

FIRST AMENDMENT TO LEASE

[ABRE-AERO, INC.]

THIS FIRST AMENDMENT TO LEASE ("First Amendment") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and AERO-ABRE, INC., a California corporation ("AERO-ABRE"), to be effective as of **October 1, 2010** (the "First Amendment Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. This First Amendment relates to that certain PERCENTAGE LEASE ("Lease") by and between CITY, as lessor, and "ABRE ENTERPRISES, a California corporation," as the purported lessee, signed by CITY on February 4, 2011, and relating to the lease of the real property located on the north side of Brown Field Airport and located along Pogo Row, San Diego, California, 92101, and consisting of approximately thirty (30) acres, for purposes of vehicle sales and miscellaneous storage. The Lease is attached hereto as **Exhibit A to First Amendment: Lease**.
- B. CITY and AERO-ABRE acknowledge and agree that "ABRE ENTERPRISES, INC., a California corporation," does not exist and want to correct the error by retroactively and correctly designating AERO-ABRE as the intended and true lessee under the Lease.
- C. The parties acknowledge and agree that Lease section 2.1, Commencement, is contradictory as to the definition of the "Effective Date" of the Lease, and want to correct the error retroactively and correctly by defining the "Effective Date" as October 1, 2010.
- D. Section 3.2, a. Rent Amount, of the Lease provided for payment of rent by AERO-ABRE based on a flat rate, in addition to a percentage of certain revenues derived from subleasing activity. The terms and conditions originally stated in Lease section 3.2, a. Rent Amount, did not correctly memorialize the intent of the parties, and in practice the parties consistently paid and accepted rent based on a separate formula as it related to sublease revenue and capital expenditures. The parties acknowledge and agree that the drafting error was a mutual mistake and want to correct it.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. Corporate Acceptance. CITY and AERO-ABRE acknowledge and agree that "Abre Enterprises, Inc., a California corporation," does not exist. AERO-ABRE hereby assumes all rights and obligations as the lessee under the Lease as if it were originally correctly named as such therein. CITY accepts such assumption of rights and obligations and recognizes AERO-ABRE as the lessee under the Lease.

2. Effective Date. Notwithstanding anything to the contrary in Lease section 2.1, Commencement, the "Effective Date" of the Lease is October 1, 2010.
3. Rent. Lease section 3.2, a. Rent Amount, is hereby deleted in its entirety and shall be replaced to read as follows, in its entirety:
 - a. Rent Amount. There shall be a rent abatement period starting on the Effective Date of this Lease and ending on February 28, 2011, to allow LESSEE time to construct the improvements needed to sublease the Premises. Thereafter, commencing March 1, 2011, the base rent shall be Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750) per month (i.e., \$625 x 30 acres). In addition, at the end of each lease year, LESSEE shall pay to CITY percentage rent ("Percentage Rent") in the amount of fifty percent (50%) of gross rental income above Two Hundred Twenty-Five Thousand Dollars (\$225,000) (i.e., annual base rent). "Gross rental income" means all income derived from subleasing any portion of the leased premises. The Percentage Rent shall be offset by the Leasehold Improvement Expenses paid by LESSEE. "Leasehold Improvement Expenses" means those costs and expenses incurred by LESSEE and related to the installation of electricity, water, fencing and asphalt on the leased premises, and all costs and expenses incurred by LESSEE related to the removal of dumps, abandoned vehicles and tires on or along Pogo Row. If the Leasehold Improvement Expenses in any given lease year exceed the Percentage Rent, the excess Leasehold Improvement Expenses shall be carried forward and applied to offset future Percentage Rent, if any. CITY shall not be obligated to reimburse or otherwise pay LESSEE for any Leasehold Improvement Expenses that are not applied to offset Percentage Rent. All rental income and any revenue derived from use of the leased premises shall be subject to Section 3.4 Inspection of Records, below.

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The following is included as an example only. Any errors in calculation or formulae shall not amend or modify the foregoing section regarding "Rent Amount." Example:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Gross Revenue	\$ 325,000	\$ 525,000	\$ 925,000
Annual Base Rent	\$ 225,000	\$ 225,000	\$ 225,000
Difference:	\$ 100,000	\$ 300,000	\$ 700,000
Percentage Rent	\$ 50,000	\$ 150,000	\$ 350,000
Excess Leasehold Improvement Expenses Past Years Carried Forward	\$ 0	\$ (150,000)	\$ (200,000)
Percentage Rent After Carry Forward Applied	\$ 50,000	\$ 0	\$ (150,000)
Leasehold Improvement Expenses (<i>offsets base rent</i>)	\$ (200,000)	\$ (200,000)	\$ (200,000)
Excess Leasehold Improvement Expenses to Carry Forward	\$ (150,000)	\$ (200,000)	\$ (50,000)
Net Amount owed to City	\$ 0	\$ 0	\$ 0

4. Applicability; Retroactivity. This First Amendment and its provisions are and shall be deemed to be effective retroactively to October 1, 2010, as declaratory and providing clarification as to the true intentions of the parties under the Lease *nunc pro tunc*.

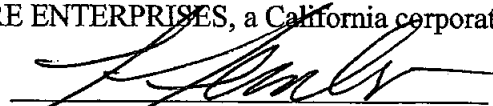
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5. No Other Changes. Except as may render the terms of this First Amendment inoperable, all other terms and conditions of the Lease shall remain in full force and effect. Any conflict between the terms and conditions of the Lease and those of this First Amendment shall be resolved in favor of this First Amendment.

IN WITNESS WHEREOF this First Amendment is executed to be effective as of the First Amendment Effective Date.

Date: 2/12/14

ABRE ENTERPRISES, a California corporation

BY: 

LAWRENCE "BO" LEMLER, President

Date: 2/21/14

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 

JAMES F. BARWICK, CCIM
Director, Real Estate Assets

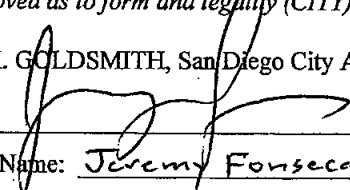
<i>Approved as to form and legality (CITY):</i>	
JAN L. GOLDSMITH, San Diego City Attorney	
BY:	
Name:	<u>Jeremy Fonseca</u>
Title:	<u>Deputy City Attorney</u>
Date:	<u>2/25/14</u>

Exhibit A to First Amendment: Lease

Exhibit A to First Amendment: Lease



PERCENTAGE LEASE

BETWEEN

THE CITY OF SAN DIEGO

AND

ABRE ENTERPRISES

LEASE OUTLINE

SECTION 1: USES.....	1
1.1 Premises.	1
1.2 Uses.	1
1.3 Related Council Actions.	2
1.4 Quiet Possession.	2
1.5 Easements and Reservations.....	2
1.6 Competent Management.	3
1.7 CITY Use.	3
1.8 Political Activities.....	3
SECTION 2: TERM.....	3
2.1 Commencement.....	3
2.2 Early Termination.	4
2.3 Holdover.	4
2.4 Surrender of Premises.	4
SECTION 3: RENT	4
3.1 Time and Place of Payment.....	4
3.2 Rent.	5
3.3 Payment Procedure.....	5
3.4 Inspection of Records.	5
3.5 Delinquent Rent and Audit Fees.....	7
3.6 Unauthorized Use Charge.	7
SECTION 4: ASSIGNMENT/ENCUMBERANCE/EMINENT DOMAIN.....	8
4.1 Time is of Essence; Provisions Binding on Successors.	8
4.2 Assignment and Subletting.....	8

4.3 Encumbrance.....	9
4.4 Defaults and Remedies.	9
4.5 Eminent Domain.	10
4.6 Control by Specified Individuals or Entities.	11
SECTION 5: INSURANCE RISKS/SECURITY	11
5.1 Indemnity.....	11
5.2 Insurance.	12
5.3 Waste, Damage, or Destruction.	13
5.4 Security Deposit.	14
SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	15
6.1 Acceptance of Premises.	15
6.2 Entry and Inspection.	15
6.3 Maintenance.	15
6.4 Improvements/Alterations.	16
6.5 Utilities.	16
6.6 Construction Bond.....	16
6.7 Liens.	16
6.8 Taxes.	17
6.9 Signs.	17
6.10 Ownership of Improvements and Personal Property.....	17
6.11 Unavoidable Delay.	18
6.12 Hazardous/Toxic Waste.....	19
SECTION 7: GENERAL PROVISIONS.....	20
7.1 Notices.	20
7.2 Compliance with Law.....	20

7.3 CITY Approval or Notice.....	20
7.4 Nondiscrimination.....	20
7.5 Compliance with CITY'S Equal Opportunity Contracting Program.	21
7.6 Partial Invalidity.....	21
7.7 Legal Fees.	22
7.8 Number and Gender.....	22
7.9 Captions.	22
7.10 Entire Understanding.....	22
7.11 CITY Employee Participation Policy.....	22
7.12 Drug-free Workplace.....	23
7.13 Disabled Access Compliance.....	23
SECTION 8: SPECIAL PROVISIONS	24
8.1 Standard of Employees.....	24
8.2 Supersedure.....	24
8.3 Relocation Payments.....	24
8.4 Additional Consideration.....	24
SECTION 9: AIRPORTS PROVISIONS	25
9.1 LESSEE Use to Conform with Law and Other Rules.....	25
9.2 LESSEE Use and Construction to Conform with Federal Aviation Regulations.	25
9.3 LESSEE'S Noninterference with Aircraft.....	26
9.4 Lease Subordinate to CITY-United States Agreements.....	26
9.5 Height Limitation.....	26
9.6 Right of Flight Easement.....	26
9.7 War or National Emergency.....	26

9.8 Airport Development.....	26
9.9 Nonexclusive Right.....	27
9.10 Landing Area Maintenance.	27
9.11 FAA Nondiscrimination Covenant.....	27
9.12 Equal Opportunity.....	28
9.13 CITY to Mitigate Impacts of Subordination.	28
9.14 CITY to Mitigate Impacts of Subordination by Termination or Extension.	28
9.15 Employee Conduct.....	28
9.16 Minority Business Policy.	28
SECTION 10: SIGNATURES.....	29
10.1 Signature Page.....	29
SECTION 11: EXHIBITS	30
11.1 Exhibit A.....	31
11.2 MHPA Land Use Adjacency Guidelines.....	32

CITY OF SAN DIEGO LEASE

THIS LEASE AGREEMENT (Lease) is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and Abre Enterprises, Inc., 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 located on the north side of Brown Field Airport on Pogo Row, consisting of approximately Thirty (30) acres, as further described in "Exhibit A" attached hereto and by this reference made part of this Lease. 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 vehicle sales, clean misc storage with CITY pre-approval and for such other related or incidental purposes as may be first approved in writing by the Mayor and for no other purpose whatsoever.

Directional signs at the corners of Otay Mesa Rd and Heritage Rd also at Heritage Rd and Pogo Row may be allowed with CITY pre-approval of sign design, size and placement.

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.

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.

LESSEE shall ensure that all vehicles, equipment or other objects under LESSEE'S control, and those of any customer, visitor or guest of LESSEE, or a sublessee, be parked or placed within the leasehold boundaries, without exception. Further, all vehicles, equipment or other objects under LESSEE'S control, or that of any customer, visitor or guest of LESSEE or sublessee, shall keep clear of all Airport power lines, streets, fire lanes, the Airport Operating Area (AOA), and marked unauthorized parking areas. LESSEE and CITY herein

agree that CITY may charge LESSEE a parking violation fee in the amount of \$200.00, or any subsequent amount established by CITY by giving written notice to LESSEE, for each vehicle, piece of equipment and/or object parked or placed in violation of this paragraph. CITY shall have the right to assess said parking violation for each and every instance in which a vehicle, piece of equipment, or other object is placed outside the leasehold boundaries. LESSEE further agrees that LESSEE shall pay the parking violation fee within 30 days of the date of each parking violation notice. Accumulation of more than 3 parking violations within a one-month period, or failure to pay the fines on time, may be deemed, at CITY'S sole option, a substantial default under this Lease and can result in immediate termination of this Lease. CITY may tow any unauthorized vehicles, or vehicles that are parked in violation of this paragraph, from the property at the CITY'S discretion, and at the expense of the LESSEE/owner.

 (LESSEE'S Initials)

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 Mayor 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.

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, LESSEE shall provide competent management of the leased premises to the satisfaction of the Mayor. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management of the premises as set forth herein in a fiscally responsible manner.

1.7 CITY Use.

The premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, the premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.

1.8 Political Activities.

The leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

SECTION 2: TERM

2.1 Commencement.

The term of this Lease shall be Three (3) years commencing on October 1, 2010 the first day of the calendar month following execution by the parties and approval by the City Attorney (Effective Date). "Lease year" as used in this Lease shall mean the 12-month period commencing on the Effective Date.

2.2 Early Termination.

CITY or LESSEE may, upon one hundred eighty (180) days written notice, terminate this Lease without any liability whatsoever for LESSEE'S costs associated with such early termination.

2.3 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 Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to bring the rent to fair market value and to terminate the holdover tenancy at will.

2.4 Surrender of Premises.

Upon 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, 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 122289, San Diego, California, 92112-4165 or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California.

The place 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. Rent Amount. There shall be a rent abatement period starting on the effective date of this Lease and ending on February 28, 2011, to allow LESSEE time to construct the improvements needed to sublease the Premises. Thereafter, commencing March 1, 2011, the base rent is Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750) per month (\$625.00 x 30 acres). In addition, LESSEE shall pay to CITY fifty percent (50%) of all gross rental income derived from subleasing any portion of the leased premises. Common Area Maintenance (CAM) charges and other reimbursement charges such as utilities or fencing paid by sublessees to LESSEE shall not be considered part of gross rental income and shall not be subject to the percentage rent paid to the City. Rental income shall be subject to the below Section 3.4 Inspection of Records.

3.3 Payment Procedure.

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 base rent and 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. The percentage rental due CITY, computed and totaled.
- b. All rents due CITY, including base rent and rent from sublease activities or operations, including unauthorized use charges, 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 (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

3.4 Inspection of Records.

- a. Records. LESSEE shall, at all times during the Lease term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities 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 tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the sublease income.

register tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the sublease income.

- b. Financial Statements. 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 rents 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 3.4 a. herein above, will be kept for at least three (3) 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 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 or 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 CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):
 - (1) The audit(s) reveal an underpayment of more than five percent (5%) 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 any deficiency determined by the audit(s) plus interest on such amount as defined in Section 3.5, Delinquent Rent and Audit 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 Mayor 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 for CITY inspection is, like all other failures to comply with covenants of this Lease, a breach of this Lease and cause for termination.

3.5 Delinquent Rent and Audit 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 by the parties hereto 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. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE's default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

3.6 Unauthorized Use Charge.

LESSEE shall pay CITY seventy-five percent (75%) 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 seventy-five percent (75%) 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.

SECTION 4: ASSIGNMENT/ENCUMBERANCE/EMINENT DOMAIN

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, and, 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 Mayor 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 Mayor.

"Assignment" for the purposes of this clause shall include transfers subject to Section 4.6.

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 Lease which are applicable to the rights acquired, specifically including indemnification of the CITY, its agents, officers, and employees and all insurance requirements. The Mayor shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, as set forth in Section 8.4, Additional Consideration, hereof, commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require that this Lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, the Mayor must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee.

4.3 Encumbrance.

LESSEE may not encumber this Lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE.

4.4 Defaults and Remedies.

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, and LESSEE 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 4.4 a.(1), hereinabove 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.

- 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 Mayor 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 Mayor 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, 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 Mayor to take action or require the cure of any default after such default is brought to the attention of the City Council by the Mayor or by any concerned citizen.

4.5 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 remaining part 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.

4.6 Control by Specified Individuals or Entities.

The corporation named herein as LESSEE shall remain owned and controlled by Bo Lemler, at least to the extent of fifty-one percent (51%) of the ownership of Abre Enterprises, and shall actively administer and supervise the business enterprise operated on the premises. Provided, however, in the event that any of the above-named person shall become incapacitated, then the stockholders shall select an experienced 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 five percent (5%) shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.2, Assignment and Subletting, and Section 8.4, Additional Consideration, 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. Pursuant to City Charter Section 225, the Mayor must review and approve every person or entity which will have a financial interest in this Lease as an assignee. The Mayor's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity.

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of LESSEE, or LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this Lease, LESSEE agrees to defend, indemnify, protect, and hold harmless the CITY, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the CITY, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of LESSEE, its employees, agents, or officers, or any third party. The LESSEE'S duty to defend, indemnify, protect and hold harmless shall not include any claims or liability arising from the established sole active negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this Lease the following insurance at its sole expense:
 - (1) Public liability and property damage insurance in the amount of not less than Two Million Dollars (\$2,000,000) Combined Single Limit Liability with a Two Million Dollar (\$2,000,000) aggregate 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.
 - (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.
- 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 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 five (5) 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 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 significant 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.

5.4 Security Deposit.

A security deposit shall be paid to the CITY by LESSEE in the sum of Twenty Thousand Dollars (\$20,000) 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:

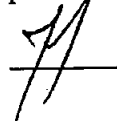
- a. Cash. Cash deposits shall be deposited with CITY, and CITY shall not be liable to LESSEE for any interest thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.
- b. Instrument(s) of Credit. An instrument(s) of credit from 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 deposit 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.

 (LESSEE Initials)

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 whether apparent or latent, in the premises, including the presence of any hazardous wastes.

6.2 Entry and Inspection.

CITY reserves and shall always have the right, but not the obligation, 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.

LESSEE will perform all such repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. All applicable codes and standards of CITY, state, and federal agencies shall be observed in all maintenance, repairs, and replacements on the premises. Except as hereinafter provided, LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term hereof, without expense to the CITY. LESSEE will perform all such repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. 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 Mayor, except those improvements agreed to in writing in Section 11.2 Description and Listing of LESSEE-owned Improvements. 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 Mayor 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 for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.

6.6 Construction Bond.

Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

6.7 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.

6.8 Taxes.

LESSEE agrees to pay, before delinquent, 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.

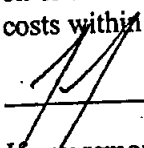
6.9 Signs.

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.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions or other improvements 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 provided in Section 11.2 of 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 listed in Section 11.2 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. LESSEE and CITY mutually agree that any personal property remaining on the premises after termination of the Lease shall be considered purposely abandoned by LESSEE, pursuant to California Civil Code Section 2080.7, and CITY may dispose of the personal property as it deems proper, at CITY'S sole discretion. LESSEE shall be responsible for all costs associated with the disposal of any personal property abandoned on or around the premises and agrees to reimburse CITY for said disposal costs within thirty (30) days of written notice.
 (LESSEE'S Initials)
- e. 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.
- f. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination of the Lease shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- g. 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.

6.11 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, 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 rent 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.

6.12 Hazardous/Toxic Waste.

LESSEE will not allow the installation of underground storage tanks 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 report and the State's lists are on file in the Office of the City Clerk as Document 769704 and by this reference are incorporated herein. 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 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, damages 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 Mayor within five (5) 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 Mayor immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the Mayor 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 without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this Lease, LESSEE, at 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 costs and expenses incurred.

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: (1) LESSEE at the address below or any other designated in writing by LESSEE:

Abre Enterprises
3487 Main St
Chula Vista, CA 91911

and (2) to CITY at:

Airports Deputy Director
3750 John J Montgomery Drive
San Diego, CA 92123

- 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 Mayor or his authorized representative under the authority of any such law, statute, ordinance or regulation.

7.3 CITY Approval or Notice.

The approval or consent of CITY or notice to CITY, wherever required in this Lease, shall mean the written approval or consent of, or notice to, the Mayor or his designee, 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 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will 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 on any basis prohibited by law.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this Lease so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

- b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements 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.

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 attorneys' 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.

7.10 Entire Understanding.

This Lease contains the entire understanding of the parties. LESSEE, by signing this Lease, 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 to this Lease agree 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 may, at the sole option of CITY, 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 are 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, compensation, 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 LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees 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.

SECTION 8: SPECIAL PROVISIONS

8.1 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a professional manner.

8.2 Supersedure.

It is mutually agreed that this Lease, upon execution, supersedes and annuls that certain Lease with ABRE ENTERPRISES, effective on June 1, 2002, which is hereafter void and of no effect except as to any claims, liability, rents and/or fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

8.3 Relocation Payments.

LESSEE understands and agrees that it shall not be entitled to any relocation payment/benefits whatsoever upon termination or expiration of this Lease.

8.4 Additional Consideration.

LESSEE agrees that as additional consideration for this Lease and in addition to all rent otherwise payable to CITY, CITY shall be entitled to participate in any "equity" taken out by the LESSEE during the Lease term. For purposes of this paragraph, "equity" shall mean any amount paid to LESSEE as consideration for an assignment or major sublease. "Major sublease" shall mean any sublease or subleases which individually or cumulatively involves 25 percent or more of the total leasehold area. The amount upon which the twenty-five (25) percent shall be based shall be the total consideration resulting from the transaction including total

cash payments and the market value of non-cash consideration, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment or major subletting, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph together with an acknowledgement from the proposed assignee or sublessee to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction be it an assignment or a sublease. In the instance of a major sublease which provides for periodic payments of rent, CITY shall be entitled to fifty percent (50%) of the difference between the rent paid by LESSEE to CITY and the rent paid by the sublessee to LESSEE, which amounts shall be added to the periodic rent paid to CITY. Any assignment or subletting in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Such other assignment for which the Mayor determines that the legal and equitable ownership interests in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to the leasehold as an asset, or the income produced thereby.
- c. Transfers of 5% interest or less in LESSEE permitted by Section 4.6 above.

SECTION 9: AIRPORTS PROVISIONS

9.1 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, taxiways, 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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 600 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.

9.6 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.

9.7 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.

9.8 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.

9.9 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).

9.10 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.

9.11 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, 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.

9.12 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.

9.13 CITY to Mitigate Impacts of Subordination.

If subordination agreements between CITY and 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 Lease are materially affected during a period of subordination, CITY agrees to make a reasonable rental reduction or adjustment, as determined by CITY. LESSEE agrees that any damages claimed during this subordination period will be limited to this rental relief.

9.14 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 Lease 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.

9.15 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.

9.16 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.

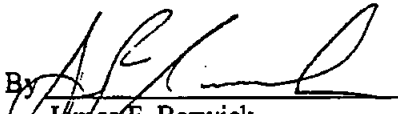
SECTION 10: SIGNATURES

10.1 Signature Page.

IN WITNESS WHEREOF, this Lease is executed by CITY, acting by and through its Mayor,
and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 2/4/11

By 
James F. Barwick
Real Estate Assets Director

LESSEE:

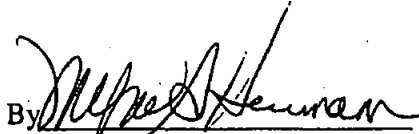
Abre Enterprises, Inc.

Date 1-14-11

By 
Bo Lemler, President

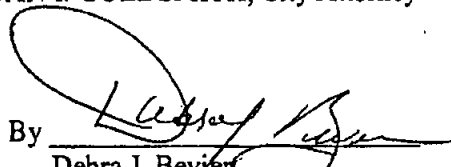
This activity is categorically exempt from State CEQA Guidelines pursuant to Section 15301.

Date 1/26/11

By 
Myra Hermann
Senior Planner

APPROVED as to form and legality this 7th day of Feb, 2010. 2011.

JAN I. GOLDSMITH, City Attorney

By 
Debra J. Bevier
Deputy City Attorney

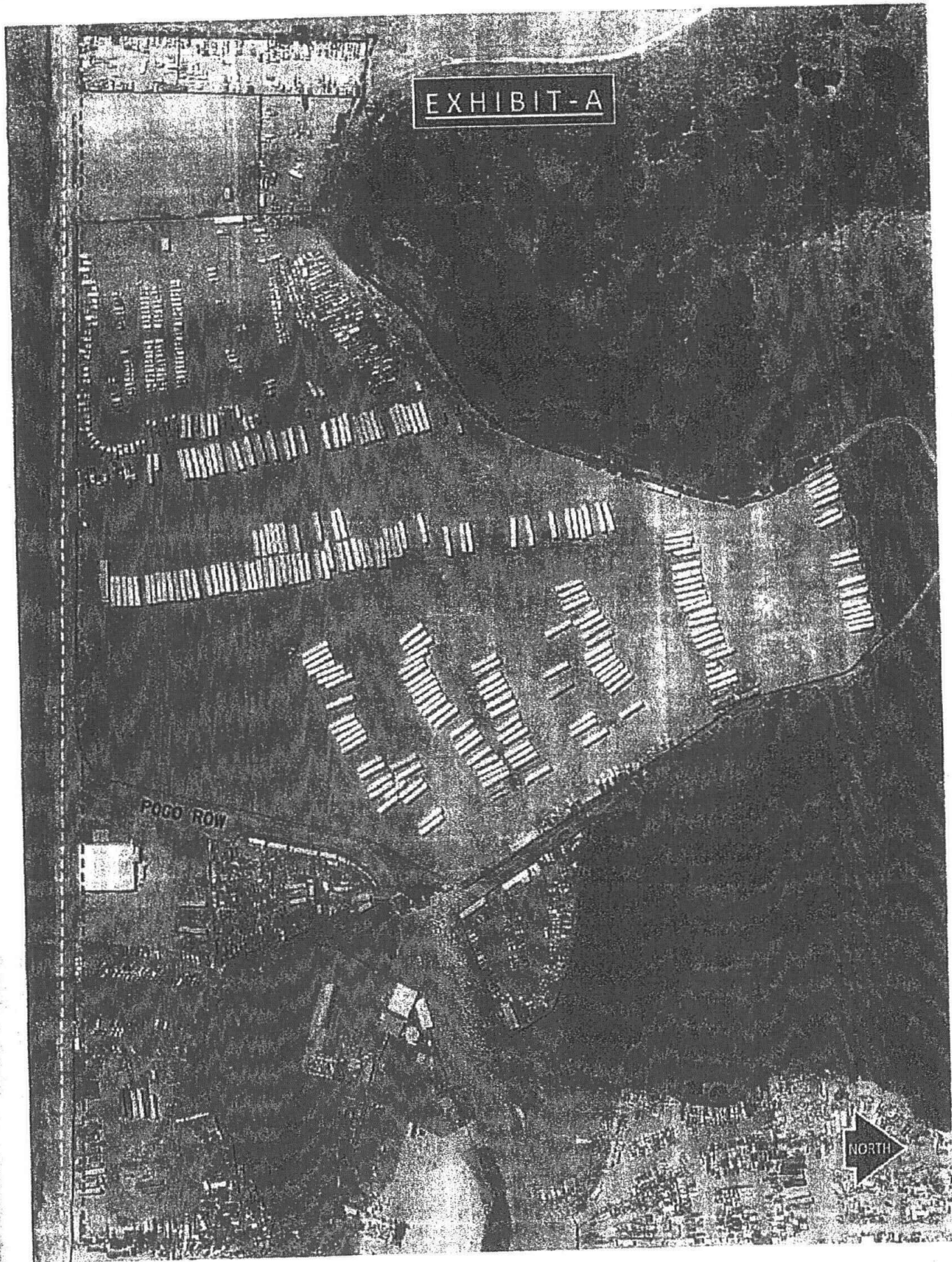
SECTION 11: EXHIBITS

11.1 Exhibit A

EXHIBIT-A

POGO ROW

NORTH



11.2 MHPA Land Use Adjacency Guidelines

1. Prior to initiation of any construction-related activities adjacent to the MHPA, the construction foreman shall discuss the sensitive nature of the adjacent habitat with the crew and subcontractor when applicable.
2. Prior to the commencement of any construction related activities adjacent to the MHPA, the limits of grading shall be clearly delineated by a survey crew prior to brushing, clearing, grading or thinning of vegetation. The limits of grading shall be defined with silt fencing and/or flagging, and checked by the biological monitor before initiation of grading activities. If no construction activities would be in areas adjacent to the MHPA, then this measure would not be implemented.
3. Prior to the commencement of any construction related activities, the ADD/Environmental Designee shall review the grading plans to ensure that no invasive, non-native plant species are being introduced into areas adjacent to the MHPA.
4. Construction lighting located in areas adjacent to the MHPA shall be shielded, unidirectional, low pressure sodium illumination (or similar) and directed away from preserve areas using appropriate placement and shields.
5. No staging/storage areas for equipment and materials shall be located within or adjacent to the MHPA; No equipment maintenance shall be conducted within or near the adjacent to the MHPA.
6. Natural drainage patterns shall be maintained as much as possible during construction. Erosion control techniques, including the use of sandbags, weed-free hay or straw bales, and/or the installation of sediment traps, shall be used to control erosion and deter drainage during construction activities into the adjacent open space. Drainage from all development areas adjacent to the MHPA shall be directed away from the MHPA, or if not possible, must not drain directly into the MHPA, but instead into sedimentation basins, grassy swales, and/or mechanical trapping devices as specified by the City Engineer. No new drainage facilities and/or BMPs would be allowed within the MHPA, they must all placed within the revised lease area outside of the MHPA.
7. No trash, oil, parking or other construction related activities shall be allowed outside the established limits of grading or permitted construction activities. All construction related debris shall be removed off-site to an approved disposal facility.

 (LESSEE'S Initials)

AERO ABLE INC.
CORPORATE NAME

I, BO LEMLER, certify that I am the
PRESIDENT of the corporation named in the attached Lease; that
BO LEMLER, who signed this Lease on behalf of the corporation, was then
PRESIDENT of said corporation; that said Lease was duly signed for and on
behalf of said corporation by authority of its governing body, pursuant to a resolution duly
adopted by its Board of Directors on JANUARY 14, 2011, and is within the
scope of its corporate powers; and that set out below are the names of the officers and directors
of said corporation.

By [Signature]

CORPORATE SEAL

Name PRESIDENT
Title

Name _____
Title

Name _____
Title

Name _____
Title