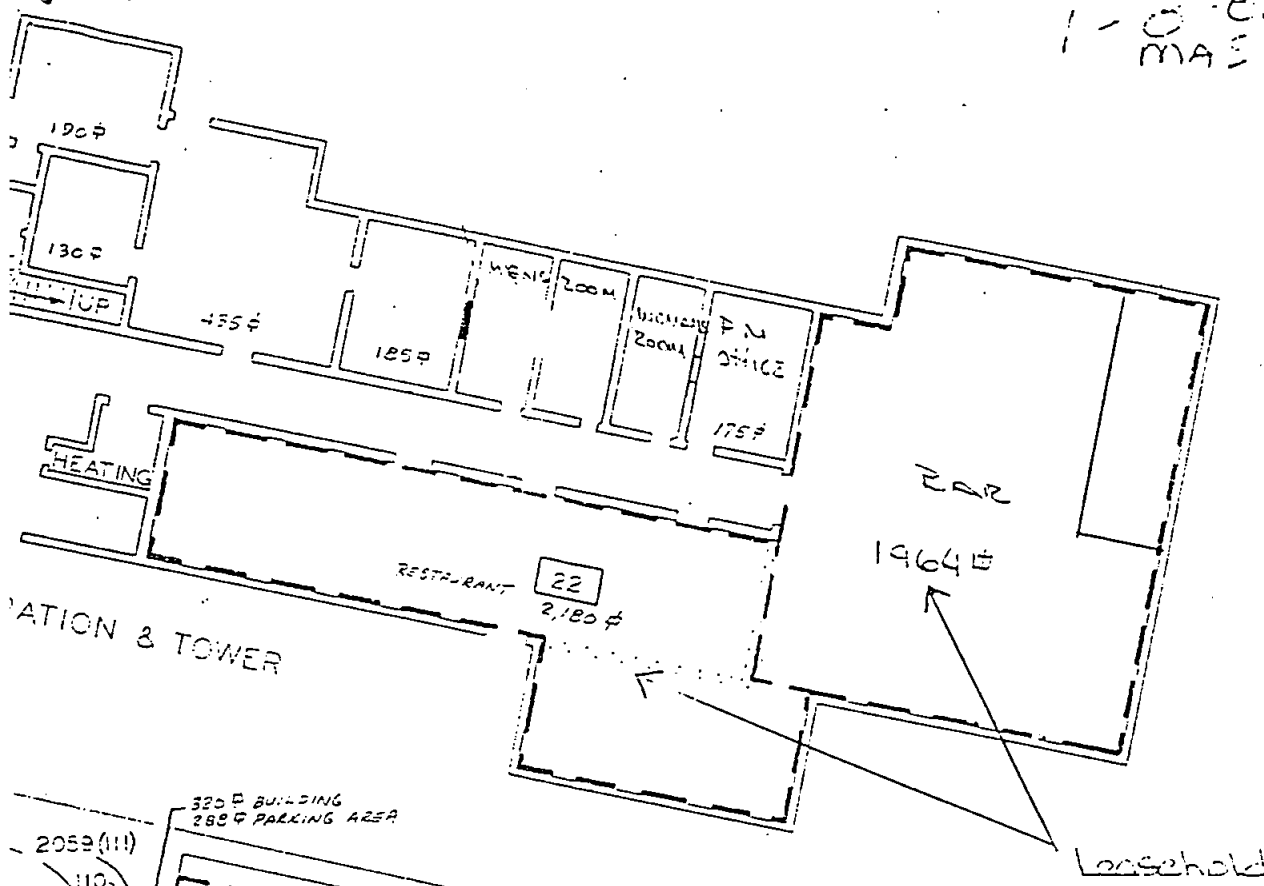
1	S/S Sink and Water Server
1	"L" shaped counter and 3 sinks w/ldg. and in-sink disposal
1	"L" shaped S/S shelf
1	Combined under GI hood, all equipment including deep-fat fryer, 2 range hoods and 4 burner cook top.
1	Low heavy-duty U. S. range burner
1	Walk-in dbl. room cooler with racks
1	Montague dbl. oven (commercial)
1	4-burner warmer range
1	Steam-master pressure cooker
1	GE dishwasher, complete
1	Small utility table
3	Short Bar stools
1	3-compartment Thermaduke Waterless Food Warmer
6	Aluminum arch segments
18	Tube-type ceiling light fixtures
46	Plastic formed chairs
8	Sets, Salt and pepper cellars
12	Dbl. face napkin holders (S/S)
1	8-ft. S/S Counter Cabinet
15	Dining Tables
2	Plastic Menu Boards
1	Standard Deep-fat fryer
1	GE Model 6655 Grill on S/S table
1	GI range hood
37	Plastic Trays
2	Table height counter bars

10.2 Ground Layout - Exhibit A.

43-05
160-108

1" = 200'

1-5-82
MAE



DETAIL "A"
1" = 20'
ROOM AREAS APPROXIMATE



10.2

BROWN FIELD - SHT. 3 OF 3

Exhibit A

David Estey
14

(O-95-99)

ORDINANCE NUMBER O- 18178 (NEW SERIES)

ADOPTED ON MAY 15 1995

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A TEN-YEAR LEASE AGREEMENT WITH MERZIOTIS PROPERTIES, INC. D.B.A. ARGUS II RESTAURANT FOR THE OPERATION AND MAINTENANCE OF A RESTAURANT AND A PUBLIC COCKTAIL LOUNGE ON BROWN FIELD AIRPORT

BE IT ORDAINED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a lease agreement with a ten-year term, with a provision that allows the City to terminate the lease at any time, with 180 days prior written notice if the City determines that the property which is subject to the lease is needed for airport expansion, with MERZIOTIS PROPERTIES, INC. d.b.a. ARGUS II RESTAURANT, a California corporation, for the operation and maintenance of a restaurant and a public cocktail lounge on Brown Field Airport, at an initial minimum rent of \$19,243, and under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. OO- 18178.

BE IT FURTHER ORDAINED, that this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps:04/04/95
Or.Dept:REA
O-95-99