

EXECUTION VERSION

**LEASE IN FURTHERANCE OF CONVEYANCE
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE CITY OF TUSTIN, CALIFORNIA
FOR PARCEL 22 ON
FORMER MARINE CORPS AIR STATION TUSTIN**

EXECUTION VERSION
LEASE IN FURTHERANCE OF CONVEYANCE
BETWEEN
THE UNITED STATES OF AMERICA
AND THE CITY OF TUSTIN, CALIFORNIA
FOR PORTIONS OF
FORMER MARINE CORPS AIR STATION TUSTIN

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- A. Map of Leased Premises/Location of Monitoring Wells/Southern Portion of the Parcel
- B. Environmental Baseline Study
- C. Finding of Suitability to Lease
- D. Work Exempt from Government Consent
- E. Lease Restriction Revision Form

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THIS LEASE is made this 16th day of June, 2004, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy (the "Government"), and the CITY OF TUSTIN, CALIFORNIA (the "Lessee"), the recognized local redevelopment authority for Marine Corps Air Station Tustin (the "Installation").

RECITALS

A. The Government is the owner of certain real and personal property, commonly referred to as the former Marine Corps Air Station Tustin ("MCAS Tustin") a military installation closed under the Defense Base Closure and Realignment Act of 1990, (Pub.L. 101-510), as amended (10 U.S.C. § 2687 note) (hereinafter referred to as "DBCRA"). Pursuant to the provisions of 2905(b)(7) of the DBCRA, Lessee submitted a notice of interest to acquire and develop a certain parcel for a public park, and recreation purposes. The Lessee's proposal was incorporated in the redevelopment plan for MCAS Tustin (the City of Tustin Reuse Plan) and the plan was approved by the U.S. Department of Housing and Urban Development in accordance with DBCRA.

B. In accordance with Section 203(k)(2) of the Federal Property and Administrative Services Act of 1949, as amended, the U.S. Department of Interior (hereinafter referred to as "sponsoring Federal Department") submitted a request to the Department of the Navy for the assignment of said parcel for transfer to the Lessee as a public benefit conveyance.

C. The condition of the Leased Premises is such that the Government cannot presently make the covenant required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 before property owned by the United States is conveyed by deed. Pending final disposition, 10 U.S.C. § 2667(f) authorizes the Government to lease real property located at a military installation closed under DBCRA, in order to facilitate state or local economic adjustment. Such a lease may be for consideration in an amount less than fair market rental value provided the Secretary determines that such a lease will serve the public interest, and that obtaining fair market rent is not compatible with such public benefit. The Government has determined that this Lease will facilitate local economic adjustment efforts, that the public interest will be served as a result of this Lease, and that obtaining fair market rent is not compatible with such public benefit.

D. In accordance with the National Environmental Policy Act ("NEPA") of 1969, as amended, and the California Environmental Quality Act ("CEQA"), Government and the City have prepared a Joint Final Environmental Impact Statement/Environmental Impact Report

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1 (“EIS/EIR”) for the disposal and reuse of the former MCAS Tustin. The City certified the
2 EIS/EIR as complete under CEQA on January 17, 2001. A NEPA Record of Decision regarding
3 the disposal of MCAS Tustin was issued on March 2, 2001.

4
5 E. To support this Lease a “Finding of Suitability to Lease for Carve-Out Areas 5, 6, 7, 8,
6 9, 10, and 11, Marine Corps Air Station Tustin, Tustin, California” (FOSL) dated April 26, 2002
7 was prepared, in accordance with 10 U.S.C. § 2667(f)(3), and Department of Defense policy
8 guidelines. The FOSL concludes that activities allowed under this Lease, if conducted in
9 accordance with the restrictions contained therein, are consistent with protection of human health
10 and the environment. Cognizant state and federal regulatory agencies have concurred.

11
12 F. The Government has agreed to grant a lease in furtherance of and pending conveyance
13 by deed for a portion of MCAS Tustin to the Lessee and the Lessee has agreed to enter into this
14 Lease.

MUTUAL UNDERSTANDINGS

15
16
17
18 **NOW, THEREFORE**, in consideration of the terms, covenants, and conditions
19 hereinafter set forth, Government and Lessee hereby agree as follows:

20 21 1. **LEASED PREMISES AND CONDITIONS:**

22
23 1.1 Government does hereby lease, rent, and demise to Lessee in furtherance of and
24 pending conveyance, and Lessee does hereby hire and rent from Government, the premises
25 described in Exhibit “A” attached hereto and made a part of this Lease, together with all
26 improvements and all personal property thereon (hereinafter the “Leased Premises”) together
27 with right of ingress and egress to said Leased Premises.

28
29 1.2 The Lessee has requested that the sponsoring Federal Department convey the Leased
30 Premises at no cost pursuant to Section 203(k)(2) of the Federal Property and Administrative
31 Services Act of 1949, as amended. Lessee shall take all steps required of it by the sponsoring
32 Federal Department to perfect said requests, and, shall accept quitclaim deeds of conveyance and
33 other evidence of title when and as delivered by the sponsoring Federal Department.

34
35 1.3 Upon execution of a Finding of Suitability for Transfer (“FOST”), the Secretary of
36 Navy shall assign the Leased Premises to the sponsoring Federal Department. The schedule for
37 the assignment and conveyance of Leased Premises is dependent upon the Government’s ability
38 to remediate the environmental contamination, and may be impacted by regulator and public
39 review, and other events not within the control of the Parties.

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2. TERM:

2.1. The term of this Lease shall be for the period of fifty (50) years beginning on the date of execution and ending on the earlier of: (A) the 16th day of June, 2054 or (B) upon execution and delivery of a quitclaim deed to Lessee for the Leased Premises, and acceptance of the same by the Lessee unless sooner terminated in accordance with the provisions of Paragraph 14.

3. CONSIDERATION:

3.1 As consideration for this Lease, Lessee agrees to provide protection and maintenance to the extent described in Paragraph 12. Lessee may apply any revenue (as defined herein) received from subleasing the Leased Premises to: reimburse Government for its reasonable costs incurred, if any, under sub-Paragraph 3.1.1 and Paragraph 14. "Revenue" as referred to herein means rental income and any other miscellaneous income derived from the rental of real or personal property, excluding property tax, sales tax, use and occupancy tax, franchise tax and other miscellaneous taxes, building fees, planning fees, and inspection fees. Security deposits or other instruments to guarantee performance of sublessees, anticipated charges for utilities, common services and other purposes, regardless of how those deposits are denominated, shall also not be considered revenue.

3.1.1 Lessee shall reimburse Government for any costs incurred which are specifically attributable to an action (or inaction) of Lessee or sublessees. Government will advise Lessee of these costs on a monthly basis.

3.1.2 If Government anticipates incurring any costs, which may be attributable to an action or inaction of the Lessee or its subleases, the Lessee and Government shall meet and confer on ways to avoid or mitigate such costs.

3.2 Consistent with standard accounting practices for tax purposes, Lessee shall keep adequate records and books of account showing the actual cost to it of all items of labor, material, equipment, supplies, services and other items of cost incurred by it directly in the performance of any item of work or service in connection with the repair, restoration, protection and maintenance of Leased Premises which is required by Paragraph 12; or otherwise approved or directed by Government. Lessee shall provide Government with access to such records and books of account and proper facilities for inspection thereof during regular business hours of the Lessee.

4. USE OF LEASED PREMISES:

The sole purpose for which Leased Premises may be used, in the absence of prior written approval by Government for any other use, is for public park or public recreational purposes identified as "Permitted" within Paragraph 3.3.3.A of the Tustin Legacy Specific

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1 Plan/Reuse Plan for the Marine Corps Air Station, Tustin, adopted through City Council
2 Ordinance No. 1257 and dated February 3, 2003.

3 4 5. SUBLETTING:

5
6 5.1 Lessee shall not sublease Leased Premises without prior approval of Government.
7 Such approval shall not be unreasonably withheld or delayed. Any sublease approved shall
8 assure the continued use and maintenance of the property for those public park or public
9 recreational purposes referenced in Paragraph 4 of this Lease. Under no circumstance shall
10 Lessee assign this Lease.

11
12 5.2 For purposes of Paragraph 5 and this Lease, "sublease" shall include licenses, use
13 and occupancy agreements, concession agreements and other similar agreements.

14
15 5.3 Any sublease granted by Lessee shall contain a copy of this Lease as an
16 attachment and be subject to all terms and conditions of this Lease and shall terminate
17 immediately upon the expiration or any earlier termination of this Lease, without any liability on
18 the part of Government to Lessee or any sublessee. Under any sublease made, with or without
19 consent, the sublessee shall be deemed to have assumed all of the obligations of Lessee under
20 this Lease. No sublease shall relieve Lessee of any of its obligations hereunder.

21
22 5.4 Upon its execution, a copy of the sublease shall immediately be furnished to
23 Government. Should conflict arise between the provisions of this Lease and a provision of the
24 sublease, the provisions of this Lease shall take precedence. Any sublease shall not be taken or
25 construed to diminish or enlarge any of the rights or obligations of either of the parties under this
26 Lease.

27 28 6. CONDITION OF PROPERTY:

29
30 6.1 Leased Premises shall be delivered to Lessee "AS IS", "WHERE IS." Government
31 makes no warranty as to Leased Premises' usability generally or as to its fitness for any particular
32 purpose. Any safety and/or health hazards identified shall be corrected, at Lessee's or
33 sublessee's expense, prior to use and occupancy.

34
35 6.2 In the event this Lease is terminated pursuant to Paragraph 14, Lessee is not
36 obligated to restore improvements to the Leased Premises once those improvements have been
37 demolished or to demolish improvements that have been completed during the term of this
38 Lease.

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7. ENVIRONMENTAL BASELINE SURVEY AND FINDING OF SUITABILITY TO LEASE:

A copy of the executive summary of the Environmental Baseline Survey ("EBS"), the FOSL are attached and made a part hereof as Exhibits "B" and "C" respectively. The EBS and FOSL have been provided to lessee and all other documents referenced therein have been made available to lessee. The FOSL sets forth the basis for Government's determination that Leased Premises are suitable for leasing and the EBS describes the environmental condition of Installation. Lessee is hereby made aware of the notifications contained in the FOSL and shall comply with the restrictions set forth therein.

8. ALTERATIONS:

8.1 Lessee shall not construct or make or permit its sublessees to construct or make any substantial alterations to, additions to, excavations upon, improvements to, installations upon or other modifications or alterations to (collectively "Work") the Southern Portion of the Leased Premises ("Southern Portion"), as identified in Exhibit A, including those which may adversely affect the cleanup, human health or the environment, without the prior written consent of Government. Notwithstanding the first sentence of this paragraph 8.1, no such prior written consent shall be required for any Work identified in Exhibit "D," attached hereto, except insofar as prior written consent for such Work may be required by Article 13 of this Lease and/or the FOSL. Lessee shall not be required to obtain prior written consent of Government for Work performed on those portions of the Leased Premises in the Northern Portion (Exhibit A). All Work shall be done in a workmanlike manner and be subject to the requirements of the City of Tustin.

8.2 Lessee shall provide Government with prior written notification and a full description of all proposed Work within the Southern Portion (other than work described in Exhibit "D" which does not require prior written consent under Paragraph 13 and/or the FOSL). Lessee shall further provide a projected schedule, and an analysis as to how and why such Work will or will not adversely affect the environmental cleanup of the Leased Premises, human health or the environment.

9. ACCESS BY GOVERNMENT:

9.1 In addition to access required under Paragraph 13, at all reasonable times throughout the term of this Lease, Government shall be allowed access to Leased Premises for any purposes upon notice to Lessee. Government normally will give Lessee or any sublessee forty-eight (48) hour prior notice of its intention to enter Leased Premises, unless it determines the entry is required for safety, environmental, operations or security purposes. Lessee shall have no claim on account of any entries against Government or any officer, agent, employee, contractor or subcontractor of Government. All keys to the buildings and facilities occupied by Lessee or any sublessee shall be made available to Government upon request. Any access by Government will take into consideration its obligations under Paragraph 34.

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2 9.2 To the extent that access and the provision of utilities is required across and on the
3 Leased Premises consistent with sub-Paragraph 27.2 of this Lease, Government shall have a non-
4 exclusive right to use that portion of the Leased Premises for access, including but not limited to
5 vehicular access to said parcel by users, employees, contractors, delivery services, vendors,
6 maintenance and ancillary service providers for the activities and improvements now or hereafter
7 located thereon, and a right to install, maintain, operate, replace, and repair active existing utility
8 distribution systems owned and operated by the Lessee, including, but not limited to, water,
9 electricity, and for storm water drainage and sewerage, and new electrical and water utility
10 distribution systems not owned by utility service providers across the Leased Premises as
11 described above. Lessee may provide an alternative means of access or utility provision across
12 other streets that Government determines to be equally convenient.
13

14 9.3 The Government shall be responsible for direct costs on the Leased Premises
15 related to the maintenance, operation, replacement, or repair of existing utility distribution
16 systems or installation of new utility distribution systems required by the Government. Any and
17 all damage to Leased Premises and to existing utility distribution systems resulting from
18 activities of Government pursuant to sub-paragraph shall be repaired by Government at no
19 expense to Lessee and the Leased Premises shall be restored to its pre-construction condition. In
20 the event of any death or injury to any person, or the loss of or damage to any property caused by
21 officers, employees, or contractors of the United States in connection with the modification,
22 maintenance, or operation of existing utility systems or installation of new utility distribution
23 systems by the Government on the Leased premises or in the event of any legal or equitable
24 action instituted against the United States, the liability, if any, of the United States will be
25 determined in accordance with the applicable provisions of the Federal Tort Claims Act (28
26 U.S.C. Sections 2671-2680). The Government shall ensure that any Government contractor
27 involved in modification, maintenance, or operation of existing utility systems or installation of
28 new utility distribution systems by the Government on the Leased Premises shall obtain
29 Comprehensive General Liability Insurance which will name the Lessee as an additional insured
30 party.
31

32 10. **UTILITIES AND SERVICES:** 33

34 10.1 Procurement of utilities, i.e., electricity, water, gas, steam, sewer, telephone and
35 trash removal shall be the sole responsibility of Lessee.
36

37 10.2 Should utility services be required by Government, in connection with
38 environmental contracts, maintenance, or other Government requirements within Leased
39 Premises, the Lessee shall work to facilitate the provision of utilities and services in a manner
40 consistent with the provisions set forth in Paragraph 34 of the "Agreement Between the United
41 States of American and the City of Tustin, California for the Conveyance of a Portion of the
42 Former Marine Corps Air Station Tustin"(Agreement) dated 13 May 2002. In the event that
43 Lessee shall furnish Government with any utilities maintained by Lessee, which Government

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may require, Government shall reimburse Lessee at a rate equitably related to the cost incurred by the Lessee in providing such services or utilities, or the costs incurred by the Lessee, where the Lessee purchases such services or utilities from a third party provider. If the Lessee is unable to locate a utility provider willing to take over the system pursuant to Paragraph 34 of the Agreement, and if the Lessee undertakes to operate such system and subsequently determines to cease such operations and disconnect service, the Lessee shall provide the Government with a minimum of four (4) weeks prior notice prior to disconnection. In the event such disconnection will result in the termination of utility service necessary to ensure the continuity of ongoing environmental clean-up, restoration, or testing activities by the Government or regulators as provided in Paragraph 11 of this Lease, and the Government is unable to procure an alternate source of such utilities within the notice period, Lessee shall, to the maximum extent practicable, work with the Government and utility service providers to facilitate the provision of an alternate source of such utilities. In order to prevent such an event, the Government and Lessee agree to coordinate, to the maximum extent practicable, the scheduling and conduct of the Government's environmental clean-up, restoration, and testing activities and Lessee's redevelopment activities on the Leased Premises.

11. NON-INTERFERENCE WITH GOVERNMENT OPERATIONS:

Lessee shall not conduct operations that would interfere with or otherwise restrict operations, environmental clean-up or restoration actions by Government, United States Environmental Protection Agency ("EPA"), state environmental regulators, or their contractors. Environmental clean-up, restoration or testing activities by these parties shall take priority over Lessee's use of Leased Premises in the event of any conflict. Notwithstanding that priority, the Government shall make every reasonable effort to work with the Lessee, to provide reasonable and timely notification of all Government operations that may interfere with Lessee and sublessees' operations and to minimize potential conflicts between necessary remediation of environmental contamination and Lessee's and sublessees' use of Leased premises.

12. PROTECTION AND MAINTENANCE SERVICES:

12.1 Government shall not be required to furnish any services or facilities to Lessee or to make any repair or alteration in or to Leased Premises. Lessee hereby assumes the full and sole responsibility for the protection, maintenance and repair of Leased Premises upon such standards that Lessee determines appropriate and reasonable.

12.2 During the term of this Lease, debris, trash and other useless materials not generated by Government shall be promptly removed from Leased Premises.

12.3 Lessee shall provide or cause to be provided all security services necessary to assure security and safety within Leased Premises. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of Government property,

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shall be reported to the appropriate authorities for their investigation and disposition and to Government as property owner.

12.4 Lessee shall take or cause to be taken, all reasonable fire protection precautions at Leased Premises consistent with the level of use on the property.

13. ENVIRONMENTAL PROTECTION PROVISIONS:

13.1 Lessee, sublessees and contractors shall comply with all applicable federal, state and local laws, regulations and standards that are or may become applicable to Lessee's activities on Leased Premises.

13.2 Lessee or any sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits held by Government. Lessee shall provide prior written notice to the Government of any environmental permit applications required for any of Lessee's or sublessee's operations which the Lessee or any sublessee proposes to submit to a regulatory agency. Lessee acknowledges that Government will not consent to being named a secondary discharger or co-permittee for any operations or activities of the Lessee or any sublessee under the Lease. In the event Government is named as a secondary discharger or co-permittee for any activity or operation of the Lessee or any sublessee, Government shall have the right to take reasonable actions necessary to prevent, suspend, or terminate such activity or operation, including terminating this Lease, without liability or penalty.

13.3 Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice Leased Premises for compliance with environmental, safety and occupational health laws and regulations, whether or not Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Government normally will give Lessee or sublessee forty-eight (48) hours prior notice of its intention to enter Leased Premises unless it determines the entry is required for safety, environmental, operations or security purposes. Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, contractor or subcontractor thereof.

13.4 Government, pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980 as amended, and the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) pursuant to the Resource Conservation and Recovery Act ("RCRA"), have entered into a Federal Facilities Site Remediation Agreement ("FFSRA") for MCAS Tustin. Lessee acknowledges that Government has provided it with a copy of the FFSRA and agrees that should any conflict arise between the terms of the FFSRA as it presently exists or may be amended and the provisions of this Lease, the terms of the FFSRA will take precedence. Lessee further agrees that notwithstanding any other provision of this Lease, Government assumes no liability to Lessee or

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1 its sublessees should implementation of the FFSRA interfere with Lessee's or any sublessee's
2 use of Leased Premises. Lessee shall have no claim on account of any such interference against
3 the United States or officer, agent, employee, contractor or subcontractor thereof, other than for
4 abatement of rent, where applicable.
5

6 13.5 Government, EPA, DTSC, and the state, its officers, agents, employees,
7 contractors and subcontractors, have the right, upon reasonable notice to Lessee and/or any
8 subleases, to enter upon Leased Premises for the purposes enumerated in this sub-Paragraph and
9 for such other purposes consistent with any provisions of the cleanup program (including but not
10 limited to the BRAC Cleanup Plan, IRP, or FFSRA):
11

12 13.5.1 to conduct investigations and surveys, including, where necessary, drilling,
13 soil and water sampling, test-pitting, testing soil borings and other activities related to the
14 cleanup program;
15

16 13.5.2 to inspect field activities of Government and its contractors and
17 subcontractors in implementing the cleanup program;
18

19 13.5.3 to conduct any test or survey required by EPA, or DTSC relating to the
20 implementation of the cleanup program;
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22 13.5.4 to construct, operate, maintain or undertake any other response or remedial
23 action as required or necessary under the cleanup program, including but not limited to
24 monitoring wells, pumping wells and treatment facilities.
25

26 13.6 Lessee shall comply with the provisions of any health or safety plan in effect
27 under the IRP or the FFSRA during the course of any of the above described response or
28 remedial actions. Any inspection, survey, investigation or other response or remedial action will,
29 to the extent practicable, be coordinated with representatives designated by Lessee and any
30 sublessee. Lessee and sublessee shall have no claim on account of such entries against the
31 United States or any officer, agent, employee, contractor or subcontractor thereof. In addition,
32 Lessee shall comply with all applicable federal, state and local occupational safety and health
33 regulations.
34

35 13.7 In the event of any sublease of Leased Premises, Lessee shall provide to U.S. EPA
36 and California EPA, DTSC by certified mail at the address shown below, a copy of the
37 agreement or sublease of Leased Premises (as the case may be) within fourteen (14) calendar
38 days after the effective date of such transaction. Lessee may delete the financial terms and any
39 other proprietary information from the copy of any agreement of sublease furnished pursuant to
40 this condition.
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Office of Military Affairs
5796 Corporate Avenue
Cypress, CA 90630

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US EPA, (SFD-H-8), Region IX
75 Hawthorne Street
San Francisco, CA 94105

13.8 Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act and its applicable state equivalent. Except as specifically authorized by Government in writing, Lessee must provide at its own expense such hazardous waste management facilities complying with all laws and regulations. Government hazardous waste management facilities will not be available to Lessee. Government EPA identification numbers shall not be used by Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

13.9 The Installation accumulation points for hazardous and other waste will not be used by Lessee or any sublessee. Neither will Lessee or sublessee permit its hazardous wastes to be commingled with hazardous waste of the Installation.

13.10 Prior to commencement of operations on Leased Premises, Lessee shall have a Government-approved plan for responding to hazardous waste, fuel and other chemical spills caused by the Lessee or its sublessees. The contingency plan shall be consistent with the provisions of California Code of Regulations, Title 22, Chapter 15, Paragraph 4 beginning with Section 66265.50. Such plan shall be independent of the Installation plan and, except for initial fire response and/or spill containment, shall not rely on use of Installation personnel or equipment. Should Government provide any personnel or equipment whether for initial fire response and/or spill containment, or otherwise on request of Lessee, or because Lessee was not, in the opinion of Government, conducting timely cleanup actions, Lessee agrees to reimburse Government for its costs in association with such response or cleanup.

13.11 Lessee shall not conduct or permit its sublessees to conduct any subsurface excavation, digging, drilling or other disturbance of the surface within the Southern Portion of the Parcel (Exhibit A) without the prior written approval of Government. Government shall make every effort to make a decision within 30 calendar days of the date it receives Lessee's request for approval. The parties recognize that the Lessee or its sublessees may desire to conduct, at their own expense, certain investigations within the Leased Premises to evaluate environmental conditions. Lessee shall provide Government with a work plan for the performance of any environmental subsurface excavation, digging, drilling, or other disturbance of the surface for review and approval at least 30 days prior to commencing any such work within the Southern Portion of the Parcel. The Government's review and approval shall be

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limited to the health and safety plans, consistency with the FOSL, and ensuring, to the maximum extent practicable, that the investigations not cause or aggravate releases of hazardous substances within the Southern Portion of the Parcel. Government reserves the right to impose reasonable conditions on its approval.

13.12 The presence of known asbestos and ACM, or LBP is identified in the previously provided FOSL.

13.12.1 If Lessee intends to make any improvements or repairs that require the disturbance of or the removal of asbestos or ACM, an appropriate asbestos disposal plan must be incorporated into the plans and specifications required under Paragraph 8 and submitted to Government. The asbestos disposal plan will identify the proposed disposal site for the asbestos, or in the event the site has not been identified, will provide for disposal at a licensed facility authorized to receive asbestos and ACM. In accordance with sub-Paragraph 8.1 above, an asbestos disposal plan shall not be required for demolition of structures, except to the extent that any such demolition performed in the Southern Portion of the Parcel may require subsurface excavation or may otherwise result in any disturbance of the surface.

If the Lessee intends to make any improvements or repairs that require the removal of LBP, prior written approval must be obtained from Government. Lessee shall not be required to obtain such prior approval from Government for removal of LBP insofar as such removal results from demolition of structures, except to the extent that any such demolition performed in the Southern Portion of the Parcel may require subsurface excavation or may otherwise result in any disturbance of the surface. In its use and occupancy of the Leased Premises, including but not limited to demolition of structures, Lessee shall manage asbestos, ACM, and LBP in accordance with all applicable federal, state, and local laws and other requirements.

13.12.2 Lessee shall be responsible for monitoring the condition of existing asbestos and ACM on Leased Premises for deterioration or damage and accomplishing repairs or abatement pursuant to the applicable conditions of this Lease. Asbestos and ACM which during the period of this Lease becomes accessible, damaged, or deteriorated through the passage of time, as the result of a natural disaster or as a consequence of Lessee's activities under this Lease including but not limited to any emergency, will be abated by Lessee. Lessee may choose the most economical means of abatement available. Notwithstanding sub-Paragraph 13.12.1 above, in an emergency, Lessee will notify Government as soon as practicable of its emergency asbestos or ACM responses.

13.12.3 Lessee shall be responsible for monitoring the condition of existing LBP on Leased Premises for deterioration or damage and accomplishing repairs or abatement pursuant to the applicable conditions of this Lease. LBP which during the period of this Lease becomes damaged or deteriorated through the passage of time, as the result of a natural disaster or as a consequence of Lessee's activities under this Lease

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1 including but not limited to any emergency, will be abated by Lessee. Lessee may choose
2 the most economical means of abatement available. Notwithstanding sub-Paragraph
3 13.12.1 above, in an emergency, Lessee will notify Government as soon as practicable of
4 its emergency LBP responses.
5

6 13.13 Lessee shall indemnify and hold harmless Government from any costs, expenses,
7 liabilities, fines or penalties resulting from discharges, emissions, spills, storage or disposal
8 caused or created by Lessee's occupancy, use or operations, or any other action by Lessee or any
9 sublessee giving rise to Government liability, civil or criminal, or any other action by Lessee or
10 any sublessee giving rise or responsibility under federal, state or local environmental laws.
11 Lessee's obligations hereunder shall apply whenever Government incurs costs or liabilities for
12 Lessee's activities or activities of any sublessee as provided hereunder. This provision shall not
13 apply to the extent that claims, demands, actions, proceedings, losses, liens, costs and judgments
14 (including fines and penalties) are caused or created by concurrent active or sole negligence of the
15 Government, its officers, agents, employees, or contractors. This provision shall survive the
16 expiration or termination of the Lease.
17

18 13.14 Storage, treatment or disposal of toxic or hazardous materials on Leased Premises
19 is prohibited.
20

21 13.15 The responsibility of Government to indemnify and hold harmless the Lessee and
22 any sublessees against toxic torts and other environmental claims shall be in accordance with
23 Public Law 102-484, Section 330, as amended.
24

25 13.16 Lessee and sublessees shall not use or access groundwater, and shall not disturb or
26 cause to be disturbed monitoring wells and equipment described in Exhibit "A" without prior
27 approval pursuant to sub-Paragraph 13.11.
28

29 13.17 Asbestos Containing Material ("ACM") 30

31 Access to and occupancy of Buildings 93, 163, and 221 is prohibited except for short-
32 term tours and emergency maintenance with prior approval of the Navy until such time as the
33 Lessee or its sublessee conducts necessary surveys and/or abatement as set forth for ACM in the
34 FOSL.
35

36 13.18 Indoor Air Quality 37

38 13.18.1 Access to and occupancy of Building 221 is prohibited until such time as
39 the Lessee or its sublessees: a) conducts air monitoring within the building following all
40 federal, state and local regulatory requirements to determine the suitability of air quality
41 relative to the proposed use of the particular building, b) submits an indoor air report to
42 the Government, DTSC, USEPA, and RWQCB for review, and c) obtains the concurrence
43 of the Government, DTSC, USEPA, and RWQCB that restrictions for indoor air quality

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are no longer necessary for the building and a Lease Restriction Revision Form is completed. Lessee or its sublessees is permitted to demolish and remove existing buildings that may be affected by impairments to air quality, notwithstanding any other restriction on use or occupancy of such buildings and structures. Such existing buildings and structures are not considered a component of any response or remedial action under any environmental law or regulation.

13.18.2 Lessee or its sublessees may not construct new buildings or structures within the Southern Portion of the Parcel designated in Exhibit "A" without prior approval under sub-Paragraph 8.1 of this Lease. Access to and occupancy of such new buildings and structures constructed after the effective date of this lease is prohibited until such time as the Lessee or its sublessees: a) conduct air monitoring within the building following all federal, state and local regulatory requirements to determine the suitability of air quality relative to the proposed use of the particular building, b) submits an indoor air report to the Government, DTSC, USEPA, and RWQCB for review, c) obtains the concurrence of the Government, DTSC, USEPA, and RWQCB that no restrictions on access to and occupancy of the particular building are necessary. Such construction shall not be considered a component of any response or remedial action under any environmental law or regulation within the context of this Lease.

13.19 Lead Based Paint ("LBP")

13.19.1 Building C-4 and Structures 128, 145 and 202 were built prior to 1978 and are proposed for reuse. They may be used for residential use or child-occupied facilities only after the Lessee or its sublessees conduct the necessary LBP surveys and abatement in accordance with all local, state, and federal requirements. Residential or child-occupied use of these buildings/structures must be approved by Government, DTSC, USEPA, and RWQCB. In the event of demolition, the Lessee or its sublessees shall be responsible for ensuring that any demolition of buildings/structures is in accordance with applicable local, state, and federal regulatory requirements. In the event demolition occurs, the Lessee or its sublessees shall be responsible for conducting post-demolition soil sampling and any necessary abatement of soil lead hazards related to the demolition prior to occupancy of any newly constructed buildings at the above listed building/structure locations.

13.19.2 Buildings C-3, 93, 163, 216, 221, and Structures 143, 146 and 150 were built prior to 1978 and are tentatively proposed for demolition or their use is yet to be determined. They may be used for residential use or child-occupied facilities only after the necessary LBP surveys and abatement are conducted by Lessee or its sublessees in accordance with all local, state, and federal requirements. Residential or child-occupied use of these buildings/structures must be approved by Government, DTSC, USEPA, and RWQCB. In the event of demolition, the Lessee or its sublessees shall be responsible for ensuring that any demolition of buildings/structures is in accordance with applicable

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1 local, state, and federal regulatory requirements. In the event demolition occurs, the
2 Lessee or its sublessees shall be responsible for conducting post-demolition soil sampling
3 and any necessary abatement of soil lead hazards related to the demolition prior to
4 occupancy of any newly constructed buildings at the above listed building/structure
5 locations.
6

7 13.20 The Lessee may submit a Lease Restriction Revision Form (LRRF) in order to
8 demonstrate the basis for removal of certain lease restriction(s) imposed pursuant to the FOSL,
9 and to request removal of such restriction(s). Subsequent to receipt and initial review of such
10 LRRF(s), the Government shall forward each such LRRF to DTSC and USEPA for approval,
11 prior to the removal of any lease restriction(s). A template for an LRRF is attached as Exhibit
12 "E."
13

14. TERMINATION:

15
16 14.1 Government shall have the right to terminate this Lease, in whole or in part,
17 without liability, upon thirty (30) calendar days notice in the event of:
18

19 14.1.1 a national emergency as declared by the President or the Congress of the
20 United States; or
21

22 14.1.2 a breach by Lessee of any terms and conditions hereof. In the event of a
23 breach involving the performance of any obligation, Lessee shall be afforded sixty (60)
24 calendar days from the receipt of Government's notice of intent to terminate to complete
25 the performance of the obligation or otherwise cure the subject breach and avoid
26 termination of this Lease, unless Government determines that a shorter period is required
27 for safety, environmental, operations or security purposes. In the event that Government
28 shall elect to terminate this Lease on account of the breach by Lessee of any of the terms
29 and conditions, Government shall be entitled to recover and Lessee shall pay to
30 Government:
31

32 14.1.2.1 the costs incurred in reacquiring possession of Leased
33 Premises,
34

35 14.1.2.2 the costs incurred in performing any obligation on the
36 part of Lessee to be performed hereunder,
37

38 14.1.2.3 an amount equal to the aggregate of any maintenance
39 obligations and charges assumed hereunder and not paid or satisfied, which
40 amounts shall be due and payable at the time when such obligations and charges
41 would have accrued or become due and payable under this Lease.
42

MCAS TUSTIN LEASE IN FURTHERANCE OF CONVEYANCE

14.1.3 Government making a final decision regarding disposal of Leased Premises that is inconsistent with continued use thereof by Lessee under this Lease.

14.1.4 Failure of Lessee to accept conveyance of the Leased Premises (Parcel) within thirty (30) days following Government notice to Lessee that it has executed the FOST and tendered a deed for such Parcel.

14.2 Lessee shall have the right to terminate this Lease upon thirty (30) calendar days written notice to Government in the event of a breach by Government of any of the terms and conditions hereof. In the event of a breach involving the performance of any obligation by the Government, the Government shall be afforded sixty (60) calendar days from the receipt of Lessee's notice of intent to terminate to complete performance of the obligation or otherwise cure the subject breach and avoid termination of this Lease. Lessee shall also have the right to terminate this Lease in the event of damage to or destruction of all of the improvements on Leased Premises or such a substantial portion thereof as to render Leased Premises incapable of use for the purposes for which it is Leased hereunder, provided:

14.2.1 Government either has not authorized or directed the repair, rebuilding or replacement of the improvements or has made no provision for payment for such repair, rebuilding or replacement by application of insurance proceeds or otherwise; and

14.2.2 That such damage or destruction was not occasioned by the fault or negligence of Lessee or any of its officers, agents, servants, employees, sublessees, licensees or invitees, or by any failure or refusal on the part of Lessee to fully perform its obligations under this Lease.

14.3 Lessee shall have the right to terminate this lease by written notice to Government, given at any time:

14.3.1 If Government requires Lessee to vacate all or a substantial portion of Leased Premises pursuant to Paragraph 15 of this Lease for a period in excess of five (5) calendar days. Lessee may terminate this Lease by written notice to Government given at any time while Lessee shall continue to be denied use of all or a substantial portion of Leased Premises. Lessee shall thereafter surrender possession of Leased Premises within fifteen (15) calendar days of such notice.

14.3.2 In the event that entry by Government on Leased Premises is necessary for the purposes of remedial or corrective action, and such activity substantially interferes with the use or sublease of all or a substantial part of Leased Premises for a period of more than five (5) consecutive calendar days. Lessee may terminate this Lease by written notice to Government given at any time while Lessee shall continue to be denied use of all or a substantial portion of Leased Premises. Lessee shall thereafter surrender possession of Leased Premises within fifteen (15) calendar days of such notice.

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14.3.3 In the event of breach by Government of the Agreement, provided, that in the event of a breach involving the performance of any obligation by the Government, the Government shall be afforded sixty (60) calendar days from the receipt of Lessee's notice of intent to terminate to complete performance of the obligation or otherwise cure the subject breach and avoid termination of this Lease.

15. ENVIRONMENTAL CONTAMINATION:

In the event environmental contamination is discovered on Leased Premises which creates, in Government's determination, an imminent and substantial endangerment to human health or the environment which necessitates evacuation of Leased Premises, and notwithstanding any other termination rights and procedures contained in this Lease, Lessee shall vacate or require any sublessee to vacate Leased Premises immediately upon notice from Government of the existence of such a condition. Exercise of this right by Government shall be without liability, except that Lessee shall not be responsible for the payment of consideration, the amount of deduction to be determined on a daily pro-rata basis, during the period Leased Premises is vacated. Government's exercise of this right herein to order Leased Premises immediately vacated does not alone constitute a termination of the Lease, but such right may be exercised in conjunction with any other termination rights provided in this Lease or by law.

16. NON-ENVIRONMENTAL INDEMNIFICATION BY LESSEE:

Lessee shall at all times relieve, indemnify, protect, defend and hold harmless the United States of America, and all of its officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal actions, for death or injury to persons or damage to property and for civil fines and penalties arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by Lessee and the employees, agents, servants, guests, invitees, contractors and sublessees of Lessee. These include, but are not limited to, any fines, claims, demands and causes of action of every nature whatsoever which may be made upon, sustained or incurred by Government by reason of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of Lessee or the employees, agents, servants, guests, invitees and sublessees of Lessee. However, this indemnity shall not extend to damages due to the sole fault or negligence of Government or its contractors. This covenant shall survive the termination of this Lease for any injury or damage occurring after the commencement of term of the Lease.

17. INSURANCE:

17.1 Except to the extent of the Government's obligation to indemnify pursuant to Public Law 102-484, Section 330, as amended, the Lessee shall bear all risk of loss or damage to the Leased Premises, and for claims arising from any incident with respect to bodily injuries or

MCAS TUSTIN LEASE IN FURTHERANCE OF CONVEYANCE

1 death resulting therefrom, property damage or both, suffered or alleged to have been suffered by
2 any person or persons resulting from the operations of Lessee, and Lessee's sublessees,
3 contractors and invitees under the terms of this Lease.
4

5 17.2 Based upon Lessee's written representation regarding its financial capacity to be
6 self insured and its request for waiver, Government hereby waives its requirements for insurance
7 insofar as Lessee is concerned, but not with respect to any sublessee. Notwithstanding this
8 waiver, the parties recognize that Lessee presently carries excess public liability coverage for
9 claims of \$250,000 or more. Lessee shall provide the excess coverage in an amount not less than
10 the minimum combined single limit of \$5,000,000. Lessee shall furnish to Government a
11 certificate of insurance consistent with the requirements of sub-Paragraph 17.6, evidencing such
12 excess coverage. The minimum amount of liability insurance coverage is subject to revision by
13 Government upon renewal or modification of this Lease.
14

15 17.3 As to those structures and improvements on Leased Premises constructed by or
16 owned by Government, Lessee or its sublessees shall procure and maintain from a reputable
17 insurance company or companies, at Lessee's or sublessee's expense, a standard fire and
18 extended coverage insurance policy or policies on Leased Premises in the minimum amount of
19 \$1,000,000, but not less than the amount required to demolish damaged or destroyed structures
20 and improvements, remove debris and clear Leased Premises. The insurance policy shall provide
21 that in the event of loss thereunder, the proceeds of the policy or policies, at the election of
22 Government, shall be payable to Lessee to be used solely for the demolition of damaged or
23 destroyed structures and improvements, removal of debris and clearance of Leased Premises, or
24 for repair, restoration or replacement of the property damaged or destroyed. Any balance of the
25 proceeds not required for such purposes shall be paid to Government. If Government does not
26 elect, by notice in writing to the insurer within thirty (30) calendar days after the damage or
27 destruction occurs, to have the proceeds paid to Lessee for the purposes hereinabove set forth,
28 then such proceeds shall be paid to Government, provided however that the insurer, after
29 payment of any proceeds to Lessee in accordance with the policy or policies, shall have no
30 obligation or liability with respect to the use or disposition of the proceeds. Nothing herein
31 contained shall be construed as an obligation upon Government to repair, restore or replace
32 Leased Premises or any part thereof.
33

34 17.4 If and to the extent required by law, Lessee shall provide workers' compensation
35 or similar insurance in form and amounts required by law.
36

37 17.5 During the entire period this Lease shall be in effect Lessee shall require its
38 contractors or sublessees or any contractor performing work at Lessee's or sublessee's request on
39 Leased Premises to carry and maintain the insurance required below:
40

41 17.5.1 Comprehensive general liability insurance in an amount not less than
42 \$1,000,000 with respect to personal injury or death, and for property damage.
43

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1 17.5.2 Worker's compensation or similar insurance in form and amounts required
2 by law.

3
4 17.6 All insurance which this Lease requires Lessee or sublessee to carry and maintain
5 or cause to be carried or maintained shall be in such form, for such periods of time, and with
6 such insurers as Government may reasonably require or approve. All policies or certificates
7 issued by the respective insurers for public liability and property insurance will be issued in
8 conjunction with the use of property described in this Lease and will name Government as an
9 additional insured; provide that any losses shall be payable notwithstanding any act or failure to
10 act or negligence of Lessee or Government or any other person; provide that no cancellation,
11 reduction in amount or material change in coverage thereof shall be effective until at least thirty
12 (30) calendar days after receipt by Government of written notice thereof; provide that the insurer
13 shall have no right of subrogation against Government; and be reasonably satisfactory to
14 Government in all other respects. In no circumstances will Lessee be entitled to assign to any
15 third party, rights of action, which Lessee may have against Government.

16
17 17.7 Lessee and sublessees shall deliver or cause to be delivered promptly to
18 Government a certificate of insurance evidencing the insurance required by this Lease and shall
19 also deliver prior to expiration of any such policy, a certificate of insurance evidencing each
20 renewal policy covering the same risks.

21 22 18. **LABOR PROVISION:**

23
24 During the term of this Lease, Lessee agrees as follows:

25
26 18.1 Lessee will not discriminate against any employee or applicant for employment
27 because of race, color, religion, sex or national origin. Lessee shall take affirmative action to
28 ensure that applicants are employed, and that employees are treated during employment, without
29 regard to their race, color, religion, sex or national origin. Such action shall include, but not be
30 limited to the following: employment, upgrading, demotion or transfer, recruitment or
31 recruitment advertising, layoff or termination, rate of pay or other forms of compensation and
32 selection for training, including apprenticeship. Lessee agrees to post in conspicuous places,
33 available to employees and applicants for employment, notices to be provided by Government
34 setting forth the provisions of this nondiscrimination clause.

35
36 18.1.1 Lessee shall, in all solicitations or advertisements for employees placed at
37 Leased Premises by or on behalf of Lessee, state that all qualified applicants will receive
38 consideration for employment without regard to race, color, religion, sex or national
39 origin.

40 18.1.2 Lessee shall send to each labor union or representative of workers with
41 which it has a collective bargaining agreement or other contract or understanding a notice
42 to be provided by Government, advising the labor union or worker's representative of

MCAS TUSTIN LEASE IN FURTHERANCE OF CONVEYANCE

1 Lessee's commitments under this equal opportunity clause and shall post copies of the
2 notice in conspicuous places available to employees and applicants for employment.
3

4 18.1.3 Lessee shall comply with all provisions of Executive Order 11246 of
5 September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of
6 the rules, regulations and relevant orders of the Secretary of Labor.
7

8 18.1.4 Lessee shall furnish all information and reports required by Executive
9 order 11246 of September 24, 1965, as amended by Executive Order 11375 of October
10 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor or
11 pursuant thereto, and will permit access to his books, records and accounts by
12 Government and the Secretary of Labor for purposes of investigating to ascertain
13 compliance with such rules, regulations and orders.
14

15 18.1.5 In the event of Lessee's noncompliance with the equal opportunity clause
16 of this Lease or with any of said rules, regulations or orders, this Lease may be canceled,
17 terminated or suspended in whole or in part and Lessee may be declared ineligible for
18 further Government contracts in accordance with procedures authorized in Executive
19 Order 11246 of September 24, 1965, as amended by Executive order 11375 of October
20 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in
21 Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of
22 October 13, 1967, or by rule, regulation or order of the Secretary of Labor, or otherwise
23 provided by law.
24

25 18.1.6 Lessee will include the above provisions in every sublease unless
26 exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to
27 Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive
28 Order 11375 of October 13, 1967, so that such provisions will be binding upon each
29 sublessee. Lessee will take such action with respect to any sublessee as Government may
30 direct as a means of enforcing such provisions including sanctions for noncompliance;
31 provided, however, that in the event Lessee becomes involved, or is threatened with
32 litigation with sublessee as a result of such direction by Government, Lessee may request
33 the United States to enter into such litigation to protect the interest of the United States.
34

35 18.2 This Lease, to the extent that it is a contract of a character specified in the
36 Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) and is not covered by the
37 Walsh-Healy Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and
38 exceptions of said Contract Work Hours and Safety Standards Act and to all other provisions and
39 exceptions of said law.
40

41 18.2.1 Lessee shall not require or permit any laborer or mechanic in any
42 workweek in which he is employed on any work under this Lease to work in excess of 40
43 hours in such work week on work subject to the provisions of the Contract Work Hours

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1 and Safety Standards Act unless such laborer or mechanic receives compensation at a rate
2 not less than one and one-half times his basic rate of pay for all such hours worked in
3 excess of 40 hours in such work week. The "basic rate of pay", as used in this clause,
4 shall be the amount paid per hour, exclusive of Lessee's contribution or cost for fringe
5 benefits and any cash payment made in lieu of providing fringe benefits or the basic
6 hourly rate contained in the wage determination, whichever is greater.
7

8 18.2.2 In the event of any violation of the provision of sub-Paragraph 18.2.1,
9 Lessee shall be liable to any affected employee for any amounts due, and to the United
10 States for liquidated damages. Such liquidated damages shall be computed with respect
11 to each individual laborer or mechanic employed in violation of the provisions of sub-
12 Paragraph 18.2.1 in the sum of ten \$10.00 for each calendar day on which such employee
13 was required or permitted to be employed on such work in excess of the standard work
14 week of 40 hours without payment of the overtime wages required by sub-Paragraph
15 18.2.1.
16

17 18.3 In connection with the performance of work required by this Lease, Lessee agrees
18 not to employ any person undergoing a sentence of imprisonment unless the utilization of
19 prisoners is in conformity with the provisions of Executive Order 11755.
20

21 19. SUBMISSION OF NOTICES:

22

23 No notice, order, direction, determination, requirement, consent or approval under this
24 Lease shall be of any effect unless in writing. All correspondence, notices and claims concerning
25 this Lease shall be directed to the addresses set out below or to such addresses as may from time
26 to time be given by the parties. Such correspondence, notices and claims may be delivered by
27 hand, express delivery, overnight courier or by prepaid registered or certified mail, return receipt
28 requested.
29

30 If to Government:

31
32 Real Estate Contracting Officer
33 Southwest Division, Naval Facilities Engineering Command
34 1220 Pacific Highway
35 San Diego, CA 92132-5190
36

37 If to Lessee:

38
39 City of Tustin
40 Attn: Christine Shingleton, Assistant City Manager
41 300 Centennial Way
42 Tustin, CA 92780
43

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With a Copy to:

George R. Schlossberg, Esq.
Kutak Rock, LLP
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

The individuals so designated above shall be the representatives of the parties and the points of contact during the period of this Lease, unless otherwise indicated by written notice of an individual party to the Lease to each party to the Lease.

20. **AUDIT:**

This Lease shall be subject to audit by any and all cognizant Government agencies. Lessee shall make available to such agencies for use in connection with such audits all records that it maintains with respect to this Lease and copies of all reports required to be filed hereunder. Government shall provide to Lessee reasonable documentation for all billings and assessments for costs incurred, and for any other Government demands for payment. In no event shall the provisions of this Paragraph be construed to authorize or require the disclosure of documents protected from disclosure by the attorney-client privilege, or any other document, the confidentiality of which is protected by state or federal law.

21. **AGREEMENT:**

This Lease shall not be modified unless in writing and signed by both parties. No oral statements or representation made by, for or on behalf of either party shall be a part of this Lease. Should a conflict arise between the provisions of this Lease and any exhibit hereto, or any other agreement between Government and Lessee, the provisions of this Lease shall take precedence. Government and Lessee agree to review the terms of this Lease should either party request an amendment to the Lease.

22. **FAILURE TO INSIST ON COMPLIANCE:**

The failure of Government to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Lease shall not be construed as a waiver or relinquishment of Government's right to the future performance of any such terms, covenants or conditions and Lessee's obligations in respect to such future performance shall continue in full force and effect.

23. **DISPUTES:**

23.1 This Lease is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (the Act).

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23.2 Except as provided in the Act, all disputes arising under or relating to this Lease shall be resolved under this clause.

23.3 "Claim", as used in this clause, means a written demand or written assertion by Lessee or Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a Lease clause that provides for the relief sought by the claimant. However, a written demand or written assertion by Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by sub-Paragraph 23.4. below. A voucher, invoice or other routine request for payment that is not in dispute when submitted, is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time. "Command" used in this clause means the Southwest Division, Naval Facilities Engineering Command.

23.4 A claim by Lessee shall be made in writing and submitted within six (6) years after accrual of the claim, to the Command, for a written decision. A claim by Government against Lessee shall be subject to a written decision by the Command.

23.4.1 Lessee shall provide the certification specified in sub-Paragraph 23.4.3 of this clause when submitting any claim:

23.4.1.1 exceeding \$100,000; or

23.4.1.2 regardless of the amount claimed, when using:

23.4.1.2.1 arbitration conducted pursuant to 5 U.S.C. 575-580; or

23.4.1.2.2 any other alternative means of dispute resolution (ADR) technique that the agency elects to use in accordance with the Administrative Dispute Resolution Act (ADRA).

23.4.2 The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

23.4.3 The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which Lessee believes Government is liable; and that I am duly authorized to certify the claim on behalf of Lessee."

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23.4.4 The certification may be executed by any person duly authorized to bind Lessee with respect to the claim.

23.5 For Lessee claims of \$100,000 or less, the Command, must, if requested in writing by Lessee, render a decision within 60 calendar days of the request. For Lessee-certified claims over \$100,000, the Command, must, within 60 calendar days, decide the claim or notify Lessee of the date by which the decision will be made.

23.6 The Command's decision shall be final unless Lessee appeals or files a suit as provided in the Act.

23.7 At the time a claim by the Lessee is submitted to Command or a claim by Government is presented to Lessee, the parties, by mutual consent, may agree to use ADR. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to employ in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in sub-Paragraph 23.4.3 of this clause, and executed in accordance with sub-Paragraph 23.4.4 of this clause.

23.8 Government shall pay interest on the amount found due and unpaid by Government from (1) the date the Command receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Command initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Command receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

23.9 Lessee shall proceed diligently with the performance of Lease, pending final resolution of any request for relief, claim, appeal or action arising under Lease, and comply with any decision of the Command.

24. COVENANT AGAINST CONTINGENT FEES:

Lessee warrants that no person or agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Lessee for the purpose of securing business. For breach or violation of this warranty, Government shall have the right to annul this Lease without liability or in its discretion, to require Lessee to pay, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

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25. LIENS:

Lessee shall promptly discharge or cause to be discharged any valid lien, right in rem, claim or demand of any kind, except one in favor of Government, which at any time may arise or exist with respect to the Leased Property or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by Lessee, or should Lessee or sublessee be declared bankrupt or make an assignment on behalf of creditors, or should the Leasehold estate be taken by execution, Government reserves the right to take immediate possession without any liability to Lessee or any sublessee. Lessee and any sublessee shall be responsible for any costs incurred by Government in securing clear title to its property.

26. TAXES:

Lessee shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments and similar charges which, at any time during the term of this Lease, may be imposed upon Lessee with respect to Leased Premises. Title 10 United States Code, Section 2667(e) contains the consent of Congress to the taxation of Lessee's interest in Leased Premises, whether or not Leased Premises are in an area of exclusive federal jurisdiction. Should Congress consent to taxation of Government's interest in the property, this Lease will be renegotiated.

27. EASEMENTS AND RIGHTS OF WAY:

27.1 This Lease is subject to all outstanding easements and rights of way recorded and of record with the Orange County Recorder for any type of facility over, across, in and upon Leased Premises or any portion thereof and to the right of Government to grant such additional easements and rights of way over, across, in or upon Leased Premises, subject to the terms and conditions of the Agreement with prior written consent of Lessee, and as the Government shall determine to be in the public interest; provided that any such additional easement or right of way shall be conditioned on the assumption by the grantee thereof of liability to Lessee for such damages as Lessee shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. Such easements and rights of way shall include but not be limited to those for water, gas, electricity, telephone, sewer, pipelines, conduits and for any type of facility, including but not limited to those for communications, heating, cooling and power. There is hereby reserved to the holders of such easements and rights-of-way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over Leased Premises as shall be necessary for the performance of their duties with regard to such facilities. Lessee hereby consents to the granting of such easement(s) by the Government to the County of Orange ("the County") concurrently with the execution of a lease between the Government and the County for real property on the former MCAS Tustin which is adjacent to or bordered by the Leased Premises, under such terms

MCAS TUSTIN LEASE IN FURTHERANCE OF CONVEYANCE

and conditions as are set forth in this sub-Paragraph 27.1 and subject to the County's acceptance of such terms and conditions.

27.2 The Lessee shall not interfere with or otherwise disturb Government owned roads, structures, facilities, pipe-lines or conduits located on the Leased Premises and necessary for or related to ongoing Government remediation activities without the prior written consent of the Government. To the extent relocation of such items is required by Lessee, the Lessee may relocate such items at its own cost and expense in a manner satisfactory to the Government.

28. ADMINISTRATION:

Except as otherwise provided for under this Lease, Government shall, under the direction of the Naval Facilities Engineering Command, Southwest Division, have complete charge of the administration of this Lease, and shall exercise full supervision and general direction thereof insofar as the interests of Government are affected.

29. SURRENDER:

Upon the expiration of this Lease, unless such expiration occurs by reason of conveyance, or its prior termination, Lessee shall quietly and peacefully remove itself and its property from Leased Premises and surrender the possession thereof to Government. Government may, in its discretion, declare any property that has not been removed from Leased Premises upon expiration or termination provided for above, as abandoned property upon an additional 30 calendar days notice.

30. PAYMENT:

All payments to Government required under this Lease shall be made by check payable to the Treasurer of the United States and delivered to Commander, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132-5179.

31. INTEREST:

32.1 Notwithstanding any other provision of this Lease, unless paid within thirty (30) calendar days, all amounts that become payable by Lessee to Government under this Lease (net any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds rate published by the Secretary of Treasury pursuant to 31 U.S.C. 3717 (Debt Collection Act of 1982).

32.1.1 Amounts shall be due upon the earliest of:

32.1.1.1 the date fixed pursuant to this Lease,

MCAS TUSTIN LEASE IN FURTHERANCE OF CONVEYANCE

32.1.1.2 the date of the first written demand for payment, consistent with this Lease and the requirement that Government provide reasonable documentation for all billings and assessments and other Government demands for payment, including demand consequent upon default termination,

32.1.1.3 the date of transmittal by Government to Lessee of a proposed supplemental agreement to confirm completed negotiations fixing the amount,

32.1.1.4 if this Lease provides for revision of prices, the date of written notice to Lessee stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by Lease supplement.

32. AVAILABILITY OF FUNDS:

Government's obligations under this Lease are subject to the availability of funds appropriated for such purposes. Nothing in this Lease shall be interpreted to require obligations or payments by Government which is in violation of the Anti-Deficiency Act (31 U.S.C 1341).

33. APPLICABLE RULES AND REGULATIONS:

Lessee shall comply with all federal, state and local laws, regulations and standards that are applicable or may become applicable to Lessee's or any sublessee activities on Leased Premises. These include, but are not limited to, laws and regulations on the environment, construction of facilities, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. Lessee and any sublessee are responsible for obtaining and paying for permits required for its operations under the Lease.

34. QUIET POSSESSION:

Government covenants and agrees that Lessee, upon providing the services described in sub-Paragraph 3.1 hereof and all other charges hereunder provided for and observing and keeping all covenants, agreements, and conditions of this Lease on its part to be observed and kept, shall quietly have and enjoy Leased Premises during the term of this Lease without hindrance or molestation by anyone claiming by or through Government, subject, however, to the exceptions, reservations and conditions of this Lease.

35. GOVERNMENT APPROVAL:

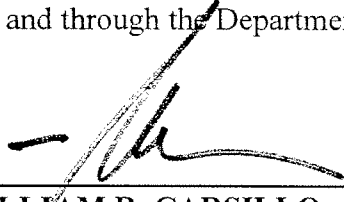
Whenever Government approval or consent is required by this Lease, such approval or consent shall not be unreasonably withheld or delayed.

[Signature Page Follows]

MCAS TUSTIN LEASE IN FURTHERANCE OF CONVEYANCE

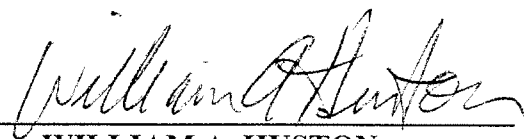
IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the date first above written.

THE UNITED STATES OF AMERICA,
Acting by and through the Department of the Navy

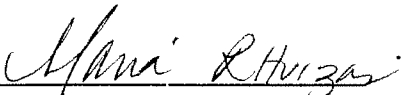
By: 
WILLIAM R. CARSILLO
Real Estate Contracting Officer
Base Realignment & Closure Office

Dated: 5/20/04

CITY OF TUSTIN

By: 
WILLIAM A. HUSTON
City Manager

Attest:

By: 
for Pamela Stoker
City Clerk

Approved as to form:

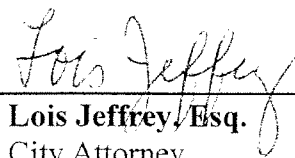
By: 
Lois Jeffrey, Esq.
City Attorney

EXHIBIT A

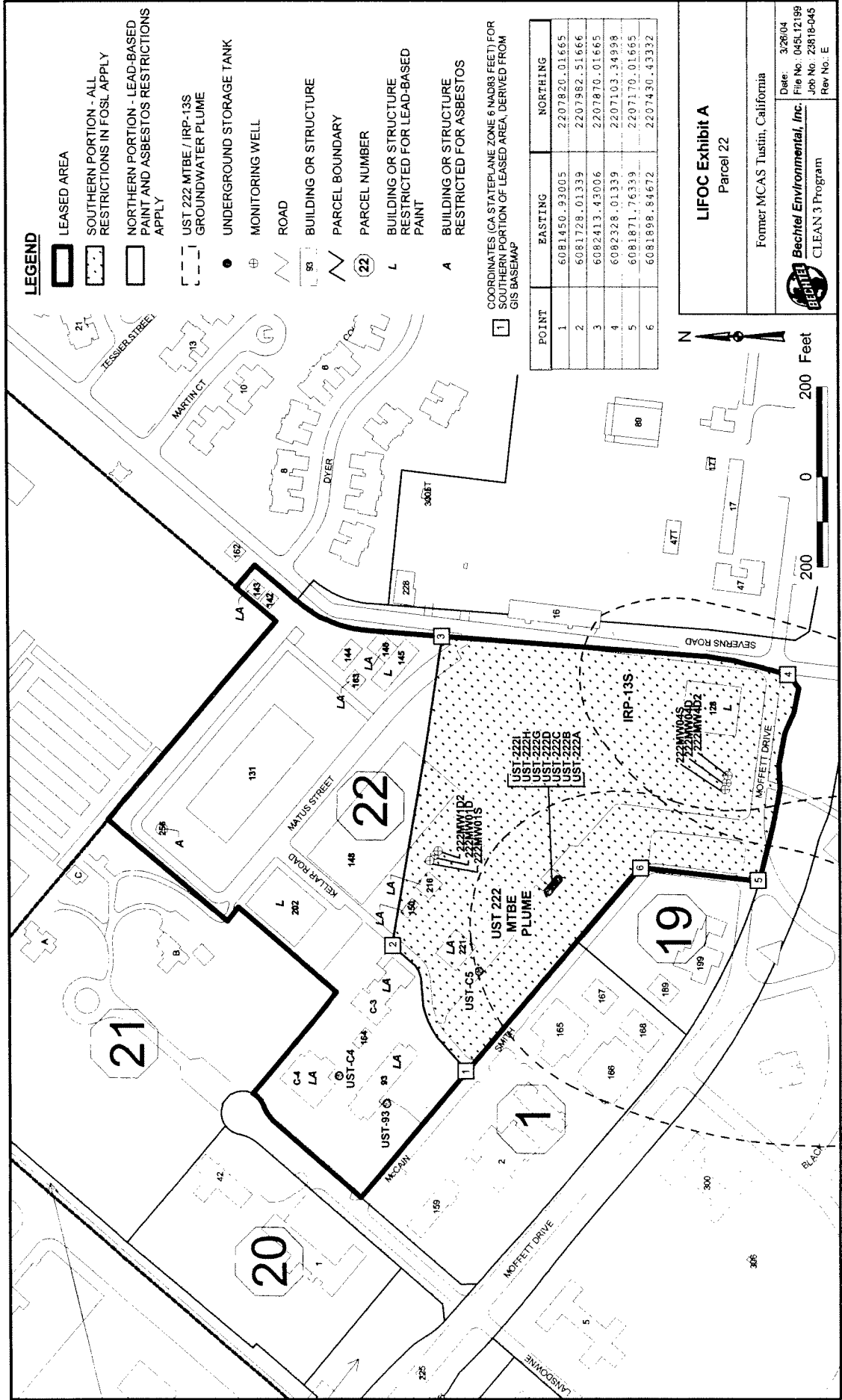


EXHIBIT B

TO BE ATTACHED BY REFERENCE (DOCUMENT AVAILABLE)

EXHIBIT C

>

EXHIBIT D

LEASE RESTRICTION REVISION FORM

Lease Restriction Revision (Navy Endorsement/Regulatory Review) Form

Upon completion, this form shall be attached to the original Finding of Suitability to Lease (FOSL) under revision.

SUBJECT: Parcel Identity _____ FOSL for Carve Out Areas

Revision #: _____ Revision Date: _____

NAVY ENDORSEMENT:

Table 9: "Notifications and Restrictions Summary" of the MCAS Tustin FOSL for above subject Parcel Identity is hereby revised as follows:

<u>Check Box</u>	TYPE OF REVISION	<u>Area(s) and/or Building(s)/Structures</u>	<u>Lease Restriction</u> (Refer to Table 9 of the FOSL)
	REMOVE		
	ADD Text enclosed Yes ☐ No ☐		
	MODIFY		

As a result of this revision, the following area(s) and/or facility(ies) is (are) **suitable for occupancy/access**:

Area(s) and/or facility(ies) which is (are) **not suitable for occupancy/access** based on addition/modification of the restriction(s) is (are) as follow(s): _____

The following enclosure(s) provide(s) the environmental documentation for each of the lease restriction/condition revisions identified above: _____

BRAC ENVIRONMENTAL COORDINATOR

DATE

EPA CONSULTATIONS/REVIEW:

☐ The environmental documentation for the revision to the lease restriction/conditions as identified in the above Navy Endorsement has been reviewed by this office. Based upon the information provided, this office is satisfied that the assessment is complete and has no comments regarding the Navy endorsement.

☐ This office does not concur with the Navy endorsement. Review comments and the rationale for the lack of concurrence are provided by Attachment (1)

ENVIRONMENTAL PROTECTION AGENCY

DATE

DTSC CONSULTATIONS/REVIEW:

☐ The environmental documentation for the revision to the lease restriction/conditions as identified in the above Navy Endorsement has been reviewed by this office. Based upon the information provided, this office is satisfied that the assessment is complete and has no comments regarding the Navy endorsement.

☐ This office does not concur with the Navy endorsement. Review comments and the rationale for the lack of concurrence are provided by Attachment (1)

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

DATE

MCAS TUSTIN LEASE IN FURTHERANCE OF CONVEYANCE

Exhibit D

WORK EXEMPT FROM GOVERNMENT CONSENT

IN THE RESTRICTED AREA (SOUTHERN PORTION)

(Note: All work must be in accordance with Paragraph 13 of the LIFOC. In the event of any conflict between this Exhibit "D" and Paragraph 13 of the LIFOC, the language of Paragraph 13 shall take precedence.)

1. Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety and City of Tustin Building Code requirements in accordance with sub-Paragraph 12 of this lease.
2. Addition of improvements to existing structures to comply with the Americans with Disabilities Act.
3. Ongoing maintenance of landscaping, native vegetation and irrigation systems to include planting and irrigation in areas previously disturbed by these activities and removal of vegetation and dead or unsalvageable trees or other vegetation.
4. In-kind replacement of buildings or site features.
5. Replacement or reconstruction of existing aboveground utility systems and/or facilities involving negligible or no expansion of capacity (where no utility pole installations are involved).
6. Placement of seasonal or temporary structures and use items such as mobile food units, construction or temporary office trailers, and/or portable restrooms.
7. Interior building improvements and alterations such as wall and ceiling finishes, painting, repair and/or replacement of flooring, lighting, plumbing, and HVAC fixtures or systems and relocation and/or removal of non-bearing partition walls.
8. Demolition of buildings/structures, but only insofar as such demolition does not require subsurface excavation and will not otherwise result in any disturbance of the surface.

EXHIBIT E

LEASE RESTRICTION REVISION FORM

Lease Restriction Revision (Navy Endorsement/Regulatory Review) Form

Upon completion, this form shall be attached to the original Finding of Suitability to Lease (FOSL) under revision.

SUBJECT: Parcel Identity 22 FOSL for Carve Out Areas 5, 6, 7, 8, 9, 10, and 11
dated 26 April 2002 Revision #: 1.0 Revision Date: November 4, 2002

NAVY ENDORSEMENT:

Table 9: "Notifications and Restrictions Summary" of the MCAS Tustin FOSL for above subject Parcel Identity is hereby revised as follows:

Check Box	TYPE OF REVISION	Area(s) and/or Building(s)/Structures	Lease Restriction (Refer to Table 9 of the FOSL)
X	REMOVE	Structures 131, 144, 148, and 208	4.7(e) and 4.9(a)(i)
	ADD Text enclosed Yes ☐ No ☐		
X	MODIFY	Structures 128, 145, and 202	Remove 4.7(e) only

As a result of this revision, the following area(s) and/or facility(ies) is (are) **suitable for occupancy/access**: Structures 131, 144, 148, and 208

Area(s) and/or facility(ies) which is (are) **not suitable for occupancy/access** based on addition/modification of the restriction(s) is (are) as follow(s): Structures 128, 145, and 202 - Restriction 4.9(a)(i) is still applicable for these structures.

The following enclosure(s) provide(s) the environmental documentation for each of the lease restriction/condition revisions identified above: Revised Evaluation of Environmental Condition of Structures - Parcel 22 - Marine Corps Station Tustin, California - dated 3 October 2002

[Signature]
BRAC ENVIRONMENTAL COORDINATOR

2/20/03
DATE

EPA CONSULTATIONS/REVIEW:

☒ The environmental documentation for the revision to the lease restriction/conditions as identified in the above Navy Endorsement has been reviewed by this office. Based upon the information provided, this office is satisfied that the assessment is complete and has no comments regarding the Navy endorsement.

☐ This office does not concur with the Navy endorsement. Review comments and the rationale for the lack of concurrence are provided by Attachment (1)

[Signature]
ENVIRONMENTAL PROTECTION AGENCY

11/22/02
DATE

DTSC CONSULTATIONS/REVIEW:

☒ The environmental documentation for the revision to the lease restriction/conditions as identified in the above Navy Endorsement has been reviewed by this office. Based upon the information provided, this office is satisfied that the assessment is complete and has no comments regarding the Navy endorsement.

☐ This office does not concur with the Navy endorsement. Review comments and the rationale for the lack of concurrence are provided by Attachment (1)

[Signature]
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

11/12/02
DATE

**REVISED
EVALUATION OF ENVIRONMENTAL CONDITION OF STRUCTURES
PARCEL 22**

Marine Corps Air Station Tustin, California

Dated October 3, 2002

STRUCTURES EVALUATED:

128 – Softball Field #1, 131 – Football Field, 144 – Volleyball Court, 145 – Basketball Court, 148 – Soccer Field, 202 – Tennis Court, and 208 – Softball Field #2.

1. Purpose

This Revised Lease Restriction Revision was prepared in accordance with Section 4.0 of the Finding of Suitability to Lease (FOSL) for Carve-Out Areas 5, 6, 7, 8, 9, 10, and 11 dated 26 April 2002. This FOSL includes seven (7) structures previously used for athletic activities. The purpose of this revision is to recommend the release of restrictions for lead-based paint (LBP) on these structures based on visual inspections and the intended use of the structures. Additionally, release of asbestos-containing material (ACM) restrictions is recommended based on visual inspection and the likelihood that ACM has never been used at these structures.

The structures are within Parcel 22 and are associated with athletic activities previously conducted at the base. None of the structures are enclosed and in most cases consist of dirt fields. Use of these structures is on a periodic basis since their main function is for use as athletic facilities. The structures were restricted in the FOSL based solely on the age of the structure (constructed/in use prior to 1978) for LBP and based on not having ACM surveys previously conducted for these structures. The structures were not inspected prior to finalizing the FOSL to determine the applicability of these restrictions to these structures.

2. Visual Inspection

Marc P. Smits, Navy Remedial Project Manager, conducted a site visit on Thursday, 25 July 2002 to determine the applicability of LBP and ACM restrictions in the FOSL for the 7 structures located within Parcel 22. Each structure was inspected to determine if there were painted surfaces and/or contained ACM. Each structure was photographed to document the current condition of the structure and indicate where painted surfaces or ACM had been identified, if any. The following is a brief description of each structure inspected:

Structure 128 – This structure is a softball field, used since 1944, consisting of a chain-linked fencing around the perimeter of a dirt field. There are two sets of metal bleachers associated with the field. Two dugouts constructed of brick are located on either side of the field. These two dugouts were painted. ACM was not identified which is consistent with this type of structure. See Figures 1 through 3.

Structure 131 – This structure is a football field, used since 1959, consisting of a dirt field and two metal goalposts. In addition, there are two metal bleachers on either side of the field. No painted surfaces were identified. ACM was not identified which is consistent with this type of structure. See Figures 4 through 6.

Structure 144 – This structure was used as a volleyball court since 1960, which now consists of a dirt court with two poles. No painted surfaces were identified. ACM was not identified which is consistent with this type of structure. See Figure 7.

Structure 145 – This structure is a basketball court, used since 1961, consisting of an asphalt court and two basketball hoops. The court appears to have been recently repaved. The court boundary and stripping are painted. ACM was not identified which is consistent with this type of structure. See Figures 8 and 9.

Structure 148 – This area was used as a soccer field since 1961, which now consists of a dirt field. There are no support facilities (e.g., bleachers) in this area; therefore, no painted surfaces or ACM was identified. See Figure 10.

Structure 202 – This structure consists of tennis courts, constructed in 1971, surrounded by a chain-link fence. The surface of the court is painted. The area outside of the court consists of asphalt roads on two sides and dirt areas on the other two sides. ACM was not identified which is consistent with this type of structure. See Figures 11 and 12.

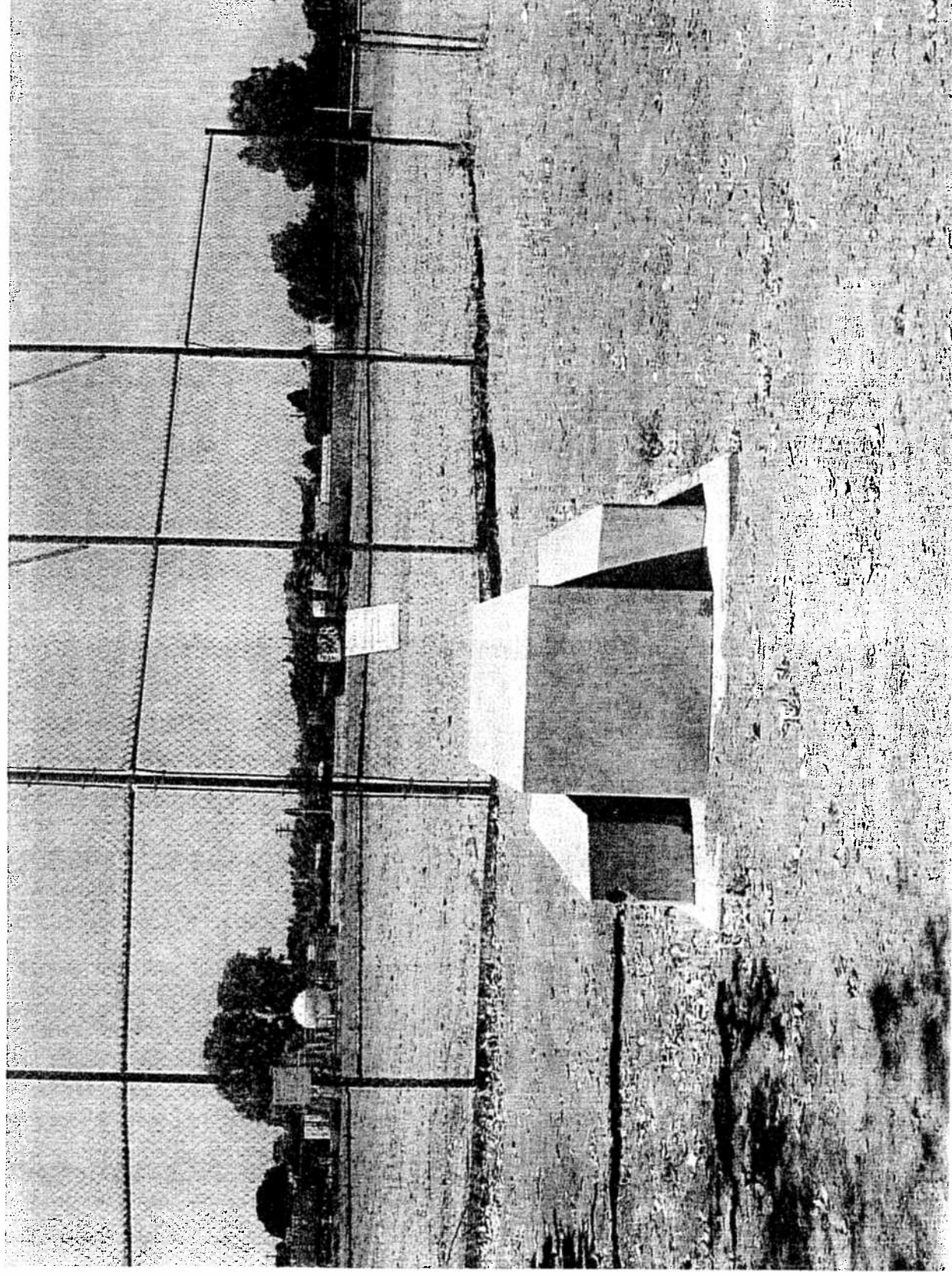
Structure 208 – This structure is a softball field, used since 1974, consisting of the chain-linked fence surrounding the dirt field. There is one metal bleacher associated with the field. No painted surfaces or ACM was identified. See Figures 13 through 15.

3. Current Restrictions

The FOSL pertaining to all these structures contains the following restrictions based on the age of construction/use and since no ACM survey had previously been conducted:

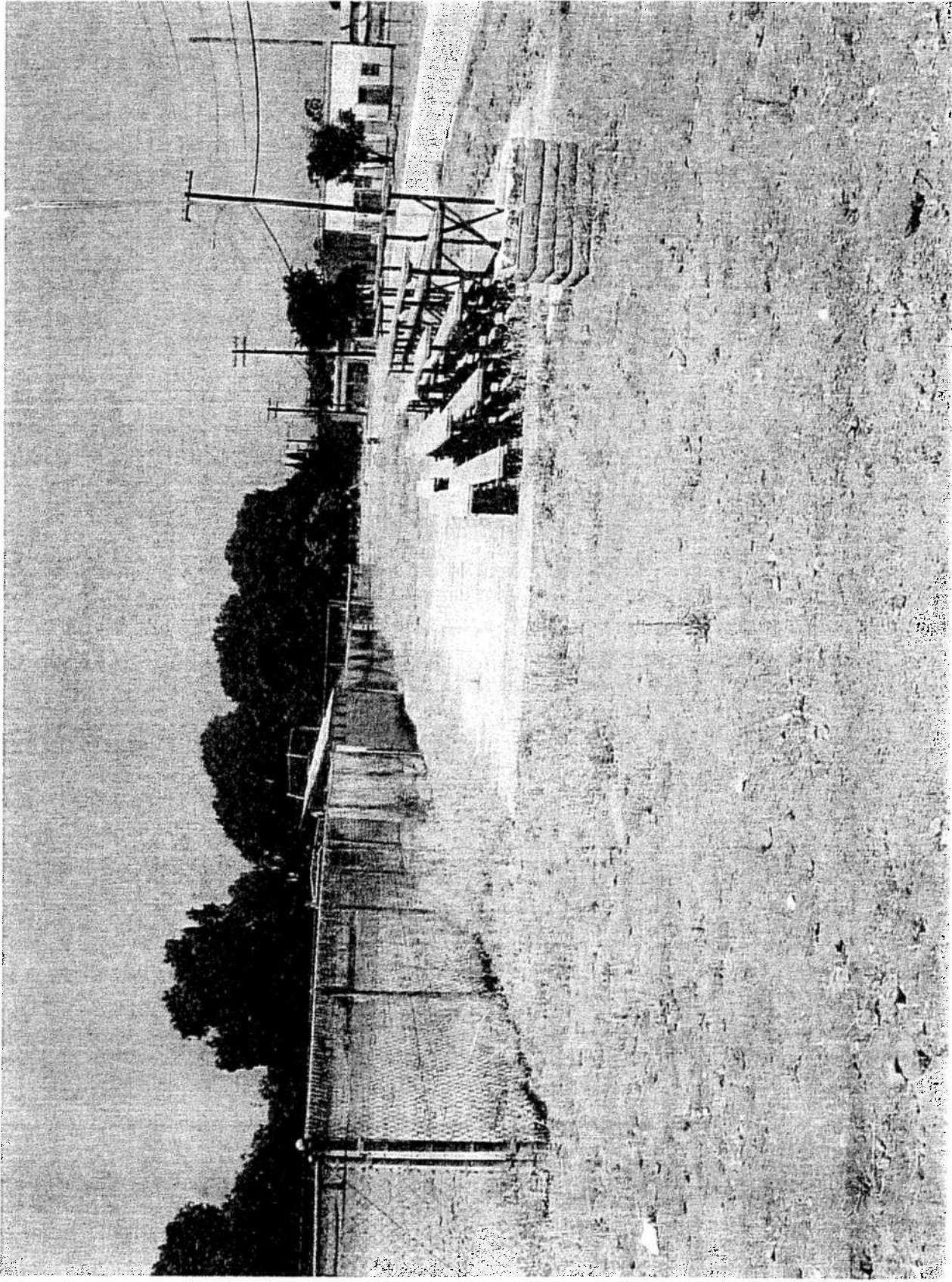
- Section 4.9 of the FOSL - Buildings/structures may be used for residential use or child-occupied facilities only after the lessee conducts the necessary LBP surveys and abatement in accordance with all local, state, and federal requirements. Residential or child-occupied use of these buildings/structures will be subject to approval of DON and the BCT.
- Section 4.7 of the FOSL - The lessee shall be responsible for the management of ACM, including surveys, removal and/or management of ACM prior to or during renovation in accordance with applicable regulatory requirements.

FIGURE 1



Structure 128 – Softball Field Chain-Linked Fence (Facing Northwest)

FIGURE 2



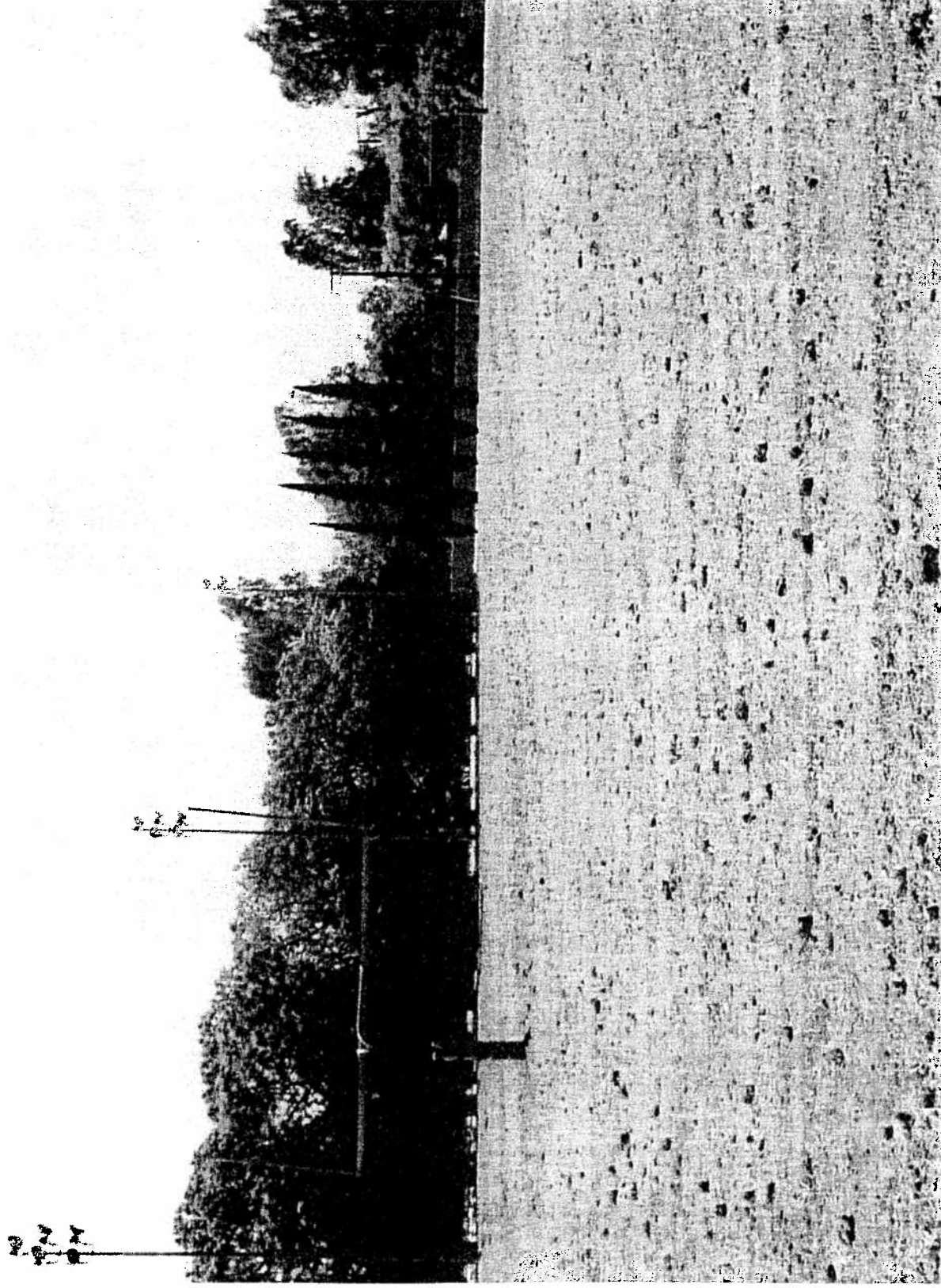
Structure 128 – Softball Field Metal Benches (Facing North)

FIGURE 3



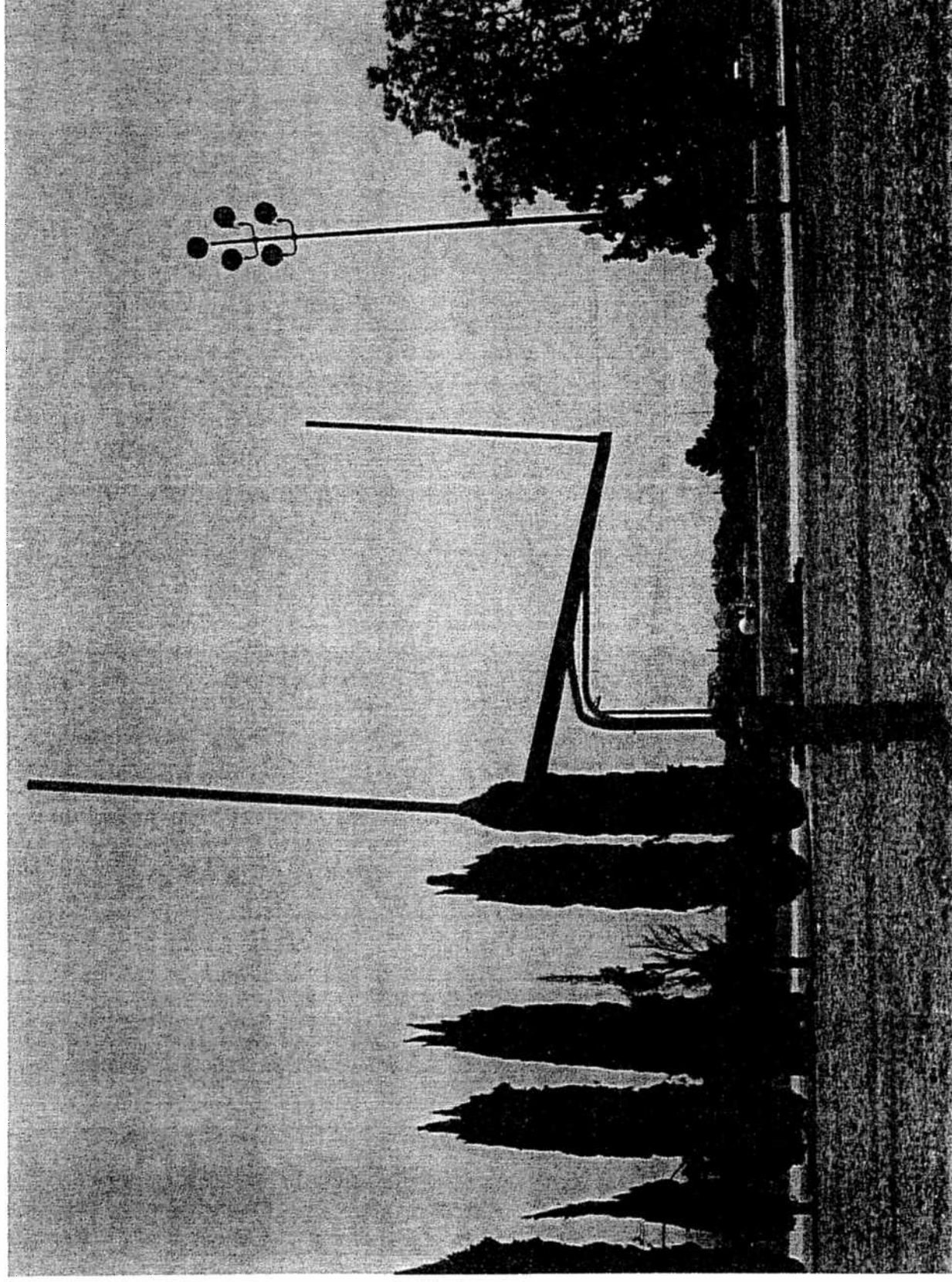
Structure 128 – Softball Field Dugout (Facing Southwest)

FIGURE 4



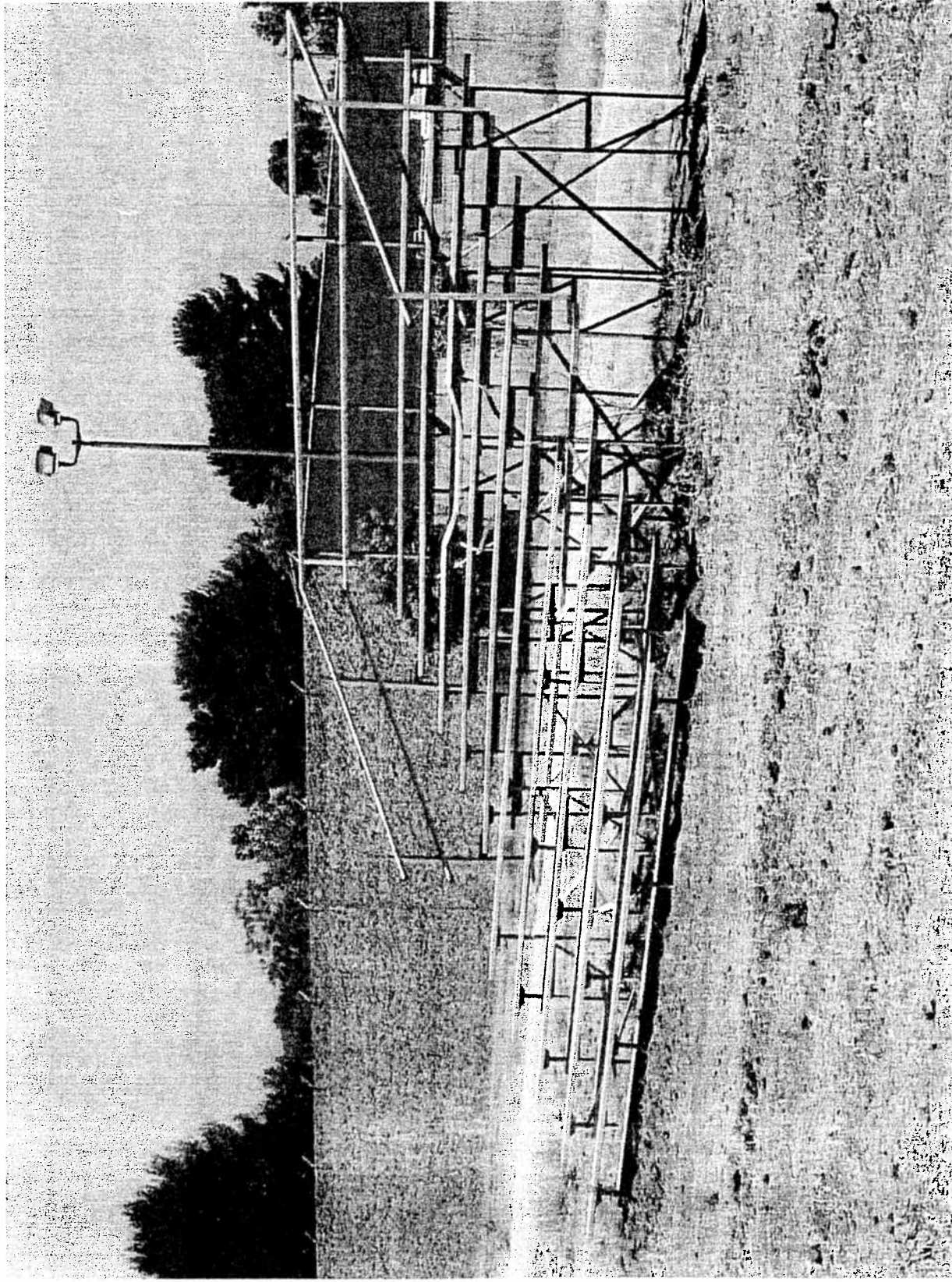
Structure 131 – Football Field w/ Goal Post (Facing West)

FIGURE 5



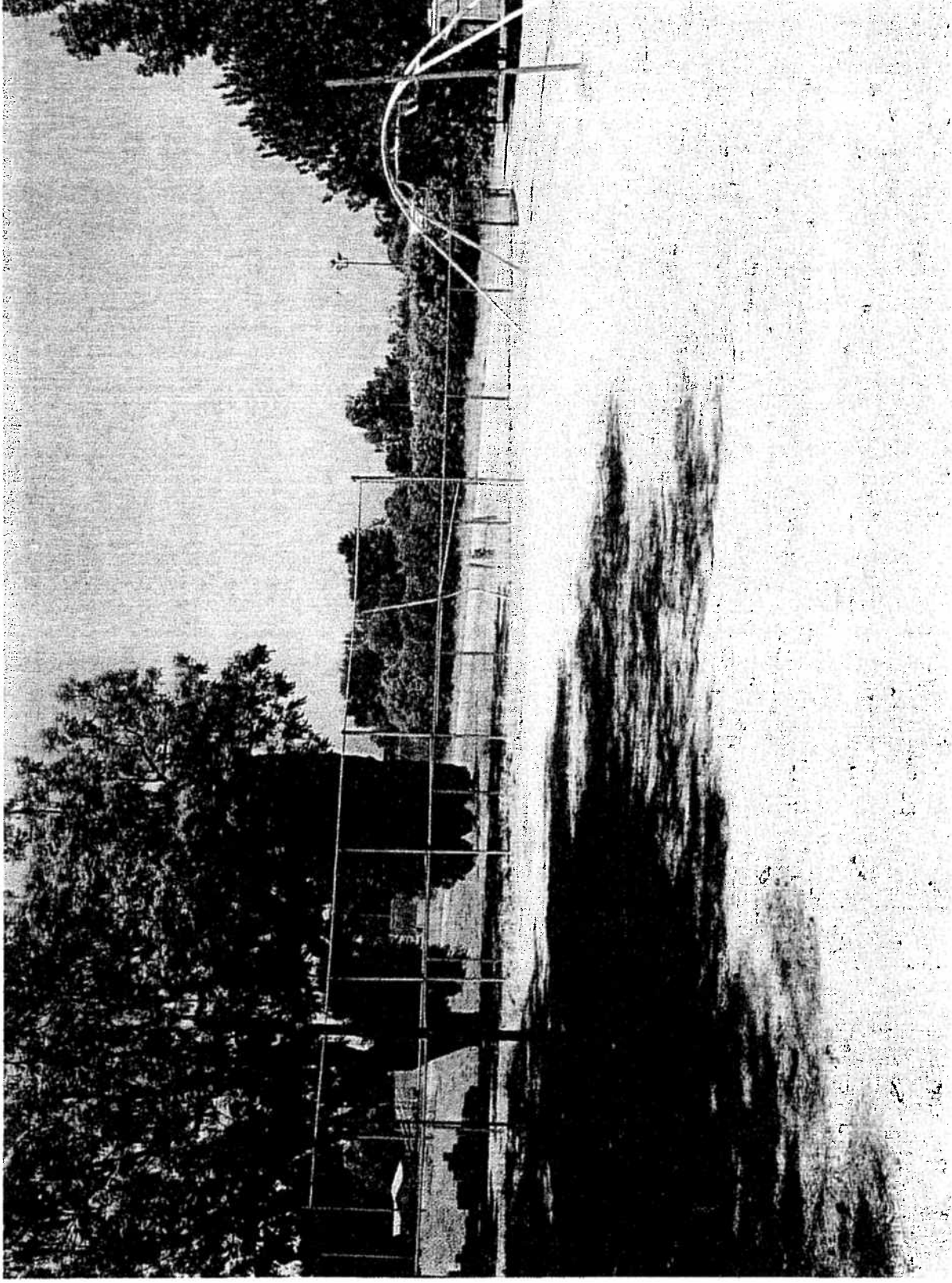
Structure 131 – Football Field Goal Post (Facing Southwest)

FIGURE 6



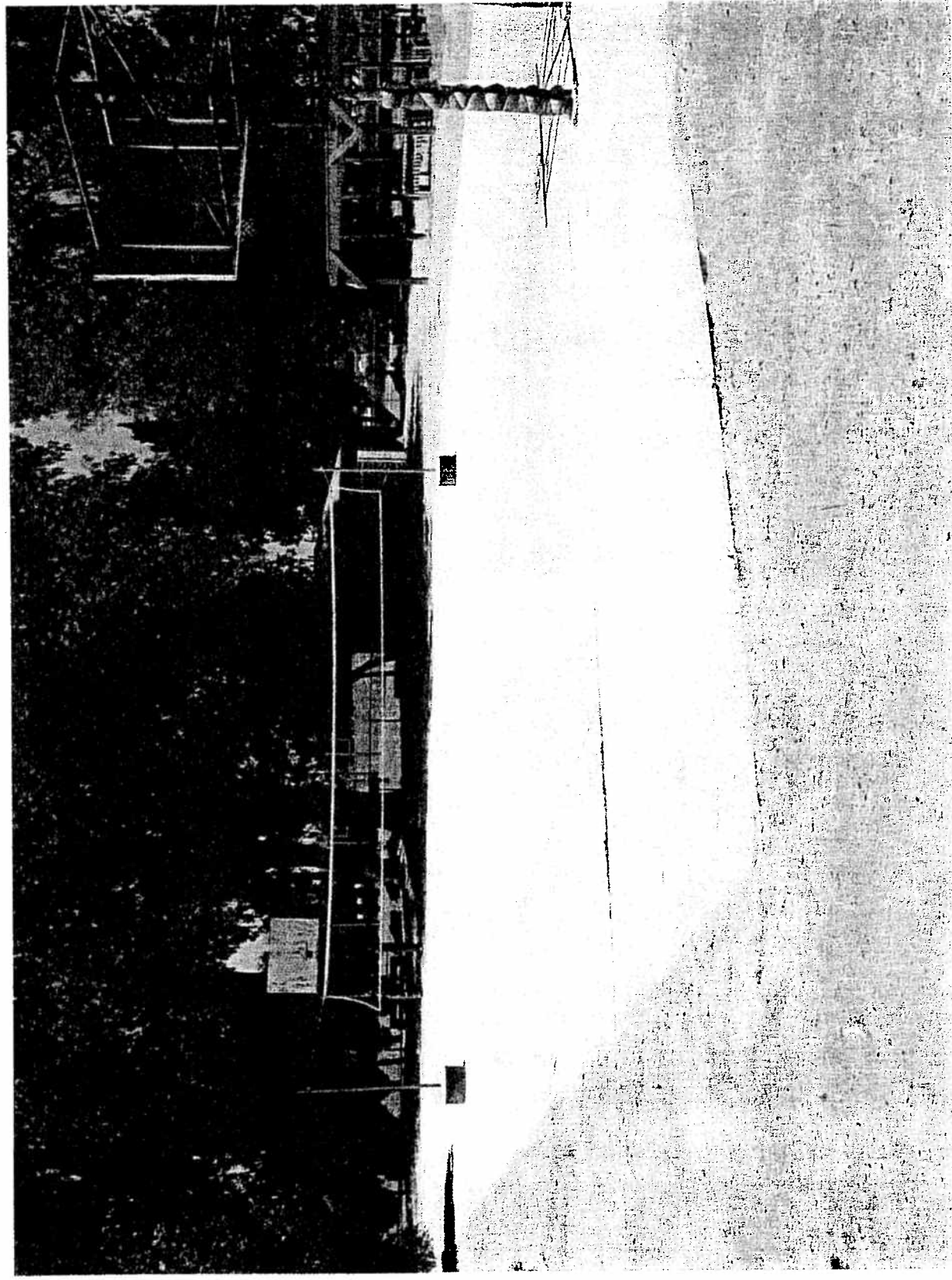
Structure 131 – Football Field Metal Benches (Facing North)

FIGURE 7



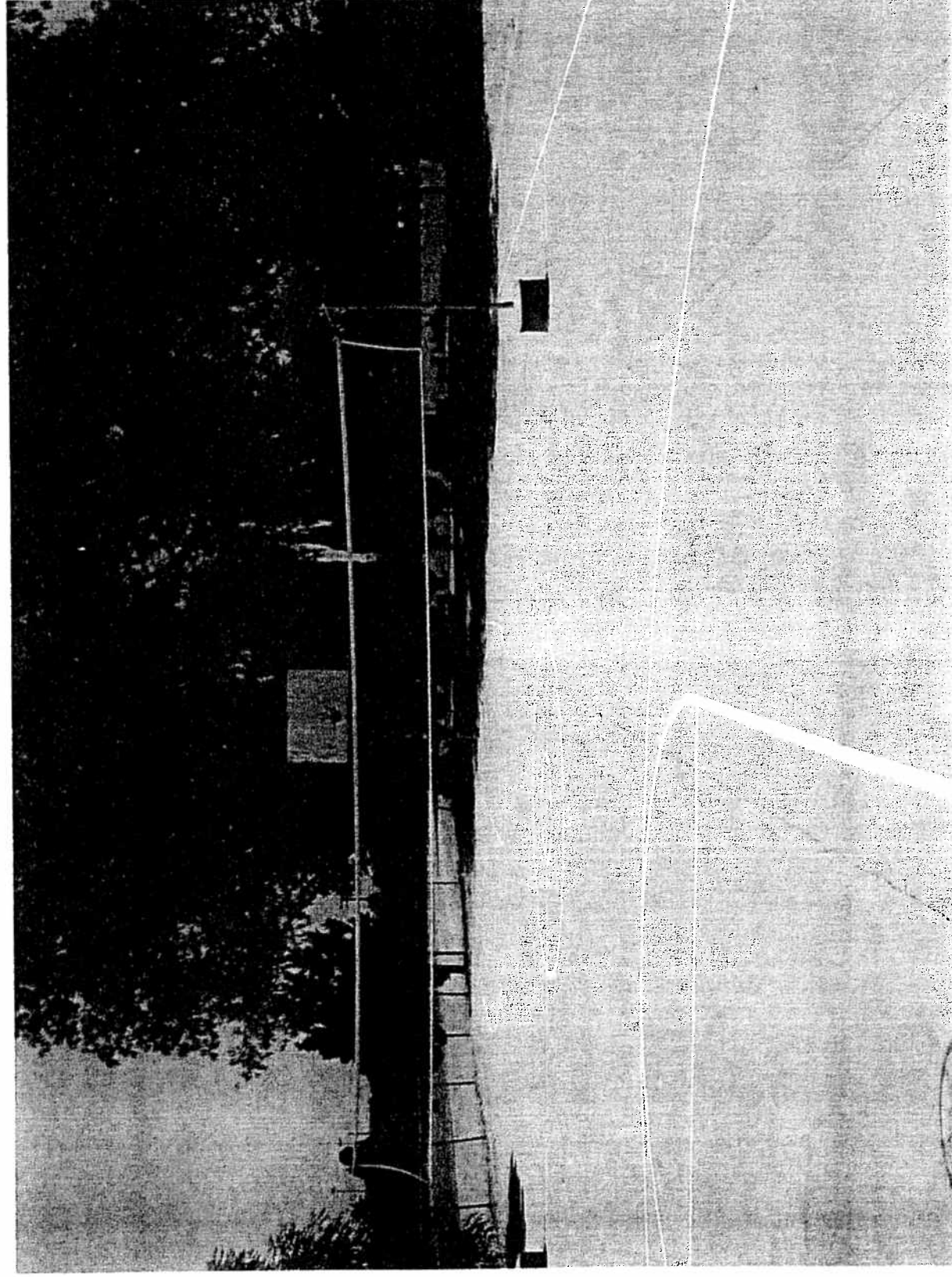
Structure 144 – Volleyball Court – Two Poles (Facing Northwest)

FIGURE 8



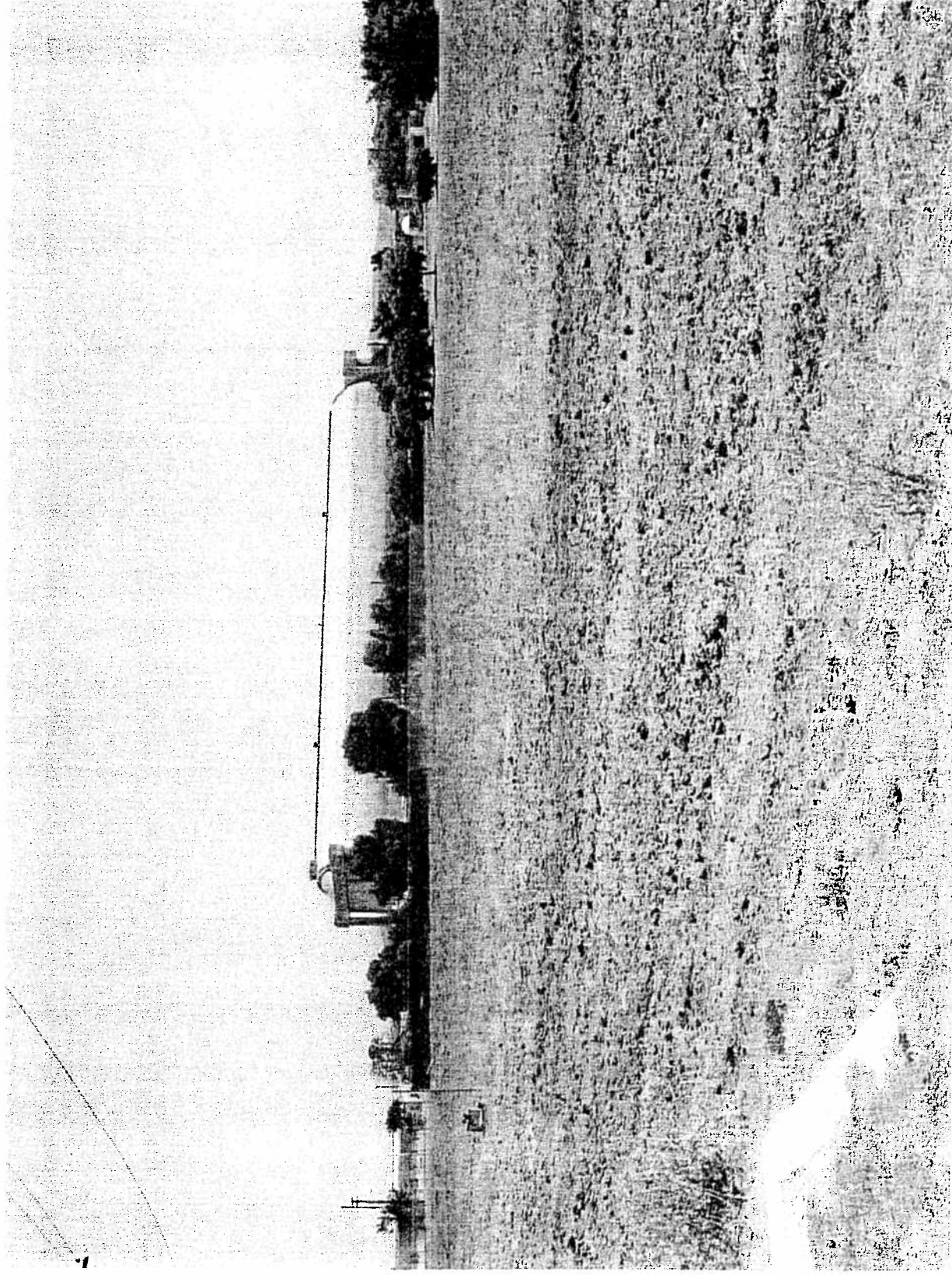
Structure 145 – Basketball Court w/ Limited Paint (Facing Northwest)

FIGURE 9



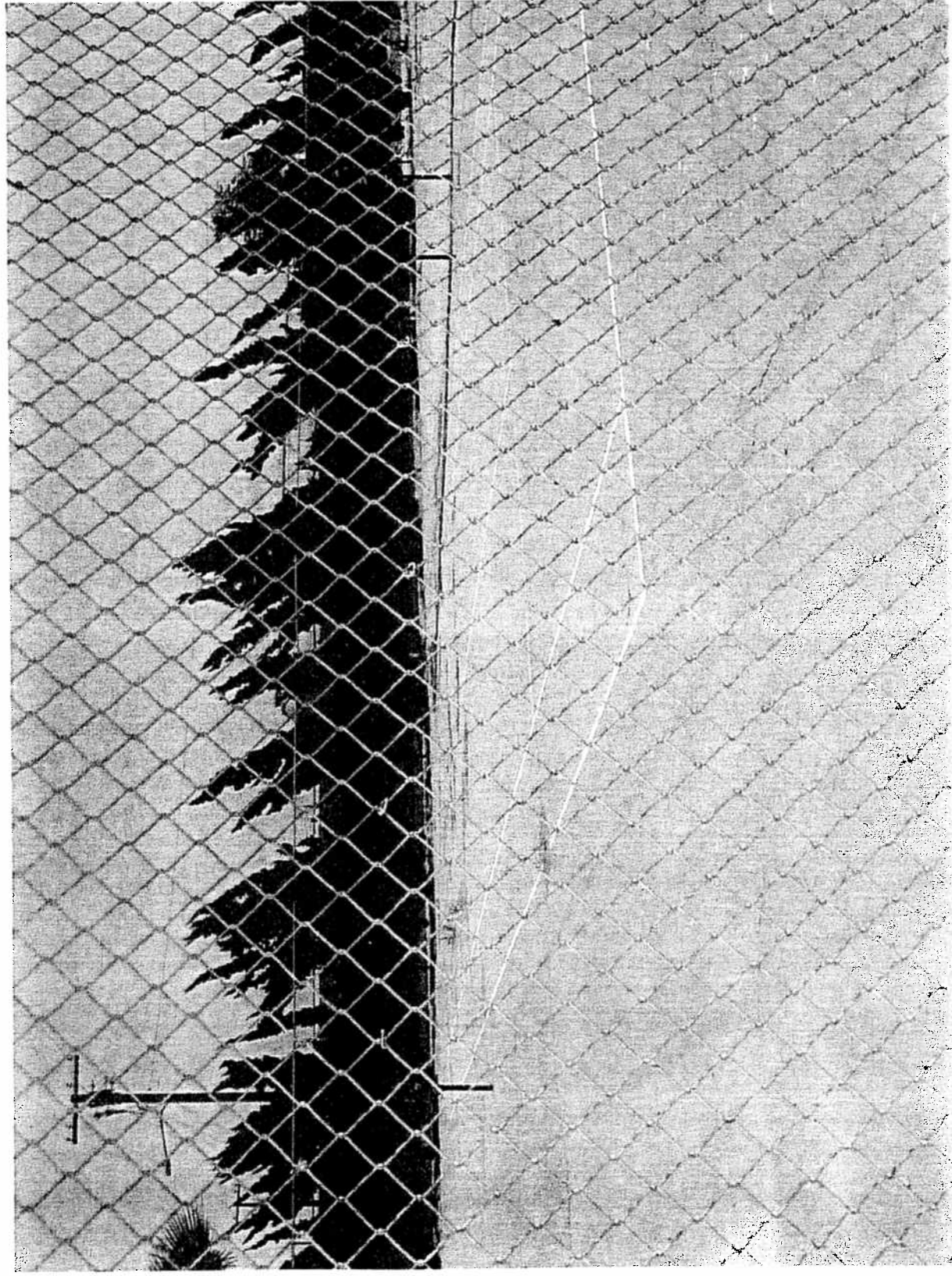
Structure 145 – Basketball Court Hoop (Facing West)

FIGURE 10



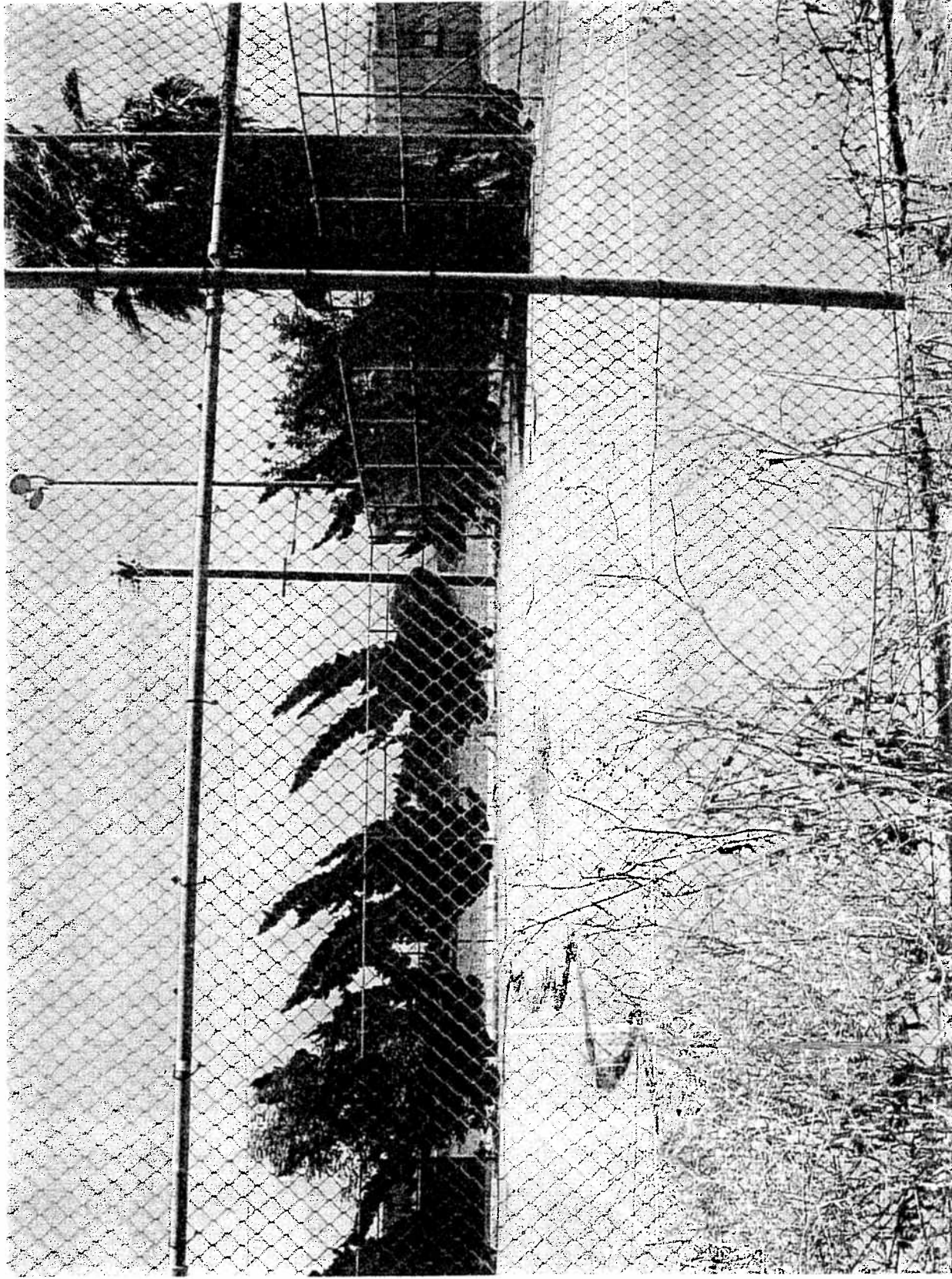
Structure 148 – Soccer Field – Previous Use (Facing Southeast)

FIGURE 11



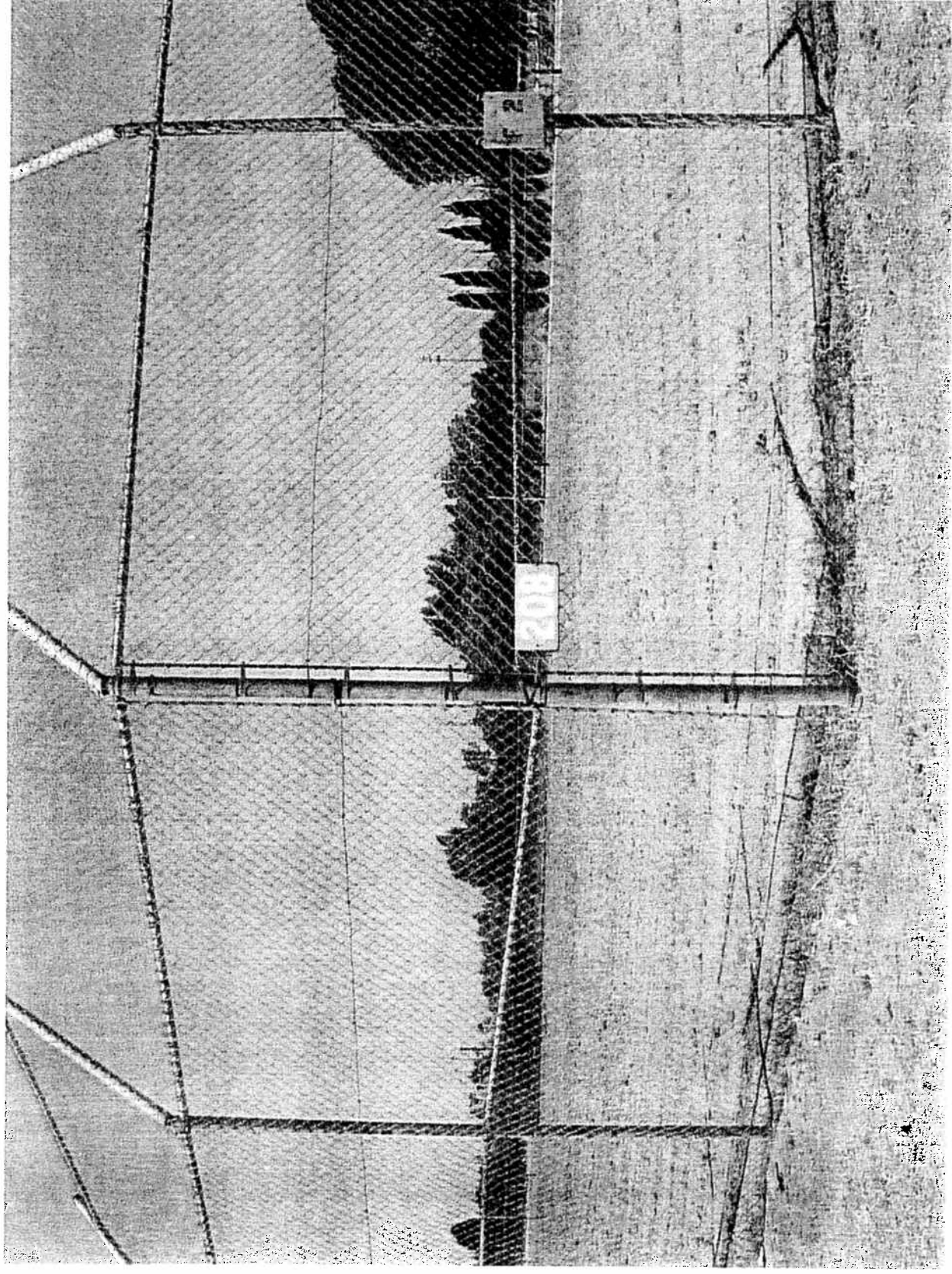
Structure 202 – Tennis Courts (Facing South East)

FIGURE 12



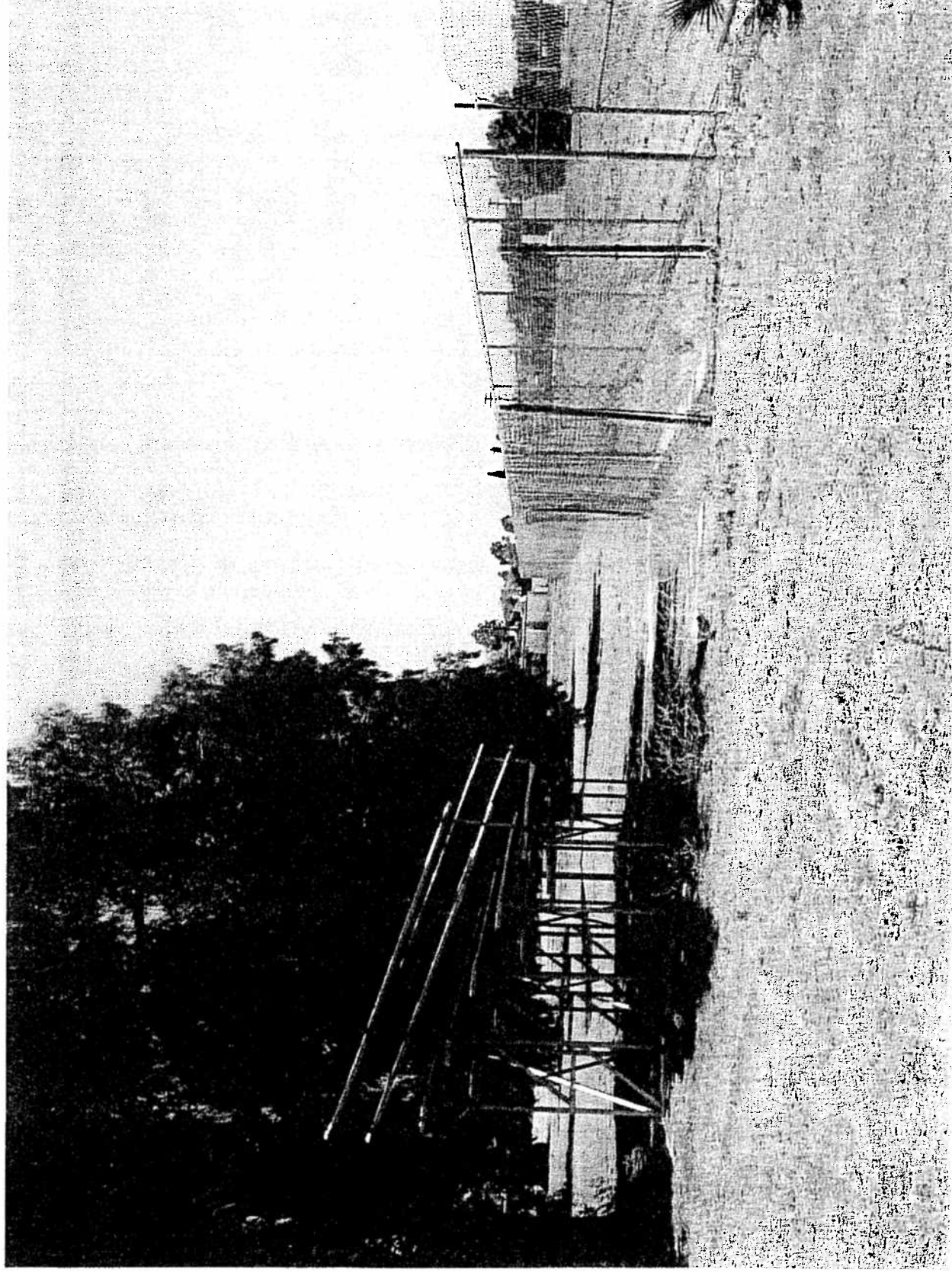
Structure 202 – Tennis Courts (Facing East)

FIGURE 13



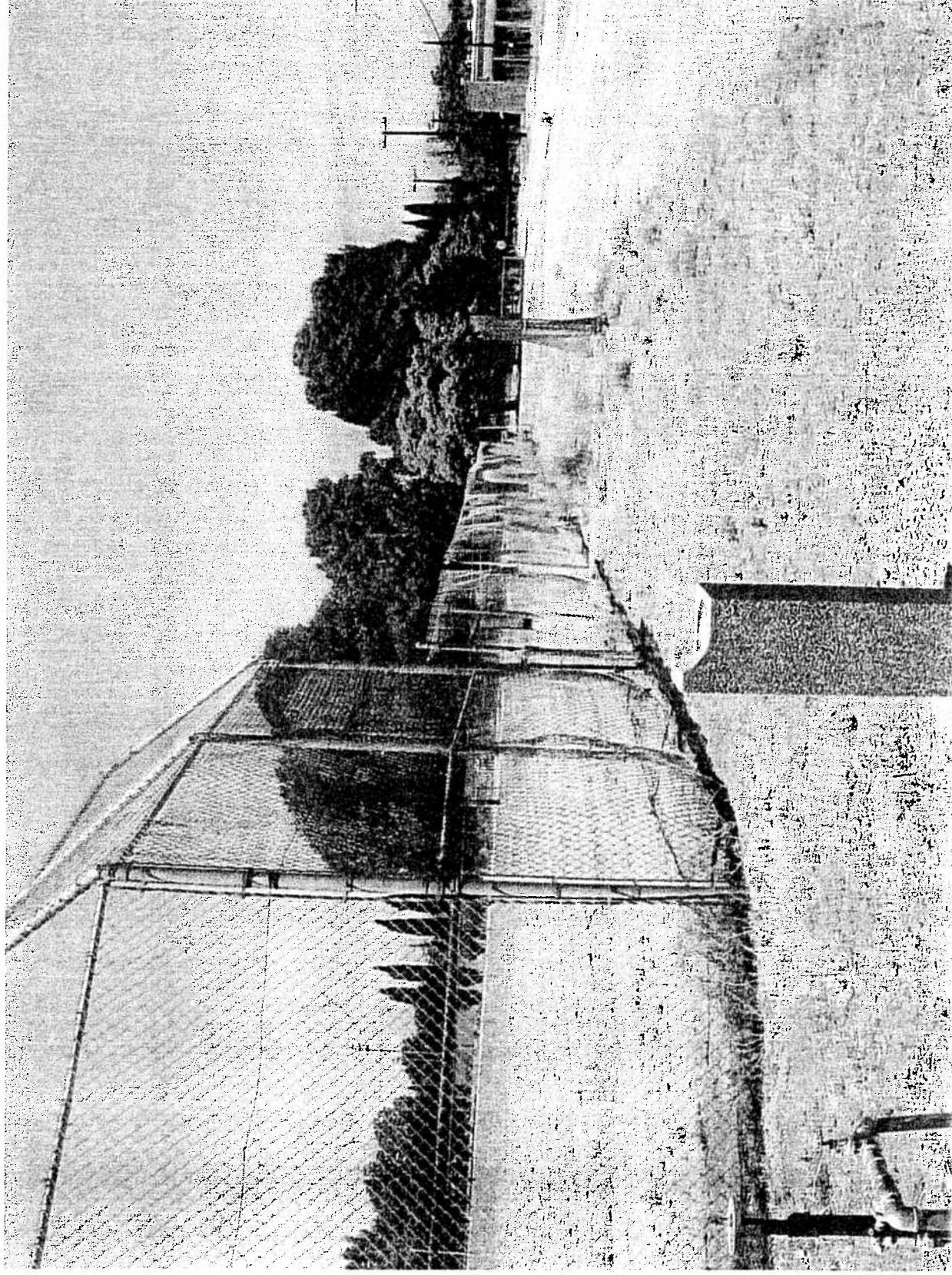
Structure 208 – Softball Field Chain-Linked Fence (Facing Northwest)

FIGURE 14



Structure 208 – Softball Field Metal Benches (Facing West)

FIGURE 15



Structure 208 – Softball Field Chain-Linked Fence (Facing North)

