



23rd NAVAJO NATION COUNCIL LEGISLATION SPONSORSHIP WITHDRAWAL

I, Walter Phelps, Primary Sponsor of proposed legislation hereby withdraw my sponsorship of the proposed legislation. The legislation tracking number is 0332-17.

If there are any co-sponsors, they may re-sponsor the same bill by beginning a new legislation.

SPONSOR SIGNATURE:

Walter Phelps

DATE:

9/27/18

LEGISLATIVE SUMMARY SHEET
Tracking No. 0332-17

DATE: August 25, 2017

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE NAVAJO NATION HOSPITALITY ENTERPRISE'S WAIVER OF SOVEREIGN IMMUNITY FOR THE PURPOSE OF OBTAINING A LOAN WITH THE NATIVE AMERICAN BANK, N.A., TO CONSTRUCT AN OFFICE BUILDING

PURPOSE: This resolution if approved, will approve the Navajo Nation Hospitality Enterprise's waiver of sovereign immunity for the purpose of obtaining a loan with Native American Bank, N.A., to construct an office building, pursuant to the Navajo Nation Hospitality Enterprise Plan of Operation, Article XVI, Immunity From Suit.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed legislation in detail.

5-DAY BILL HOLD PERIOD: SNOTAH
Website Posting Time/Date: 10:05pm 8/25/2017
Posting End Date: 8/30/2017
Eligible for Action: 8/31/2017

PROPOSED STANDING COMMITTEE RESOLUTION
23rd NAVAJO NATION COUNCIL -- Third Year, 2017

INTRODUCED BY



(Prime Sponsor)


040730

TRACKING NO. 0332-17

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE
NAVAJO NATION HOSPITALITY ENTERPRISE'S WAIVER OF SOVEREIGN
IMMUNITY FOR THE PURPOSE OF OBTAINING A LOAN WITH THE NATIVE
AMERICAN BANK, N.A., TO CONSTRUCT AN OFFICE BUILDING

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee is a standing committee of the Navajo Nation Council and exercises legislative oversight over the Navajo Nation Hospitality Enterprise (NNHE). 2 N.N.C. § 500(A); 5 N.N.C. § 1844.
- B. The Economic Development Committee shall mean the Resources and Development Committee. See CO-45-12.

SECTION TWO. FINDINGS

- A. The Enterprise and its Management Board and officers and employees while acting in their official capacities are immune from suit, and the assets and other property of the authority are exempt from any levy or execution, except as provided:
 - a. In the Navajo Sovereign Immunity Act (1 N.N.C. § 551 *et seq.*); or
 - b. When the Enterprise's Management Board has, in any particular matter by duly adopted resolution, waived the Enterprise's immunity from suit so as to

1 permit suit against the Enterprise in the courts of the Navajo Nation, the courts
2 of the United States or of any state as may be appropriate and agreed to by the
3 Management Board of the Enterprise. A decision by the Management Board
4 to agree to state and federal court jurisdiction with respect to any matters
5 arising from the development, construction, ownership, or management of
6 properties of the Enterprise that lie within Navajo Indian country shall be
7 valid only if such decision has been approved by a resolution of the Economic
8 Development Committee of the Navajo Nation Council, after any consultation
9 with the Attorney General of the Navajo Nation *as such Committee deems*
10 *advisable.* (Emphasis added).

11 Navajo Nation Hospitality Enterprise Plan of Operation, Article XVI, Immunity
12 From Suit. Plan of Operation is attached as **Exhibit A**.

13 B. The Management Board of the NNHE has duly adopted Resolution No. 2017-1,
14 *“Approving a Loan Agreement with Native American Bank, N.A., and Related*
15 *Agreements and Approving a Waiver of Sovereign Immunity.”* Resolution No. 2017-1
16 is attached as **Exhibit B**.

17 C. The Management Board believes it is in the NNHE’s best interest to construct an
18 office building to be located near the hotel commonly referred to as the Quality Inn in
19 Window Rock, Arizona. *See Exhibit B*.

20 D. The Loan Certification between the NNHE and Native American Bank, N.A., is
21 attached as **Exhibit C**; Assignment of Leases, Rents and Profits is attached as
22 **Exhibit D**; Closing Certificate is attached as **Exhibit E**; Assignment of Contractor’s
23 Agreements is attached as **Exhibit F**; Assignment of Architect’s Agreements and
24 Plans and Specifications is attached as **Exhibit G**; and Consent and Agreement of
25 Architect is attached as **Exhibit H**.

26
27 **SECTION THREE. APPROVING WAIVER OF NAVAJO NATION**
28 **SOVEREIGN IMMUNITY**

29 The Resources and Development Committee hereby approve the Navajo Nation
30 Hospitality Enterprise’s waiver of sovereign immunity for the purpose of obtaining a loan

1 with Native American Bank, N.A., to construct an office building, pursuant to the Navajo
2 Nation Hospitality Enterprise Plan of Operation, Article XVI, Immunity From Suit.
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NAVAJO NATION HOSPITALITY ENTERPRISE PLAN OF OPERATION

Article I. Establishment as Independent Enterprise

The "Navajo Nation Hospitality Enterprise" is continued and reauthorized as a Navajo Enterprise under the laws and authority of the Navajo Nation as an enterprise of the Navajo government, managed and operated in accordance with this Plan of Operation. The "Enterprise," for purposes of this Plan of Operation, includes all of its properties, operations, facilities, divisions and/or subsidiaries. Its duration shall be perpetual unless terminated in accordance with Navajo law.

Article II. Name, Place of Business, and Seal

A. The name of this Enterprise shall be the Navajo Nation Hospitality Enterprise. The principal place of business shall be known as the Navajo Nation Inn, located in Window Rock, Navajo Nation (Arizona).

B. An official seal for the Enterprise was adopted and approved by Resolution ACAP 84-87 (Apr. 15, 1987). The adoption of any new official seal shall require the approval of the Navajo Nation Hospitality Enterprise Management Board, subject to the further approval of the Economic Development Committee of the Navajo Nation Council.

Article III. Purposes

The Enterprise is organized for the purposes of establishing an independent, profitable, growing, financially self-sustaining, and successful Navajo business enterprise which will generate revenue for the Navajo Nation, provide Navajo employment and training opportunities, provide commercial office space, and provide professional motel and restaurant, retail, wholesale, and recreational (including gaming as authorized by the Navajo Nation in accordance with applicable Navajo and federal law) services and quality facilities to the public.

Article IV. Method of Operation

The operation of this Enterprise shall be patterned as closely as feasible to the best operational practices of existing Navajo enterprises, or to the practices of a business corporation similar in nature and magnitude with a management board comparable to a board of directors of such a corporation.

Article V. Management Board

A. The Management Board shall consist of five (5) members appointed for staggered three-year terms by the President of the Navajo Nation with the concurrence of the Economic Development Committee of the Navajo Nation Council.

B. Of the five (5) Board members appointed, one (1) member must be an experienced Navajo business person, one (1) member from the Government Services Committee of the Navajo Nation Council, one (1) from the Economic Development Committee of the Navajo Nation Council, and two (2) members must have recognized expertise and substantial management experience in the

motel-restaurant industry. No other employee of the federal or Navajo Nation government shall be a member of the Management Board. No Board member shall be an employee of the Enterprise.

C. Between thirty and sixty days prior to the expiration of the term of any Board member, the President of the Navajo Nation shall appoint a qualified person to fill the expected vacancy. Such appointment shall be subject to the approval of the Economic Development Committee of the Navajo Nation Council.

D. A Board member may resign, by submitting a written notice of resignation, and such resignation shall be accepted by the Board at the next Board meeting.

E. Any member of the Board may be removed for cause by a majority vote of the members of the Board taken at a duly called meeting or by the Economic Development Committee of the Navajo Nation Council at a duly called meeting of said Committee after the Committee has had the opportunity to fully review the matters constituting cause for removal and after allowing any Board member so affected to appear before the Committee and respond to allegations which constitute cause for removal. Cause for removal includes the following:

1. Such a member has failed to attend any four (4) meetings of the Board out of any eight (8) consecutive meetings unless such absences are excused by the Board; or

2. Such a member has been convicted of any crime reflecting upon such member's honesty or ability to fulfill the fiduciary obligations imposed by law upon such member; or

3. The Board has found, in a meeting wherein such a topic is scheduled for discussion, that such member has been adjudged in any action, suit, or other lawful proceeding to be liable for negligence or misconduct in the performance of management duties; or

4. Such member violates the disclosure requirements of Article VII(K)(1) or (2) of this Plan of Operation, or any provision of the Navajo Nation Ethics in Government Act.

5. Such member has knowingly or negligently permitted the Enterprise to be substantially mismanaged and unprofitable.

F. A vacancy shall exist from the date of any Board meeting at which a Board member is removed or whose resignation is accepted as provided hereinabove.

G. The Management Board shall immediately notify the President of the Navajo Nation of vacancies resulting from removal or resignation. The President of the Navajo Nation shall appoint a qualified person to fill any vacancy in the Management Board within sixty (60) days of the Management Board meeting where such vacancy occurs. The new Management Board appointment shall be subject to the approval of the Economic Development Committee of the Navajo Nation Council.

H. If the President of the Navajo Nation fails to nominate persons for service on the Management Board within the time limits set forth in subsections (C) and (G) of this section, the Economic Development Committee may, but shall not be required to, nominate and confirm appointments to the Management Board on its own initiative.

Article VI. Authority

A. Subject to applicable federal and Navajo Nation laws and regulations, the Management Board shall have the following authority and shall exercise the following powers and duties:

1. The Management Board shall have full authority and responsibility for the management and operation of the Enterprise.

2. The Management Board is authorized to direct the operation of the Enterprise to accomplish the purposes set forth in Article III hereof and to exercise the powers set forth below without previous authorization or subsequent approval, and all parties dealing with the Enterprise shall have the right to rely upon any action taken by the Management Board pursuant to such authorization.

a. The Management Board shall exercise full authority and responsibility for the custody, management and maintenance of all Enterprise facilities and property.

b. The Management Board shall also be responsible for the planning, construction, acquisition, and management of all new or additional Enterprise facilities or operations.

c. The Management Board shall function in much the same capacity as an elected Board of Directors of a chartered corporation and shall be responsible:

(1) For making financial decisions, subject to the limitations contained herein or which may be included in any advance of funds;

(2) For the establishment and maintenance of effective operating policies and procedures;

(3) For the selection of the Chief Operating Officer; and

(4) For guiding the Chief Operating Officer in the performance of his/her duties.

d. The Management Board shall exercise its authorized powers in the best interests of the Navajo Nation and within the limits of responsible business judgment, with the express limitation that it shall not incur obligations in excess of the ability of the Enterprise to make timely payment.

e. The Management Board shall have the authority to act on behalf of the Enterprise within the scope of its authorized purposes and subject to applicable laws and regulations.

f. The Management Board shall have the authority to elect officers, appoint agents, and select attorneys, auditors, accountants and other consultants as may be needed from time to time by the Enterprise and to define their duties and compensation. The Management Board, at the expense of the Enterprise, shall require bonding of the Chief Operating Officer and all other officers, agents or employees directly responsible for funds or property of the Enterprise.

g. Subject to the provisions of Article VI(A)(2)(d), (A)(2)(j), and (A)(2)(l), the Management Board shall have the authority to own, acquire, construct, utilize, improve, maintain, operate and manage in the ordinary course of business for the purposes set forth in Article III all real property of the Enterprise. Pursuant to such authority, the Management Board shall have the authority to execute any and all necessary documents, commercial office space leases, or other legal instruments for Enterprise land, buildings, and other real property, and may negotiate and enter into other leases, subleases or mortgages of Enterprise real property in accordance with and as may be required by the laws of the Navajo Nation and this Plan of Operation.

h. The Management Board shall have the authority to acquire, hold, own, manage, operate, pledge, exchange, deal in and dispose of all Enterprise personal property in the ordinary course of business for the purposes set forth in Article III.

i. The Management Board shall have the authority to acquire, hold, own, use, license, lease, and sell any interest in and to inventions, improvements, letters,

patents, licenses, formulas, privileges, processes, copyrights, trade names, trademarks and all applications therefor, provided that title of all such acquisitions shall be taken in the name of the Navajo Nation, and, provided further, that any conveyance of licenses, privileges, trade names, or trademarks shall not be valid unless approved by resolution of the Economic Development Committee of the Navajo Nation Council.

j. The Management Board shall have the authority to borrow funds and make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Enterprise; provided (1) that such guaranty is made pursuant to the purposes set forth in Article III; (2) that the Enterprise shall not incur obligations in excess of its ability to repay as required; (3) that liability for such obligations be limited to the available assets of the Enterprise; and (4) that property subject to restrictions on alienation or otherwise held in trust status may not be used as security of any sort without the consent of the Economic Development Committee of the Navajo Nation Council and such other approval as may be required by the laws of the Navajo Nation and other applicable law.

k. The Management Board shall have the authority to designate and approve all depositories used for the deposit of funds of the Enterprise.

l. The Management Board shall have the authority to enter into, make, perform, carry out, cancel, or rescind contracts for any lawful purposes set forth in Article III and subject to the express limitation that the Enterprise not incur obligations in excess of its ability to repay as required, and may delegate as much of this contractual authority as may be advisable and practical to the Chief Operating Officer of the Enterprise, or to the Chairman of the Management Board. Any contract hiring or retaining an attorney is subject to applicable federal and Navajo laws, rules and regulations.

m. The Management Board shall have the authority to recommend amendment or revision of this Plan of Operation to the Economic Development Committee of the Navajo Nation Council whenever deemed appropriate to improve the operation and management of the Enterprise.

n. The Management Board shall have the authority, on behalf of the Enterprise, to form, under the laws of the Navajo Nation or of any state or other appropriate jurisdiction, corporations, and to own shares of stock in such corporations, and to form partnerships and engage in activities as a limited or general partner, and to form joint ventures and engage in activities as a joint venturer, and to form other legal entities when the formation of such corporations, partnerships, joint ventures, or other legal entities are necessary, proper, advisable or convenient to effect any or all of the purposes for which the Enterprise is organized, and subject to the prior approval of the Economic Development Committee of the Navajo Nation Council.

o. The Management Board shall have and exercise all other powers necessary, proper, advisable or convenient to effect any or all of the purposes for which the Enterprise is organized, subject to applicable laws and regulations, and this Plan of Operation.

B. The powers enumerated herein shall not be construed as purposes by the Enterprise. The Enterprise shall have and exercise such powers solely in furtherance of, but not in addition to, the purposes set forth in Article III of this Plan of Operation.

C. The Enterprise shall indemnify any officer, Managing Agent, employee or member of the Management Board or former officer, Managing Agent, employee or member of the Management Board, or any person who may have served at its request as an officer, Managing Agent, employee, or member of the Management Board against reasonable expenses actually and necessarily incurred by such person in connection with the defense of any action, suit, or proceeding in which such person is made a party by reason of being, or having been, such officer, Managing Agent, employee, or member of the Management Board except in relation to matters as to which such person shall be adjudged in such action, suit or proceeding to be liable for gross negligence or wilful misconduct in the performance of duty, or except in relation to matters in which such person was acting beyond the scope of such person's employment or authority.

D. The Enterprise shall also reimburse any officer, Managing Agent, employee or member of the Management Board for reasonable costs of settlement of any such action, suit, or proceeding if it shall be found by a majority of the Management Board that it is in the best interest of the Enterprise and the Navajo Nation that such settlement be made and that such person was not guilty of gross negligence or wilful misconduct, and the Economic Development Committee of the Navajo Nation Council has concurred with the findings of the Management Board and further determined that such a settlement does not involve Navajo Nation real or personal property. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such person may be entitled.

E. Nothing in this section shall be construed as a waiver of the sovereign immunity of the Enterprise and/or the Navajo Nation.

Article VII. Operation.

A. The Management Board shall elect from its own membership a Chairman of the Board, a Vice-Chairman, and a Secretary-Treasurer.

B. The Management Board shall adopt such rules as it may deem necessary for the orderly conduct of its business and Board meetings. The Management Board may establish and disestablish committees of its members as it deems prudent from time to time, including an Audit Committee, which, if established, shall substantially follow any applicable Rules for Audit Committees of the American Institute of Certified Public Accountants, as those rules may be amended from time to time.

C. Management Board members shall be reimbursed for actual travel, lodging expenses, meals, and other costs and expenses incurred which are directly attributable to attendance at duly called Board meetings, or are otherwise incurred for the benefit of the Enterprise pursuant to the prior authorization, request, or direction of the Management Board or Chief Operating Officer. At its discretion, the Management Board may pay a flat stipend of no more than \$250 per Board meeting (not day) to each Board member in attendance, or in any other amount that the Navajo Nation may authorize generally pursuant to amendments to 5 N.N.C. § 1991 (1995) or otherwise. All Board expenses and stipends shall be paid from Enterprise funds budgeted for that purpose. Management Board members shall be entitled to reimbursement, as above, for attendance at duly called Board meetings, where due to absences of other Board members, a quorum is not present.

D. The Management Board shall meet quarterly upon proper written notice of the time, place and agenda. Additional meetings shall be allowed on an emergency or special meeting basis, where the Chairman of the Management Board makes a determination that circumstances exist

which constitute an emergency or which require a special meeting in addition to those generally authorized herein.

E. Subject to subsection (D) above, special meetings, strategic meetings, and working sessions may be called by the Chairman of the Board. Regular procedures shall apply, except not less than five (5) days' notice shall be given. Such meetings deemed by the Management Board Chairman to be urgent may be held in person or by telephone conference call with some or all members of the Board participating via telephonic connection.

F. The Management Board shall designate an annual meeting date which shall be recognized thereafter. The Management Board shall notify the Chairperson of the Economic Development Committee of the Navajo Nation Council of the date of such annual meeting at least thirty days prior to such meeting. Regular meeting procedures shall apply and the annual meeting shall be considered one of the Board's regular meetings.

G. Provisions for notice of meetings are as follows:

1. Notice of meetings stating the time, date, place and agenda shall be given in writing by prepaid letter, facsimile, electronic mail, or other written telecommunication, properly addressed to each Board member according to the latest available Enterprise records, not later than thirty (30) calendar days immediately preceding the meeting excluding the day of the meeting, provided that special meetings may be called with no less than five (5) days' notice or other reasonable notice unanimously agreed upon by the Board members.

2. Notice may be waived in writing, signed by the member or members entitled to such notice; whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at a Board meeting shall constitute a waiver of notice.

3. Actions by the Board taken at any meeting held without compliance with the above notice requirements shall be void and beyond the scope of the Board's authority unless thereafter ratified by resolution of the Management Board.

H. Three (3) members of the Management Board shall constitute a quorum for the transaction of any business. Each Board member shall have one (1) vote on all matters. The act of a simple majority of the members present and voting at a duly called meeting at which a quorum is present shall be the act of the Board. The Chairman of the Management Board may cast a vote on any matter being considered by the Management Board.

I. The Chairman of the Management Board shall make arrangements for minutes to be taken of the Board's meetings. Such Board minutes shall be made available ten (10) days after each meeting to the Board members and the Chief Operating Officer. Board minutes shall be provided promptly to the Economic Development Committee of the Navajo Nation Council upon the written request of such Committee.

J. The Chairman of the Management Board shall present a formal annual report each May to the Economic Development Committee of the Navajo Nation Council on its activities including a summary of the budget which the Management Board has approved for that fiscal year.

K. Provisions for disclosure of conflicts of interest are as follows:

1. No contract or other transaction between the Enterprise and any one of the members of the Management Board, or between the Enterprise and any corporation, partnership, firm or other legal entity in which any member of the Management Board has a direct or indirect interest shall be valid for any purpose, unless the entire interest of such member in such corporation, firm or other legal entity is fully disclosed to the Management

Board and the proposed contract or transaction is approved by the affirmative vote of a majority of the entire Management Board who are not so interested. The Management Board shall submit any such contract or transaction for further approval at any regular meeting of the Ethics and Rules Committee of the Navajo Nation Council. Any such contract or transaction which is approved by a vote of the Ethics and Rules Committee shall be valid and binding upon the parties.

2. The Management Board shall submit any contract or transaction with the Enterprise wherein a Navajo Nation officer or employee may have a direct or indirect interest in the matter or transaction to any regular meeting of the Ethics and Rules Committee of the Navajo Nation Council for approval. Any such contract or transaction which is approved by a vote of the majority of the Ethics and Rules Committee of the Navajo Nation Council shall be valid and binding upon the parties.

3. This section shall be subject to any additional requirements of or regulations adopted pursuant to the Navajo Nation Ethics in Government Law (2 NNC §§ 3741 *et seq.*).

Article VIII. Principal Officers of the Enterprise

A. The principal officers of the Enterprise shall consist of the following:

1. A Chairman of the Management Board;
2. A Vice-Chairman of the Management Board;
3. A Secretary-Treasurer of the Management Board; and
4. A Chief Operating Officer who shall not be a member of the Management Board.

At the sole discretion of the Management Board, a Managing Agent may be designated to assume the responsibilities of the Chief Operating Officer, and any reference in this Plan of Operation to the Chief Operating Officer shall be deemed to include and apply to such Managing Agent.

B. The officers of the Enterprise shall have the following duties and such other duties as may be determined by resolution of the Management Board not inconsistent with applicable law or this Plan of Operation.

1. The Chairman of the Management Board shall be elected from among the members of the Board, shall preside at all meetings of the Board, if present, and shall, in general, perform all duties incident to the Office of the Chairman of the Board and such other duties as from time to time may be assigned by the Management Board.

2. The Vice-Chairman shall be so elected, and shall act in the capacity of the Chairman in the absence of the latter, and shall discharge any other duties delegated by the Chairman.

3. The Secretary-Treasurer shall be so elected, and shall ensure that the Enterprise's Plan of Operation, by-laws, resolutions, minutes, policies, procedures, and financial books and records are properly maintained and organized.

4. The Chief Operating Officer shall be the principal operating executive of the Enterprise, shall direct all parts of the actual operations, shall be responsible to the Management Board as a principal operating executive of a corporation would be, and shall render reports to the Board and perform all other functions and duties specified in Article IX hereof. The Chief Operating Officer shall also furnish to the Management Board as requested clerical and stenographic personnel and equipment needed to record minutes of meetings, and shall provide notices of meetings and other clerical services as needed by the Board.

C. The officers of the Enterprise with the exception of the Chief Operating Officer shall be elected annually by the Management Board at its annual meeting, or as soon after such annual meeting as newly appointed Board members shall have been qualified. Each officer shall hold office until a successor is chosen and qualified, or until death, resignation, or removal in the manner provided in this Plan of Operation.

D. Any elected Board officer may be removed from office by Management Board action whenever, in its judgment, the best interest of the Enterprise will be served thereby. The Chief Operating Officer may be removed only pursuant to any approved contract provisions.

E. Any Board officer may resign by submitting a written notice of resignation, and such resignation shall be accepted by the Board at the next Board meeting.

F. Any vacancy in any office caused by death, resignation, removal, or other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office. If a vacancy occurs in the office of the Chief Operating Officer, the Management Board may immediately appoint an interim Chief Operating Officer, but shall proceed promptly to employ a new Chief Operating Officer pursuant to Article IX(A).

G. The Management Board may appoint such other agents as it deems necessary and determine duties, compensation, and terms of their positions by Board resolution.

Article IX. Chief Operating Officer

A. The Chief Operating Officer shall be employed under a written employment contract with the Management Board subject to such other approval as may be required by the laws of the Navajo Nation or other applicable law, and shall report and be directly responsible to the Management Board.

B. The Chief Operating Officer shall, among other things, execute the general policies formulated by the Management Board and organize the operation of the Enterprise into operating units, facilities, operations, divisions and/or subsidiaries, with specific duties and responsibilities, subject at all times to applicable laws and regulations, and to this Plan of Operation. The Chief Operating Officer may also perform the responsibilities of the General Manager of one or more of the operating units, facilities, operations, subsidiaries or divisions of the Enterprise.

C. With the concurrence of the Management Board, the Chief Operating Officer shall hire a manager for each Enterprise operating unit, facility, operation, division or subsidiary. The Chief Operating Officer shall also be responsible for overseeing the activities of each such manager and assuring that the rights, responsibilities, and activities of each such manager conform to this Plan of Operation, the policies and procedures adopted by the Management Board, and applicable Navajo law.

D. The Chief Operating Officer shall exercise his/her best judgment in the determination of the ways and means by which general policy set forth by the Management Board is to be effectuated, prepare plans and annual budgets, make recommendations to the Board as to policies and proposals for improvements, render regular reports to the Board and perform all other functions and duties as may be designated by the Management Board as specified herein.

E. The Chief Operating Officer shall comply with all laws and policies of the Navajo Nation and shall fully observe and apply Navajo preference in hiring, training, advancement and retention of employees of the Enterprise.

F. The Chief Operating Officer shall provide periodic reports regarding the status and operations of the Enterprise to the Economic Development Committee of the Navajo Nation Council, upon the written request of such Committee.

Article X. Accounting System

A. A modern accounting system shall be established and used in the Enterprise in conformity with corporate accounting principles generally accepted in the hospitality field. The Chief Operating Officer shall provide annual financial and operating statements to the President of the Navajo Nation, the Economic Development Committee of the Navajo Nation Council, and the Management Board.

B. The accounting system shall insure the availability of information as may be necessary to comply with federal and Navajo regulatory requirements. Use of automatic data processing shall be encouraged whenever possible. The fiscal year of the enterprise shall be January 1 to December 31.

C. The Enterprise shall establish an Investment Fund which shall be used exclusively to set aside funds for Enterprise property acquisitions and investments. The Management Board shall formulate an investment policy for the purpose of setting aside earnings from operations to be placed in the Investment Fund.

Article XI. Books, Records, and Property

The books and records of the Enterprise shall be made available at the principal place of business of the Enterprise which shall be within the exterior boundaries of the Navajo Nation and shall be available for inspection at all reasonable times by the President of the Navajo Nation, the Economic Development Committee of the Navajo Nation Council, and the Management Board.

Article XII. Audits

The Management Board, or, if established, the Audit Committee thereof, shall solicit proposals and select qualified auditors for the Enterprise. Such auditors shall audit the accounts and records of the Enterprise at the close of each fiscal year. Copies of all audit reports and management letters shall be furnished to the same parties receiving copies of the annual financial and operating statements pursuant to Article X(A) within 30 days after the completion of the audit or 120 days after the end of the fiscal year of the Enterprise, whichever is sooner.

Article XIII. Return on Investment

At the sole discretion of the Management Board, the Enterprise may declare dividends payable to the Navajo Nation in such amounts as the Management Board deems prudent and appropriate.

Article XIV. Insurance

The Enterprise at its own expense shall maintain appropriate public liability and property insurance for its facilities and premises sufficient to protect the interests of the Enterprise and the Navajo Nation. Alternatively, the Enterprise shall obtain written proof of full insurance coverage for public liability and property insurance within the umbrella policy maintained for that purpose by the Navajo Nation. Such policies shall name the Navajo Nation as owner and beneficiary thereunder.

Article XV. Navajo Preference in Employment and Training.

All initial opportunities for employment, training and advancement as they arise shall first be extended to qualified members of the Navajo Nation. The Management Board shall implement a Navajo preference policy in the hiring, training, advancement and retention of all employees of the Enterprise.

Article XVI. Immunity From Suit

A. The Enterprise and its Management Board and officers and employees while acting in their official capacities are immune from suit, and the assets and other property of the authority are exempt from any levy or execution, except as provided:

1. In the Navajo Sovereign Immunity Act (1 NNC § 551 *et seq.*); or
2. When the Enterprise's Management Board has, in any particular matter by duly adopted resolution, waived the Enterprise's immunity from suit so as to permit suit against the Enterprise in the courts of the Navajo Nation, the courts of the United States or of any state as may be appropriate and agreed to by the Management Board of the Enterprise. A decision by the Management Board to agree to state or federal court jurisdiction with respect to any matters arising from the development, construction, ownership, or management of properties of the Enterprise that lie within Navajo Indian country shall be valid only if such decision has been approved by resolution of the Economic Development Committee of the Navajo Nation Council, after any consultation with the Attorney General of the Navajo Nation as such Committee deems advisable.

B. The acts or omissions of the Enterprise (whether pursuant to the powers enumerated in this Plan of Operation or otherwise) shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation, and only the assets, revenues and income held by or in the name of the Enterprise shall be subject (to the extent otherwise permitted herein or by law) to the debts, obligations or other liabilities created or incurred by the Enterprise.

C. Any waiver of immunity by the Enterprise shall not be construed to waive any immunity of the Navajo Nation or other person or entity, nor shall the provisions of the Navajo Sovereign Immunity Act (1 NNC § 551 *et seq.*) be deemed altered or amended.

D. This section of the Plan of Operation of the Enterprise shall not be amended so as to diminish any existing rights of owners, sureties or other persons with whom the Enterprise has a contractual relationship at the time of such amendment, and, to that extent, the authority of the Economic Development Committee of the Navajo Nation Council to adopt and amend the Plan of Operation of the Enterprise is limited.

E. In the event the Enterprise is sold, dissolved or merged to or into any other entity, the provisions of this subsection and the rights created hereunder shall survive such sale, dissolution or merger.

Article XVII. Amendments

Subject to the limitations of Article XVI(D), this Plan of Operation may be amended from time to time as necessary and appropriate by the Economic Development Committee of the Navajo Nation Council upon the recommendation of the Management Board; provided, however, that any amendments to Article XVI hereof respecting the sovereign immunity of the Enterprise and its Management Board and officers and employees shall be void and of no effect unless approved by resolution of the Navajo Nation Council upon the recommendation of such Committee.



**RESOLUTION OF THE
MANAGEMENT BOARD OF THE
NAVAJO NATION HOSPITALITY ENTERPRISE**

Resolution No. 2017-1

**Approving a Loan Agreement with Native American Bank, N.A., and
Related Agreements and Approving a Waiver of Sovereign Immunity**

WHEREAS:

1. The Navajo Nation Hospitality Enterprise ("NNHE") is an enterprise organized and duly formed pursuant to 5 N.N.C. § 1841, owned entirely and exclusive by the Navajo Nation and is in good standing; and
2. NNHE's Management Board is empowered to act on behalf of NNHE pursuant to NNHE's Plan of Operation, which was approved by Navajo Nation Council Resolution No. CD-79-02; and
3. The Management Board believes it is in NNHE's best interests to construct an office building to be located near the hotel commonly referred to as the Quality Inn in Window Rock, Arizona.

NOW THEREFORE BE IT RESOLVED THAT:

1. The NNHE Management Board hereby approves the Loan Agreement and related agreements with Native American Bank, N.A., (hereinafter "Loan Documents") which were presented to the Management Board at the meeting held on this same date and which are described on Exhibit 1 attached hereto. The NNHE Management Board further authorizes Stanley M. Sapp, Management Agent of NNHE ("Managing Agent"), to execute such agreements on NNHE's behalf.
2. The NNHE Management Board approves a waiver of sovereign immunity in favor of Native American Bank, N.A., and further requests that the Resources and Development Committee of the Navajo Nation Council approve such sovereign immunity waiver as is required pursuant to NNHE's Plan of Operation; and
3. The Managing Agent and the other proper officers of NNHE are hereby authorized and directed to take all such other action as is deemed to be necessary or as is reasonably requested by Native American Bank, N.A., to carry out, give effect to, and consummate the transactions contemplated hereby and by the Loan Documents, including without limitation, the execution and delivery at the closing and at any time subsequent thereto, any and all other documents deemed necessary or reasonably requested to be executed in connection with the execution and delivery of the Loan Documents and to effect the intentions and purpose as contemplated thereunder and hereunder, the taking of such additional action and the execution of such additional documents being conclusive evidence of such approval, and the Managing Agent and the other proper officers

of NNHE are hereby authorized and directed, for and on behalf of NNHE, to take such additional action and to sign and attest such additional documents.

**NAVAJO NATION HOSPITALITY
ENTERPRISE BOARD**

By: 

Printed Name: Lorenzo Max

Title: Chairman, Management Board

CERTIFICATION

The above resolution was duly adopted by the Management Board of the Navajo Nation Hospitality Enterprise by vote of -3- in favor, -0- opposed, and -0- abstaining on this 23 day of June, 2017, at a meeting of the Management Board at which a quorum was present:


Otto Tso, Secretary

CERTIFICATION

[“Navajo Nation Hospitality Enterprise -Window Rock, AZ Project”]

EXHIBIT

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C

BORROWER: NAVAJO NATION HOSPITALITY ENTERPRISE, an enterprise organized and duly formed under the laws of, and owned entirely and exclusively by, the NAVAJO NATION [ALSO KNOWN AS THE NAVAJO TRIBE OF INDIANS], a federally recognized tribe

LENDER: NATIVE AMERICAN BANK, NATIONAL ASSOCIATION, a national banking association

NAB LOAN NO.: 51000013

LOAN AMOUNT: \$3,600,000.00

As additional consideration for making the loan (the “Loan”) described in that certain Loan Agreement (the “Loan Agreement”) between Borrower and Lender dated as of the date of this instrument (the “Certification”), Borrower hereby certifies to Lender the following:

1. **Lender Reliance; Loan Application Assurances.** Borrower acknowledges that Lender relied on the information provided in Borrower’s loan application to approve and underwrite the Loan. Borrower hereby certifies that all information provided to Lender in the Loan application and its supporting documentation is true and accurate.

2. **Review And Advice Of Counsel.** Borrower has reviewed the Transaction Documents (as that term is defined in the Loan Agreement, executed between Borrower and Lender of even date herewith) and understands all requirements and conditions contained in such Transaction Documents and that Borrower has had the opportunity to have such documents reviewed by Borrower’s legal counsel.

3. **Fee Obligations.** Borrower agrees that, pursuant to Section 2.3 of the Loan Agreement, certain fees are to be paid to the Lender (and various other parties described therein) (the “Fees”) associated with this transaction and that such fees are non-refundable and non-negotiable. These Fees are to be paid to Native American Bank, National Association as described in the Loan Agreement.

4. **Compliance Assurances.** Borrower certifies to Lender that Borrower and the Project are in full compliance with:

(i) any applicable provisions of the Flood Disaster Protection Act of 1973 (P.L. 93-234, 87 Stat. 975);

(ii) provisions of the National Environmental Policy Act of 1969 (P.L. 91-190, 42 U.S.C. 4321), Executive Order 11514, and all other pertinent environmental laws; and

(iii) any applicable provisions of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), as amended by the Act of May 24, 1974 (P.L. 93-291, 88 Stat. 174), relating to the preservation of historical and archeological data.

5. **Additional Certifications For The Benefit Of Lender.** Borrower hereby further certifies to Lender that:

(i) Borrower has executed an AIA construction contract with regard to the Project satisfactory to Lender;

(ii) Borrower has adopted a construction budget and line item budget satisfactory to Lender; and

(iii) Borrower has provided Lender with true, correct and complete copies of its organizational documents, including Resolution No. 2015-1 dated May 4, 2015, which are each in full force and effect and have not been amended, revised or rescinded in any manner.

6. **Limited Waiver Of Sovereign Immunity.**

6.1 Borrower, by this Certification, agrees to and does hereby expressly and unequivocally waives its sovereign immunity from suit, both as to jurisdiction and liability, against it by the Lender or any successor or assign of the Lender, and consents to suit in any court of competent jurisdiction (as contemplated by and to the extent consistent with Section 7): (a) to allow Lender or any successor or assign to exercise and enforce its rights or to enforce the Borrower's responsibilities or obligations under the terms of this Certification and any of the other Transaction Documents; (b) for damages incident to a breach of any term, condition, representation, warranty, covenant or agreement of the Borrower arising under this Certification or any of the other Transaction Documents, provided that any monetary award shall be limited to actual damages and shall not include any consequential, incidental or punitive damages and shall further be limited to the assets of Borrower; or (c) for costs, including attorneys' fees, incident to any of the above (the "Limited Waiver of Sovereign Immunity").

6.2 Nothing in this Limited Waiver of Sovereign Immunity shall be construed to confer any rights on any third party, except to any successor or assign of the Lender. Borrower will undertake all actions as may be necessary or appropriate to ensure that this Limited Waiver of Sovereign Immunity granted in favor of Lender herein shall remain in full force and effect at all times.

6.3 This Limited Waiver of Sovereign Immunity is irrevocable.

7. **Binding Arbitration.** Any Dispute between Lender and Borrower as to this Certification shall be resolved by binding arbitration ("Arbitration") in accordance with the terms of the Loan Agreement.

8. **Governing Law; Venue.**

8.1 This Certification and the other Transaction Documents and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the Tribe and federal law and, to the extent not inconsistent therewith, the laws of the State of Arizona.

8.2 Borrower and Lender expressly submit to and consent to the jurisdiction and venue of the Tribal Court and any other court of competent jurisdiction, as contemplated by and to the extent consistent with Section 9.14 of the Loan Agreement, with respect to any Dispute.

8.3 Borrower and Lender expressly authorize any government or other agency authorities who have the right and duty under applicable law to take any and all action authorized or ordered by the Tribal Court or any court of competent jurisdiction (as contemplated by and to the extent consistent with Section 5) in giving effect to any judgment entered.

9. **Survival.** This Certification shall survive the making of the Loan and shall continue in force and effect so long as any amount owed to Lender under the Note or any of the other Transaction Documents or any extension or renewal thereof, remains outstanding.

10. **Capitalized Terms.** Capitalized terms not otherwise defined in this Certification shall have the meaning ascribed to such terms in the Loan Agreement.

11. **Further Acts And Assurances.** Borrower agrees to execute such other documents and instruments as may be reasonably requested by the Lender for the purpose of effectuating and carrying out the intent and purposes of this Certification and the other Transaction Documents.

12. **Headings.** The headings or captions of sections and paragraphs in this Certification are for reference only, do not define or limit the provisions of such sections or paragraphs, and shall not affect the interpretation of this Certification.

Dated effective ____ day of _____ 2016.

THIS CERTIFICATION CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

BORROWER:

NAVAJO NATION HOSPITALITY ENTERPRISE,
an enterprise organized and formed under the laws
of, and owned entirely and exclusively by, the
Navajo Nation [also known as the Navajo Tribe of Indians],
a federally recognized tribe

By: _____
Stanley M. Sapp, Managing Agent



**AFTER RECORDING, PLEASE
RETURN TO:**

Native American Bank, N.A.
999 18th Street, Suite 2460
Denver, Colorado 80202
Attn: Clay Colombe, Senior Vice President

Space above this line for recorder's use only |

ASSIGNMENT OF LEASES, RENTS AND PROFITS

[Navajo Nation Hospitality Enterprise]

This ASSIGNMENT OF LEASES, RENTS AND PROFITS ("Assignment") is made and entered into effective as of the ___ day of _____, 2016, by and between NAVAJO NATION HOSPITALITY ENTERPRISE ("Assignor"), a enterprise organized and duly formed under the laws of, and owned entirely and exclusively by, the Navajo Nation [also known as the Navajo Tribe of Indians], a federally recognized tribe (the "Tribe"), having a mailing address of 6677 Thunderbird Road JI76, Glendale, Arizona 85306 to and for the benefit of NATIVE AMERICAN BANK, NATIONAL ASSOCIATION, a national banking association, having a mailing address of 999 18th Street, #2460, Denver, Colorado 80202 ("Assignee").

**I.
RECITALS**

WHEREAS, Assignor is an enterprise organized and duly formed under the laws of, and owned entirely and exclusively by, the Tribe;

WHEREAS, the Tribe (as "Lessor") and Assignor (as "Lessee") have entered into that certain "Business Site Lease" (as Lease Number FD-92-158) dated effective November 13, 1992 (and approved by the Acting Area Director of the U.S. Bureau of Indian Affairs, pursuant to Secretarial Redelelegation Order 209 DM 8 and 230 DM 3) (the "Master Lease") regarding the construction, operation and lease of: (i) an approximate 12,000 sq. ft. office building; (ii) a 56 room Quality Inn Hotel; and (iii) a 200 seat restaurant;

WHEREAS, Assignee proposes to construct on the Real Estate (hereafter defined), an approximate 14,900 sq. ft. office building (the "New Office Building") for the sublease thereof to one or more third parties (the "New Office Building Subleases");

WHEREAS, the Tribe joins in the execution of this Assignment for the limited purpose of evidencing its express consent to the actions of the Assignor (as the lessee and subsidiary of the Tribe, respectively) in entering into this Assignment;

WHEREAS, sometimes herein Assignor, the Tribe, and Assignee are collectively referred to hereinafter as the "Parties" or individually as a "Party";

WHEREAS, Assignor has executed and delivered to Assignee, as Lender, a Promissory Note of even date herewith in the original principal amount of **Three Million Six Hundred Thousand And No/100 Dollars (\$3,600,000.00)** (the "Note");

WHEREAS, the Note is secured by, among other things, a certain first lien "Leasehold Deed of Trust of Trust, Security Agreement and Fixture Filing" of even date herewith, signed by Assignor, (as "Grantor"), for the benefit of Assignee, (as "Grantee") (the "Deed of Trust"), recorded in the records of Apache County, Arizona, encumbering: (i) Assignor's leasehold interest in a certain 12.553 acre parcel of improved real property (the "Leasehold Interest") owned by the Tribe and located in Apache County, Arizona, described on Exhibit "A" attached hereto and incorporated herein (the "Real Estate") and (ii) together with all improvements and fixtures now

or hereafter constructed or located on, or associated with, such Leasehold Interest and all appurtenances thereunto belonging (collectively (i) and (ii), the "Encumbered Property");

WHEREAS, the Deed of Trust was granted by Assignor in favor of Assignee to the extent that Assignor has rights in and to the Encumbered Property; and

WHEREAS, by means of this Assignment, Assignor will secure further to Assignee the prompt payment and performance of all obligations of Assignor to Assignee of every kind and nature, whether arising currently or hereafter, including, without limitation, the prompt payment and performance of all obligations reflected in the Note, Deed of Trust and other security instruments as described in the Loan Agreement (and as more specifically described below, as the "Secured Indebtedness").

II. ASSIGNMENT

2.1 To secure to Assignee the prompt payment and performance of the Secured Indebtedness and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign, grant, transfer and set over unto Assignee to the extent that the Assignor has rights in and to the following as owner, operator, lessee or sublessor regarding or relating to the Encumbered Property now existing or hereafter executed: (i) all right, title and interest of Assignor in and to the Master Lease; (ii) all right, title and interest of Assignor in and to any subleases of any portion or parcel of the Master Lease, including, but not limited to, the New Office Building Subleases, any third party premises use agreements or premises license agreements (whatever the character, collectively, the "Subleases"); (iii) all extensions, modifications or renewals of the Master Lease and any of the Subleases; (iv) all guaranties of the Master Lease and any of the Subleases, together with all modifications, amendments, extensions or renewals thereof; (v) any other agreements, licenses, concessions or third party agreements regarding or arising out of or related to the Encumbered Property (the "Other Agreements"); and (vi) all of the rents, issues and profits derived (or to be derived) from Assignor's operation of the Encumbered Property or arising out of the Master Lease, any of the Subleases or the Other Agreements.

2.2 The foregoing assignment is intended to be an absolute and irrevocable conveyance and assignment to Assignee, subject only to the license in favor of Assignor described in Section 3.1 of this Assignment. The rights granted to Assignor hereunder are not intended to be conditioned on the occurrence of an event of default under the Note or Deed of Trust.

2.3 This Assignment is executed, acknowledged and delivered to secure the prompt payment and performance of the following described indebtedness and obligations of Assignor:

(a) all principal, interest, after-default interest, prepayment premiums, charges and fees due under the Note, the original of which is maintained at the office of Assignee, and the terms and provisions of which are incorporated herein by reference as if fully set forth herein, together with any and all extensions, renewals, modifications, amendments, rearrangements, consolidations, substitutions and changes in form thereof;

(b) any and all future advances which may be made to Assignor by Assignee, in connection with the Encumbered Property;

(c) any and all other indebtedness, of whatever kind or character, now owing or that may hereafter become owing by Assignor to Assignee, whether such indebtedness is evidenced by loan agreement, promissory note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise;

(d) any and all sums which Assignee may expend or become obligated to expend, at Assignee's option, to cure any breach or default of Assignor under this Assignment, together with interest on all sums from the respective dates which Assignee may expend or become obligated to expend at the after-default rate of interest specified in the Note or the highest rate permitted by law, whichever is less; and

(e) any and all amounts which Assignee may expend or become obligated to expend in collecting the Secured Indebtedness, in foreclosing the lien of the Deed of Trust, in preserving or protecting the

Encumbered Property, or in pursuing or exercising any right or remedy hereunder, including, but not limited to, reasonable attorneys' fees, court costs, abstracting expenses, receivers' fees, appraisers' fees, watchmen's fees, storage fees and other expenses reasonably incurred to protect and preserve the Encumbered Property or in maintaining the priority of this Assignment or in retaking, holding, preparing for sale or selling the Encumbered Property, and all other sums and other obligations due or to become due pursuant to the Loan Agreement or any document and other collateral described in the Loan Agreement, together with interest on all such sums which Assignee may expend, accrued from the respective dates of expenditure at the after-default rate of interest specified in the Note or the highest rate permitted by law, whichever is less.

2.4 All of the indebtedness and obligations set out in Section 2.3, above shall comprise and be included in the definition of "Secured Indebtedness" for purposes of this Assignment.

III. ADDITIONAL COVENANTS, CONDITIONS AND AGREEMENTS

3.1 LICENSE; REVOCATION OF LICENSE. Until a default shall have occurred under the Note or Deed of Trust, or any of the other documents described in the Loan Agreement, Assignor will have the right, under the license hereby granted, to collect the rents, issues, profits, and other sums from the Encumbered Property. Upon occurrence of a default under the Note or Deed of Trust or any of the other documents described in the Loan Agreement, the failure by Assignor to cure such default after such notice and opportunity to cure the default as may be required under the terms of the Note, the Deed of Trust or any of the other documents described in the Loan Agreement:

(a) Assignee, at its option and without further notice, shall have the immediate and continuing right to terminate the license hereby granted to Assignor to collect rents, issues, profits, and other sums from the Encumbered Property; and

(b) Assignee shall have the right and authority, whether or not it takes possession of the Encumbered Property, or seeks the appointment of a receiver for the Encumbered Property, to demand, collect receive, sue for and recover, in its own name, directly from all subtenants, licensees, or users of the Encumbered Property the rents, issues, profits, and other sums thereof, whether accruing or past due.

3.2 DEFAULT OF THIS ASSIGNMENT. A default by Assignor under this Assignment shall constitute an Event of Default under the Deed of Trust and all other instruments that secure payment of the Note.

3.3 FURTHER ACTS AND ASSURANCES. Assignor will execute any further instruments reasonably necessary or required by Assignee to evidence or to perfect the transfer to Assignee hereunder, any of the Subleases or the Other Agreements covered by this Assignment and all rents, profits, and other sums inuring to the benefit of Assignor in connection with the Encumbered Property. Notwithstanding any language in this Assignment to the contrary, Assignee shall not be deemed to be in possession of the Encumbered Property and it shall not have any duties to Assignor unless otherwise specifically prescribed by statute.

3.4 APPLICATION OF RENTS BY ASSIGNEE. All sums collected and received by Assignee out of the rents, issues, profits, and other sums of such Encumbered Property, pursuant to this Assignment, may be applied to the payment of the following, in such order and priority as Assignee may determine, in its sole subjective discretion:

- (a) The reasonable costs of collection of such rents, issues, profits, and other sums;
- (b) The Secured Indebtedness, in such order and priority as Assignee may determine, in its sole subjective discretion;
- (c) The reasonable costs of management of the Encumbered Property;

(d) The repair and upkeep of the Encumbered Property deemed necessary by Assignee, including without limitation, the purchase items or equipment as Assignee in its sole discretion may deem necessary for the maintenance of a proper rental value of the Encumbered Property;

(e) All taxes, assessments, premiums for public liability insurance and insurance premiums payable by Assignor as provided in the Deed of Trust described above; and

(f) Any taxes imposed upon or collectible by Assignee under any federal or state law or any law or ordinance enacted by any political subdivision thereof or any supplements or amendments thereto, provided, however, that such tax shall be based upon the employment by Assignee of persons necessary to the operation of the Encumbered Property.

3.5 NO CREDIT. Notwithstanding any other provision of this Assignment, no credit shall be given by Assignee for any sum or sums received from the rents, issues, profits, and other sums of the Encumbered Property until the money collected is actually received by Assignee at its principal office or at such other place as Assignee shall designate in writing, and no credit shall be given for any uncollected rents, issues, profits, and other sums derived from the Encumbered Property after Assignee obtains possession of the Encumbered Property under order of court or by operation of law.

3.6 APPOINTMENT OF AGENTS.

3.6.1 Assignee may, after occurrence of a default under the Deed of Trust or any other instrument which secures payment of the Note, appoint and dismiss such agents or employees as shall be necessary for the collection of the rents, issues, profits, and other sums, and for the proper care and operation of the Encumbered Property, and Assignor hereby grants to such agents or employees so appointed full and irrevocable authority on Assignor's behalf to manage the Encumbered Property and to do all acts relating to such management, including among others, the making of new leases, subleases, or licenses, subject to applicable law, in the name of Assignor or otherwise, the alteration or amendment of any of the Subleases, the authorization of repairs or replacements to maintain the building or buildings and chattels incidental thereto in good and tenantable condition and the making of such alterations or improvements as in the reasonable judgment of Assignee may be necessary to maintain or increase the income from the Encumbered Property.

3.6.2 Assignee shall have the sole control of such agents or employees whose remuneration shall be paid out of the rents, issues, profits, and other sums as hereinbefore provided, at a rate of compensation generally accepted as reasonable in the community wherein the Encumbered Property is situated unless otherwise specified, and Assignor hereby expressly releases Assignee from any liability to Assignor for the acts of such agents, and agrees that Assignee shall not be liable for their neglect or for monies that may come into the possession of such agents.

3.6.3 In the exercise of such authority conferred by this section 3.6, Assignee shall comply with the Navajo Preference in Employment Act and the Navajo Business Opportunity Act.

3.7 NO LIMITATION OF RIGHTS. Assignor agrees that nothing in this Assignment shall be construed to limit or restrict in any way the rights and powers granted in the Deed of Trust, the Note or any other instruments described in the Loan Agreement or executed as a part of this transaction. The collection and application of the rents, issues, profits, and other sums as above described shall not constitute waiver of any default which might at the time of application or thereafter exist under the Note, the Deed of Trust, this Assignment or any other security instrument described in the Loan Agreement. The exercise by Assignee of the rights herein provided shall not prevent Assignee's exercise of any rights provided under the Deed of Trust or any other security instrument.

3.8 ASSIGNOR'S WARRANTIES. In addition to all other representations and warranties by Assignor in this Assignment, Assignor hereby represents and warrants to Assignee that:

(a) Assignor is the sole lessee under the Master Lease;

(b) Assignor is or will be the sole sublessor under each of the Subleases and is entitled to receive the rents, issues, profits, other sums, and security deposits under each of the Subleases;

(c) Assignor is the sole Party entitled to receive rents, issues, revenues, profits or other sums and security deposits under any of the Other Agreements;

(d) Assignor, subject to applicable law, has the unqualified right to sell, assign, transfer and set over the same and to grant to and confer upon Assignee the rights, interests, powers and authorities herein granted and conferred;

(e) Assignor has neither made nor permitted to be made any assignment other than this Assignment of any of its rights or of any issues, rents and profits from the Encumbered Property to any person or entity other than Assignee;

(f) There is no default under the Master Lease, any of the Subleases or any of the Other Agreements affecting the Encumbered Property; and

(g) Assignor is not prohibited under any agreement with any person or entity or under any judgment or decree from executing and delivering to Assignee, this Assignment.

3.9 PERFORMANCE BY ASSIGNOR. Assignor hereby further covenants and agrees with Assignee as to the matters set out in this Section 3.9, as follows:

3.9.1 Assignor shall: (i) fulfill, perform and observe each and every condition and covenant of Assignor contained in the Master Lease, any of the Subleases and the Other Agreements; (ii) at the sole cost and expense of Assignor, diligently seek to enforce (short of termination), the performance and observance of each and every covenant and condition to be performed or observed by any lessees or licensees or obligees under the Master Lease, any of the Subleases or Other Agreements; and (iii) appear in and defend any action growing out of, or in any manner connected with the obligations or liabilities of Assignor, under the Master Lease, any Subleases and Other Agreements.

3.9.2 Assignor, at Assignee's request, shall furnish Assignee with executed copies of: (i) the Master Lease; (ii) any Subleases; and (iii) the Other Agreements now existing or hereafter made of all or any part of the Encumbered Property. Assignor will not sign, modify, amend, cancel or terminate any of the foregoing instruments or permit any such signature, modification, amendment, cancellation or termination of any such instruments, except in the normal course of business, under commercially reasonable terms.

3.9.3 Assignor shall not, without Assignee's prior written consent, permit an assignment of the Master Lease, any of the Subleases or the Other Agreements or request or consent to the subordination of any such instruments to any lien subordinate to the Deed of Trust. The holder of any subordinate lien shall have no right to terminate any lease or agreement affecting the Encumbered Property whether or not such lease or agreement is subordinate to the Deed of Trust. Provided, however, nothing contained in this Section 3.9.3 shall constitute or be construed as an approval by Assignee of any subordinate lien on the Encumbered Property, or any part thereof.

3.9.4 Assignor shall authorize and direct, and does hereby authorize and direct, each and every present and future obligor under the Master Lease, Subleases or the Other Agreements to pay rent or other sums due directly to Assignee upon: (i) receipt of written notice and demand from Assignee and (ii) the existence of a default or an Event of Default under the Note, the Deed of Trust, this Assignment or any other security instrument. Further, upon satisfaction of the requirements set out in the prior sentence, Assignor will deliver a written notice to each sublessee, licensee or obligor under the applicable agreement, which notice shall inform such obligor of this Assignment and instruct it that all rent or other sums due thereafter shall be paid to Assignee.

3.9.5 Assignee shall not be obligated to perform or discharge any obligation under the Master Lease, any of the Subleases or Other Agreements hereby assigned or under or by reason of this Assignment, and Assignor hereby agrees to defend, indemnify and hold harmless Assignee from and against any and all liability, loss or damage (including, without limitation, the reasonable fees of attorneys, expert witnesses and consultants as well

as court costs) which Assignee may suffer or incur or become liable for under the Master Lease, any of the Subleases or Other Agreements or under or by reason of this Assignment and from and against all claims and demands whatsoever which may be asserted against Assignee by reason of any act of Assignee under this Assignment or under the Master Lease, any of the Subleases or Other Agreements or by reason of any alleged obligation or undertaking on Assignee's part to perform or discharge any of the terms of such lease.

3.10 REMEDIES CUMULATIVE.

3.10.1 The rights and remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Assignee in the Note, Deed of Trust and any other documents described in the Loan Agreement, at law or in equity, all of which rights and remedies are specifically reserved by Assignee. The rights and remedies herein provided or otherwise available to Assignee shall be cumulative and may be exercised concurrently.

3.10.2 The failure to exercise any of the rights or remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the rights or remedies herein provided prevent the subsequent or concurrent resort to any other rights or remedies. This Section 3.10.2 shall be broadly construed so that all rights and remedies herein provided or otherwise available to Assignee shall continue and be each and all available to Assignee until the indebtedness evidenced by the Note shall have been paid in full, all obligations of Assignor to Assignee shall have been satisfied and Assignee shall not have any further obligation to make advances to or for the benefit of Assignor.

IV. MISCELLANEOUS

4.1 ADDITIONAL DOCUMENTS.

4.1.1 At any time and from time to time, upon request by Assignee, Assignor will make, execute and deliver, or cause to be made, executed and delivered, to Assignee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Assignee, any and all such other and further assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Assignee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve: (i) the obligations of Assignor under this Assignment and (ii) the security interest created by this Assignment or other Transaction Documents as a first and prior security interest upon the Master Lease, any Subleases or Other Agreements as well as the rents, issues, profits, other sums, and security deposits from the Encumbered Property and such instruments.

4.1.2 Upon any failure by Assignor so to do (or to promptly take such actions as described in Section 4.1.1 above), Assignee may, at its sole election, make, execute, record, file, re-record and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Assignor and Assignor hereby irrevocably appoints Assignee the agent and attorney-in-fact, of Assignor so to do, such appointment coupled with an interest.

4.2 INDULGENCES BY ASSIGNEE. Assignor hereby consents and agrees that Assignee may at any time and from time to time, without notice to or further consent from Assignor, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm, entity or corporation on its behalf or for its account securing the indebtedness evidenced by the Note; extend or renew the Note for any period; grant releases, compromises and indulgences with respect to the Note or any of the security instruments to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note; or take or fail to take any action of any type whatsoever. No such action which Assignee shall take or fail to take in connection with the Note nor any course of dealing with Assignor or any other person shall release Assignor's obligations hereunder, affect this Assignment in any way or afford Assignor any recourse against Assignee. The provisions of this Assignment shall extend and be applicable to all extensions, renewals, modifications, amendments, rearrangements, consolidations, substitutions and changes in form of the Note, the Deed of Trust, and any other documents described in the Loan Agreement, and any and all references herein to the Note,

the Deed of Trust, any other documents described in the Loan Agreement shall be deemed to include any such extensions, renewals, modifications, amendments, rearrangements, consolidations, substitutions or changes in form thereof.

4.3 NO WAIVERS BY ASSIGNEE. Any failure by Assignee to insist upon the strict performance by Assignor of any of the terms and provisions of this Assignment shall not be deemed to be a waiver of any of the terms and provisions of this Assignment or of Assignee's rights under applicable law. Assignee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Assignor of any and all of the terms and provisions of this Assignment to be performed by Assignor. Further, no delay by Assignee in exercising any of its rights or remedies hereunder or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

4.4 CHANGE OF OWNERSHIP. If ownership of the Encumbered Property or any portion thereof becomes vested in any person or entity other than Assignor where Assignee has executed a partial or full release of the obligations under the Deed of Trust (Assignee not being under any obligation to do so, however), Assignee may deal with such successor or successors-in-interest with reference to this Assignment and the Secured Indebtedness in the same manner as with Assignor. Provided, however, nothing contained in this Section 4.4 shall constitute or be construed as Assignee's consent to or approval of any change in ownership of the Encumbered Property or any part thereof, or the waiver of any default or Event of Default of the Note, Deed of Trust or any other document described in the Loan Agreement that may be caused by any change in ownership of the Encumbered Property.

4.5 NOTICES. Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent by registered or certified mail, postage prepaid, return receipt requested and addressed as listed below or to such other address as the Party concerned may substitute by written notice to the other:

If To Assignor: Navajo Nation Hospitality Enterprise
6677 Thunderbird Rd J176
Glendale, Arizona 85306
Attn: Stanley M. Sapp, Managing Agent

With a Required Copy To: Law Office of Warren Denetsosie
1820 E. Morten Ave., Unit 221
Phoenix, Arizona 85020
Attn: Warren Denetsosie, Esq.

If To Tribe: Navajo Nation
6677 Thunderbird Rd J176
Glendale, Arizona 85306
Attn: Stanley M. Sapp, Managing Agent

With a Required Copy To: Law Office of Warren Denetsosie
1820 E. Morten Ave., Unit 221
Phoenix, Arizona 85020
Attn: Warren Denetsosie, Esq.

If To Assignee: Native American Bank, National Association
999 18th Street, #2460
Denver, Colorado 80202
Attn: Clay Colombe, SVP, Chief Lending Officer

With a Required Copy To: Jones & Keller, P.C.
1999 Broadway, Suite 3150
Denver, Colorado 80202
Attn: Robin Kovash, Esq.

4.6 RELATIONSHIP OF THE PARTIES. In no event shall Assignee be construed or held to be a partner, joint venturer or associate of Assignor in the conduct of the business of Assignor, on or about the Encumbered Property or otherwise, nor shall Assignee be liable for any debts or obligations incurred by Assignor in the conduct of such business, it being understood and agreed that the relationship of the Parties is and at all times shall remain that of lender and borrower.

4.7 GOVERNING LAW; VENUE; CONSENT.

4.7.1 This Assignment and the other Transaction Documents (as that term is defined in the Loan Agreement) and the rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the Tribe and federal law and, to the extent not inconsistent therewith, the laws of the State of Arizona; provided however, all issues regarding the creation, perfection and enforcement (including the foreclosure on interests in real estate and the Uniform Commercial Code) of the liens and security interests created pursuant to this Assignment and the Transaction Documents shall, in Assignee's sole discretion, be governed by and construed according to the laws of: (i) the State in which the Encumbered Property is located or (ii) the State of Colorado.

4.7.2 The Parties expressly submit to and consent to the jurisdiction and venue of the Tribal Court and any other court of competent jurisdiction, as contemplated by and to the extent consistent with Section 6, with respect to any Dispute (as defined in Section 6.13).

4.7.3 The Parties expressly authorize any government or other agency authorities who have the right and duty under applicable law to take any and all action authorized or ordered by the Tribal Court or any court of competent jurisdiction (as contemplated by and to the extent consistent with Section 6) in giving effect to any judgment entered.

4.7.4 Section 81 Compliance; No Further Approvals.

4.7.4.1 For the present purpose of consummating this Assignment and the Transaction Documents, the Assignor and Assignee agree that this Assignment and the Transaction Documents will be submitted to the Bureau of Indian Affairs for approval under 25 U.S.C. § 81 ("Section 81").

4.7.4.1 Assignor further agrees and represents that, except for the approval of the Tribe's Tribal Council, no other consent, approval, authorization, or order of any governmental body of the Tribe is required for the proper consummation of this Assignment or the Transaction Documents.

4.7.4.3 The Parties agree that, except for the approval of the Bureau of Indian Affairs, no other consent, approval, authorization, or order of any governmental body (other than the Tribe), including without limitation the U.S. Department of the Interior or its Bureau of Indian Affairs, is required for the proper consummation of this Assignment or the Transaction Documents.

4.7.4.4 The Parties agree that Assignee shall have no obligation to close or fund this Loan unless the Bureau of Indian Affairs (and any other applicable governmental authorities) grants its respective approval of the Transaction Documents, or issues a written statement that such approval is not required, as required under Section 2.2.2 of the Loan Agreement.

4.8 CUMULATIVE REMEDIES. The rights and remedies of Assignee arising under the representations, warranties, covenants and agreements contained in this Assignment shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; and no act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provisions, anything herein or otherwise to the contrary notwithstanding.

4.9 CONSTRUCTION. The paragraph (section) headings and captions contained in this Assignment are included for convenience only and shall not be construed or considered a part of this Assignment or affect in any manner the construction or interpretations of this Assignment. Whenever used in this Assignment, the singular will

include the plural, the plural the singular, and the use of any gender shall refer to and include the use of any other gender as the context so requires.

4.10 SEVERABILITY. If any covenant or agreement in this Assignment is invalid or void for any reason, such invalid or void covenant or agreement shall not affect the whole of this Assignment, and the balance of the covenants and agreements of this Assignment shall remain in full force and effect.

4.11 AMENDMENT. This Assignment cannot be changed, modified or amended except by an agreement in writing, signed by the Party against whom enforcement of the change is sought and in recordable form.

4.12 BINDING EFFECT. All of the covenants, conditions and agreements contained in this Assignment shall run with the land and shall bind Assignor, and the respective successors and assigns of Assignor, and shall inure to the benefit of Assignee and its successors and assigns. Whenever a reference is made in this Assignment to "Assignor" or "Assignee", such reference shall be deemed to include a reference to its successors and assigns, but this shall not be construed as Assignee's consent to any conveyance, assignment or other transfer by Assignor of its interest in the Encumbered Property.

4.13 NO THIRD-PARTY BENEFICIARY. This Assignment is made solely for the benefit of Assignee and its successors and assigns. No lessee or any other person under the Master Lease, any of the Subleases or Other Agreements shall have standing to bring any action against Assignee as a result of this Assignment, or to assume that Assignee will exercise any rights or remedies provided herein, and no person other than Assignee or its permitted successors and assigns shall, under any circumstances, be deemed to be a beneficiary of any provision of this Assignment.

4.14 NO CONSENT. Nothing contained in this Assignment shall be construed, interpreted or enforced so as to constitute the consent of Assignee to the lease or other disposition of any collateral.

4.15 BINDING EFFECT. This Assignment shall be in full force and effect continuously from this day to and until the Deed of Trust given to secure the Note hereinabove described shall be released of record, and the release of such Deed of Trust shall, for all purposes render this Assignment null and void and of no effect whatsoever.

4.16 RECITALS. The statements and definitions set forth in the "Whereas" clauses in Article I, above are incorporated herein word for word and made a part of this Assignment for all purposes.

4.17 CAPITALIZED TERMS. The capitalized terms not defined in this Assignment shall have the meaning ascribed to such term in that certain Loan Agreement dated of even date herewith and executed by and between Assignor and Assignee (among others) (the "Loan Agreement").

4.18 CONSENT OF TRIBE. The Tribe consents to Assignor's execution of this Assignment and of Assignor's agreement to be bound by all of the terms and conditions hereof.

4.19 HEADINGS. The headings or captions of sections and paragraphs in this Assignment are for reference only, do not define or limit the provisions of such sections or paragraphs, and shall not affect the interpretation of this Assignment.

V.

LIMITED WAIVER OF SOVEREIGN IMMUNITY

5.1 Assignor, by this Assignment, agrees to and does hereby expressly and unequivocally waive its sovereign immunity from suit, both as to jurisdiction and liability, against it solely by the Assignee (or any successor or assign of the Assignee), and consents to suit in any court of competent jurisdiction (as contemplated by and to the extent consistent with Section 6), with respect to any Dispute (as defined in Section 6.13): (i) to allow Assignee (or any successor or assign of Assignee) to exercise and enforce its rights or to enforce the Assignor's responsibilities or obligations under the terms of this Assignment and any of the other Transaction Documents; (ii) for damages incident to a breach of any term, condition, representation, warranty, covenant or agreement of the Assignor arising

under this Assignment or any of the other Transaction Documents, provided that any monetary award shall be limited to actual damages and shall not include any consequential, incidental or punitive damages and shall further be limited to the assets of Assignor; or (iii) for costs, including attorneys' fees, incident to any of the above.

5.2 The Tribe, by this Assignment, agrees to and does hereby expressly and unequivocally waive its sovereign immunity from suit, both as to jurisdiction and liability, against it solely by the Assignee (or any successor or assign of the Assignee), and consents to suit in any court of competent jurisdiction (as contemplated by and to the extent consistent with Section 6), with respect to any Dispute (as defined in Section 6.13): (i) to allow Assignee (or any successor or assign of Assignee) to exercise and enforce, pursuant to an action for specific performance, the Tribe's responsibilities or obligations under the terms of this Assignment and any of the other Transaction Documents to which it is a party; and/or (ii) for costs, including attorneys' fees, incident to such action described in subpart (i), above.

5.3 The obligations, waivers and agreements of the Assignor and the Tribe set out in Section 5.1 and 5.2 above, shall be referred to in this Assignment as the "Limited Waiver of Sovereign Immunity".

5.4 Assignor and the Tribe, as the case may be, shall undertake all actions as may be necessary or appropriate to ensure that this Limited Waiver of Sovereign Immunity granted in favor of Assignee herein shall remain in full force and effect at all times.

5.5 This Limited Waiver of Sovereign Immunity is irrevocable.

5.6 Nothing in this Limited Waiver of Sovereign Immunity shall be construed to confer any rights on any third party, except to any successor or assign of the Assignee.

VI. BINDING ARBITRATION

6.1 Any Dispute between the Parties shall be resolved by binding arbitration ("Arbitration") in accordance with the terms of this Section 6.

6.2 A Party seeking to compel another Party to resolve a Dispute in Arbitration shall first bring such action in the Tribal Court of the Tribe ("Tribal Court").

6.3 Any Party who fails or refuses to submit to Arbitration following a lawful demand by any other Party shall bear all costs and expenses incurred by such other Party in compelling the arbitration of any Dispute.

6.4 After a Party has initiated an action to compel Arbitration pursuant to this Section 6, any Party shall have the right to seek injunctive relief in order to maintain the status quo until such time as the Arbitration award is rendered or the controversy is otherwise resolved, provided that such relief is first sought from the Tribal Court, subject to Section 6.9, below.

6.5 Arbitration proceedings shall be administered by the terms of the Navajo Nation Arbitration Act ("NNAA"); provided, a Dispute with an amount in controversy of \$50,000 or less shall be conducted by one arbitrator, to be agreed upon by the Parties, in accordance with the NNAA. In any Dispute with an amount in controversy that exceeds \$50,000, three (3) arbitrators shall be appointed to hear and determine the case, as follows: (i) one (1) arbitrator shall be appointed by the Assignee; (ii) one arbitrator shall be appointed by the Assignor; and (iii) the third arbitrator shall be appointed by the mutual agreement of the Assignee and Assignor, such person to be an attorney or retired judge knowledgeable about federal Indian law. If the Assignee and Assignor cannot agree on the third arbitrator, then the Assignee, acting in its reasonable discretion, shall have the right to select such person. The arbitrators shall be independent and impartial. Upon selection, each arbitrator shall promptly disclose any circumstances that might cause doubt regarding the arbitrator's independence or impartiality. The Arbitration shall be conducted in Denver, Colorado. All statutes of limitation applicable to any Dispute shall apply to any Arbitration proceeding. All discovery activities shall be expressly limited to the Dispute being arbitrated.

6.6 The arbitrators shall have the authority to award in connection with a Dispute any remedy or relief that a court of competent jurisdiction could order or grant, including, without limitation, equitable remedies, specific performance of any obligation created under this Assignment or any other Transaction Document, and the issuance of an injunction.

6.7 Any award rendered in Arbitration may be entered in and/or enforced in Tribal Court and subject to Section 6.9 below, in any court of competent jurisdiction. Judgment on any final arbitration award may be entered in any court of competent jurisdiction.

6.8 Any review of the Arbitration decision and award shall be limited to enforcement of the decision and award and the findings of the arbitrator(s) shall not be re-litigated or subjected to *de novo* review.

6.9 If Tribal Court declines jurisdiction, fails to compel arbitration, fails to confirm an Arbitration award, fails to render a final ruling on a Party's motion to compel Arbitration or to confirm such an Arbitration award within forty-five (45) days of the filing of that motion and/or fails to render a final ruling on such Party's action for injunctive relief to maintain the status quo under Section 6.4 within forty-five (45) days of the filing of that action then such Party may commence an action in any other court of competent jurisdiction to compel such actions or secure such relief, as the case may be. For purposes of this Assignment, the Parties agree that a court of competent jurisdiction may include the courts of the States of Colorado and Arizona. The Parties waive any right to claim such action is barred by the doctrines of *res judicata* or collateral estoppel and agree not to assert such defenses in any other court of competent jurisdiction. The Parties consent to the jurisdiction of any such other court of competent jurisdiction and to the jurisdiction of all courts to which the decisions of those courts can be appealed, under the circumstances and for the purposes set forth in this Section 6.

6.10 The Parties waive, and agree not to assert by way of motion, defense, or otherwise in any action to compel Arbitration or to confirm an Arbitration award, any claim that the Tribal Court or any other court of competent jurisdiction are inconvenient forums or that venue in those courts is improper.

6.11 The Parties hereby agree that this Section 6 is valid and enforceable and therefore waive any defense or assertion to the contrary. To the extent set out in this Assignment, the Assignor expressly waives the application of the doctrines of exhaustion of tribal court remedies.

6.12 No provision hereof shall limit the right of any Party to exercise self-help remedies such as setoff, foreclosure against, or sale of any real or personal property collateral or security, or to obtain provisional or ancillary remedies, including injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver, from a court of competent jurisdiction before, after, or during the pendency of any Arbitration or other proceeding; provided, that the right to compel Arbitration and the remedies referred to herein shall be available only to the Parties to this Assignment and no other parties. The exercise of any such remedy shall not waive the right of any Party to compel Arbitration hereunder.

6.13 A "Dispute" shall mean any action, dispute, claim, or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to, any of the Transaction Documents (including this Assignment), or any activities, transactions, or obligations of any kind related directly or indirectly to any of the Transaction Documents (including this Assignment), including any of the remedies which arise out of or which are ancillary to any of the foregoing described actions or pursuant to any of the Transaction Documents (including this Assignment) (and including, but not limited to, those action described in Section 5, above).

6.14 If there is any inconsistency between the terms of this Section 6 and any NNAA rules, the terms and procedures set out in this Section 6 shall govern and control.

VII.
CONSENT OF FRANCHISOR

Assignor further agrees to secure the written consent of Choice Hotels International (as the Franchisor under that certain "Quality Inn Hotel Franchise Agreement" described in the Loan Agreement and Deed of Trust) to the terms and conditions of this Assignment.

IN WITNESS WHEREOF, the Parties have duly executed this Assignment the day, month and year first above written.

ASSIGNOR:

NAVAJO NATION HOSPITALITY ENTERPRISE,
an enterprise organized and formed under the laws
of, and owned entirely and exclusively by, the
Navajo Nation [also known as the Navajo Tribe of Indians],
a federally recognized tribe

By: _____
Printed Name: Stanley M. Sapp
Title: Managing Agent

Address:

6677 Thunderbird Rd. J176
Glendale, Arizona 85306
Attention: Stanley M. Sapp

ASSIGNEE:

NATIVE AMERICAN BANK, NATIONAL
ASSOCIATION,
a national banking association

By: _____
Clay Colombe, Senior Vice President

TRIBE:

**[For the limited purposes described in Article IV., Sections
5.2, 5.3, 5.4, 5.5, 5.6, and Article VI. of this Assignment]**

NAVAJO NATION [ALSO KNOWN AS THE NAVAJO
TRIBE OF INDIANS],
a federally recognized tribe

By: _____
Printed Name: Russell Begaye
Title: President

ACKNOWLEDGMENTS

STATE OF ARIZONA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2016, by Stanley M. Sapp, Managing Agent of the **Navajo Nation Hospitality Enterprise**, an enterprise organized and formed under the laws of, and owned entirely and exclusively by, the Navajo Nation [also known as the Navajo Tribe of Indians], a federally recognized tribe.

Witness my hand and official seal.

(Seal and Expiration Date)

Notary Public

STATE OF COLORADO

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2016, by Clay Colombe, Senior Vice President of **Native American Bank, National Association**, a national banking association.

WITNESS my hand and official seal.

Signature

(This area for official notarial seal)

STATE OF ARIZONA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2016, by Russell Begaye, President of the Navajo Nation [also known as the Navajo Tribe of Indians], a federally recognized tribe.

Witness my hand and official seal.

(Seal and Expiration Date)

Notary Public

EXHIBIT "A"

DESCRIPTION OF REAL PROPERTY (RELATING TO THE LEASEHOLD INTERESTS)

A tract of land situated within Tribal Tract T 10068 in the Southwest quarter of the Southeast quarter of Section 8, Township 26 North, Range 31 East, Gila and Salt River Meridian, District 18, Window Rock, Apache County, Arizona, being more particularly described as follows:

COMMENCE at the South quarter corner, a Bureau of Land Management brass cap of Section 8, Township 26 North, Range 31 East of the Gila and Salt River Meridian;

THENCE North 44 degrees 54 minutes 23 seconds East, 428.34 feet to a point of intersection of the Northerly right of way line of Arizona State Highway No. 264 and the Easterly right of way line of a road having a right of way width of 82.48 feet, said point also being the POINT OF BEGINNING of the herein described parcel;

THENCE North 03 degrees 41 minutes 38 seconds East, a distance of 786.09 feet on said Easterly right of way line to the Northwest corner of said parcel;

THENCE South 86 degrees 18 minutes 22 seconds East, a distance of 701.78 feet to the northeast corner of said parcel being a point intersecting a curve to the right having a delta of 36 degrees 46 minutes 21 seconds, and a radius of 567.49 feet, said point also being on the southwesterly right-of-way line of a road having right-of-way wide of 60.00 feet;

THENCE along the arc of a curve, 364.22 feet on said right of way line to the point of tangent;

THENCE South 18 degrees 41 minutes 54 seconds West, a distance of 443.76 feet on said right-of-way line to the Southeast corner of said parcel, a point on the Northerly line of Arizona State Highway No. 264;

THENCE North 86 degrees 21 minutes 31 seconds West, 89.82 feet on said Northerly line to a brass cap, designated as P.O.S.T. Sta. No. 696+50.42;

THENCE North 86 degrees 18 minutes 22 seconds West, 518.20 feet on said Northerly line to the POINT OF BEGINNING of the herein described parcel.



CLOSING CERTIFICATE
["Certificate"]

Navajo Nation Hospitality Enterprise ("Borrower"), an enterprise organized and duly formed under the laws of, and owned entirely and exclusively by, the **Navajo Nation [also known as the Navajo Tribe of Indians]**, a federally recognized tribe (the "Tribe"), does hereby state, represent and certify to Lender as follows:

1. **Plan of Operation.** The Plan of Operation attached hereto as Exhibit "A" is a true, correct and complete copy of such instrument as presently in effect (the "POC").
2. **No Other Documents.** The POC is the sole governance document of the Borrower and no other instruments (including, but not limited to, a Charter or Bylaws) exist regarding the governance and authority of the Borrower.
3. **Lender Reliance.** For the purposes of this Certificate, a facsimile transmission hereof may be accepted and relied upon by Native American Bank, N.A. ("Lender") or other parties for all purposes, and any facsimile copy shall be binding upon the Borrower.
4. **Originals.** Ink signed originals of this Certificate shall be delivered to Lender as soon as practicable but in any event within five (5) days from the date hereof.
5. **Consideration.** This Certificate is given by the Borrower for the purposes of facilitating the closing of that certain \$3,600,000.00 loan from Lender to the Borrower.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of (although not necessarily on) the ____ day of _____, 2016.

NAVAJO NATION HOSPITALITY ENTERPRISE,
an enterprise organized and formed under the laws
of, and owned entirely and exclusively by, the
Navajo Nation [also known as the Navajo Tribe of Indians],
a federally recognized tribe

By: _____
Printed Name: Stanley M. Sapp
Title: Managing Agent

ACKNOWLEDGMENTS

STATE OF ARIZONA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2016, by Stanley M. Sapp, Managing Agent of the **Navajo Nation Hospitality Enterprise**, an enterprise organized and formed under the laws of, and owned entirely and exclusively by, the Navajo Nation [also known as the Navajo Tribe of Indians], a federally recognized tribe.

Witness my hand and official seal.

(Seal and Expiration Date)

Notary Public

EXHIBIT “A”

Plan of Operation of The Navajo Nation Hospitality Enterprise



ASSIGNMENT OF CONTRACTOR'S AGREEMENTS

THIS ASSIGNMENT OF CONTRACTOR'S AGREEMENTS (this "Assignment"), dated to be effective as of _____, 2016, is from **Navajo Nation Hospitality Enterprise** ("Borrower"), an enterprise organized and duly formed under the laws of, and owned entirely and exclusively by, the **Navajo Nation [also known as the Navajo Tribe of Indians]**, a federally recognized tribe (the "Tribe") to **Native American Bank, National Association**, a national banking association (the "Lender").

RECITALS:

A. Lender has agreed to make a loan to Borrower in the maximum principal amount of Three Million Six Hundred Thousand and No/100 Dollars (\$3,600,000.00) (the "Loan"). The Loan is evidenced by a Promissory Note, dated as of _____, 2016, in the original principal amount of the Loan, from Borrower payable to Lender (as amended, restated, supplemented, renewed or extended from time to time, the "Note"), and is governed by a Loan Agreement dated as of _____, 2016 among Borrower and Lender (as amended, restated or supplemented from time to time, the "Loan Agreement").

B. The purpose of the Loan is to provide funds for the construction and permanent financing of a new office building located in Window Rock, Arizona (the "Project") to be operated by the Borrower.

C. As a condition precedent to making the Loan, Lender has required that Borrower assign to Lender all Contractor's agreements relating to the Project. Borrower acknowledges that Lender would not make the Loan absent execution and delivery of this Assignment by Borrower.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants contained herein and the Loan to be made hereunder, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lender and Borrower hereby covenant and agree as follows:

1. **Assignment.** Borrower, as additional security for the payment by Borrower of all amounts due under the Transaction Documents (as defined in the Loan Agreement executed between Borrower and Lender of even date herewith), hereby assigns and transfers to Lender, its successors and assigns, all of Borrower's rights, title and interests in and to the following agreements between Borrower and Keyah Construction, Inc., an Arizona corporation (the "Contractor"):

- (1) Standard Form of Agreement between Owner and Contractor (AIA Document A101 – 2007) executed as of June 5, 2015; and
- (2) Any agreement or contract entered into by Borrower in connection therewith (the foregoing agreements, as same may be amended, modified,

supplemented or restated from time to time, are collectively referred to herein as the "Construction Contract").

2. Representations and Warranties. Borrower represents, warrants and covenants to Lender that: (a) Exhibit "A" attached hereto is a true, correct and complete copy of the Construction Contract; (b) Borrower has the full right, power and authority to assign its interests in the Construction Contract to Lender pursuant to this Assignment, subject to the consent of Contractor; (c) Borrower has not conveyed, transferred, or assigned or granted a security interest in any of the Construction Contract or any right or interest therein to anyone other than Lender; (d) Borrower has not executed any other document or instrument that might prevent or limit Lender from operating under the terms, conditions and provisions of this Assignment; (e) Borrower shall make no other assignment of the Construction Contract or of any right or interest therein; (f) the Construction Contract is held by Borrower free and clear of all prior liens, security interests, charges and encumbrances whatsoever with respect to the Project and covenants and agrees with Lender to perform all acts required of Borrower to maintain the Construction Contract in good standing at all times; (g) Borrower shall perform and observe, in timely fashion, all of the covenants, conditions, obligations and agreements of Borrower in connection with the Construction Contract, in material accordance with the terms, conditions and provisions thereof; and (h) Borrower shall not waive or execute any agreement which could be interpreted as waiving, or in any manner release or discharge any party from, the material covenants, conditions, obligations or agreements to be performed or observed in connection with the Construction Contract, or condone any nonperformance thereof, but shall, at Borrower's sole cost and expense, enforce and secure the performance of all material covenants, conditions, obligations and agreements to be performed or observed in connection with the Construction Contract.

3. No Assumption; Lender Exculpation. Neither this Assignment nor any action or actions on the part of Lender shall constitute an assumption by Lender of any obligation under the Construction Contract. Borrower shall continue to be liable for all obligations under the Construction Contract and Borrower hereby agrees to perform each and all of Borrower's obligations under the Construction Contract. Borrower shall indemnify and hold Lender free and harmless from and against any loss, costs, liability or expense (including, but not limited to, reasonable attorneys' fees and accountants' fees) resulting from any failure of Borrower to perform under the Construction Contract.

4. Event Of Default Under Transaction Documents. If an Event of Default occurs and is continuing under any of the Transaction Documents, Lender may, but shall not be obligated to, assume all of the rights and obligations of Borrower under the Construction Contract. Such assumption, however, shall not relieve Borrower of its obligations under the Construction Contract and Borrower shall remain liable for all costs and expenses incurred in connection with the performance of its obligations under the Construction Contract. If Lender assumes all of the rights and obligations of Borrower under the Construction Contract, Lender may, but shall not be obligated to, pay or cause Borrower to pay Contractor under the Construction Contract the unpaid amounts due thereunder in accordance with its terms and conditions. If Lender makes any such payment to Contractor, Lender shall thereupon be subrogated to all of Contractor's rights against Borrower with respect to such payment. Contractor shall rely and shall be entitled to rely upon written notice from Lender that Lender

has assumed all of the rights and obligations of Borrower under the Construction Contract without any inquiry into whether Borrower are in default under the Loan Agreement or other Transaction Document. Such assumption of the Construction Contract by Lender shall be evidenced by written notice from Lender to Contractor. Under no circumstances shall Lender be deemed by any party to have assumed Borrower's rights and obligations under the Construction Contract unless and until such written notice is delivered to Contractor in accordance with the foregoing.

5. Event Of Default Under Construction Contract.

A. If an event of default occurs and is continuing under the Construction Contract, Lender shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower or otherwise such action as Lender may at any time or from time to time determine to be necessary to cure any default under the Construction Contract or to protect the rights of Borrower or Lender thereunder. Lender agrees to deliver to Borrower prior written notice of such default and Lender's proposed action in response thereto. Lender shall incur no liability to Borrower if any action taken by Lender or in its behalf in good faith and pursuant to this Assignment shall prove to be in whole or in part inadequate or invalid. Borrower agrees to hold Lender free and harmless from and against any loss, cost, liability or expense (including but not limited to the fees and disbursements of attorneys and their staff and accountants' fees and disbursements) to which Lender may be exposed, or that Lender may incur, in exercising any of its rights under this Assignment, but excluding any claim or liability which arises as the direct result of the gross negligence or willful misconduct of Lender.

B. Borrower hereby irrevocably constitutes and appoints Lender as its true and lawful attorney-in-fact in Borrower's name or in Lender's name or otherwise to enforce all rights of Borrower under the Construction Contract; provided, however, that Lender shall not exercise such power of attorney unless and until an Event of Default has occurred and is continuing. It is hereby recognized that the power of attorney herein granted is coupled with an interest and shall not be revocable.

C. Notwithstanding anything to the contrary contained herein, Lender shall have no right under this Assignment to assume, enforce, cure any default or exercise any rights under any Contract, including the Construction Contract and Borrower shall retain the right to enforce any Contract, including the Construction Contract, unless an Event of Default under the Loan Agreement has occurred and is continuing.

6. Expense Obligations Of Borrower. Borrower shall pay all costs and expenses, including, without limitation, court costs and reasonable attorneys' fees, incurred by Lender in enforcing performance of the obligations of Borrower or in exercising the rights and remedies of Lender hereunder. All such costs and expenses shall be secured by this Assignment and by the Transaction Documents. In the event of any court proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Lender.

7. No Waiver. No failure or delay on the part of Lender in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial

exercise of any right, power, or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies hereunder are cumulative and may be exercised by Lender either independently of or concurrently with any other right, power or remedy contained herein or in any document or instrument executed in connection with the Note.

8. **Limited Waiver of Sovereign Immunity; Governing Law; Arbitration.** The Limited Waiver of Sovereign Immunity, Governing Law and Arbitration provisions of the Loan Agreement dated January __, 2016 are incorporated into this Assignment, by reference and are enforceable on each Borrower, Lender and the Tribe, in the event of a dispute or issue arising under this Assignment.

9. **Binding Nature.** This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and permissible assigns.

10. **Defined Terms.** Capitalized terms not otherwise defined in this Assignment shall have the meaning ascribed to such terms in the Loan Agreement.

11. **Recitals.** The statements and definitions set forth in the "Recitals" above are incorporated herein word for word and made a part of this Assignment for all purposes.

12. **Further Acts.** Borrower agrees to execute such other documents and instruments as may be reasonably requested by the Lender for the purpose of effectuating and carrying out the intent and purposes of this Assignment and the other Transaction Documents.

Dated to be effective as of the date first set forth above.

[Signatures On Following Page]

BORROWER:

NAVAJO NATION HOSPITALITY ENTERPRISE,
an enterprise organized and formed under the laws
of, and owned entirely and exclusively by, the
Navajo Nation [also known as the Navajo Tribe of Indians],
a federally recognized tribe

By: _____
Printed Name: Stanley M. Sapp
Title: Managing Agent

Address:

6677 Thunderbird Rd J176
Glendale, Arizona 85306
Attn: Stanley M. Sapp, Managing Agent

LENDER:

NATIVE AMERICAN BANK, NATIONAL
ASSOCIATION,
a national banking association

By: _____
Name: Clay Colombe
Title: Senior Vice President

EXHIBIT "A"

CONSTRUCTION CONTRACT

[See Attached]



**ASSIGNMENT OF ARCHITECT'S AGREEMENTS
AND PLANS AND SPECIFICATIONS**

THIS ASSIGNMENT OF ARCHITECT'S AGREEMENTS AND PLANS AND SPECIFICATIONS (this "Assignment"), dated to be effective as of _____, 2016, is from **Navajo Nation Hospitality Enterprise** ("Borrower"), an enterprise organized and duly formed under the laws of, and owned entirely and exclusively by, the **Navajo Nation [also known as the Navajo Tribe of Indians]**, a federally recognized tribe (the "Tribe") to **Native American Bank, National Association**, a national banking association (the "Lender"), as additional security for all obligations incurred and to be incurred pursuant to the Loan Agreement (as amended, restated or supplemented from time to time, the "Loan Agreement"), dated as of _____, 2016 among Borrower and Lender.

RECITALS:

A. Lender has agreed to make a loan to Borrower in the maximum principal amount of Three Million Six Hundred Thousand and No/100 Dollars (\$3,600,000.00) (the "Loan"). The Loan is evidenced by a Promissory Note, dated as of _____, 2016, in the original principal amount of the Loan, from Borrower payable to Lender (as amended, restated, supplemented, renewed or extended from time to time, the "Note"), and is governed by a Loan Agreement dated as of _____, 2016 among Borrower and Lender (as amended, restated or supplemented from time to time).

B. The purpose of the Loan is to provide funds for the construction and permanent financing of a new office building located in Window Rock, Arizona (the "Project") to be operated by the Borrower.

C. As a condition precedent to making the Loan, Lender has required that Borrower assign to Lender all Contractor's and Architect's agreements relating to the Project. Borrower acknowledges that Lender would not make the Loan absent execution and delivery of this Assignment by Borrower.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants contained herein and the Loan to be made hereunder, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lender and Borrower hereby covenant and agree as follows:

1. **Assignment.** Borrower hereby assigns and transfers to Lender, its successors and assigns, all of Borrower's right, title and interest in and to: (i) all architectural and engineering drawings, plans, specifications, studies, reports and other materials of every nature whatsoever relating to the Project, including, but not necessarily limited to, the construction of a new office building located in Window Rock, Arizona located at 48 West Highway 264, Window Rock, Arizona 86515, whether such drawings, plans, specifications, studies, reports and other materials exist on the date hereof or come into existence in the future (collectively and singularly

the “Plans and Specifications”) and (ii) all contracts, whether now existing or hereafter arising, to which Borrower is a party and relating to: (aa) the Project and (bb) the preparation of the Plans and Specifications (the “Architect’s Contract”). Borrower shall deliver to Lender a true and correct copy of the Architect’s Contract promptly after it has been executed.

2. Representations And Warranties. Borrower represents and warrants to Lender that: (a) Exhibit “A” attached hereto is a true, correct and complete copy of the Architect’s Contract; (b) Borrower has full right, power and authority to assign the Plans and Specifications and Architect’s Contract; (c) Borrower has not assigned or granted a security interest in any of the Plans and Specifications or Architect’s Contract to anyone other than Lender; (d) Borrower’s interests in the Plans and Specifications and Architect’s Contract are not subject to any claim, setoff, lien, deduction or encumbrance of any nature; and (e) Lender shall have the right to use the Plans and Specifications and Architect’s Contract to complete the Project as provided herein.

3. No Assumption; Lender Exculpation. Neither this Assignment nor any action or actions on the part of Lender shall constitute an assumption of any obligation on the part of Lender under the Architect’s Contract and Borrower shall continue to be liable for all obligations thereunder. Borrower hereby agrees to perform each and all of its obligations under the Architect’s Contract and to indemnify and hold Lender free and harmless from and against any loss, cost, liability or expenses (including, but not limited to, fees and disbursements of attorneys and their staff and accountants’ fees and disbursements) resulting from any failure of Borrower to so perform.

4. Event Of Default Under Transaction Documents.

A. If an Event of Default occurs and is continuing under any of the Transaction Documents, Lender shall have the right to use the Plans and Specifications to complete the Project in such manner as Lender in its discretion may deem appropriate, and Lender may, but shall not be obligated to, assume all of the rights and obligations of Borrower under any or all of the Architect’s Contract.

B. Such assumption of the Architect’s Contract by Lender shall be evidenced by written notice from Lender to Architect. Under no circumstances shall Lender be deemed by any party to have assumed Borrower’s rights and obligations under the Architect’s Contract unless and until such written notice is delivered to Architect in accordance with the foregoing. Such assumption, however, shall not relieve Borrower of its obligations under the Architect’s Contract and Borrower shall remain liable for all actual costs and expenses incurred in connection with the performance of its obligations under the Architect’s Contract.

C. If Lender assumes all of the rights and obligations of Borrower under the Architect’s Contract, Lender shall pay or cause Borrower to pay Architect under the Architect’s Contract the unpaid amounts due under the Architect’s Contract in accordance with its terms and conditions and will otherwise be bound by and perform the obligations of Borrower thereunder. If Lender makes any such payment, Lender shall thereupon be subrogated to all of Architect’s rights against Borrower with respect to such payment. Architect shall rely and shall be entitled to rely upon written notice from Lender that Lender has assumed all of the rights and obligations

of Borrower under the Architect's Contract without any inquiry into whether Borrower is in default under the Loan Agreement.

5. Event Of Default Under Architect's Contract.

A. Upon an event of default by Borrower under the Architect's Contract, Lender shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower or otherwise such action as Lender may at any time or from time to time determine to be necessary to cure any default under the Architect's Contract or to protect the rights of Borrower or Lender thereunder. Lender agrees to deliver to Borrower prior written notice of such default and Lender's proposed action in response thereto. Lender shall incur no liability to Borrower if any action taken by Lender or in its behalf in good faith and pursuant to this Assignment after an Event of Default occurs and is continuing shall prove to be in whole or in part inadequate or invalid. Borrower agrees to hold Lender free and harmless from and against any actual loss, cost, liability or expense (including, but not limited to, fees and disbursements of attorneys and their staff and accountants' fees and disbursements) to which Lender may be exposed, or which Lender may incur, in exercising any of its rights under this Assignment, but excluding any claim or liability which arises as the direct result of the gross negligence or willful misconduct of Lender.

B. Borrower hereby irrevocably constitutes and appoints Lender its true and lawful attorney-in-fact in Borrower's name (or in Lender's name or otherwise) to enforce all rights of Borrower under the Architect's Contract; provided, however, that Lender shall not exercise such power of attorney unless and until an event of default by Borrower has occurred and is continuing. It is hereby recognized that the power of attorney herein granted is coupled with an interest and shall not be revocable.

6. Further Acts. In addition to the "Consent And Agreement of Architect" attached hereto to be executed and delivered to Lender by the Architect, Borrower shall promptly obtain substantially similar consents from such other Architects as Lender may request from time to time. Borrower agrees to execute such other documents and instruments as may be reasonably requested by the Lender for the purpose of effectuating and carrying out the intent and purposes of this Assignment and the other Transaction Documents.

7. Limited Waiver of Sovereign Immunity; Governing Law; Arbitration. The Limited Waiver of Sovereign Immunity, Governing Law and Arbitration provisions of the Loan Agreement dated _____, 2016 are incorporated into this Assignment, by reference and are enforceable against Borrower and Lender, in the event of a dispute or issue arising under this Assignment.

8. Binding Nature. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns.

9. Defined Terms. Capitalized terms used in this Assignment and not otherwise defined herein shall have the meanings given those terms in the Loan Agreement.

10. Recitals. The statements and definitions set forth in the "Recitals" above are incorporated herein word for word and made a part of this Assignment for all purposes.

Dated to be effective as of the date first set forth above.

BORROWER:

NAVAJO NATION HOSPITALITY ENTERPRISE,
an enterprise organized and formed under the laws
of, and owned entirely and exclusively by, the
Navajo Nation [also known as the Navajo Tribe of Indians],
a federally recognized tribe

By: _____
Printed Name: Stanley M. Sapp
Title: Managing Agent

Address:

6677 Thunderbird Rd J176
Glendale, Arizona 85306
Attn: Stanley M. Sapp, Managing Agent

LENDER:

NATIVE AMERICAN BANK, NATIONAL
ASSOCIATION, a national banking association

By: _____
Name: Clay Colombe
Title: Senior Vice President

EXHIBIT “A”

ARCHITECT’S CONTRACT

[See Attached]



CONSENT AND AGREEMENT OF ARCHITECT

With regard to its interest in the Architect’s Contract and the Plans and Specifications referred to in the “Assignment of Architects’ Agreements and Plans and Specifications” (the “Assignment”) to which this consent is attached, the undersigned (“Architect”), hereby consents to the assignment of the Plans and Specifications and the Architect’s Contract and agrees to recognize any assumption of the Architect’s Contract by Lender pursuant to the provisions of the Assignment. Architect understands and agrees that Lender shall have no duties or obligations under any of the contracts or agreements to which Architect is a party (the “Contracts”). Architect hereby agrees to complete the performance pursuant to any of the Contracts. Architect hereby warrants and represents to Lender that Exhibit “A” attached to the Assignment contains a true, correct and complete copy of the Architect’s Contract, such Architect’s Contract has been executed by the duly authorized officers of Architect, and such Architect’s Contract is a valid, binding and authorized obligation of Architect. Architect agrees that Lender may use the Plans and Specification to complete construction of the Project whether or not Lender assumes the Architect’s Contract.

EXECUTED to be effective as of _____, 2016.

ARCHITECT:

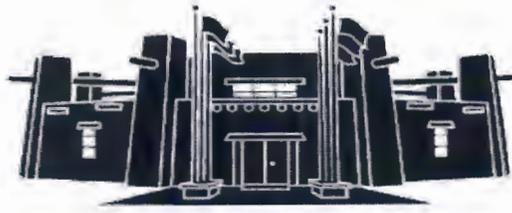
IRON ROCK ENGINEERING, INC.,
a Utah corporation dba TC Engineering

By: _____
Name: Thomas Avant
Title: President

EXHIBIT "A"

ARCHITECT'S CONTRACT

[See Attached]



MEMORANDUM

TO: Hon. Walter Phelps
23rd Navajo Nation Council

FROM: 
Rhonda L. Tuni, Attorney
Office of Legislative Counsel

DATE: August 25, 2017

SUBJECT: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT;
APPROVING THE NAVAJO NATION HOSPITALITY
ENTERPRISE'S WAIVER OF SOVEREIGN IMMUNITY FOR THE
PURPOSE OF OBTAINING A LOAN WITH THE NATIVE
AMERICAN BANK, N.A., TO CONSTRUCT AN OFFICE BUILDING

Pursuant to your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. This legislation requires a two-thirds (2/3) vote of the Committee. The Resources and Development Committee may request consultation with the Attorney General, if the Committee determines consulting with the Attorney General is advisable, as stated in the legislation and Navajo Nation Hospitality Enterprise's Plan of Operation. Based on existing law the resolution as drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of a challenge.

The Office of Legislative Council confirms the appropriate standing committee(s) reviews based on the standing committees powers outlined in 2 N.N.C. §§ 301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. § 164(A)(5).

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Prime Sponsor", and submit it to the Office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of changes you would like made to the proposed resolution. You may contact me at (928) 871-7166. Thank you.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0332-17_____ SPONSOR: Walter Phelps

TITLE: An Action Relating to Resources and Development; Approving the Navajo Nation Hospitality Enterprise's Waiver of Sovereign Immunity for the Purpose of Obtaining a Loan with the Native American Bank, N.A., to Construct an Office Building

Date posted: August 25, 2017 at 6:05pm

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0332-17

SPONSOR: Honorable Walter Phelps

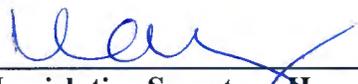
TITLE: An Action Relating To Resources and Development; Approving the Navajo Nation Hospitality Enterprise's Waiver of Sovereign Immunity for the Purpose of Obtaining a Loan with the Native American Bank, N.A., to Construct an Office Building.

Posted: August 25, 2017 at 6:05pm

5 DAY Comment Period Ended: August 30, 2017

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Inclusive Comments	<i>None</i>



**Legislative Secretary II
Office of Legislative Services**

8/31/2017 8:28 AM

Date/Time