

LEGISLATIVE SUMMARY SHEET

Tracking No. 0189-18

DATE: June 5, 2018

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A SUBLEASE TO NTUA NEW MARKETS V, INC., AN OPERATING SUBLEASE TO NAVAJO TRIBAL UTILITY AUTHORITY, A SUBLEASEHOLD DEED OF TRUST, A REPAYMENT GUARANTY, AND AN ATTORNMENT, ESTOPPEL AND SUBORDINATION AGREEMENT BY THE NAVAJO NATION, NTUA, NTUA NEW MARKETS V, INC., IN FAVOR OF ECOTRUST SUB-CDE XXV, LLC

PURPOSE: The purpose of this resolution is to approve a sublease to NTUA New Markets V, Inc., an Operating Sublease to Navajo Tribal Utility Authority, a Subleasehold Deed of Trust, a Repayment Guaranty, and an Attornment, Estoppel And Subordination Agreement by the Navajo Nation, NTUA, NTUA New Markets V, Inc., in favor of Ecotrust Sub-CDE XXV, LLC.

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

5-DAY BILL HOLD PERIOD: None

Website Posting Time/Date: 5:11pm 10/18

Posting End Date: 10/10/2018

Eligible for Action: 10/11/2018

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 23RD NAVAJO NATION COUNCIL – Fourth Year, 2018

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4 INTRODUCED BY

5 
6 _____

7 (Prime Sponsor)

8
9 TRACKING NO. 0189-18

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11 AN ACTION

12 RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A SUBLEASE
13 TO NTUA NEW MARKETS V, INC, AN OPERATING SUBLEASE TO NAVAJO
14 TRIBAL UTILITY AUTHORITY, A SUBLEASEHOLD DEED OF TRUST,
15 A REPAYMENT GUARANTY, AND AN ATTORNMENT, ESTOPPEL AND
16 SUBORDINATION AGREEMENT BY THE NAVAJO NATION, NTUA, NTUA
17 NEW MARKETS V, INC., IN FAVOR OF ECOTRUST SUB-CDE XXV, LLC
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19 **BE IT ENACTED:**

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21 **SECTION ONE, AUTHORITY**

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- 23 A. Pursuant to 2 N.N.C. § 501(B)(2), the Resources and Development Committee of the
24 Navajo Nation Council has the authority to grant final approval for all land withdrawals,
25 non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding
26 requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall
27 include subleases, modifications, assignments, leasehold encumbrances, transfers,
28 renewals and terminations.
- 29 B. Pursuant to 21 N.N.C. § 7(B)(8), the Management Board of the Navajo Tribal Utility
30 Authority (NTUA) is authorized to make loan guarantees, provided that no such

1 guarantee in excess of \$200,000 shall be made without the prior written approval of
2 the Resources and Development Committee of the Navajo Nation Council.

3
4 **SECTION TWO. FINDINGS**

- 5
6 A. New Markets Tax Credits are authorized by Internal Revenue Code Section 45D.
7 Such tax credits cannot be utilized directly by NTUA because of its tax-exempt
8 status. NTUA chartered a corporation under Navajo Nation law through which the
9 financing will be accomplished. This limited liability company is known as NTUA
10 New Markets V, Inc., and is wholly owned by NTUA.
- 11 B. NTUA constructed the Kayenta Solar Substation to serve the Kayenta Solar
12 Development within the Kayenta Chapter.
- 13 C. The New Markets Tax Credits financing utilizes a loan arrangement between NTUA
14 New Markets V, Inc., and Ecotrust Sub-CDE XXV, LLC (a Delaware limited liability
15 company) to re-finance the Kayenta Solar Substation. These loan obligations will be
16 secured by various loan agreements between and/or among NTUA, NTUA New
17 Markets V, Inc., and Ecotrust Sub-CDE XXV, LLC.
- 18 D. In particular, NTUA intends to sublease the Kayenta Solar Substation to NTUA New
19 Markets V, Inc., pursuant to the form of sublease attached hereto as **Exhibit "A"**.
20 NTUA New Markets V, Inc., will sub-sublease the facilities to NTUA for operational
21 purposes pursuant to the form of operating sublease attached hereto as **Exhibit "B"**.
22 The transaction will be secured by a subleasehold deed of trust pursuant to the form
23 attached hereto as **Exhibit "C"**.
- 24 E. As additional security, the counterparties to the financing described above desire a
25 guarantee by NTUA of the financial obligations of NTUA New Markets V, Inc., as a
26 condition of closing. Such obligations are set forth in the attached Repayment
27 Guaranty attached hereto as **Exhibit "D"**. Also, the parties have agreed to enter into
28 a Non-Disturbance, Attornment, Estoppel and Subordination Agreement by the
29 Navajo Nation, NTUA, NTUA New Markets V, Inc., and Ecotrust Sub-CDE XXV,
30 LLC, which is attached hereto as **Exhibit "E"**.

1 F. It is in the best interests of NTUA's customers to utilize this New Markets Tax
2 Credits financing opportunity to lower NTUA's overall construction costs.

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4 **Section Three. Approval**

5 The Resources and Development Committee of the Navajo Nation Council hereby
6 approves:

- 7 A. Kayenta Chapter Solar Site Sublease between NTUA and NTUA New Markets V,
8 Inc., attached hereto as **Exhibit "A"**;
- 9 B. Kayenta Chapter Solar Site Sublease between NTUA New Markets V, Inc. and
10 NTUA (Operating Sublease), attached hereto as **Exhibit "B"**;
- 11 C. Subleasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement
12 and Fixture Filing among NTUA New Markets V, Inc. and Commonwealth Land
13 Title Insurance Co. for the benefit of Ecotrust Sub-CDE XXV, LLC, attached hereto
14 as **Exhibit "C"**;
- 15 D. Repayment Guaranty by NTUA in favor of Ecotrust Sub-CDE XXV, LLC, attached
16 hereto as **Exhibit "D"**; and
- 17 E. Non-Disturbance, Attornment, Estoppel and Subordination Agreement by the Navajo
18 Nation, NTUA, NTUA New Markets V, Inc., and Ecotrust Sub-CDE XXV, LLC,
19 attached hereto as **Exhibit "E"**.
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**KAYENTA CHAPTER SOLAR SITE SUBLEASE
BETWEEN
NAVAJO TRIBAL UTILITY AUTHORITY
AND THE
NTUA NEW MARKETS V, INC.**



THIS SUBLEASE is made and entered into this ____ day of _____, 2018, by and between THE NAVAJO TRIBAL UTILITY AUTHORITY (NTUA), hereinafter called the "Sublessor," whose address is P.O. Box 170, Fort Defiance, AZ 86504, and NTUA NEW MARKETS V, INC., hereinafter called the "Sublessee," whose address is P.O. Box 170, Fort Defiance, AZ 86504. This Sublease shall follow the provisions of 2 N.N.C. § 501(B)(2)(a) and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162, and all amendments or successors thereto, which by this reference are made a part hereof.

1. DEFINITIONS.

(A) "Approved Encumbrance" means an encumbrance approved in writing by Sublessor and the Secretary in accordance with the terms and conditions of this Sublease.

(B) "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.

(C) "Hazardous Substance" means any "hazardous substance as defined at § 2104 Q. of the NNCERCLA, 4 N.N.C. § 2101 *et seq.*, including all amendments or successors thereto.

(D) "Lease" means the Kayenta Chapter Solar Site Lease between the Navajo Nation and the Navajo Tribal Utility Authority dated as of June 24, 2016 as approved by the Bureau of Indian Affairs on July 27, 2016 as amended by Amendment dated _____, 2018.

(E) "NNCERCLA" means the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act, 4 N.N.C. § 2101 *et seq.*

(F) "Navajo Nation" or "Nation" means the government of the Navajo Nation, as engaged under this Sublease through the Navajo Land Department.

(G) "Regulated Substance" means any regulated substance as defined at § 1502 V. of the Navajo Nation Underground and Aboveground Storage Act, 4 N.N.C. § 1501 *et seq.*, which includes petroleum and petroleum products.

(H) "Secretary" means the Secretary of the U.S. Department of the Interior, or his or her authorized representative, delegate, or successor.

2. SUBLEASED PREMISES.

For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Sublessor hereby subleases to Sublessee all, or a portion of, that tract or parcel

of land situated within the Lease in the Chapter of Kayenta, Navajo Nation, state of Arizona more particularly described in the survey map with legal description attached hereto as Attachment “1,” and by this reference made a part hereof, containing approximately ___ acre(s), more or less, together with the right of reasonable ingress and egress, and the right to install utilities pursuant to Section 10 below, hereinafter called the “Subleased Premises.” The access road is approximately 0.03 miles, comprised of 0.18 acres. The legal description for this road is contained within Attachment “1”.

3. COMPLIANCE WITH FEDERAL LAW.

This Sublease hereby incorporates by reference, and shall be deemed to include, all the mandatory provisions regarding a business lease set forth in 25 C.F.R. §162.413 (the “Mandatory Provisions”). Incorporation of the Mandatory Provisions into this Sublease is designed to assure that the Sublease complies with all applicable requirements of federal law and to facilitate the processing and administration of this Sublease. The Mandatory Provisions require compliance with federal and tribal laws pursuant to the 25 C.F.R. §162.014. Please note this requires compliance with all federal and tribal historic and cultural preservation laws—specifically all work must cease and the Nation must be notified if artifacts are discovered to prevent unauthorized destruction of resources pursuant to 16 U.S.C. §470ee. In no circumstances shall the Sublease be construed to waive any requirement of federal law or to prevent the Secretary from exercising any right granted to the Secretary with respect to this Sublease. The parties understand and agree the Sublessor determined Navajo Nation Land Department will approve the Sublease pursuant to form.

4. PURPOSE, UNLAWFUL USES.

(A) Sublessee shall develop, use and occupy the Subleased Premises solely for the purpose of operating and maintaining an electrical substation, related interconnection facilities, ancillary water lines, wastewater facilities, and data lines and electric distribution facilities to residential customers in the vicinity of Kayenta, Arizona. Sublessee shall have the right to fence all, or any portion, of the Subleased Premises as may be necessary to conduct Sublessee’s operations. Whether or not Sublessee chooses to fence the Subleased Premises, Sublessee shall be solely responsible for securing the Subleased Premises so as to protect the above-described facilities located on the Subleased Premises and for protecting members of the general public, as well as Sublessee’s agents and invitees, from personal injury on the Subleased Premises.

(B) The Subleased Premises shall not be developed or used by Sublessee for any purpose other than as described in Section 4(A) above.

(C) Sublessee shall not use, or permit to be used, any part of the Subleased Premises for any unlawful conduct or purpose, creation of a nuisance, illegal activity, or negligent use or waste of the Subleased Premises.

5. TERM.

The Primary Term of this Sublease shall commence on the date this Sublease is approved by the Secretary (the “Effective Date”) and expire on July 23, 2051.

6. RENTAL.

(A) Sublessee shall pay \$2,000 as an annual rental payment so long as Sublessee uses the Subleased Premises for the development and operation of the above-described facilities. Annual payments shall be paid in advance, by the December 15 of the year prior to the commencement of each annual term.

(B) Payments under this Sublease shall be addressed to: The Navajo Tribal Utility Authority, Accounts Receivable Section, Post Office Box 170, Fort Defiance, Arizona 86515.

7. CONDITION OF SUBLEASED PREMISES.

Sublessee has examined the Subleased Premises and any improvements thereon and accepts the same in "as-is" condition. No representations as to the condition of the Subleased Premises have been made by Sublessor, any agent of Sublessor, or the Secretary, prior to or at the time of execution of this Sublease. Sublessee warrants that its decision to enter into this Sublease is based solely upon Sublessee's independent investigation of the Subleased Premises.

8. IMPROVEMENTS.

(A) All buildings and other improvements within the Subleased Premises, including, but not limited to, inverters, structures, interconnection facilities, as well as any and all equipment, conduits, fixtures and personal property, shall remain the property of Sublessee during and after the Term.

(B) Sublessor agrees and acknowledges that Sublessee shall have the right to remove all property, without limitation and including, but not limited to, buildings, improvements, equipment, conduits, fixtures and personal property of Sublessee, at any time during the term, up to twelve months past the expiration of the Term. Prior and up to twelve months past the expiration of the Term, at Sublessee's expense, Sublessee shall remove any buildings, improvements and all personal property in a workmanlike manner, and shall restore the Subleased Premises to substantially the same condition, including reasonable wear and tear, as existed prior to the installation of Sublessee's improvements. Sublessee will be released from liability when approved by an inspection of the premises. Any structures, buildings and other improvements which are not removed within twelve months after the expiration or termination of the Sublease shall become the property of the Navajo Nation. The Sublessee shall remain liable for any and all clean up and removal costs of any property not removed within the twelve month window.

9. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.

(A) All buildings and other improvements placed on the Subleased Premises by Sublessee shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance. The Nation reserves the right to require Sublessee to modify or remove any improvements to the Subleased Premises that do not comply with the requirements of this Section 9(A).

(B) Sublessee shall maintain the Subleased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition.

10. UTILITY SERVICE LINE AGREEMENTS.

(A) Sublessee is authorized to enter into appropriate service line agreements with utility companies for the provision of utility services, such as electricity and telecommunication services, to the Subleased Premises on the condition that:

- (1) such agreements are for the sole purpose of supplying utility services, such as electricity and telecommunication services, to the Subleased Premises;
- (2) such agreements authorize utility service lines only within the Subleased Premises;
- (3) such agreements do not extend beyond the Term of this Sublease;
- (4) executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Sublessor and the Secretary within thirty (30) days of their execution;
- (5) such agreements make Sublessee solely responsible for any charges; and
- (6) such agreements are otherwise in accordance with the provisions of 25 C.F.R. Part 169.22, including any amendments or successors thereto.

(B) Although Sublessor has the right to enter into service line agreements with utility companies for service lines across the Subleased Premises, the Sublessor shall ensure that any such agreements do not interfere with Sublessee's use of the Subleased Premises, e.g., solar photovoltaic energy collection, transmission and distribution. For the avoidance of any doubt regarding potential interference, Sublessor agrees to coordinate with Sublessee prior to entering into any such agreements.

11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.

(A) Sublessee shall not permit any liens arising from any work performed, materials furnished, or obligations incurred by Sublessee to be enforced against the Subleased Premises, any interest therein or any improvements thereon. Sublessee shall discharge all such liens before any action is brought to enforce same.

(B) Sublessee shall pay, before becoming delinquent, all property, use or gross receipts taxes or assessments, or any other like charges levied upon or against the Subleased Premises, any interest therein or any improvements thereon, for which Sublessee is liable. Upon request by Sublessor, Sublessee shall furnish Sublessor written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Sublessee have been paid, satisfied

or otherwise discharged. Sublessee shall have the right to contest any asserted tax, assessment or other like charge against the Subleased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom.

(C) Sublessee agrees to protect and hold harmless Sublessor, the Secretary and the Subleased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefor, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Upon request by Sublessee, Sublessor shall execute and deliver any appropriate documents with reference to real estate tax exemption of the Subleased Premises, any interest therein or improvements thereon.

(D) Sublessee shall pay, before becoming delinquent, all charges for utility services, including electricity and telecommunication services, supplied to the Subleased Premises. .

(E) Sublessor shall have the right to pay any lien, tax, assessment or other charge payable by Sublessee under this Sublease, or to settle any action therefor, if, within a reasonable time after written notice thereof from Sublessor, Sublessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Sublessor in so doing shall be repaid by Sublessee to Sublessor on demand, together with interest at the greater of (a) ten percent (10%) per annum, or (b) the highest allowable rate from the date of payment or incursion thereof by Sublessor until repayment is made by Sublessee. Interest shall accrue from the date of payment or incursion thereof by Sublessor until repayment is made by Sublessee.

12. ASSIGNMENTS AND SUBLEASES.

Except as set forth in Section 14, the Sublessee shall not assign, convey, or otherwise transfer this Sublease without the prior written approval of Sublessor, and then only upon the condition that the assignee or other successor in interest shall agree, in writing, to be bound by each and every covenant, agreement, term and condition of this Sublease. Any such attempted assignment, conveyance, or transfer, without Sublessor's prior written approval shall be void and of no effect. The approval of Sublessor may be granted, granted upon conditions, or withheld at the sole discretion of Sublessor. Any assignment of the Subleased Premises shall be effective only upon approval of the assignment by the Sublessor. The Subleasehold may be sold, assigned or transferred by the Sublessee, with approval or consent of the Sublessor, to Sublessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Sublessee's assets by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of Sublessee or transfer upon partnership or corporate dissolution of Sublessee shall constitute an assignment hereunder.

13. QUIET ENJOYMENT.

Sublessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Sublease, Sublessee shall peaceably and quietly have, hold and enjoy the Subleased Premises without any hindrance, interruption, ejection or molestation by Sublessor or by any other person or persons claiming from or under Sublessor.

14. ENCUMBRANCE.

- A. This Sublease or any right to or interest therein may not be encumbered without the prior written approval of the Sublessor and the Secretary, and no such encumbrance shall be valid or binding without such prior written approval. An Approved Encumbrance shall be confined to the subleasehold interest of the Sublessee and shall not jeopardize in any way Sublessor's interest in the land. Sublessee agrees to furnish any requested financial statements or analyses pertinent to the Approved Encumbrance that the Sublessor may deem necessary to justify the amount, purpose and terms.
- B. In the event of default by Sublessee of the terms of an Approved Encumbrance, Encumbrancer may exercise any rights provided in such Approved Encumbrance, provided that prior to any sale of the subleasehold, whether under power of sale or foreclosure, the Encumbrancer shall give to Sublessor notice of the same character and duration as is required to be given to Sublessee by the terms of such Approved Encumbrance and by applicable law. In the event of such default, Sublessor shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.
- C. If Sublessor exercises the above right, all right, title and interest of Sublessee in this Sublease shall terminate and Sublessor shall acquire this Sublease; provided, however, that such termination shall not relieve Sublessee of any obligation or liability which shall have accrued prior to the date of termination. Acquisition of this Sublease by Sublessor under these circumstances shall not serve to extinguish this Sublease by merger or otherwise.
- D. If Sublessor declines to exercise the above right and a sale of the subleasehold or other transaction transferring the subleasehold to a third party shall occur in accordance with the Approved Encumbrance, the purchaser at such sale or transaction shall succeed to all of the right, title and interest of Sublessee in this Sublease. It is further agreed that the purchaser at such sale, if it is the Encumbrancer, the Encumbrancer may sell and assign this Sublease without any further approval by Sublessor, the Nation or the Secretary, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Sublease, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Sublease only so long as it retains title thereto. If the purchaser is other than the Encumbrancer, the purchaser shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Sublease, and no such purchase shall be valid unless and until purchaser shall so agree.
- E. Sublessor's right to enter the Subleased Premises and to remove all persons and property therefrom and relet the Subleased Premises without cancelling this Sublease and Sublessor's other rights and remedies under this Sublease are subordinate to all rights and remedies of an Encumbrancer hereunder and under an Approved

Encumbrance and all documents, instruments and other writings executed in connection therewith.

- F. Sublessor acknowledges and agrees that it shall permit and cause each of its entities, agencies, subdivisions, instrumentalities and the officers, employees and agents thereof to take or cause to be taken all action required to allow the Encumbrancer and any of its respective agents or representative access to and entry upon the property covered by the Sublease for the purpose of enforcing any remedies or taking an action or remedy permitted by the Approved Encumbrance.
- G. Notwithstanding anything to the contrary in this Sublease, no Encumbrancer or successor in interest of an Encumbrancer, third-party purchaser in a foreclosure, transaction in lieu of foreclosure or other transaction involving the Subleased Premises for the benefit of an Encumbrancer shall be liable for any act, failure to act or omission of Sublessee.
- H. To the extent there is any conflict or ambiguity between any of the provisions of Sections 14 and 15 and any Approved Encumbrance, the Approved Encumbrance shall control.
- I. Until all indebtedness of the Sublessee secured by an Approved Encumbrance is fully paid and performed and the Approved Encumbrance has been extinguished: (1) Sublessor shall not permit the cancellation or termination of this Sublease except as provided herein; and (2) Sublessor shall not agree or consent to any material amendment or modification of this Sublease without the prior written consent of the Encumbrancer.

15. DEFAULT.

(A) Time is declared to be of the essence in this Sublease. Should Sublessee default in any payment of monies when due under this Sublease, fail to post any required bond, failure to cooperate with a request by the Sublessor to make appropriate records, reports, information available or be in violation of any other provision of this Sublease, and should such violation not be cured within thirty (30) days of written notice from Sublessor, or, with respect to any default other than a failure to make a timely payment of monies due and owed, within such additional time as is needed to cure provided Sublessee is diligently prosecuting the same to completion, said violation may be acted upon by the Sublessor in accordance with the provisions of 25 C.F.R. Part 162, including any amendments or successors thereto.

(B) In addition to the rights and remedies provided by the aforementioned regulations, Sublessor, either jointly or severally, may exercise the following options upon Sublessee's default, authorized by applicable law subject to the provisions of subsection (D) below:

- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Sublessee's compliance with all provisions of this Sublease; or

- (2) Re-enter the premises, if the Sublessee has abandoned the premises and defaulted on payment of rent, or has failed to conduct its operations for twelve months without notice, and remove all property therefrom, and re-let the premises without terminating this Sublease, for the account of Sublessee, but without prejudice to Sublessor's right to terminate the Sublease under applicable law thereafter, and without invalidating any right of Sublessor or any obligations of Sublessee hereunder. The terms and conditions of any re-letting shall be in the sole discretion of Sublessor, who shall have the right to alter and repair the Subleased Premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of altering and repairing or re-letting the Subleased Premises and collecting any related expenses, including reasonable attorney's fees and any reasonable real estate commission actually paid, together with any insurance, taxes and assessments paid, and thereafter toward payment to liquidate the total liability of Sublessee. Sublessee shall pay to Sublessor monthly when due, any deficiency and Sublessor may sue thereafter as each monthly deficiency shall arise; or
- (3) Take any other action authorized or allowed under applicable law.

(C) No waiver of a breach of any of the terms and conditions of this Sublease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Sublease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Sublessor, or any other rights or remedies now held or which may be held by Sublessor in the future.

(D) Sublessor shall deliver or cause to be delivered to Sublessee in a manner that comports with the requirements for delivery of notices and demands set forth in Section 45, with a duplicate copy delivered in the same manner to Encumbrancer, any and all notices of default or notices to show cause ("Default Notice"). Such Default Notice shall set forth with specificity the default that Sublessor alleges, whether in the opinion of Sublessor and/or the Secretary the default may be corrected, and, if so, the action Sublessee must take in order to cure such default. Sublessor shall accept performance by an Encumbrancer of any of Sublessee's obligations under this Sublease, with the same force and effect as though performed by Sublessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Sublessee would be entitled to pursue. Sublessor shall not terminate this Sublease if an Encumbrancer has cured or is diligently taking action to cure Sublessee's default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

E. In case a default on the part of Sublessee occurs preceding, during, or due to the bankruptcy, receivership or insolvency of the Sublessee, if an Encumbrancer, prior to the receipt of the Default Notice or within thirty (30) days following such receipt, shall have filed in the court having jurisdiction over such bankruptcy, receivership or insolvency, a petition for permission to foreclose or to pursue any transaction in lieu thereof, the filing of such petition shall be deemed to

be the beginning of foreclosure proceedings or the diligent pursuit of such transaction for purposes of this Section 15.

F. If the Encumbrancer is stayed or otherwise prohibited by any process or injunction by any court or by reason of any action by any court having jurisdiction of any bankruptcy, debt, rehabilitation or insolvency proceedings, from commencing or prosecuting foreclosure proceedings, transactions in lieu thereof, or other transactions involving the Subleased Premises for the benefit of an Encumbrancer, the time specified herein for commencing or prosecuting such a proceeding or transaction shall be extended for the period of such stay or prohibition.

16. SANITATION.

Sublessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Nation, and to dispose of all solid waste in compliance with applicable federal and Nation law. Sublessee further agrees at all times to maintain the entire Subleased Premises in a safe and sanitary condition, presenting a good appearance both inside and outside the Subleased Premises.

17. HAZARDOUS AND REGULATED SUBSTANCES.

(A) Sublessee shall not cause or permit any Hazardous or Regulated Substance to be used, stored, generated or disposed of on or in the Subleased Premises without first notifying Sublessor and obtaining Sublessor's prior written consent. If Hazardous or Regulated Substances are used, stored, generated or disposed of on or in the Subleased Premises, with or without Sublessor's consent, or if the premises become contaminated in any manner, Sublessee shall indemnify and hold harmless the Sublessor and the Secretary from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Subleased Premises, damages due to loss or restriction of rentable or usable space, any and all sums paid for settlement of claims, and any costs related to marketing the Subleased Premises), as well as attorneys' fees, consultant and expert fees arising during or after the Sublease term and arising as a result of such contamination regardless of fault, with the exception that the Sublessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by the federal government or the Nation. Without limitation of the foregoing, if Sublessee causes or permits any Hazardous or Regulated Substance on the Subleased Premises and the presence of such results in any contamination of the Subleased Premises, including, but not limited to, the improvements, soil, surface water or groundwater, Sublessee shall promptly, at its sole expense, take any and all necessary actions to return the Subleased Premises to the condition existing prior to the contamination by any such Hazardous or Regulated Substance on the Subleased Premises. Sublessee shall first obtain Sublessor's approval for any such remedial action.

(B) Sublessee shall provide the Navajo Environmental Protection Agency and the Risk Management Department of the Nation with a clear and legible copy of all notices or reports concerning release of Hazardous or Regulated Substance, testing, or remediation at the premises subject to this Sublease which Sublessee is required by applicable law, or regulation, to provide to

the United States Environmental Protection Agency or which Sublessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Sublease upon the Navajo Environmental Protection Agency shall be by first class mail to:

Waste Regulatory and Compliance Program
Navajo Environmental Protection Agency
Post Office Box 3089
Window Rock, Navajo Nation (Arizona) 86515

and,

Risk Management Department
Navajo Environmental Protection Agency
Post Office Box 1690
Window Rock, Navajo Nation (Arizona) 86515

or their respective institutional successors.

18. PUBLIC LIABILITY INSURANCE.

(A) Sublessee shall obtain and maintain a commercial public liability insurance policy in an amount of no less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate and \$5,000,000 in the form of umbrella coverage. Sublessor and the United States shall be named as additional insureds with respect to this Sublease. This coverage shall be primary to the additional insured, and not contributing with any other insurance or similar protection available to the additional insured, whether said other available coverage by primary, contributing or excess. Sublessee shall provide for notification to Sublessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason including non-payment of premium. Certificate of Insurance evidencing the above coverage shall be furnished to Sublessor annually, or upon written request.

(B) Sublessor may require that the amount of the insurance policy required by subsection (A) of this Section 18 be increased at any time, whenever either shall determine that such increase reasonably is necessary for the protection of Sublessor or the United States.

(C) In no event shall the amount of Sublessee's insurance policy limit Sublessee's liability or its duty to indemnify Sublessor under this Sublease.

19. RESERVED.

20. RESERVED.

21. PERFORMANCE BOND.

NTUA is a wholly owned enterprise of the Navajo Nation. The Nation waives the Performance Bond Requirements pursuant to 16 N.N.C. §2335(B), which permits waiver of the Performance Bond where the Nation waives the rent; or the waiver of the bond is in the best interest

of the Nation. Since NTUA was created by the Nation as an enterprise of the Nation, no performance bond is required.

22. NON-LIABILITY.

Neither Sublessor nor its officers, agents, or employees (collectively, the "Sublessor Parties"), shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Sublessee or any other person whomsoever, that is caused by any use of the Subleased Premises by Sublessee, or that results from any defect in any structure existing or erected thereon, or that arises from accident, fire, or from any other casualty on said premises or from any other cause whatsoever, except to the extent of the Sublessor Parties' negligence or intentional misconduct. Sublessee, as a material part of the consideration for this Sublease, hereby waives on Sublessee's behalf all claims against Sublessor and the United States Government and agrees to defend and hold Sublessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death arising from the condition of the premises or use of the premises by Sublessee, together with all costs and expenses in connection therewith to the full extent permitted by applicable law, excepting however, all claims to the extent arising from the Sublessor Parties' negligence or intentional misconduct.

23. INSPECTION.

The Sublessor, Secretary, and their authorized representatives shall have the right, upon reasonable notice to Sublessee, to enter upon the Subleased Premises, or any part thereof, to inspect the same and all improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the premises, the protection of the Subleased Premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Sublessee shall pay the costs of such testing provided such contamination arose due to Sublessee's acts or omissions. Nothing in this section shall limit Sublessee's obligation under applicable law or this Sublease to perform testing or remediation or otherwise limit Sublessee's liability.

24. MINERALS.

All minerals, including sand and gravel, contained in or on the Subleased Premises are reserved for the use of Sublessor. Sublessor also reserves the right to enter upon the Subleased Premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Sublessee's personal property or any improvements constructed by Sublessee.

25. EMINENT DOMAIN.

If the Subleased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Sublease, Sublessee's interest in the Subleased Premises or the part of the Subleased Premises taken shall thereupon cease. Compensation awarded for the taking of the Subleased Premises or any part thereof, including any improvements located thereon,

shall be awarded to Sublessor and Sublessee as their respective interests may appear at the time of such taking, provided that Sublessee's right to such awards shall be subject to the rights of an Encumbrancer under an Approved Encumbrance.

26. DELIVERY OF SUBLEASED PREMISES.

At the termination of this Sublease, Sublessee will peaceably and without legal process deliver up the possession of the Subleased Premises, in good condition, usual wear and tear excepted.

27. HOLDING OVER.

Except as otherwise provided, holding over by Sublessee after termination of this Sublease shall not constitute a renewal or extension thereof or give Sublessee any rights hereunder in or to the Subleased Premises or to any improvements located thereon.

28. ATTORNEY'S FEES.

Sublessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Sublessor in enforcing the provisions of this Sublease or in pursuing an action against Sublessee for breach, default or liability arising under this Sublease. Sublessee will not be liable for costs incurred by Sublessor if a judgment is rendered in favor of Sublessee.

29. INDEMNIFICATION.

Except to the extent of the negligence or intentional misconduct of Nation and the Secretary, and their agents, employees and contractors, Sublessee shall defend, indemnify and hold harmless the Nation and the Secretary and their authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the construction on or maintenance, operation, occupancy or use of the Subleased Premises by Sublessee.

30. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.

Sublessee and Sublessee's employees or agents, agree to abide by all laws, regulations, and ordinances of the Nation and all applicable laws, regulations and ordinances of the United States now in force and effect or as may be hereafter in force and effect including, but not limited to:

- a. Title 25, Code of Federal Regulations, Part 169 subject to the terms of that certain right-of-way approved by the Navajo Nation Council on September 15, 2015 and submitted to the Bureau of Indian Affairs on October 20, 2015 (the "Right-of-Way");
- b. The Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.* (NPEA);
- c. The Navajo Nation Business Opportunity Act, (NNBOA), 5 N.N.C. § 201 *et seq.*; and

- d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq. Lessee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

31. GOVERNING LAW.

Except as may be prohibited by applicable federal law, the laws of the Nation shall govern the construction, performance and enforcement of this Sublease. Any action or proceeding brought by Sublessee against the Nation in connection with or arising out of the terms and conditions of this Sublease, to the extent authorized by Navajo law, shall be brought only in the courts of the Nation, and no such action or proceeding shall be brought by Sublessee against the Nation in any court or administrative body of any State.

32. AIR QUALITY.

The Sublessee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the Lease.

33. KEEPING LANDS CLEAR.

The Sublessee shall clear and keep clear the lands within the Sublease and right-of-way to the extent compatible with the purpose of this Sublease, and shall dispose of all vegetation and other materials cut, uprooted or otherwise accumulated during any surface disturbance activities.

34. RECLAIMED LANDS.

The Sublessee shall reclaim all surface lands disturbed related to the Sublease and Right-of-Way, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA) prior to commencement of such a plan.

35. MAINTENANCE OF LAND.

The Sublessee shall at all times during the term of the Sublease and at the Sublessee's sole cost and expense, maintain the land subject to the Sublease and all improvements located thereon and make all necessary reasonable repairs resulting from any damages caused by the Navajo Nation, its employees and any entity to which the Navajo Nation has granted a lease or right-of-way.

36. PERMISSION TO CROSS.

The Sublessee is responsible for securing written permission to cross existing rights-of-way, if any, from the appropriate parties.

37. TERMINATION.

The Navajo Nation may recommend termination of the Sublease by the Secretary for violation of any of the terms and conditions stated herein.

At the termination of this Sublease, the Sublessee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Sublessee shall provide the Navajo Nation, at the Sublessee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.

38. ENTRY UPON PREMISES.

The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the Sublease, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.

39. DISPUTE RESOLUTION.

In the event that a dispute arises under this Sublease, Sublessee, before initiating any action or proceeding, agrees to use good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution in connection with this Sublease.

40. CONSENTS AND WAIVERS.

Sublessee hereby consents to the legislative, executive and judicial jurisdiction of the Nation in connection with all activities conducted by the Sublessee within the Nation.

The Sublessor and Sublessee agree that in addition to and notwithstanding any rights of the Encumbrancer in any Approved Encumbrance, claims brought by an Encumbrancer to enforce any rights hereunder (an "Encumbrancer Claim") shall proceed in the manner set forth in an Approved Encumbrance, and each of the Sublessor and Sublessee hereby consents to such dispute resolution terms. Each of Sublessor and Sublessee hereby expressly, unequivocally and irrevocably waives its sovereign immunity to suit, legal process and proceedings, consents to the application of the laws of the State of Arizona to such Encumbrancer Claim, consents to the jurisdiction of state and federal courts located in the State of Arizona (and any courts with appellate jurisdiction therefrom) and waives the right to exhaustion of tribal remedies in connection with any Encumbrancer Claim.

41. COVENANT NOT TO CONTEST JURISDICTION.

Sublessee hereby covenants and agrees not to contest or challenge the legislative, executive or judicial jurisdiction of the Nation in connection with any enforcement of this Sublease (by any party other than the Encumbrancer and its successors and assigns) on the basis that such jurisdiction is inconsistent with the status of the Nation as an Indian nation, or that the Nation government is not a government of general jurisdiction, or that the Nation government does not possess police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing in this section shall be construed to negate or impair federal responsibilities with respect to the Subleased Premises or to the Nation.

42. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Sublease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Nation.

43. INTEREST OF MEMBER OF CONGRESS.

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Sublease or to any benefit that may arise here from. This provision shall not be construed to extend to this Sublease if made with a corporation or company for its general benefit.

44. OBLIGATIONS TO THE UNITED STATES.

It is understood and agreed that while the Subleased Premises are in trust or restricted status, all of Sublessee's obligations under this Sublease and the obligations of its sureties are to the United States as well as to Sublessor.

45. NOTICES AND DEMANDS.

(A) Any notices, demands, requests or other communications to or upon either party provided for in this Sublease, or given or made in connection with this Sublease, (hereinafter referred to as "Notices,") shall be in writing and shall be addressed as follows:

To or upon Navajo Nation:

W. Mike Halona, Director
Navajo Land Department
DIVISION OF NATURAL RESOURCES
P.O. Box 2249
Window Rock, Navajo Nation (Arizona) 86515
Fax: 1- 928-871-7039

To or upon Sublessor:

Navajo Tribal Utility Authority
P.O. Box 170
Fort Defiance, Arizona 86504
Fax: 1-928-729-2135

To or upon the Sublessee:

NTUA New Markets V, Inc.
P.O. Box 170
Fort Defiance, Arizona 86504
Fax: 1-928-729-2135

(B) All Notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission or e-mail, followed by surface mail. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours; or if not, during normal business hours on the next business day following delivery; if by registered or certified mail, or by facsimile transmission or e-mail, followed by surface mail, on the next business day following actual delivery and receipt.

(C) Copies of all Notices shall be sent to the Secretary if approval of this Sublease is required.

(D) Sublessor, Sublessee and the Secretary may at any time change its address for purposes of this section by Notice.

46. SUCCESSORS AND ASSIGNS.

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors of Sublessee. Except as the context otherwise requires, the term "Sublessee," as used in this Sublease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

47. RESERVATION OF JURISDICTION.

There is expressly reserved to the Nation full territorial legislative, executive and judicial jurisdiction over the area under the Sublease and all lands burdened by the Sublease, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the area under the Sublease; and the area under the Sublease and all lands burdened by the Sublease shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

48. EFFECTIVE DATE; VALIDITY.

This Sublease shall take effect on the date it is executed by both parties, or approved by the Secretary if the Navajo Nation determines that its approval is required. No modification of or amendment to this Sublease shall be valid or binding on either party until it is executed by both parties and approved by the Secretary when necessary until the Navajo Nation commences leasing authority pursuant to 25 U.S.C. 415(e).

49. SOVEREIGN IMMUNITY; JURISDICTION; ENFORCEMENT.

(A) *Limited Waiver of Sovereign Immunity.* Nothing in this Sublease shall be deemed a waiver of Sublessor or Sublessee's sovereign immunity pursuant to the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq. If a court of competent jurisdiction should find or conclude that Sublessor or Sublessee's does enjoy sovereign immunity, each of Sublessor and Sublessee hereby irrevocably waives its sovereign immunity on a limited basis and consents to be sued should an action be commenced to determine and enforce the obligations of the parties (including any permitted successors and assigns of the parties) under this Sublease pursuant to and

in accordance with that Resolution No. CAP-18-10 adopted by the Navajo Nation Council on April 10, 2010, and by Resolution No. NTUA-28-10 of the Management Board of the Navajo Tribal Utility Authority dated June 25, 2010; and provided further that such limited waiver shall be limited to the assets, revenues and income of Sublessor and Sublessee, and shall not waive the sovereign immunity of the Navajo Nation nor extend any liability to the assets, revenues or income of the Navajo Nation. With respect to the foregoing limited waiver, Sublessor and Sublessee represent and warrant that all notices and other actions required to authorize such waiver have been given and done.

(B) *Jurisdiction/Enforcement.* The parties hereto acknowledge and agree that this Sublease and the duties and obligations of the parties hereto shall be enforceable against Sublessor or Sublessee in any of the following forums: (a) the United States District Court for the District of Arizona, the Superior Court for Navajo County, Arizona, or, if and only if elected or consented to in writing by an Encumbrancer, the courts of the Navajo Nation (“Permitted Courts”), or (b) if and only if elected or consented to in writing by an Encumbrancer, arbitration pursuant to and in accordance with arbitration procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. § 554 J and § 554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§ 1101 et seq. (“Arbitration”).

(C) *Permitted Courts.* If a party hereto seeks enforcement of any duty or obligation hereunder by suit or injunction or other legal proceeding, the following provisions shall apply:

1. actions filed in any of the Permitted Courts shall be governed by the laws of the forum in which they are initiated;
2. each of Sublessor and Sublessee hereby submits to the jurisdiction of the Permitted Courts, waives its rights to bring any action or proceeding against the other in any court except the Permitted Courts, waives any objection, including, without limitation, any objection to the laying of venue on the grounds of forum non conveniens, which either may have or hereafter have to the bringing of any action or proceeding in the Permitted Courts, waives any requirement of exhaustion of tribal remedies or that the foregoing must be brought in the tribal courts of the Navajo Nation, and agrees that all claims in respect of this Sublease or related transaction may only be heard and determined in the Permitted Courts; and
3. Sublessor and Sublessee irrevocably consent to the service of process of any of the Permitted Courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Sublessor and Sublessee at their address provided herein. Nothing contained in this Section shall affect the right of an Encumbrancer to serve process in any other manner permitted by law. The parties hereby explicitly consent to the jurisdiction of each of the Permitted Court systems for proceedings brought pursuant to this Section.

(D) *Arbitration.* If either Sublessor or Sublessee seeks enforcement of any duty or obligation or resolution of any dispute hereunder by Arbitration, or if Sublessor or Sublessee shall consent (in its sole discretion) to other party’s enforcement of any duty or obligation or resolution

of any dispute hereunder by Arbitration (if the Encumbrancer shall have consented thereto), the Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

1. unless otherwise agreed to in writing by the parties hereto, all arbitration procedures shall be held in Navajo County, Arizona;
2. the arbitration shall be conducted by an arbitration panel consisting of three (3) AAA available arbitrators, with at least one arbitrator possessing at least ten (10) years of experience in federal Indian law, with each party choosing one arbitrator and the two arbitrators choosing a third;
3. notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. § 555;
4. the result of any arbitration award provided for herein shall be in strict conformance with the provisions of 1 N.N.C. § 554 K 1-6;
5. notwithstanding the provisions herein, the laws of the Navajo Nation shall exclusively govern the arbitration provisions set forth herein and the arbitration procedures conducted pursuant thereto (but actions to enforce this Sublease pursuant to a waiver of sovereign immunity described herein and to actions to compel arbitration and enforce awards resulting from arbitration as provided in subparagraph (b)(vi) shall be subject to the provisions herein);
6. each of Sublessor and Sublessee expressly consents to submit to the Permitted Courts (including all courts to which decisions of the federal court may be appealed) with regard to actions to compel the other party and/or the Navajo Nation's participation in an arbitration proceeding and to enforce an award resulting from such arbitration. Such actions shall be governed by laws of the forum in which they are initiated; and
7. Commencement of arbitration in accordance with the foregoing provisions of this Section shall be a complete defense to any suit, action or proceeding instituted in any federal, state, or tribal court or any administrative tribunal, with respect to any dispute or controversy arising out of this Sublease that is arbitrated as set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed as of the date first above written.

**THE NAVAJO TRIBAL UTILITY
AUTHORITY
SUBLESSOR**

**NTUA NEW MARKETS V, INC.
SUBLESSEE**

Date: _____

Date: _____

By: _____
Walter W. Haase, P.E.
General Manager

By: _____
Walter W. Haase, P.E.

ATTACHMENT 1

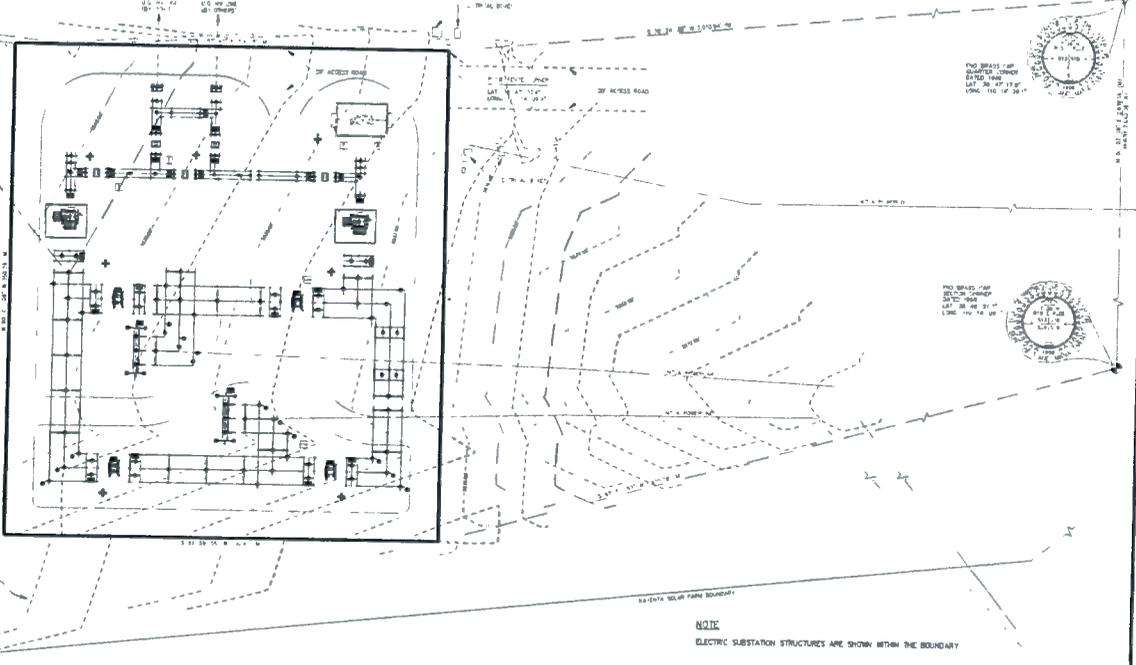
Legal Description and Survey Map of Subleased Premises

LEGEND/SYMBOLS

-  FOUND SECTION CORNER
-  QUARTER CORNER
-  BEARINGS
-  CHAIN AND PENCES
-  ELECTRICAL BOXES
-  BOUNDARY LINE
-  MEASURED
-  RECALCULATED
-  FOUND

ALTA / NSPS LAND TITLE SURVEY

KAYENTA PRIMARY SUBSTATION TRACT
 LOCATED IN UNSURVEYED SECTIONS OF 13 & 24,
 TOWNSHIP 39 NORTH, RANGE 19 EAST,
 GILA AND SALT RIVER BASE MERIDIAN, ARIZONA
 IN THE VICINITY OF KAYENTA,
 NAVAJO COUNTY, STATE OF ARIZONA.



DATE 1/24/20	SECTION 13 & 24 TOWNSHIP 39N RANGE 19E	JOB NO 6296956	 NAVAJO TRIBAL UTILITY AUTHORITY P O BOX 170 FORT DEFIANCE, ARIZONA 86504	DRAWN BY JTB	CHECKED BY AM	DATE 1/20/20	SCALE AS SHOWN	ALTA NSPS LAND TITLE SURVEY KAYENTA PRIMARY SUBSTATION TRACT LOCATED IN UNSURVEYED SECTIONS OF 13 & 24, TOWNSHIP 39 NORTH, RANGE 19 EAST, GILA AND SALT RIVER BASE MERIDIAN, ARIZONA IN THE VICINITY OF KAYENTA, NAVAJO COUNTY, STATE OF ARIZONA
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ATTACHMENT 2

UTILITY SYSTEM DESCRIPTION

Kayenta Solar Substation & X-line
Kayenta (Todacheene Extension) PL Project
Kayenta Solar 3-ph Powerline Project to Sub
Kayenta Solar Water line Project
Kayenta Solar Sewer line Project
Kayenta Solar Fiber Project
Kayenta Solar Fiber Make Ready
Kayenta Hall Burns Main
Kayenta Hall Burns Member Extension

SCHEDULE 1

Rent

LEASE TERM PERIOD	BASE RENT PER QUARTER*
Effective Date – December 31, 2024	\$43,750
January 1, 2025 – December 31, 2041	\$187,500
January 1, 2042 – Termination	\$187,500

*Quarterly rent shall be reduced proportionately for any period comprising less than a calendar quarter.



**KAYENTA CHAPTER SOLAR SITE SUBLEASE
BETWEEN
NTUA NEW MARKETS V, INC.
AND
THE NAVAJO TRIBAL UTILITY AUTHORITY**

THIS SUBLEASE is made and entered into this ___ day of _____, 2018, by and between NTUA NEW MARKETS V, INC., hereinafter called the “Sublessor,” whose address is P.O. Box 170, Fort Defiance, AZ 86504, and THE NAVAJO TRIBAL UTILITY AUTHORITY (NTUA), hereinafter called the “Sublessee,” whose address is P.O. Box 170, Fort Defiance, AZ 86504. This Sublease shall follow the provisions of 2 N.N.C. § 501(B)(2)(a) and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162, and all amendments or successors thereto, which by this reference are made a part hereof.

1. DEFINITIONS.

(A) “Approved Encumbrance” means an encumbrance approved in writing by Sublessor and the Secretary (defined below) in accordance with the terms and conditions of this Sublease.

(B) “Encumbrancer” means the owner and holder of an Approved Encumbrance, including all successors and assigns.

(C) “Ground Sublease” means the Kayenta Chapter Solar Site Sublease between Navajo Tribal Utility Authority as sublessor and the NTUA New Markets V, Inc., as sublessee dated as of _____, 2018.

(D) “Hazardous Substance” means any “hazardous substance as defined at § 2104 Q. of the NNCERCLA, 4 N.N.C. § 2101 *et seq.*, including all amendments or successors thereto.

(E) “NNCERCLA” means the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act, 4 N.N.C. § 2101 *et seq.*

(F) “Navajo Nation” or “Nation” means the government of the Navajo Nation, as engaged under this Sublease through the Navajo Land Department.

(G) “Regulated Substance” means any regulated substance as defined at § 1502 V. of the Navajo Nation Underground and Aboveground Storage Act, 4 N.N.C. § 1501 *et seq.*, which includes petroleum and petroleum products.

(H) “Secretary” means the Secretary of the U.S. Department of the Interior, or his or her authorized representative, delegate, or successor.

2. SUBLEASED PREMISES.

For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Sublessor hereby subleases to Sublessee its subleasehold interests in the Ground Sublease located within the Chapter of Kayenta, Navajo Nation, state of Arizona, more particularly described in the survey map with legal description attached hereto as Attachment "1," and by this reference made a part hereof, containing approximately 2.41 acre(s), more or less, together with the right of reasonable ingress and egress, and the right to install utilities pursuant to Section 10 below (the "Subleased Premises") and Sublessor's interest in the electrical substation installed thereon, and certain interconnection facilities, ancillary water lines, wastewater facilities, and data lines and electric distribution facilities, described in Attachment "2" attached hereto (the "Utility System"). The access road is approximately 0.03 miles, comprised of 0.18 acres. The legal description for this road is contained within Attachment "1".

3. COMPLIANCE WITH FEDERAL LAW.

This Sublease hereby incorporates by reference, and shall be deemed to include, all the mandatory provisions regarding a business lease set forth in 25 C.F.R. §162.413 (the "Mandatory Provisions"). Incorporation of the Mandatory Provisions into this Sublease is designed to assure that the Sublease complies with all applicable requirements of federal law and to facilitate the processing and administration of this Sublease. The Mandatory Provisions require compliance with federal and tribal laws pursuant to the 25 C.F.R. §162.014. Please note this requires compliance with all federal and tribal historic and cultural preservation laws—specifically all work must cease and the Nation must be notified if artifacts are discovered to prevent unauthorized destruction of resources pursuant to 16 U.S.C. §470ee. In no circumstances shall the Sublease be construed to waive any requirement of federal law or to prevent the Secretary from exercising any right granted to the Secretary with respect to this Sublease. The parties understand and agree the Sublessor determined Navajo Nation Land Department will approve the Sublease pursuant to form.

4. PURPOSE, UNLAWFUL USES.

(A) Sublessee shall develop, use and occupy the Subleased Premises solely for the purpose of operating and maintaining the Utility System for residential customers in the vicinity of Kayenta, Arizona. Sublessee shall have the right to fence all, or any portion, of the Subleased Premises as may be necessary to conduct Sublessee's operations. Whether or not Sublessee chooses to fence the Subleased Premises, Sublessee shall be solely responsible for securing the Subleased Premises so as to protect the above-described facilities located on the Subleased Premises and for protecting members of the general public, as well as Sublessee's agents and invitees, from personal injury on the Subleased Premises.

(B) The Subleased Premises shall not be developed or used by Sublessee for any purpose other than as described in Section 4(A) above.

(C) Sublessee shall not use, or permit to be used, any part of the Subleased Premises for any unlawful conduct or purpose, creation of a nuisance, illegal activity, or negligent use or waste of the Subleased Premises.

5. TERM.

The Primary Term of this Sublease shall commence on the date set forth below (the "Effective Date") and continue for a term of twenty-four years.

6. RENTAL.

(A) As used herein, the "Rent" for the Subleased Premises and the Utility System shall be an amount per calendar quarter as set forth on the Schedule of Rent attached hereto as Schedule 1, which shall be paid in quarterly installments as set forth on Schedule 1. From and after the commencement date, Sublessee shall pay to Sublessor Base Rent partially in advance and partially in arrears, without demand therefor, on or before the first day of the last month of each calendar quarter, during the Primary Term.

(B) Rent shall increase only as contemplated by the Schedule of Rent attached hereto or as otherwise agreed in writing by the parties.

(C) Payments under this Sublease shall be addressed to: NTUA New Markets V, Inc., Post Office Box 170, Fort Defiance, Arizona 86504.

7. CONDITION OF SUBLEASED PREMISES.

Sublessee has examined the Subleased Premises, the Utility System and any other improvements thereon and accepts the same in "as-is" condition. No representations as to the condition of the Subleased Premises or the Utility System have been made by Sublessor, any agent of Sublessor, or the Secretary, prior to or at the time of execution of this Sublease. Sublessee warrants that its decision to enter into this Sublease is based solely upon Sublessee's independent investigation of the Subleased Premises and the Utility System.

8. IMPROVEMENTS.

All buildings and other improvements within the Subleased Premises, including, but not limited to, inverters, structures, interconnection facilities, as well as any and all equipment, conduits, fixtures, personal property and the Utility System, shall remain the property of Sublessor during and after the Term. All references to "improvements" in this Sublease shall include without limitation, the Utility System.

9. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.

(A) All buildings and other improvements placed on the Subleased Premises by Sublessee shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance. The Nation and Sublessor reserve the right to require Sublessee to modify or remove any improvements to the Subleased Premises that do not comply with the requirements of this Section 9(A).

(B) Sublessee shall maintain the Subleased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition.

10. UTILITY SERVICE LINE AGREEMENTS.

(A) Sublessee is authorized to enter into appropriate service line agreements with utility companies for the provision of utility services, such as electricity and telecommunication services, to the Subleased Premises on the condition that:

- (1) such agreements are for the sole purpose of supplying utility services, such as electricity and telecommunication services, to the Subleased Premises;
- (2) such agreements authorize utility service lines only within the Subleased Premises;
- (3) such agreements do not extend beyond the Term of this Sublease;
- (4) executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Sublessor and the Secretary within thirty (30) days of their execution;
- (5) such agreements make Sublessee solely responsible for any charges; and
- (6) such agreements are otherwise in accordance with the provisions of 25 C.F.R. Part 169.22, including any amendments or successors thereto.

(B) Although Sublessor has the right to enter into service line agreements with utility companies for service lines across the Subleased Premises, the Sublessor shall ensure that any such agreements do not interfere with Sublessee's use of the Subleased Premises, e.g., solar photovoltaic energy collection, transmission and distribution. For the avoidance of any doubt regarding potential interference, Sublessor agrees to coordinate with Sublessee prior to entering into any such agreements.

11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.

(A) Sublessee shall not permit any liens arising from any work performed, materials furnished, or obligations incurred by Sublessee to be enforced against the Subleased Premises, any interest therein or any improvements thereon. Sublessee shall discharge all such liens before any action is brought to enforce same.

(B) Sublessee shall pay, before becoming delinquent, all property, use or gross receipts taxes or assessments, or any other like charges levied upon or against the Subleased Premises, any interest therein or any improvements thereon, for which Sublessee is liable. Upon request by Sublessor, Sublessee shall furnish Sublessor written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Sublessee have been paid, satisfied or otherwise discharged. Sublessee shall have the right to contest any

asserted tax, assessment or other like charge against the Subleased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom.

(C) Sublessee agrees to protect and hold harmless Sublessor, the Secretary and the Subleased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefor, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Upon request by Sublessee, Sublessor shall execute and deliver any appropriate documents with reference to real estate tax exemption of the Subleased Premises, any interest therein or improvements thereon.

(D) Sublessee shall pay, before becoming delinquent, all charges for utility services, including electricity and telecommunication services, supplied to the Subleased Premises and the improvements.

(E) Sublessor shall have the right to pay any lien, tax, assessment or other charge payable by Sublessee under this Sublease, or to settle any action therefor, if, within a reasonable time after written notice thereof from Sublessor, Sublessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Sublessor in so doing shall be repaid by Sublessee to Sublessor on demand, together with interest at the greater of (a) ten percent (10%) per annum, or (b) the highest allowable rate from the date of payment or incursion thereof by Sublessor until repayment is made by Sublessee. Interest shall accrue from the date of payment or incursion thereof by Sublessor until repayment is made by Sublessee.

12. ASSIGNMENTS AND SUBLEASES.

Except as set forth in Section 14, the Sublessee shall not assign, convey, or otherwise transfer this Sublease without the prior written approval of Sublessor, and then only upon the condition that the assignee or other successor in interest shall agree, in writing, to be bound by each and every covenant, agreement, term and condition of this Sublease. Any such attempted assignment, conveyance, or transfer, without Sublessor's prior written approval shall be void and of no effect. The approval of Sublessor may be granted, granted upon conditions, or withheld at the sole discretion of Sublessor. Any assignment of the Subleased Premises and/or the improvements shall be effective only upon approval of the assignment by the Sublessor. The Subleasehold may be sold, assigned or transferred by the Sublessee, with approval or consent of the Sublessor, to Sublessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Sublessee's assets by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of Sublessee or transfer upon partnership or corporate dissolution of Sublessee shall constitute an assignment hereunder.

13. QUIET ENJOYMENT.

Sublessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Sublease, Sublessee shall peaceably and quietly have, hold and enjoy the Subleased Premises and the improvements without any hindrance, interruption, ejection or molestation by Sublessor or by any other person or persons claiming from or under Sublessor.

14. ENCUMBRANCE.

- A. This Sublease or any right to or interest therein may not be encumbered without the prior written approval of the Sublessor and the Secretary, and no such encumbrance shall be valid or binding without such prior written approval. Sublessor hereby expressly consents to that certain Subleasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing made as of _____, 2018, by NTUA New Markets V, Inc., a corporation formed under the laws of the Nation as trustor for the benefit of Ecotrust Sub-CDE XXV, LLC, a Delaware limited liability corporation as beneficiary (“Lender”), which shall be deemed an Approved Encumbrance once the Secretary approves such document. An Approved Encumbrance shall be confined to the subleasehold interest of the Sublessee and shall not jeopardize in any way Sublessor’s interest in the land. Sublessee agrees to furnish any requested financial statements or analyses pertinent to the Approved Encumbrance that the Sublessor may deem necessary to justify the amount, purpose and terms.
- B. In the event of default by Sublessee of the terms of an Approved Encumbrance, Encumbrancer may exercise any rights provided in such Approved Encumbrance, provided that prior to any sale of the subleasehold, whether under power of sale or foreclosure, the Encumbrancer shall give to Sublessor notice of the same character and duration as is required to be given to Sublessee by the terms of such Approved Encumbrance and by applicable law. In the event of such default, Sublessor shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.
- C. If Sublessor exercises the above right, all right, title and interest of Sublessee in this Sublease shall terminate and Sublessor shall acquire this Sublease; provided, however, that such termination shall not relieve Sublessee of any obligation or liability which shall have accrued prior to the date of termination. Acquisition of this Sublease by Sublessor under these circumstances shall not serve to extinguish this Sublease by merger or otherwise.
- D. If Sublessor declines to exercise the above right and a sale of the subleasehold or other transaction transferring the subleasehold to a third party shall occur in accordance with the Approved Encumbrance, the purchaser at such sale or transaction shall succeed to all of the right, title and interest of Sublessee in this Sublease. It is further agreed that the purchaser at such sale, if it is the Encumbrancer, the Encumbrancer may sell and assign this Sublease without any further approval by Sublessor, the Nation or the Secretary, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Sublease, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Sublease only so long as it retains title thereto. If the purchaser is other than the Encumbrancer, the purchaser shall agree in writing to be bound by all

the covenants, agreements, terms and conditions of this Sublease, and no such purchase shall be valid unless and until purchaser shall so agree.

- E. Sublessor's right to enter the Subleased Premises and to remove all persons and property therefrom and relet the Subleased Premises without cancelling this Sublease and Sublessor's other rights and remedies under this Sublease are subordinate to all rights and remedies of an Encumbrancer hereunder and under an Approved Encumbrance and all documents, instruments and other writings executed in connection therewith.
- F. Sublessor acknowledges and agrees that it shall permit and cause each of its entities, agencies, subdivisions, instrumentalities and the officers, employees and agents thereof to take or cause to be taken all action required to allow the Encumbrancer and any of its respective agents or representative access to and entry upon the property covered by the Sublease for the purpose of enforcing any remedies or taking an action or remedy permitted by the Approved Encumbrance.
- G. Notwithstanding anything to the contrary in this Sublease, no Encumbrancer or successor in interest of an Encumbrancer, third-party purchaser in a foreclosure, transaction in lieu of foreclosure or other transaction involving the Subleased Premises for the benefit of an Encumbrancer shall be liable for any act, failure to act or omission of Sublessee.
- H. To the extent there is any conflict or ambiguity between any of the provisions of Sections 14 and 15 and any Approved Encumbrance, the Approved Encumbrance shall control.
- I. Until all indebtedness of the Sublessee secured by an Approved Encumbrance is fully paid and performed and the Approved Encumbrance has been extinguished: (1) Sublessor shall not permit the cancellation or termination of this Sublease except as provided herein; and (2) Sublessor shall not agree or consent to any material amendment or modification of this Sublease without the prior written consent of the Encumbrancer.

15. DEFAULT.

(A) Time is declared to be of the essence in this Sublease. Should Sublessee default in any payment of monies when due under this Sublease, fail to post any required bond, failure to cooperate with a request by the Sublessor to make appropriate records, reports, information available or be in violation of any other provision of this Sublease, and should such violation not be cured within ten (10) days after written notice from Sublessor with respect a failure to make a timely payment of monies due and owed or with respect to any default other than a failure to make a timely payment of monies due and owed, thirty (30) days a written notice from Sublessor, or, within such additional time as is needed to cure provided Sublessee is diligently prosecuting the same to completion, said violation may be acted upon by the Sublessor in accordance with the provisions of 25 C.F.R. Part 162, including any amendments or successors thereto.

(B) In addition to the rights and remedies provided by the aforementioned regulations, Sublessor, either jointly or severally, may exercise the following options upon Sublessee's default, authorized by applicable law subject to the provisions of subsection (D) below:

- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Sublessee's compliance with all provisions of this Sublease; or
- (2) Re-enter the premises, if the Sublessee has abandoned the premises and defaulted on payment of rent, or has failed to conduct its operations for twelve months without notice, and remove all property therefrom, and re-let the premises without terminating this Sublease, for the account of Sublessee, but without prejudice to Sublessor's right to terminate the Sublease under applicable law thereafter, and without invalidating any right of Sublessor or any obligations of Sublessee hereunder. The terms and conditions of any re-letting shall be in the sole discretion of Sublessor, who shall have the right to alter and repair the Subleased Premises and the improvements as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of altering and repairing or re-letting the Subleased Premises and the improvements and collecting any related expenses, including reasonable attorney's fees and any reasonable real estate commission actually paid, together with any insurance, taxes and assessments paid, and thereafter toward payment to liquidate the total liability of Sublessee. Sublessee shall pay to Sublessor monthly when due, any deficiency and Sublessor may sue thereafter as each monthly deficiency shall arise; or
- (3) Take any other action authorized or allowed under applicable law.

(C) No waiver of a breach of any of the terms and conditions of this Sublease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Sublease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Sublessor, or any other rights or remedies now held or which may be held by Sublessor in the future.

(D) Sublessor shall deliver or cause to be delivered to Sublessee in a manner that comports with the requirements for delivery of notices and demands set forth in Section 45, with a duplicate copy delivered in the same manner to Encumbrancer, any and all notices of default or notices to show cause ("Default Notice"). Such Default Notice shall set forth with specificity the default that Sublessor alleges, whether in the opinion of Sublessor and/or the Secretary the default may be corrected, and, if so, the action Sublessee must take in order to cure such default. Sublessor shall accept performance by an Encumbrancer of any of Sublessee's obligations under this Sublease, with the same force and effect as though performed by Sublessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Sublessee would be entitled to pursue. Sublessor shall not terminate this Sublease if an Encumbrancer has cured or is diligently taking action to cure Sublessee's default

and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

E. In case a default on the part of Sublessee occurs preceding, during, or due to the bankruptcy, receivership or insolvency of the Sublessee, if an Encumbrancer, prior to the receipt of the Default Notice or within thirty (30) days following such receipt, shall have filed in the court having jurisdiction over such bankruptcy, receivership or insolvency, a petition for permission to foreclose or to pursue any transaction in lieu thereof, the filing of such petition shall be deemed to be the beginning of foreclosure proceedings or the diligent pursuit of such transaction for purposes of this Section 15.

F. If the Encumbrancer is stayed or otherwise prohibited by any process or injunction by any court or by reason of any action by any court having jurisdiction of any bankruptcy, debt, rehabilitation or insolvency proceedings, from commencing or prosecuting foreclosure proceedings, transactions in lieu thereof, or other transactions involving the Subleased Premises for the benefit of an Encumbrancer, the time specified herein for commencing or prosecuting such a proceeding or transaction shall be extended for the period of such stay or prohibition.

16. SANITATION.

Sublessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Nation, and to dispose of all solid waste in compliance with applicable federal and Nation law. Sublessee further agrees at all times to maintain the entire Subleased Premises and improvements in a safe and sanitary condition, presenting a good appearance both inside and outside the Subleased Premises and the improvements.

17. HAZARDOUS AND REGULATED SUBSTANCES.

(A) Sublessee shall not cause or permit any Hazardous or Regulated Substance to be used, stored, generated or disposed of on or in the Subleased Premises without first notifying Sublessor and obtaining Sublessor's prior written consent. If Hazardous or Regulated Substances are used, stored, generated or disposed of on or in the Subleased Premises, with or without Sublessor's consent, or if the premises become contaminated in any manner, Sublessee shall indemnify and hold harmless the Sublessor and the Secretary from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Subleased Premises, damages due to loss or restriction of rentable or usable space, any and all sums paid for settlement of claims, and any costs related to marketing the Subleased Premises), as well as attorneys' fees, consultant and expert fees arising during or after the Sublease term and arising as a result of such contamination regardless of fault, with the exception that the Sublessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by the federal government or the Nation. Without limitation of the foregoing, if Sublessee causes or permits any Hazardous or Regulated Substance on the Subleased Premises and the presence of such results in any contamination of the Subleased Premises, including, but not limited to, the improvements, soil,

surface water or groundwater, Sublessee shall promptly, at its sole expense, take any and all necessary actions to return the Subleased Premises to the condition existing prior to the contamination by any such Hazardous or Regulated Substance on the Subleased Premises. Sublessee shall first obtain Sublessor's approval for any such remedial action.

(B) Sublessee shall provide the Navajo Environmental Protection Agency and the Risk Management Department of the Nation with a clear and legible copy of all notices or reports concerning release of Hazardous or Regulated Substance, testing, or remediation at the premises subject to this Sublease which Sublessee is required by applicable law, or regulation, to provide to the United States Environmental Protection Agency or which Sublessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Sublease upon the Navajo Environmental Protection Agency shall be by first class mail to:

Waste Regulatory and Compliance Program
Navajo Environmental Protection Agency
Post Office Box 3089
Window Rock, Navajo Nation (Arizona) 86515

and,

Risk Management Department
Navajo Environmental Protection Agency
Post Office Box 1690
Window Rock, Navajo Nation (Arizona) 86515

or their respective institutional successors.

18. PUBLIC LIABILITY INSURANCE.

(A) Sublessee shall obtain and maintain a commercial public liability insurance policy in an amount of no less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate and \$5,000,000 in the form of umbrella coverage. Sublessor and the United States shall be named as additional insureds with respect to this Sublease. This coverage shall be primary to the additional insured, and not contributing with any other insurance or similar protection available to the additional insured, whether said other available coverage by primary, contributing or excess. Sublessee shall provide for notification to Sublessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason including non-payment of premium. Certificate of Insurance evidencing the above coverage shall be furnished to Sublessor annually, or upon written request.

(B) Sublessor may require that the amount of the insurance policy required by subsection (A) of this Section 18 be increased at any time, whenever either shall determine that such increase reasonably is necessary for the protection of Sublessor or the United States.

(C) In no event shall the amount of Sublessee's insurance policy limit Sublessee's liability or its duty to indemnify Sublessor under this Sublease.

19. RESERVED.

20. RESERVED.

21. PERFORMANCE BOND.

NTUA is a wholly owned enterprise of the Navajo Nation. The Nation waives the Performance Bond Requirements pursuant to 16 N.N.C. §2335(B), which permits waiver of the Performance Bond where the Nation waives the rent; or the waiver of the bond is in the best interest of the Nation. Since NTUA was created by the Nation as an enterprise of the Nation, no performance bond is required.

22. NON-LIABILITY.

Neither Sublessor nor its officers, agents, or employees (collectively, the "Sublessor Parties"), shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Sublessee or any other person whomsoever, that is caused by any use of the Subleased Premises or the improvements by Sublessee, or that results from any defect in any structure existing or erected thereon, or that arises from accident, fire, or from any other casualty on said premises or from any other cause whatsoever, except to the extent of the Sublessor Parties' negligence or intentional misconduct. Sublessee, as a material part of the consideration for this Sublease, hereby waives on Sublessee's behalf all claims against Sublessor and the United States Government and agrees to defend and hold Sublessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death arising from the condition of the premises or use of the premises by Sublessee, together with all costs and expenses in connection therewith to the full extent permitted by applicable law, excepting however, all claims to the extent arising from the Sublessor Parties' negligence or intentional misconduct.

23. INSPECTION.

The Sublessor, Secretary, and their authorized representatives shall have the right, upon reasonable notice to Sublessee, to enter upon the Subleased Premises, or any part thereof, to inspect the same and all improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the premises, the protection of the Subleased Premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Sublessee shall pay the costs of such testing provided such contamination arose due to Sublessee's acts or omissions. Nothing in this section shall limit Sublessee's obligation under applicable law or this Sublease to perform testing or remediation or otherwise limit Sublessee's liability.

24. MINERALS.

All minerals, including sand and gravel, contained in or on the Subleased Premises are reserved for the use of Sublessor. Sublessor also reserves the right to enter upon the Subleased

Premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Sublessee's personal property or any improvements constructed by Sublessee.

25. EMINENT DOMAIN.

If the Subleased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Sublease, Sublessee's interest in the Subleased Premises or the part of the Subleased Premises taken shall thereupon cease. Compensation awarded for the taking of the Subleased Premises or any part thereof, including any improvements located thereon, shall be awarded to Sublessor and Sublessee as their respective interests may appear at the time of such taking, provided that Sublessee's right to such awards shall be subject to the rights of an Encumbrancer under an Approved Encumbrance.

26. DELIVERY OF SUBLEASED PREMISES.

At the termination of this Sublease, Sublessee will peaceably and without legal process deliver up the possession of the Subleased Premises and the improvements, in good condition, usual wear and tear excepted.

27. HOLDING OVER.

Except as otherwise provided, holding over by Sublessee after termination of this Sublease shall not constitute a renewal or extension thereof or give Sublessee any rights hereunder in or to the Subleased Premises or to any improvements located thereon.

28. ATTORNEY'S FEES.

Sublessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Sublessor in enforcing the provisions of this Sublease or in pursuing an action against Sublessee for breach, default or liability arising under this Sublease. Sublessee will not be liable for costs incurred by Sublessor if a judgment is rendered in favor of Sublessee.

29. INDEMNIFICATION.

Except to the extent of the negligence or intentional misconduct of Nation and the Secretary, and their agents, employees and contractors, Sublessee shall defend, indemnify and hold harmless the Nation and the Secretary and their authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the construction on or maintenance, operation, occupancy or use of the Subleased Premises and improvements by Sublessee.

30. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.

Sublessee and Sublessee's employees or agents, agree to abide by all laws, regulations, and ordinances of the Nation and all applicable laws, regulations and ordinances of the United States now in force and effect or as may be hereafter in force and effect including, but not limited to:

- a. Title 25, Code of Federal Regulations, Part 169 subject to the terms of that certain right-of-way approved by the Navajo Nation Council on September 15, 2015 and submitted to the Bureau of Indian Affairs on October 20, 2015 (the "Right-of-Way");
- b. The Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.* (NPEA);
- c. The Navajo Nation Business Opportunity Act, (NNBOA), 5 N.N.C. § 201 *et seq.*; and
- d. The Navajo Nation Water Code, 22 N.N.C. § 1101 *et seq.* Lessee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

31. GOVERNING LAW.

Except as may be prohibited by applicable federal law, the laws of the Nation shall govern the construction, performance and enforcement of this Sublease. Any action or proceeding brought by Sublessee against the Nation in connection with or arising out of the terms and conditions of this Sublease, to the extent authorized by Navajo law, shall be brought only in the courts of the Nation, and no such action or proceeding shall be brought by Sublessee against the Nation in any court or administrative body of any State.

32. AIR QUALITY.

The Sublessee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the Ground Sublease.

33. KEEPING LANDS CLEAR.

The Sublessee shall clear and keep clear the lands within the Sublease and right-of-way to the extent compatible with the purpose of this Sublease, and shall dispose of all vegetation and other materials cut, uprooted or otherwise accumulated during any surface disturbance activities.

34. RECLAIMED LANDS.

The Sublessee shall reclaim all surface lands disturbed related to the Sublease and Right-of-Way, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA) prior to commencement of such a plan.

35. MAINTENANCE OF LAND.

The Sublessee shall at all times during the term of the Sublease and at the Sublessee's sole cost and expense, maintain the land subject to the Sublease and all improvements located thereon and make all necessary reasonable repairs resulting from any damages caused by the Navajo Nation, its employees and any entity to which the Navajo Nation has granted a lease or right-of-way.

36. PERMISSION TO CROSS.

The Sublessee is responsible for securing written permission to cross existing rights-of-way, if any, from the appropriate parties.

37. TERMINATION.

The Navajo Nation may recommend termination of the Sublease by the Secretary for violation of any of the terms and conditions stated herein.

At the termination of this Sublease, the Sublessee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Sublessee shall provide the Navajo Nation, at the Sublessee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.

38. ENTRY UPON PREMISES.

The Navajo Nation, the Secretary, Sublessor and Lender shall have the right, at any reasonable time during the term of the Sublease, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.

39. DISPUTE RESOLUTION.

In the event that a dispute arises under this Sublease, Sublessee, before initiating any action or proceeding, agrees to use good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution in connection with this Sublease.

40. CONSENTS AND WAIVERS.

Sublessee hereby consents to the legislative, executive and judicial jurisdiction of the Nation in connection with all activities conducted by the Sublessee within the Nation.

The Sublessor and Sublessee agree that in addition to and notwithstanding any rights of the Encumbrancer in any Approved Encumbrance, claims brought by an Encumbrancer to enforce any rights hereunder (an "Encumbrancer Claim") shall proceed in the manner set forth in an Approved Encumbrance, and each of the Sublessor and Sublessee hereby consents to such dispute resolution terms. Each of Sublessor and Sublessee hereby expressly, unequivocally and irrevocably waives its sovereign immunity to suit, legal process and proceedings, consents to the application of the laws of the State of Arizona to such Encumbrancer Claim, consents to the jurisdiction of state and federal courts located in the State of Arizona (and any courts with

appellate jurisdiction therefrom) and waives the right to exhaustion of tribal remedies in connection with any Encumbrancer Claim.

41. COVENANT NOT TO CONTEST JURISDICTION.

Sublessee hereby covenants and agrees not to contest or challenge the legislative, executive or judicial jurisdiction of the Nation in connection with any enforcement of this Sublease (by any party other than the Encumbrancer and its successors and assigns) on the basis that such jurisdiction is inconsistent with the status of the Nation as an Indian nation, or that the Nation government is not a government of general jurisdiction, or that the Nation government does not possess police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing in this section shall be construed to negate or impair federal responsibilities with respect to the Subleased Premises or to the Nation.

42. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Sublease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Nation.

43. INTEREST OF MEMBER OF CONGRESS.

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Sublease or to any benefit that may arise here from. This provision shall not be construed to extend to this Sublease if made with a corporation or company for its general benefit.

44. OBLIGATIONS TO THE UNITED STATES.

It is understood and agreed that while the Subleased Premises are in trust or restricted status, all of Sublessee's obligations under this Sublease and the obligations of its sureties are to the United States as well as to Sublessor.

45. NOTICES AND DEMANDS.

(A) Any notices, demands, requests or other communications to or upon either party provided for in this Sublease, or given or made in connection with this Sublease, (hereinafter referred to as "Notices,") shall be in writing and shall be addressed as follows:

To or upon Navajo Nation:

W. Mike Halona, Director
Navajo Land Department
DIVISION OF NATURAL RESOURCES
P.O. Box 2249
Window Rock, Navajo Nation (Arizona) 86515
Fax: 1- 928-871-7039

To or upon Sublessee:

Navajo Tribal Utility Authority
P.O. Box 170
Fort Defiance, Arizona 86504
Fax: 1-928-729-2135

To or upon the Sublessor:

NTUA New Markets V, Inc.
P.O. Box 170
Fort Defiance, Arizona 86504
Fax: 1-928-729-2135

(B) All Notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission or e-mail, followed by surface mail. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours; or if not, during normal business hours on the next business day following delivery; if by registered or certified mail, or by facsimile transmission or e-mail, followed by surface mail, on the next business day following actual delivery and receipt.

(C) Copies of all Notices shall be sent to the Secretary if approval of this Sublease is required.

(D) Sublessor, Sublessee and the Secretary may at any time change its address for purposes of this section by Notice.

46. SUCCESSORS AND ASSIGNS.

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors of Sublessee. Except as the context otherwise requires, the term "Sublessee," as used in this Sublease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

47. RESERVATION OF JURISDICTION.

There is expressly reserved to the Nation full territorial legislative, executive and judicial jurisdiction over the area under the Sublease and all lands burdened by the Sublease, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the area under the Sublease; and the area under the Sublease and all lands burdened by the Sublease shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

48. EFFECTIVE DATE; VALIDITY.

This Sublease shall take effect on the date it is executed by both parties, or approved by the Secretary if the Navajo Nation determines that its approval is required. No modification of or amendment to this Sublease shall be valid or binding on either party until it is executed by both parties and approved by the Secretary when necessary until the Navajo Nation commences leasing authority pursuant to 25 U.S.C. 415(e).

49. SOVEREIGN IMMUNITY; JURISDICTION; ENFORCEMENT.

(A) *Limited Waiver of Sovereign Immunity.* Nothing in this Sublease shall be deemed a waiver of Sublessor or Sublessee's sovereign immunity pursuant to the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq. If a court of competent jurisdiction should find or conclude that Sublessor or Sublessee's does enjoy sovereign immunity, each of Sublessor and Sublessee hereby irrevocably waives its sovereign immunity on a limited basis and consents to be sued should an action be commenced to determine and enforce the obligations of the parties (including any permitted successors and assigns of the parties) under this Sublease pursuant to and in accordance with that Resolution No. CAP-18-10 adopted by the Navajo Nation Council on April 10, 2010, and by Resolution No. NTUA-28-10 of the Management Board of the Navajo Tribal Utility Authority dated June 25, 2010; and provided further that such limited waiver shall be limited to the assets, revenues and income of Sublessor and Sublessee, and shall not waive the sovereign immunity of the Navajo Nation nor extend any liability to the assets, revenues or income of the Navajo Nation. With respect to the foregoing limited waiver, Sublessor and Sublessee represent and warrant that all notices and other actions required to authorize such waiver have been given and done.

(B) *Jurisdiction/Enforcement.* The parties hereto acknowledge and agree that this Sublease and the duties and obligations of the parties hereto shall be enforceable against Sublessor or Sublessee in any of the following forums: (a) the United States District Court for the District of Arizona, the Superior Court for Navajo County, Arizona, or, if and only if elected or consented to in writing by an Encumbrancer, the courts of the Navajo Nation ("Permitted Courts"), or (b) if and only if elected or consented to in writing by an Encumbrancer, arbitration pursuant to and in accordance with arbitration procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. § 554 J and § 554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§ 1101 et seq. ("Arbitration").

(C) *Permitted Courts.* If a party hereto seeks enforcement of any duty or obligation hereunder by suit or injunction or other legal proceeding, the following provisions shall apply:

1. actions filed in any of the Permitted Courts shall be governed by the laws of the forum in which they are initiated;
1. each of Sublessor and Sublessee hereby submits to the jurisdiction of the Permitted Courts, waives its rights to bring any action or proceeding against the other in any court except the Permitted Courts, waives any objection, including, without limitation, any objection to the laying of venue on the grounds of forum non conveniens, which either may have or hereafter have to the bringing of any action or proceeding in the Permitted Courts, waives any requirement of exhaustion of tribal remedies or that the foregoing must be brought in the tribal courts of the Navajo Nation, and agrees that all claims in

respect of this Sublease or related transaction may only be heard and determined in the Permitted Courts; and

2. Sublessor and Sublessee irrevocably consent to the service of process of any of the Permitted Courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Sublessor and Sublessee at their address provided herein. Nothing contained in this Section shall affect the right of an Encumbrancer to serve process in any other manner permitted by law. The parties hereby explicitly consent to the jurisdiction of each of the Permitted Court systems for proceedings brought pursuant to this Section.

(D) Arbitration. If either Sublessor or Sublessee seeks enforcement of any duty or obligation or resolution of any dispute hereunder by Arbitration, or if Sublessor or Sublessee shall consent (in its sole discretion) to other party's enforcement of any duty or obligation or resolution of any dispute hereunder by Arbitration (if the Encumbrancer shall have consented thereto), the Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

1. unless otherwise agreed to in writing by the parties hereto, all arbitration procedures shall be held in Navajo County, Arizona;
2. the arbitration shall be conducted by an arbitration panel consisting of three (3) AAA available arbitrators, with at least one arbitrator possessing at least ten (10) years of experience in federal Indian law, with each party choosing one arbitrator and the two arbitrators choosing a third;
3. notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. § 555;
4. the result of any arbitration award provided for herein shall be in strict conformance with the provisions of 1 N.N.C. § 554 K 1-6;
5. notwithstanding the provisions herein, the laws of the Navajo Nation shall exclusively govern the arbitration provisions set forth herein and the arbitration procedures conducted pursuant thereto (but actions to enforce this Sublease pursuant to a waiver of sovereign immunity described herein and to actions to compel arbitration and enforce awards resulting from arbitration as provided in subparagraph (B) shall be subject to the provisions herein);
6. each of Sublessor and Sublessee expressly consents to submit to the Permitted Courts (including all courts to which decisions of the federal court may be appealed) with regard to actions to compel the other party and/or the Navajo Nation's participation in an arbitration proceeding and to enforce an award resulting from such arbitration. Such actions shall be governed by laws of the forum in which they are initiated; and

7. Commencement of arbitration in accordance with the foregoing provisions of this Section shall be a complete defense to any suit, action or proceeding instituted in any federal, state, or tribal court or any administrative tribunal, with respect to any dispute or controversy arising out of this Sublease that is arbitrated as set forth herein.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed as of the date first above written.

**THE NAVAJO TRIBAL UTILITY
AUTHORITY
SUBLESSEE**

**NTUA NEW MARKETS V, INC.
SUBLESSOR**

Date: _____

Date: _____

By: _____
Walter W. Haase, P.E.
General Manager

By: _____
Walter W. Haase, P.E.
President

ATTACHMENT 1

**Legal Description
and Survey Map of Subleased Premises**

ATTACHMENT 2

UTILITY SYSTEM DESCRIPTION

Kayenta Solar Substation & X-line
Kayenta (Todacheene Extension) PL Project
Kayenta Solar 3-ph Powerline Project to Sub
Kayenta Solar Water line Project
Kayenta Solar Sewer line Project
Kayenta Solar Fiber Project
Kayenta Solar Fiber Make Ready
Kayenta Hall Burns Main
Kayenta Hall Burns Member Extension

SCHEDULE 1

Rent

LEASE TERM PERIOD	BASE RENT PER QUARTER*
Effective Date – December 31, 2024	\$43,750
January 1, 2025 – December 31, 2041	\$187,500
January 1, 2042 – Termination	\$187,500

*Quarterly rent shall be reduced proportionately for any period comprising less than a calendar quarter.



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Ruth Sparrow
Future Unlimited Law PC
P.O. Box 2776
Yelm, Washington 98597

Space above this line for Recorder's Use

**SUBLEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

This Subleasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "Subleasehold Deed of Trust") is made as of _____, 2018, by NTUA New Markets V, Inc., a corporation formed under the laws of the Navajo Nation, whose mailing address is P.O. Box 170, Fort Defiance, Arizona 86504, as trustor ("Trustor"), to Commonwealth Land Title Insurance Company, a Florida corporation, whose mailing address is [c/o Lawyers Title of Arizona, Inc., 1500 E. Woolford Road, Suite 1023, Show Low, Arizona 85901] as trustee ("Trustee"), for the benefit of Ecotrust Sub-CDE XXV, LLC, a Delaware limited liability company, whose mailing address is 721 NW 9th Avenue, Suite 200, Portland, Oregon 97209, as beneficiary ("Beneficiary").

1. GRANT IN TRUST.

1.1 The Property. For the purpose of securing payment and performance of the Secured Obligations defined in Section 2 below, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in the following property (all or any part of such property, or any interest in all or any part of it, together with the Personalty (as hereinafter defined), if any, being hereinafter collectively referred to as the "Property"):

(a) All right, title and interest of Trustor in that certain Sublease (as the same may be amended, modified, extended or restated from time to time, the "Sublease") between Navajo Tribal Utility Authority, a public agency and enterprise of the Navajo Nation (hereinafter "Sublessor"), and Trustor (the "Sublessee") dated [_____, 2018], approved by the United States Department of the Interior Bureau of Indian Affairs on [_____, 2018], described on Exhibit A, for that tract or parcel of land ("Land") legally described in the Sublease, together with all rights, interests and properties described as follows, and all rights of estates, powers and privileges appurtenant thereto (all of which are collectively referred to herein as the "Leasehold Property");

(b) All buildings, structures, improvements, fixtures and appurtenances now or hereafter placed on the Leasehold Property, and all apparatus and equipment now or hereafter attached in any manner to the Leasehold Property or any building on the Leasehold Property, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment (collectively, the "Improvements");

(c) All easements and rights of way appurtenant to the Leasehold Property; all development rights or credits and air rights; all water in, on, under, or upon the Leasehold Property;

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions relating to the use and enjoyment of all or any part of the Leasehold Property or the Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the foregoing ("Leases"), which Leases shall include, but are not limited to, the Leases described on Exhibit B;

(e) All proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Leasehold Property, Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the Leasehold Property, Improvements, or the other property described above or any part of them; and

(f) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

1.2 Fixture Filing. This Subleasehold Deed of Trust constitutes a financing statement filed as a fixture filing under the Arizona Uniform Commercial Code, as amended or recodified from time to time (the "UCC"), covering any Property which now is or later may become a fixture attached to the Leasehold Property or any building located thereon.

2. THE SECURED OBLIGATIONS.

2.1 Purpose of Securing. Trustor makes the grant, conveyance, transfer and assignment set forth in Section 1, makes the irrevocable and absolute assignment set forth in Section 3, and grants the security interest set forth in Section 4, all for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose:

(a) Payment and performance of all obligations of Trustor to Beneficiary arising under the following instrument(s) or agreement(s) (collectively, the "Loan Documents"):

(1) that certain Loan Agreement dated as of _____, 2018, between Trustor as borrower (the "Obligor") and Beneficiary that provides for loans in the aggregate principal amount of Eight Million Two Hundred Forty-Five Thousand (\$8,245,000) (as amended, restated, modified or supplemented, the "Loan Agreement"); and

(2) the other Loan Documents (as defined in the Loan Agreement).

This Subleasehold Deed of Trust also secures payment of all obligations of Obligor under the Loan Documents which arise after any of the Loan Documents are extended, renewed, modified or amended pursuant to any written agreement between Obligor and Beneficiary, and all obligations of Obligor under any successor agreements or instruments which restates and supersedes any of the Loan Documents in its entirety;

(b) Payment and performance of all obligations of Trustor under this Subleasehold Deed of Trust; and

(c) Payment and performance of all future advances and other obligations that Trustor (or any successor in interest to Trustor) may agree to pay and/or perform to or for the benefit of Beneficiary, when a writing signed by Trustor (or any successor in interest to Trustor) expressly evidences said parties' agreement that such advance or obligation be secured by this Subleasehold Deed of Trust.

This Subleasehold Deed of Trust does not secure any obligation which expressly states that it is unsecured or is secured by other collateral, whether contained in the foregoing Loan Documents or in any other document, agreement or instrument.

2.2 Terms of Secured Obligations. All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Loan Documents described in Paragraph 2.1(a) and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. These terms include any provisions in the Loan Documents which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

3. ASSIGNMENT OF RENTS.

3.1 Assignment. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary all rents, royalties, issues, profits, revenue, income and proceeds of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (collectively, the "Rents"), and confers upon Beneficiary the right to collect such Rents with or without taking possession of the Property. This is an absolute assignment, not an assignment for security only.

3.2 Grant of License. Notwithstanding the provisions of Paragraph 3.1, Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Paragraph 6.2, shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of the security for the Secured Obligations. If the Event of Default is cured to the satisfaction of the Beneficiary in its sole discretion, the License shall automatically be reinstated.

4. GRANT OF SECURITY INTEREST.

4.1 Grant of Security Interest. Trustor grants to Beneficiary a security interest in, and pledges and assigns to Beneficiary, all of Trustor's right, title and interest now or hereafter acquired in and to all of the following described personal property (collectively, the "Personalty"):

(a) All tangible personal property of every kind and description, whether stored on the Leasehold Property or elsewhere, including, without limitation, all goods, materials, supplies, tools, books, records, chattels, furniture, fixtures, equipment, and machinery, and which in all cases is (i) used or useful or acquired in connection with the operation, use, occupancy, management, or any construction undertaken on the Leasehold Property or the maintenance of the Leasehold Property and the Improvements, or (ii) affixed or installed, or to be affixed or installed, in any manner on the Leasehold Property or the Improvements;

(b) All water and all architectural and engineering plans, specifications and drawings, and as-built drawings which arise from or relate to the Leasehold Property or the Improvements;

(c) All contracts (including, without limitation, service, supply, maintenance and construction contracts), registrations, franchise agreements, management agreements, permits, licenses, plans and specifications, and other agreements, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction,

management or operation of the Leasehold Property, or respecting any business or activity conducted by Trustor from the Leasehold Property, and all right, title and interest of Trustor therein and thereunder;

(d) All accounts, escrows, chattel paper, claims, deposits, trade names, trademarks, service marks, logos, copyrights, books and records, goodwill, and all other general intangibles relating to or used in connection with the operation of the Leasehold Property;

(e) All reserves, escrows and deposit accounts maintained by Trustor with respect to the Leasehold Property (including, without limitation, the Ecotrust Interest Reserve Account (as defined in the Loan Agreement) and all reserves, escrows, deposit accounts and lockbox accounts established pursuant to the Loan Agreement, together with all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property from time to time held therein, and all proceeds, products, distributions, dividends or substitutions thereon or thereof;

(f) All general intangibles and rights relating to the Leasehold Property, including, without limitation, all permits, licenses and claims to or demands for the voluntary or involuntary conversion of any of the Leasehold Property, Improvements, or other Property into cash or liquidated claims, proceeds of all present and future fire, hazard or casualty insurance policies, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the Leasehold Property, Improvements, or other Property or any part of them;

(g) All substitutions, replacements, additions, accessions and proceeds for or to any of the foregoing, and all books, records and files relating to any of the foregoing, including, without limitation, computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data.

5. RIGHTS AND DUTIES OF THE PARTIES.

5.1 Representations and Warranties. Trustor represents and warrants that Trustor lawfully possesses and holds a subleasehold interest to all of the Leasehold Property and the Improvements.

5.2 Taxes, Assessments, Liens and Encumbrances. Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock, imposed by any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it. Trustor shall immediately discharge any lien on the Property which Beneficiary has not consented to in writing, and shall also pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now or hereafter encumbers or appears to encumber all or part of the Property, whether the lien, charge or encumbrance is or would be senior or subordinate to this Subleasehold Deed of Trust; provided, however, that Trustor shall have the right, provided it does so in good faith and in a diligent and continuous manner, to contest the validity or amount of any such lien or encumbrance if prior to commencing such contest, Trustor records an indemnity bond, if the effect of recording the indemnity bond is to release the Property from such lien or encumbrance.

5.3 Damages and Insurance and Condemnation Proceeds.

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments and rights to payment (collectively, the "Claims"):

- (i) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it;
 - (ii) all other awards, claims and causes of action, arising out of any breach of warranty or misrepresentation affecting all or any part of the Property, or for damage or injury to, or defect in, or decrease in value of all or part of the Property or any interest in it;
 - (iii) all proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Beneficiary; and
 - (iv) all interest which may accrue on any of the foregoing.
- (b) Trustor shall immediately notify Beneficiary in writing if:
- (i) any damage occurs or any injury or loss is sustained to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or
 - (ii) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

If an Event of Default exists and is continuing, and if Beneficiary chooses to do so, it may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on breach of warranty or misrepresentation, or for damage or injury to, defect in, or decrease in value of all or part of the Property, and it may make any compromise or settlement of the action or proceeding. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance.

(c) All proceeds of the Claims assigned to Beneficiary under this Paragraph shall be paid to Beneficiary. In each instance, Beneficiary shall apply those proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including attorneys' fees. Trustor further authorizes Beneficiary, at Beneficiary's option and in Beneficiary's reasonable discretion, and regardless of whether there is any impairment of the Property, (i) to apply the balance of such proceeds, or any portion of them, to pay or prepay some or all of the Secured Obligations in such order or proportion as Beneficiary may determine, or (ii) to hold the balance of such proceeds, or any portion of them, in an interest-bearing account to be used for the cost of reconstruction, repair or alteration of the Property, or (iii) to release the balance of such proceeds, or any portion of them, to Trustor. If any proceeds are released to Trustor, neither Beneficiary nor Trustee shall be obligated to see to, approve or supervise the proper application of such proceeds. If the proceeds are held by Beneficiary to be used to reimburse Trustor for the costs of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing. Beneficiary may, at Beneficiary's option, condition disbursement of the proceeds on Beneficiary's approval of such plans and specifications prepared by a licensed architect, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage of completion of construction, application of payments, and satisfaction of liens as Beneficiary may reasonably require. Notwithstanding the foregoing, if Trustor is not then in default under the Obligations and if the total damage or award is Two Hundred Fifty Thousand Dollars (\$250,000) or less, Beneficiary shall promptly release such funds to Trustor, and Trustor shall use such funds to repair or restore the Property.

5.4 Insurance. Trustor shall provide and maintain in force at all times all risk property damage insurance (including without limitation windstorm coverage, and hurricane coverage as applicable) on the Property and such other type of insurance on the Property as may be required by Beneficiary in its reasonable judgment, in accordance with Section 5.7 of the Loan Agreement. Section 5.7 of the Loan Agreement is incorporated herein by reference.

5.5 Maintenance and Preservation of Property.

(a) Trustor shall keep the Property in good condition and repair and shall not commit or allow waste of the Property. Trustor shall not remove or demolish the Property or any material part of it, or alter, restore or add to the Property (except for tenant improvements, routine maintenance and non-structural alterations, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except with Beneficiary's express prior written consent in each instance, which consent shall not be unreasonably withheld.

(b) If all or part of the Property becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not Beneficiary agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction under Paragraph 5.3; provided however that Trustor shall be released from this requirement if (i) the insurance proceeds paid to Beneficiary satisfy all then remaining outstanding Secured Obligations of Trustor to Beneficiary or (ii) to the extent otherwise agreed to by Beneficiary in its sole discretion.

(c) Trustor shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen, or any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under this Subleasehold Deed of Trust.

(d) Trustor shall observe and perform all material obligations of Trustor under the Sublease, any Lease and any other lease or leases and shall refrain from taking any actions prohibited by any lease or leases. Trustor shall preserve and protect the leasehold estates and their value.

(e) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.6 Releases, Extensions, Modifications and Additional Security. Without affecting the personal liability of any person, including Trustor (or Obligor, if different from Trustor), for the payment of the Secured Obligations or the lien of this Subleasehold Deed of Trust on the remainder of the Property for the unpaid amount of the Secured Obligations, Beneficiary and Trustee are respectively empowered as follows:

(a) Beneficiary may from time to time and without notice:

(i) release any person liable for payment of any Secured Obligation;

(ii) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(iii) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or

(iv) alter, substitute or release any property securing the Secured Obligations.

(b) Trustee may perform any of the following acts when requested to do so by Beneficiary in writing:

(i) consent to the making of any plat or map of the Property or any part of it;

(ii) join in granting any easement or creating any restriction affecting the Property;

(iii) join in any subordination or other agreement affecting this Subleasehold Deed of Trust or the lien of it; or

(iv) reconvey the Property or any part of it without any warranty.

5.7 Reconveyance. When all of the Secured Obligations have been paid in full and no further commitment to extend credit continues, Beneficiary or Trustee shall reconvey the Property, or so much of it as is then held under this Subleasehold Deed of Trust, without warranty to the person or persons legally entitled to it. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

5.8 Compensation and Reimbursement of Costs and Expenses.

(a) Trustor agrees to pay reasonable fees as may be charged by Beneficiary and Trustee, for any services that Beneficiary or Trustee may render in connection with this Subleasehold Deed of Trust, including Beneficiary's providing a statement of the Secured Obligations or Trustee's rendering of services in connection with a reconveyance. Trustor shall also pay or reimburse all of Beneficiary's and Trustee's reasonable costs and expenses which may be incurred in rendering any such services.

(b) Trustor further agrees to pay or reimburse Beneficiary for all reasonable costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee to protect or preserve the Property or to enforce any terms of this Subleasehold Deed of Trust, including the exercise of any rights or remedies afforded to Beneficiary or Trustee or both of them under Paragraph 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Subleasehold Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any sale of the Property and any cost of evidence of title.

(c) Trustor shall pay all obligations arising under this Paragraph immediately upon demand by Trustee or Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Secured Obligations, and shall bear interest from the date the obligation arises at the rate provided in any instrument or agreement evidencing the Secured Obligations. If more than one rate of interest is applicable to the Secured Obligations, the highest rate shall be used for purposes hereof.

5.9 Exculpation and Indemnification.

(a) Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

- (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to it in this Subleasehold Deed of Trust;
- (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Subleasehold Deed of Trust;
- (iii) Beneficiary's failure to produce Rents from the Property or to perform any of the obligations of the lessor under any Lease covering the Property;
- (iv) any waste committed by lessees of the Property or any other parties, or any dangerous or defective condition of the Property; or
- (v) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in operating or managing the Property upon exercise of the rights or remedies afforded Beneficiary under Paragraph 6.3, unless the loss is caused by the willful misconduct and bad faith of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary.

(b) Trustor agrees to indemnify Trustee and Beneficiary against and hold them harmless for, from and against all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which either may suffer or incur in performing any act required or permitted by this Subleasehold Deed of Trust or by law or because of any failure of Trustor to perform any of its obligations, provided that such indemnity shall not be available to the extent that such losses, liabilities, damages or judgments or costs are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of the indemnitee. This agreement by Trustor to indemnify Trustee and Beneficiary shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release and/or reconveyance of this Subleasehold Deed of Trust.

5.10 Defense and Notice of Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Subleasehold Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of these matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11 Substitution of Trustee. From time to time, Beneficiary may substitute a successor to any Trustee named in or acting under this Subleasehold Deed of Trust in any manner now or later to be provided at law, or by a written instrument known as a Substitution of Trustee executed and acknowledged by Beneficiary, approved by the Secretary of the Interior or his designee (the "Secretary"), by the Navajo Tribal Utility Authority and the Navajo Nation and filed and recorded in the BIA Land Titles and Records Office, known as the Navajo Regional Office and recorded in the office of the recorder of the county where the Property is situated. Any such instrument shall be conclusive proof of the proper substitution of the successor Trustee, who shall automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it.

5.12 Representation and Warranty Regarding Hazardous Substances. Before signing this Subleasehold Deed of Trust, Trustor exercised due diligence and inquired into the previous uses and ownership of the Property. Based on that due diligence, Trustor represents and warrants that to the best of its knowledge, except to the extent disclosed in any reports provided to Beneficiary, no hazardous substance has been disposed of or released or otherwise exists in, on, under or onto the Property, except as Trustor has disclosed to Beneficiary in writing. Trustor further represents and warrants that Trustor will comply and cause all occupants of the Property to comply, with all applicable current and future laws, regulations and ordinances or other requirements of any governmental authority relating to or imposing liability or standards of conduct concerning protection of health or the environment or hazardous substances ("Environmental Laws"). Trustor shall promptly, at Trustor's sole cost and expense, take all reasonable actions with respect to any hazardous substances or other environmental condition at, on, or under the Property necessary to (i) comply with all applicable Environmental Laws; (ii) allow continued use, occupation or operation of the Property; or (iii) maintain the fair market value of the Property. Trustor acknowledges that hazardous substances may permanently and materially impair the value and use of the Property. "Hazardous substance" means any substance, material or waste that is or becomes designated or regulated as "toxic," "hazardous," "pollutant," or "contaminant" or a similar designation or regulation under any current or future federal, state or local law (whether under common law, statute, regulation or otherwise) or judicial or administrative interpretation of such, including without limitation petroleum or natural gas.

5.13 Site Visits, Observation and Testing. Subject to the rights of tenants under the Leases, Beneficiary and its agents and representatives shall have the right at any reasonable time, after giving reasonable notice to Trustor, to enter and visit the Property for the purposes of performing appraisals, observing the Property, taking and removing environmental samples, and conducting tests on any part of the Property. Trustor shall only reimburse Beneficiary on demand for the costs of any such environmental investigation and testing if Beneficiary determines in its discretion that the Property may be in violation of Environmental Laws. Beneficiary will make reasonable efforts during any site visit, observation or testing conducted pursuant this Paragraph to avoid interfering with Trustor's use of the Property. Beneficiary is under no duty, however, to visit or observe the Property or to conduct tests, and any such acts by Beneficiary will be solely for the purposes of protecting Beneficiary's security and preserving Beneficiary's rights under this Subleasehold Deed of Trust. No site visit, observation or testing or any report or findings made as a result thereof ("Environmental Report") (i) will result in a waiver of any default of Trustor; (ii) impose any liability on Beneficiary; or (iii) be a representation or warranty of any kind regarding the Property (including its condition or value or compliance with any laws) or the Environmental Report (including its accuracy or completeness). Copies of all such reports shall be delivered to Trustor. In the event Beneficiary has a duty or obligation under applicable laws, regulations or other requirements to disclose an Environmental Report to Trustor or any other party, Trustor authorizes Beneficiary to make such a disclosure. Beneficiary may also disclose an Environmental Report to any regulatory authority, and to any other parties as necessary or appropriate in Beneficiary's reasonable judgment. Trustor further understands and agrees that any Environmental Report or other information regarding a site visit, observation or testing that is disclosed to Trustor by Beneficiary or its agents and representatives is to be evaluated (including any reporting or other disclosure obligations of Trustor) by Trustor without advice or assistance from Beneficiary.

5.14 Lease Covenants, Representations and Warranties. Trustor make the following covenants, representations and warranties with respect to the Leases and the estates created thereby, as of the date hereof:

(a) Unless Beneficiary otherwise elects in writing, any and all subleases shall be subordinate to this Subleasehold Deed of Trust.

(b) With respect to any Leases hereafter entered into by Trustor: (i) the sole ownership of the landlord's interest in such Lease shall be vested in Trustor; (ii) Trustor has not, and shall not: (1) perform any act or execute any instrument that might hinder or delay Beneficiary from fully exercising its rights under this Subleasehold Deed of Trust; (2) execute any assignment or pledge of any Rents, except an assignment or pledge to Beneficiary to further

secure the Loan Documents; (3) accept any payment of any installment of Rent more than one (1) month in advance; (4) enter into any Lease affecting the Property that does not require actual occupancy by the tenant thereunder; or (5) agree to any early termination payments not provided for in the Lease (but excluding free rent and rent concessions agreed to by the Trustor and set forth in the Lease) without the prior written approval of Beneficiary, which consent shall not be unreasonably withheld;

(c) None of the Leases shall be materially altered, modified, amended, terminated, cancelled or surrendered or any term or condition thereof waived without the prior written approval of Beneficiary, not to be unreasonably withheld, conditioned or delayed;

(d) Trustor will fulfill and perform each and every material covenant and condition of each of the Leases by the landlord thereunder and, at the sole cost and expense of Trustor, enforce (short of termination of any of the Leases) the performance and observance of each and every material covenant and condition to be performed and observed by the tenants under the Leases, and if Trustor shall not so comply with or so enforce each such Lease, Beneficiary may (without being required to), after fifteen (15) days prior written notice to Trustor perform and enforce such Leases, and all amounts expended by Beneficiary in connection therewith shall be immediately due Beneficiary and shall be secured by the lien hereof;

(e) Trustor shall promptly inform Beneficiary in writing of each written notice received by Trustor claiming that a material default on the part of the landlord has occurred under any of the Leases and shall concurrently therewith send a complete copy of each such written notice to Beneficiary;

(f) Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of any landlord and any lessee, licensee or occupant under any of the Leases;

(g) Trustor will not enter into any new Lease without the prior express written approval of Beneficiary. Beneficiary's consent hereunder shall not be unreasonably withheld, conditioned or delayed.

5.15 Leasehold Covenant, Representations and Warranties. Trustor makes the following covenants, representations and warranties with respect to the Sublease and the estate created thereby, as of the date hereof, and to the best of its knowledge after diligent inquiry.

(a) Trustor shall comply with all terms, conditions, obligations and provisions of the Sublease.

(b) Trustor shall obtain the consent of the Sublessor.

(c) No default has occurred and is continuing under the Sublease and no event has occurred which, with the passage of time and/or service of notice, could constitute an Event of Default under the Sublease, and the Sublease is in full force and effect.

(d) All rents, additional rents, percentage rents and all other charges payable under the Sublease have been fully paid.

(e) Trustor is the owner of the entire lessee's interests in the Sublease and has the right and authority under the Sublease to execute this Subleasehold Deed of Trust and to encumber Trustor's interest therein.

(f) Trustor will maintain the Sublease in full force and effect until payment and performance in full of all Indebtedness.

(g) If Trustor shall violate any of the covenants specified in Subsections (a) and (f) above, Trustor grants Beneficiary the right (but not the obligation) upon at least 10 days prior written notice to Trustor, except no such notice shall be required if irreparable damage could occur with respect to the Leasehold Property, to take such action as may be necessary to prevent or cure any default of Trustor under the Sublease if necessary or appropriate to protect Beneficiary's interest hereunder, and Beneficiary shall have the right, subject to the rights of tenants under Leases, to enter all or any portion of the Land or any improvements located thereon at such times and in such manner as Beneficiary deems necessary in order to prevent or to cure any such default.

(h) The curing by Beneficiary of any default by Trustor under the Sublease shall not remove or waive, as between Trustor and Beneficiary, the default which occurred hereunder by virtue of the default by Trustor under the Sublease. All sums expended by Beneficiary in order to cure any such default shall be paid by Trustor to Beneficiary, upon demand, with interest thereon at the applicable rate specified in the Loan Agreement. All such indebtedness shall be deemed to be secured by this Subleasehold Deed of Trust. No action or payment taken or made by Beneficiary to prevent or cure a default by Trustor under the Sublease shall waive or cure the corresponding default under this Subleasehold Deed of Trust.

(i) Trustor shall notify Beneficiary promptly of (i) the occurrence of any material default by the lessor under the Sublease, or the occurrence of any event which with the passage of time and/or service of notice could constitute a material default by the lessor under the Sublease, and (ii) the receipt by Trustor of any written notice from the lessor noting or claiming the occurrence of any default by Trustor under the Sublease, or the occurrence of any event which with the passage of time and/or service of notice could constitute a default by Trustor under the Sublease (and shall deliver a copy of any written notice of default to Beneficiary).

(j) Promptly upon demand by Beneficiary (no more frequently than annually), Trustor shall use reasonable efforts to obtain from the lessor, and furnish to Beneficiary, the estoppel certificate of the Sublessor stating the date through which rent has been paid and whether or not there are any defaults under the Sublease and specifying the nature for such claimed defaults, if any.

(k) Trustor shall promptly notify Beneficiary, in writing, of any written request made by either party to the Sublease for reference or arbitration proceedings pursuant to the Sublease and of the institution of any reference or arbitration proceedings, as well as of all proceedings thereunder, and will promptly deliver to Beneficiary a copy of the determination of the referees, arbitrators or appraisers in each such reference or arbitration proceeding. Beneficiary shall have the right (but not the obligation), following the delivery of written notice to Trustor, to participate in the appointment of any referee or arbitrator to be appointed by Trustor and to participate in such reference or arbitration proceedings in association with Trustor or on its own behalf as an interested party. Trustor shall promptly notify Beneficiary, in writing, of the institution of any legal proceedings involving obligations under the Sublease. Beneficiary may intervene in any such legal proceedings and be made a party to them. Trustor shall promptly provide Beneficiary with a copy of any decision rendered in connection with such proceedings.

(l) Trustor shall promptly execute, acknowledge and deliver to Beneficiary such instruments as may be required to permit Beneficiary to cure any default under the Sublease or permit Beneficiary to take such other action required to enable Beneficiary to cure or remedy the matter in default and preserve the security interest of Beneficiary under the Sublease. While a material default exists under the Sublease, Trustor hereby irrevocably appoints Beneficiary as its true and lawful attorney-in-fact in Beneficiary's name or otherwise to do any and all acts and to execute any and all documents which are necessary to preserve any rights of Trustor to or under the Sublease, including, without limitation, the right to effectuate any extension or renewal of the Sublease, or to preserve any rights of Trustor whatsoever in respect of any part of the Sublease

(and the above powers granted to Beneficiary are coupled with an interest and shall be irrevocable).

(m) The generality of the provisions of this Section 5.15 relating to the Sublease shall not be limited by other provisions of this Subleasehold Deed of Trust setting forth particular obligations of Trustor which are also required of Trustor as the lessee under the Sublease.

(n) Unless Beneficiary shall otherwise consent in writing, so long as any of the Indebtedness remains unpaid, no other estate or interest in the Land shall merge with the leasehold estate under the Sublease but shall always be kept separate and distinct therefrom, notwithstanding the union of such estates either in the Sublessor or the Sublessee under the Sublease or in a third party, by purchase or otherwise.

(o) Trustor shall not subordinate the Sublease or the leasehold created by the Sublease to any deed of trust or other encumbrance of, or lien on, any interest in the real property subject to the Sublease without the prior written consent of Beneficiary. Any such subordination without such consent shall, at Beneficiary's option be void.

(p) Trustor shall deposit with Beneficiary a copy of the Sublease.

(q) To the extent permitted by law, the price payable by Trustor or any other party in the exercise of the right of redemption, if any, from any sale under, or decree of foreclosure of, this Subleasehold Deed of Trust, shall include all rents and other amounts paid and other sums advanced by Beneficiary on behalf of Trustor as the tenant under the Sublease.

(r) Trustor shall not, without Beneficiary's prior written consent, such consent not to be unreasonably withheld, supplement, modify or amend the Sublease or any rights relating to the Sublease or any other portion of the Leasehold Property, or waive any right, title or interest relating thereto. Any acquisition of the Sublessor's interest in the Sublease by Trustor or any affiliate of Trustor will be accomplished by Trustor in such a manner so as to avoid a merger of the interests of Sublessor and Sublessee in the Sublease.

(s) As used herein, "Bankruptcy Code" shall mean 11 U.S.C. §§ 101 et seq., as modified or recodified from time to time. Notwithstanding anything to the contrary contained herein with respect to the Sublease:

(i) The lien of this Subleasehold Deed of Trust attaches to all of Trustor's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, including, without limitation, all of Trustor's rights to remain in possession of the Land and any improvements located thereon.

(ii) Trustor shall not, without Beneficiary's prior written consent, elect to treat the Sublease as terminated under Subsection 365(h) of the Bankruptcy Code (and upon rejection of the Sublease under Section 365 of the Bankruptcy Code, Trustor shall remain in possession of the Land and any improvements located thereon to the full extent permitted by law). Any such election made without Beneficiary's prior written consent shall be void.

(iii) As additional security for the Secured Obligations of the Loan Documents, Trustor hereby unconditionally assigns, transfers and sets over to Beneficiary all of Trustor's claims and rights to the payment of damages arising from any rejection of the Sublease by the Sublessor under the Bankruptcy Code. Beneficiary and Trustor shall proceed jointly or in the name of Trustor in respect of any claim, suit, action or proceeding relating to the rejection of the Sublease including, without limitation, the right to file and prosecute any proofs of claims, complaints, motions, applications, notices

and other documents in any case in respect of the lessor under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Indebtedness has been satisfied and discharged in full. Any amounts received by Beneficiary or Trustor as damages arising out of the rejection of the Sublease as aforesaid shall be applied first to all costs and expenses of Beneficiary (including, without limitation, reasonable attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Section 6 and then in accordance with the other applicable section(s) of this Subleasehold Deed of Trust.

(iv) If, pursuant to Subsection 365(h) of the Bankruptcy Code, Trustor seeks to offset, against the rent reserved in the Sublease, the amount of any damages caused by the nonperformance by the lessor thereunder of any of such lessor's obligations under the Sublease after the rejection by Sublessor of the Sublease under the Bankruptcy Code, Trustor shall, prior to effecting such offset, notify Beneficiary in writing of its intent to so do, setting forth the amounts proposed to be offset and, in the event of Beneficiary's objection, Trustor shall not affect any offset of the amounts so objected to by Beneficiary.

(v) If any action, proceeding, motion or notice shall be commenced or filed in respect of the lessor under the Sublease in connection with any case under the Bankruptcy Code, Beneficiary shall have the option, to the exclusion of Trustor, exercisable upon notice from Beneficiary to Trustor, to conduct and control any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name or in the name of Trustor in connection with any such litigation, and Trustor agrees to execute any and all powers, authorizations, consents or other documents required by Beneficiary in connection therewith. Trustor shall, upon demand, pay to Beneficiary all costs and expenses (including reasonable attorneys' fees) paid or incurred by Beneficiary in connection with the cooperative prosecution or conduct of any such proceedings. All such costs and expenses shall be secured by the lien of this Subleasehold Deed of Trust and shall be added to the principal balance of the Secured Obligations.

(vi) Trustor shall promptly, after obtaining knowledge thereof, notify Beneficiary orally of any filing by or against the lessor under the Sublease of a petition under the Bankruptcy Code. Trustor shall thereafter immediately give written notice of such filing to Beneficiary, setting forth any information available to Trustor as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Trustor shall promptly deliver to Beneficiary, following its receipt thereof, any and all notices, summonses, pleadings, applications and other documents received by Trustor in connection with any such petition and any proceedings relating thereto.

(vii) The rights and interests covered and encumbered by this Subleasehold Deed of Trust include, without limitation, any and all rights of Trustor, as debtor or debtor in possession in any bankruptcy proceeding, to reject or otherwise disaffirm the Sublease, pursuant to Section 365(a) of the Bankruptcy Code or otherwise, and any such purported rejection or disaffirmance made without Beneficiary's prior written consent shall be void and of no effect.

(viii) Effective upon the entry of an order for relief in respect of Trustor under the Bankruptcy Code, Trustor hereby assigns and transfers to Beneficiary a nonexclusive right to apply to the Bankruptcy Court under Subsection 365(d)(1) and/or Subsection 365(d)(4) (as applicable) of the Bankruptcy Code for an order extending the period during which the Sublease may be rejected or assumed.

(ix) The foregoing references to specific provisions of the Bankruptcy Code shall also be deemed to include any similar present or future laws containing similar provisions or granting similar rights.

6. ACCELERATING TRANSFERS, DEFAULT AND REMEDIES.

6.1 Accelerating Transfers.

(a) "Accelerating Transfer" means any sale, contract to sell, conveyance, encumbrance, or other transfer (except for Leases and easements granted in the ordinary course of business), whether voluntary, involuntary, by operation of law or otherwise, of all or any material part of the Property or any interest in it, if not approved by Beneficiary, in Beneficiary's reasonable discretion.

(b) Trustor agrees that Trustor shall not make any Accelerating Transfer, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole and reasonable discretion. If any Accelerating Transfer occurs, Beneficiary in its sole and reasonable discretion may declare all of the Secured Obligations to be immediately due and payable, and Beneficiary and Trustee may invoke any rights and remedies provided by Paragraph 6.3 of this Subleasehold Deed of Trust.

6.2 Events of Default. The occurrence of any one or more of the following events, following any applicable notice and cure or grace period, at the option of Beneficiary, shall constitute an event of default ("Event of Default") under this Subleasehold Deed of Trust:

(a) Obligor fails to make any payment, when due, under the Loan Agreement or any other Loan Document (after giving effect to any applicable grace period), or any other default occurs under and as defined in the Loan Agreement or in any other instrument or agreement evidencing any of the Secured Obligations and such default continues beyond any applicable cure period;

(b) Trustor fails to make any payment or perform any obligation which arises under this Subleasehold Deed of Trust;

(c) Trustor makes or permits the occurrence of an Accelerating Transfer in violation of Paragraph 6.1;

(d) Any representation or warranty made in connection with this Subleasehold Deed of Trust or the Secured Obligations proves to have been false or misleading in any material respect when made; or

(e) Any default occurs under any other deed of trust on all or any part of the Property, or under any obligation secured by such deed of trust, whether such deed of trust is prior to or subordinate to this Subleasehold Deed of Trust.

6.3 Remedies. At any time after the occurrence of an Event of Default and for so long as such Event of Default continues, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, as well as any other rights and remedies authorized by law. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(c) Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the

name of Trustor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Subleasehold Deed of Trust, including, without limitation, the rights and remedies provided in A.R.S § 33-702(B). Such other things may include: entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; completing any unfinished construction; contracting for and making repairs and alterations; performing such acts of cultivation or irrigation as necessary to conserve the value of the Property; and preparing for harvest, harvesting and selling any crops that may be growing on the property. Trustor hereby irrevocably constitutes and appoints Beneficiary as its attorney-in-fact with full power of substitution to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments. Trustor agrees to deliver to Beneficiary all books and records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Beneficiary in order to enable Beneficiary to exercise its rights under this Paragraph. The power of attorney given herein is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Secured Obligations.

(d) Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Subleasehold Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Subleasehold Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Subleasehold Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among the parties to this Subleasehold Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under this Subleasehold Deed of Trust; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted hereunder either with or without giving notice to any person.

(e) Subject to the terms of Section 7.9 and 6.3(h) with respect to actions against Trustor, Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of any of the covenants or agreements of this Subleasehold Deed of Trust.

(f) Subject to the terms of Section 6.3(h), Beneficiary may cause the Property which consists solely of real property to be sold by Trustee as permitted by applicable law. Before any such trustee's sale, Beneficiary or Trustee shall give such notice of default and/or sale as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee shall sell the Property, either as a whole or in separate parcels, and in such order as Trustee may determine, at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any trustee's sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any trustee's sale by public announcement at the time and place noticed for that sale. Subject to the terms of Section 6.3(h), at any trustee's sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, or such other form of payment satisfactory to Trustee; and any person, including Trustor, Trustee or Beneficiary, may purchase at the trustee's sale to the extent permitted by then applicable law. Beneficiary shall have the benefit of any law permitting credit bids. Trustee shall execute and

deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any trustee's sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited in it.

(g) Beneficiary may proceed under the UCC as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the UCC. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee may sell the Personalty at a public sale to be held at the time and place specified in the notice of sale. It shall be deemed commercially reasonable for the Trustee to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties. Alternatively, Beneficiary may choose to dispose of some or all of the Property, in any combination consisting of both personal property and real property, in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Article 9 of the UCC. Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property.

(h) Upon an event of Default by Trustor, Beneficiary or Trustee shall provide notice to the Trustor as set forth in Section 7.16. Additionally, if Trustee intends to foreclose upon the Property, in addition to any other notices required by applicable law, the Trustee shall give notice to the Sublessor of its intent to foreclose on the Property (the "Foreclosure Notice"). The Sublessor shall have the right within 30 days of the Foreclosure Notice to purchase the Property from Beneficiary or Trustee at a price equal to the balance of the Secured Obligations plus reasonable costs.

6.4 Application of Sale Proceeds and Rents.

(a) Beneficiary and Trustee shall apply the proceeds of any sale of the Property in the following manner: first, to pay the portion of the Secured Obligations attributable to the costs, fees and expenses of the sale, including costs of evidence of title in connection with the sale; and, second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to the person or persons entitled thereto or to the clerk of the Superior Court of the county in which the sale took place.

(b) Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of any sale of the Property which Beneficiary may receive or collect under Paragraph 6.3, in the following manner: first, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Trustee, Beneficiary or any receiver; and, second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to the person or persons entitled thereto. Beneficiary shall have no liability for any funds which it does not actually receive.

7. MISCELLANEOUS PROVISIONS

7.1 No Waiver or Cure.

(a) Each waiver by Beneficiary or Trustee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or

subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not cure or waive any breach, Event of Default or notice of default under this Subleasehold Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed); or impair the security of this Subleasehold Deed of Trust; or prejudice Beneficiary, Trustee or any receiver in the exercise of any right or remedy afforded any of them under this Subleasehold Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Subleasehold Deed of Trust:

(i) Beneficiary, its agent or a receiver takes possession of all or any part of the Property;

(ii) Beneficiary collects and applies Rents, either with or without taking possession of all or any part of the Property;

(iii) Beneficiary receives and applies to any Secured Obligation proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under this Subleasehold Deed of Trust;

(iv) Beneficiary makes a site visit, observes the Property and/or conducts tests thereon;

(v) Beneficiary receives any sums under this Subleasehold Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations;

(vi) Beneficiary, Trustee or any receiver performs any act which it is empowered or authorized to perform under this Subleasehold Deed of Trust or invokes any right or remedy provided under this Subleasehold Deed of Trust; or

(vii) Any notice of default and election to sell under this Subleasehold Deed of Trust is cancelled.

7.2 Powers of Beneficiary and Trustee.

(a) Trustee shall have no obligation to perform any act which it is empowered to perform under this Subleasehold Deed of Trust unless it is requested to do so in writing and is reasonably indemnified against loss, cost, liability and expense.

(b) Beneficiary may take any of the actions permitted under Paragraphs 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Subleasehold Deed of Trust.

(c) Subject to Section 7.8 with respect to actions against the Trustor, from time to time, Beneficiary or Trustee may apply to any court of competent jurisdiction for aid and direction in executing the trust and enforcing the rights and remedies created under this Subleasehold Deed of Trust. Beneficiary or Trustee may from time to time obtain orders or decrees directing, confirming or approving acts in executing this trust and enforcing these rights and remedies.

7.3 Reserved.

7.4 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

7.5 Joint and Several Liability. If Trustor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Subleasehold Deed of Trust.

7.6 Applicable Law. As among Beneficiary, Trustee and Trustor only, this Subleasehold Deed of Trust will be governed the laws of the State of Arizona without regard to its conflicts of law provisions, subject to applicable federal law; provided, however, that in the event Lender initiates legal proceedings in the courts of the Navajo Nation, such legal proceedings shall be governed by the procedural law of the courts of the Navajo Nation.

7.7 Successors in Interest. The terms, covenants and conditions of this Subleasehold Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Paragraph does not waive the provisions of Paragraph 6.1.

7.8 Sovereign Immunity, Jurisdiction and Enforcement.

(a) Limited Waiver of Sovereign Immunity. In the event that any court or arbitral forum determines that Trustor or its successors and assigns (each a "Tribal Party") has sovereign immunity to suit, each Tribal Party, hereby expressly, unequivocally and irrevocably grants a limited waiver of its sovereign immunity to suit, arbitration, service of process and other legal proceedings for claims arising from or related to this Subleasehold Deed of Trust and the obligations of the parties (including any permitted successors of the parties) under this Subleasehold Deed of Trust, provided that the satisfaction of any monetary judgments against a Tribal Party resulting from any legal proceedings brought pursuant to this limited waiver shall be limited to the assets, revenues and income of such Tribal Party. For the avoidance of doubt: (i) each Tribal Party's waiver of sovereign immunity is not subject to or limited by the Navajo Sovereign Immunity Act, 1 N.N.C. §§ 551 *et seq.*, as amended, and (ii) this waiver shall not and does not waive the sovereign immunity of the Navajo Nation nor extend any liability to the assets, revenues or income of the Navajo Nation. With respect to each Tribal Party's foregoing limited waiver, each Tribal Party represents and warrants that all notices and other actions required to authorize such waiver under its organizational documents and the laws of the Navajo Nation have been given and done.

(b) Jurisdiction/Enforcement. Trustor acknowledges and agrees that this Subleasehold Deed of Trust and the duties and obligations of Trustor hereunder shall be enforceable against Trustor in any of the following forums: (i) the United States District Court for the District of Arizona, and all appellate courts with jurisdiction over appeals therefrom (the "Federal Courts"); (ii) the Superior Court of Arizona in Navajo County, Arizona and all appellate courts with jurisdiction over appeals therefrom (the "State Courts"); and (iii) at the election of the Beneficiary and in its sole discretion, the courts of the Navajo Nation (the "Nation Courts" and with the Federal Courts and State Courts the "Permitted Courts").

(c) Permitted Courts. If a party hereto seeks enforcement of any duty or obligation hereunder by suit or injunction or other legal proceeding, the following provisions shall apply:

(i) actions filed in any of the Permitted Courts shall be governed by the procedural laws of the forum in which they are initiated and the substantive laws governing this Subleasehold Deed of Trust;

(ii) Trustor hereby submits to the jurisdiction of the Permitted Courts, waives any objection, including, without limitation, any objection to the laying of venue on the grounds of forum non conveniens, which it may have or hereafter have to the bringing of any action or proceeding in the Permitted Courts, waives any right to the exhaustion of tribal remedies or requirement that the foregoing must be brought in the courts of the Navajo Nation, agrees that all claims in respect of this Subleasehold Deed of Trust or any Loan Document or related transaction may only be heard and determined in the Permitted Courts and agrees not to initiate any action against Beneficiary in the Nation Courts; and

(iii) Trustor irrevocably consents to the service of process of any of the Permitted Courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Trustor at its address provided herein. Nothing contained in this Section shall affect the right of Beneficiary to serve process in any other manner permitted by law. Trustor hereby explicitly consents to the jurisdiction of each of the Permitted Court systems for proceedings brought pursuant to this Section.

(iv) Arbitration. Beneficiary (may, in its sole discretion), elect to resolve disputes through arbitration conducted pursuant to the American Arbitration Association's Commercial Rules ("Arbitration"), and Trustor agrees its limited waiver of sovereign immunity set forth herein extends to arbitration. Beneficiary also may consent in writing to Trustor's request for Arbitration. The parties agree that the American Arbitration Association's Commercial Rules may be modified and supplemented as follows:

(v) unless otherwise agreed to in writing by the parties hereto, all arbitration procedures shall be held in Navajo County, Arizona;

(vi) the arbitration shall be conducted by an arbitration panel consisting of three (3) AAA available arbitrators, with at least one arbitrator possessing at least ten (10) years of experience in federal Indian law, with each party choosing one arbitrator and the two arbitrators choosing a third;

(vii) actions to compel arbitration, seek preliminary or injunctive relief, or enforce awards resulting from arbitration shall proceed as provided in subparagraph (b) hereof and Section 7.6;

(viii) Trustor expressly consents to submit to the Permitted Courts (including all courts to which decisions may be appealed) with regard to actions to compel Trustor's participation in an arbitration proceeding, actions for injunctive relief and to enforce an award resulting from such arbitration. Such actions shall be governed by the procedural laws of the forum in which they are initiated and the governing law of this Subleasehold Deed of Trust; and

(ix) Commencement of arbitration in accordance with the foregoing provisions of this Section shall be a complete defense to any suit, action or proceeding instituted in any Permitted Court with respect to any dispute or controversy arising out of this Subleasehold Deed of Trust that is arbitrated as set forth herein.

(d) Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SUBLEASEHOLD DEED OF TRUST OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS SUBLEASEHOLD DEED OF

TRUST. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS SUBLEASEHOLD DEED OF TRUST BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(e) Survival. The provisions of this Section 7.8 shall, with respect to such any dispute or controversy arising out of this Subleasehold Deed of Trust, survive the termination or expiration of this Subleasehold Deed of Trust.

(f) Relationship Between the Parties. The relationship between Beneficiary, on the one hand, and Trustor, on the other, will be solely that of lender and borrower, and such relationship will not, under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.

(g) Compliance. For the avoidance of any doubt, it is acknowledged that this Subleasehold Deed of Trust is not intended to "encumber Indian land" within the meaning of 25 U.S.C. § 81, and no interpretation shall be given to this Subleasehold Deed of Trust which would have the effect of such an encumbrance. Notwithstanding any right of Beneficiary in this Subleasehold Deed of Trust, any right, requirement or restriction that "encumbers Indian land" within the meaning of 25 U.S.C. § 81, shall not be effective for longer than six years, 364 days.

(h) Legal Opinion. It shall be a condition precedent to the disbursement of the Loan that Beneficiary shall have been provided with an opinion of counsel to Trustor that the provisions of Section 7.6 and this Section 7.8 and all legal prerequisites to validity thereto have been duly authorized, executed and delivered, (ii) are valid and binding obligations of Trustor, subject only to the effect of bankruptcy and similar laws and general principles and equity, and (iii) are not subject to the approval of the Bureau of Indian Affairs in order for the foregoing provisions to be valid and binding obligations of Trustor.

7.9 Interpretation. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Subleasehold Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Subleasehold Deed of Trust. The Exhibits to this Subleasehold Deed of Trust are hereby incorporated in this Subleasehold Deed of Trust.

7.10 In-House Counsel Fees. Whenever Trustor is obligated to pay or reimburse Beneficiary or Trustee for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel to the extent permitted by applicable law.

7.11 Waiver of Marshaling. Trustor waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to direct the order in which any of the Property will be sold in the event of any sale under this Subleasehold Deed of Trust. Each successor and assign of Trustor, including any holder of a lien subordinate to this Subleasehold Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

7.12 Waiver of Homestead. Trustor hereby abandons and waives all claims of homestead on the Property and does hereby forever release and discharge the Property from any and all claims of homestead.

7.13 Severability. If any provision of this Subleasehold Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Subleasehold Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

7.14 Notices. Trustor hereby requests that a copy of notice of default and notice of sale be mailed to it at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address given below is the address for Beneficiary as secured party under the UCC.

If to Trustor: NTUA New Markets V, Inc.
P.O. Box 170
Fort Defiance, Arizona 86504
Attn: Walter W. Haase, P.E.
Email: watlerh@ntua.com

with a copy to: Ginsberg Jacobs LLC
300 South Wacker Drive, Suite 2750
Chicago, Illinois 60606
Attn: Darryl P. Jacobs
Email: djacobs@ginsbergjacobs.com

And to: Law Office of Warren Denetsosie, LLC
P.O. Box 1833
Flagstaff, Arizona 86002
Attn: Warren Denetsosie
Email: wdenetsosie@gmail.com

If to Beneficiary: Ecotrust Sub-CDE XXV, LLC
c/o Ecotrust CDE, LLC
721 NW Ninth Avenue, Suite 200
Portland, Oregon 97209
Attention: Adam Lane, CFO
Email: adam@ecotrust.org

with a copy to: Future Unlimited Law PC
P.O. Box 2776
Yelm, Washington 98597
Attention: Ruth Sparrow
Email: rsparrow@futureunlimitedlaw.com

with a copy to: COCRF Investor 115, LLC
c/o Capital One, National Association
Debt Capital Markets
Place St. Charles, Suite 2900
201 St. Charles Avenue
New Orleans, Louisiana 70170
Attention: Spencer Gagnet
Email: spencer.gagnet@capitalone.com

And to: Jones Day
100 High Street, 21st Floor
Boston, Massachusetts 02110
Attention: Jeff Gaulin, Esq.
Email: jgaulin@jonesday.com

If to Trustee: Commonwealth Land Title Insurance Company
[c/o Lawyers Title of Arizona, Inc.
1500 E. Woolford Road, Suite 102
Show Low, Arizona 85901]

Address for Foreclosure Notice:

Navajo Tribal Utility Authority
P.O. Box 170
Fort Defiance, Arizona 86504
Attn: Walter W. Haase, P.E.
Email: watlerh@ntua.com

With a copy to: Ginsberg Jacobs LLC
300 South Wacker Drive, Suite 2750
Chicago, Illinois 60606
Attn: Darryl P. Jacobs
Email: djacobs@ginsbergjacobs.com

With a copy to: Law Office of Warren Denetsosie, LLC
P.O. Box 1833
Flagstaff, Arizona 86002
Attn: Warren Denetsosie
Email: wdenetsosie@gmail.com

7.15 Governmental Approvals. Other than the approval of this Subleasehold Deed of Trust by the Secretary required pursuant to 25 U.S.C. 416 and the consent of the Trustor and the recording of this Subleasehold Deed of Trust with the BIA Land Titles and Records Office known as the Navajo Regional Office through filing of this Subleasehold Deed of Trust in the County of Navajo (which BIA approval and recordings will occur after the Closing Date of the Loan Agreement), no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any other governmental authority or any other Person, including without limitation any other approval by the United States of America, Department of the Interior, under any federal law, including without limitation, 25 U.S.C. § 81, is necessary or required for the due execution, delivery or performance by, or enforcement against, the Trustor of this Subleasehold Deed of Trust or any other Loan Document.

7.16 Mandatory Federal Provisions. Pursuant to 25 C.F.R. Part 162, the Beneficiary acknowledges and agrees that Trustor's subleasehold interest conveyed in this Subleasehold Deed of Trust is subject to the following provisions contained in the Sublease:

(a) The obligations of the Trustor and its sureties to the Sublessor are also enforceable by the United States, so long as the land remains in trust or restricted status.

(b) There must not be any unlawful conduct, creation of a nuisance, illegal activity or negligence use or the of the leased premises.

(c) The Sublessee must comply with all applicable laws, ordinances, rules, regulations and other legal requirements under 25 C.F.R. § 162.014.

(d) If historic properties, archaeological resources, human remains, or other cultural items not previously reported or encountered during the course of any activity associated with the sublease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the sublessee will contact BIA and the Navajo Nation to determine how to proceed and appropriate disposition.

(e) BIA has the right, at any reasonable time during the term of the sublease and upon reasonable notice, in accordance with § 162.464, to enter the leased premises for inspection and to ensure compliance.

(f) BIA may, at its discretion, treat as a Sublease violation any failure by the Sublessee to cooperate with a BIA request to make appropriate records, reports, or information available for BIA inspection and duplication.

(g) The Sublessee holds the United States and the Lessor harmless from any loss, liability, or damages resulting from the Sublessee's use or occupation of the leased premises.

(h) The Sublessee indemnifies the United States and the Lessor against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the Sublease term, regardless of fault, with the exception that the Sublessee is not required to indemnify the Lessor for liability or costs arising from the Lessor's negligence or willful misconduct.

7.17 State Law Provisions, Waivers and Agreements.

(a) Beneficiary, Trustee and Trustor shall have all rights, benefits and remedies conferred or contemplated by the A.R.S. §§ 33-801 through 821 (the "Deed of Trust Act"). Notwithstanding the foregoing, subject to Section 6.3(h), Beneficiary may, at its option in its sole discretion, elect to foreclose this Subleasehold Deed of Trust judicially as authorized by A.R.S. § 33-807.

(b) If this Subleasehold Deed of Trust secures an obligation incurred for the construction of improvements on land or an obligation the proceeds of which were used to refinance a construction obligation, this Subleasehold Deed of Trust is a construction Subleasehold Deed of Trust and is entitled to the benefits of Arizona Revised Statutes Section 47-9334, as amended from time to time.

(c) Proceeds from any sale under the Deed of Trust Act shall be applied in accordance with A.R.S. § 33-812.

(d) The statutes referred to in this Section shall include any further statutes amending, supplementing or supplanting same.

[The remainder of this page is intentionally blank.]

ACKNOWLEDGMENT AND APPROVAL

The undersigned hereby confirms and acknowledges that it has reviewed and approved the foregoing Subleasehold Deed of Trust, Assignment of Lease and Rents, Security Agreement and Fixture Financing Statement pursuant to 25 U.S.C. §416 and 25 U.S.C. §§ 81 and 1481 *et seq.*; and 25 C.F.R. §§ 162.1 *et seq.* pursuant to authority delegated to the Assistant Secretary-Indian Affairs by 209 DM 8, 230 DM 1, and to the Western Regional Director By 3 IAM 4 (Release No. 00-03), and to the Superintendent/Field Representative by 10 BIAM 11, as amended by Western Regional Release No. 97-1, and any further delegations needed to effectuate the reorganization embodied in DM Release dated April 21, 2003.

Dated: _____, 20__

By: _____
Superintendent, _____ Field Office
Bureau of Indian Affairs
Department of the Interior

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, the authorized representative of the Secretary of the Interior, United States Department of the Interior, for and on behalf thereof.

Notary Public

EXHIBIT A TO SUBLEASEHOLD DEED OF TRUST

[INSERT LEGAL DESCRIPTION]

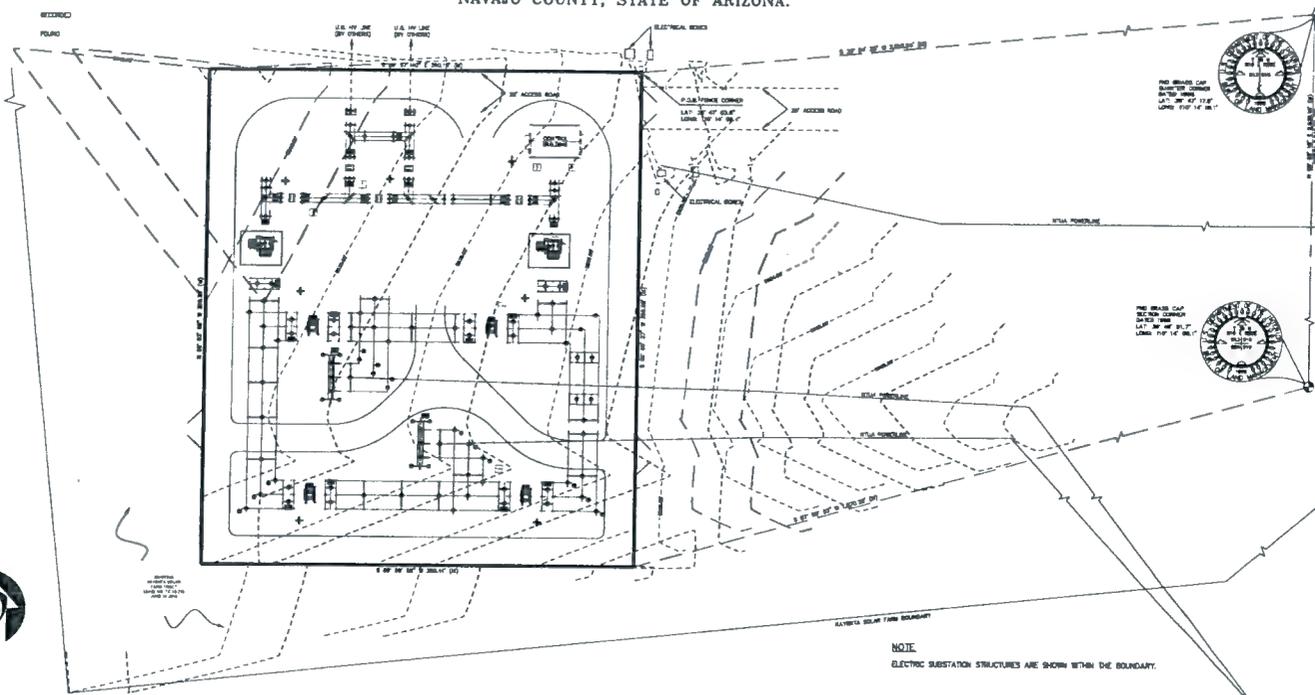
Street Address of Property

ALTA / NSPS LAND TITLE SURVEY

KAYENTA PRIMARY SUBSTATION TRACT
 LOCATED IN UNSURVEYED SECTIONS OF 13 & 24,
 TOWNSHIP 39 NORTH, RANGE 19 EAST,
 GILA AND SALT RIVER BASE MERIDIAN, ARIZONA
 IN THE VICINITY OF KAYENTA,
 NAVAJO COUNTY, STATE OF ARIZONA.

LEGEND/SYMBOLS

- FOUND VECTED CORNER
- FOUND BLASER CORNER
- BLASERS
- DAM LINE PINNACLES
- ELECTRICAL BONES
- BOUNDARY LINE
- BEARING
- DISTANCE
- POINT



SCALE
1" = 30'

SECTION 13&24
TOWNSHIP 39N
RANGE 19E

SHEET 2 OF 2

JOB NO.
6296956

NAVAJO TRIBAL UTILITY AUTHORITY
 P.O. BOX 170
 FORT DEFIANCE, ARIZONA
 86504

DRAWN BY: J.E.			
CHECKED BY: A.M.			
DATE: 02/2018			
DATE	REVISION	BY	

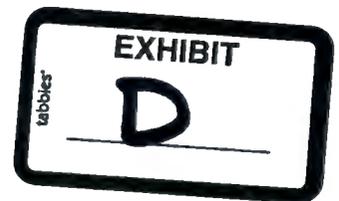
ALTA NSPS LAND TITLE SURVEY

KAYENTA PRIMARY SUBSTATION TRACT
 LOCATED IN UNSURVEYED SECTIONS OF 13 & 24,
 TOWNSHIP 39 NORTH, RANGE 19 EAST,
 GILA AND SALT RIVER BASE MERIDIAN, ARIZONA
 IN THE VICINITY OF KAYENTA,
 NAVAJO COUNTY, STATE OF ARIZONA.

EXHIBIT B TO SUBLEASEHOLD DEED OF TRUST

Description of Leases

Kayenta Chapter Solar Site Sublease (Operating Sublease) between Borrower, as Sub-lessor and NTUA, as Sub-lessee dated as of the Effective Date, as approved by the Secretary of the U.S. Interior on [_____, 2018], as amended, assigned, restated, modified or supplemented from time to time.



REPAYMENT GUARANTY

THIS REPAYMENT GUARANTY (this "Guaranty") is made as of [____], 2018, in favor of ECOTRUST SUB-CDE XXV, LLC, a Delaware limited liability company (and its successors and assigns are referred herein as "Lender") by the NAVAJO TRIBAL UTILITY AUTHORITY, ("Guarantor") a public agency and enterprise of the Navajo Nation, a federally recognized, sovereign and self-governing American Indian Tribe.

A. NTUA New Markets V, Inc., a corporation wholly owned by the Guarantor and formed under the laws of the Navajo Nation ("Borrower") and Lender are entering into a certain Loan Agreement of even date herewith ("Loan Agreement") pursuant to which Lender will make loans (collectively, the "Loan") to Borrower in the aggregate principal amount of \$8,245,000. The Loan will also be evidenced by Borrower's promissory notes to Lender of even date herewith; a promissory note in the original principal amount of \$5,582,800 ("Note A") and a promissory note in the original principal amount of \$2,662,200 ("Note B", together with Note A referred to collectively herein as the "Promissory Notes") and secured by, among other things, that certain Subleasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, and that certain Security Agreement made by Borrower to Lender each of even date herewith (collectively, the "Security Instrument"), which grants to Lender, all right, title and interest of Borrower in and to that certain Kayenta Chapter Solar Site Sublease (the "Sublease"), entered into between Guarantor and Borrower dated of even date herewith.

B. Pursuant to the Sublease, Borrower is subleasing from Guarantor the real property described therein, located in Kayenta, Arizona (the "Property"). Guarantor is leasing the Property from the Navajo Nation pursuant to that certain Kayenta Chapter Solar Site Lease and Right-of-Way between NTUA and the Navajo Nation dated June 24, 2016, as amended effective [____], 2018], it may be further amended, assigned, restated, modified or supplemented from time to time (the "Lease").

C. Borrower intends to finance the purchase of the substation and network of electrical lines, data lines, water lines, sewer lines and related equipment and facilities serving the Kayenta Solar Farm located on the Property from Guarantor (the "Project").

D. Guarantor owns a direct interest in Borrower and will derive substantial benefit from Lender's making of the Loan to Borrower.

E. Guarantor's entry into the guaranty will further its purpose of planning for, providing and furnishing green energy generation, increased access to electricity, and community economic development.

F. Lender requires as a condition to making the Loan that Guarantor agree to guaranty for the benefit of Lender, and its successors and assignees, all obligations and liabilities of Borrower with respect to the Loan.

NOW, THEREFORE, to induce Lender to make the Loan to Borrower, and in consideration of the substantial benefit Guarantor will derive from the Loan, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound hereby, Guarantor hereby agrees as follows:

Article 1
Definitions

1.01. Definitions. Capitalized terms used in this Guaranty and not specifically defined in this Guaranty have the meaning provided in the Loan Agreement.

Article 2
Obligation Guaranteed

2.01. Guaranty of Loan Obligations. Guarantor irrevocably, absolutely and unconditionally, guarantees to Lender the prompt payment when due, whether at stated maturity, by acceleration or otherwise, of all obligations and liabilities of Borrower for which Borrower is, or shall become, liable pursuant to the Loan Agreement and the other Loan Documents, excluding principal payments (collectively, the "Guaranteed Obligations"), including without limitation:

(a) the prompt, full and complete performance and payment of interest and other amounts due on the Loan (other than principal) as and when the same shall become due and payable under the Promissory Notes, whether at stated maturity, by acceleration or otherwise, and any and all other sums of money payable by Borrower to Lender under the provisions of the Loan Agreement or any other Loan Document, including without limitation, the payment or reimbursement, as applicable, of fees and expenses of Lender, Lender's members and/or Lender's affiliates, as applicable, under the Loan Agreement;

(b) the payment in full of all actual losses, costs, expenses, claims or damages arising out of Borrower's or Guarantor's fraud, gross negligence, willful misrepresentation, willful misconduct, physical waste, misappropriation and misapplication of funds, voluntary bankruptcy filings or other actions intended to cause or result in an event described in Section 8.1 of the Loan Agreement (incorporated herein by reference and made a part hereof);

(c) the prompt, full and complete performance and payment of Borrower's obligation to indemnify, protect, hold harmless and defend the Covered Persons in accordance with Section 5.12 of the Loan Agreement (incorporated herein by reference and made a part hereof);

(d) the payment in full of any and all reasonable third party expenses, including, without limitation, (i) all reasonable attorneys', accountants, experts, consultants fees and expenses and (ii) all disbursements, arbitration and court costs prior to trial, incurred by Lender (whether at arbitration, court proceeding or on appeal) in the collection of all or any portion of Guarantor's obligations under this Guaranty or the exercise or enforcement of any one or more of the rights, powers, privileges, remedies and interests of Lender under the Loan Documents or under this Guaranty, whether or not such expenses constitute part of Borrower's obligations; and

(e) the payment in full of all real estate taxes, other taxes and assessments, municipal and local charges of any subdivision of the Navajo Nation, utility charges, insurance premiums for all policies of insurance required to be furnished by Borrower pursuant to the Loan Agreement, if such costs are not paid by Borrower.

2.02. Continuing Obligation. This Guaranty is a continuing guaranty and in full force and effect and will be discharged only if and when the Loan has been paid in full, and all obligations under the Loan Agreement and other Loan Documents have been fully performed; provided, however, that notwithstanding any of the foregoing to the contrary, this Guaranty shall remain in full force and effect for so long as any payment hereunder may be voided in bankruptcy proceedings as a preference or for any other reason.

2.03. Direct Action Against Guarantor. Guarantor's liability under this Guaranty is a guaranty of payment and performance and not of collection. Lender has the right to require Guarantor to pay, comply with and satisfy its obligations and liabilities under this Guaranty, and shall have the right to proceed immediately against Guarantor with respect thereto, without being required to attempt recovery first from Borrower or any other party, without first suing on the Promissory Notes or any other Loan Document and without demonstrating that the collateral for the Loan is inadequate security or that Lender has exercised (to any degree) or exhausted any of Lender's other rights and remedies with respect to Borrower or any collateral for the Loan.

Article 3 General Terms and Conditions

3.01. Payments; Interest on Amounts Payable Hereunder. Amounts payable to Lender under this Guaranty shall be immediately due and payable within ten (10) calendar days after Lender's written demand and shall be paid without reduction by set-off, defense, counterclaim or cross-claim. Interest at the Default Rate (or the maximum interest rate permitted by applicable law) shall accrue on any judgment obtained by Lender in connection with the enforcement or collection of amounts due under this Guaranty until such judgment is paid in full. Lender may apply all money received by Lender to payment or reduction of the Loan or reimbursement of Lender's expenses and costs of enforcement of this Guaranty, in such priority and proportions, and at such time or times as Lender may elect.

3.02. Cumulative Remedies. Guarantor acknowledges that, following an Event of Default with respect to the Loan, Lender is entitled to accelerate the Loan and exercise all other rights and remedies as have been provided to Lender under the other Loan Documents, by law or in equity, including, without limitation, enforcement of this Guaranty. All rights and remedies of Lender are cumulative and may be exercised independently, concurrently or successively in Lender's sole discretion and as often as occasion therefor shall arise and no choice of remedy by Lender shall preclude Lender from subsequently electing to exercise a different remedy. Lender's delay or failure to accelerate the Loan or exercise any other remedy upon the occurrence of an Event of Default with respect to the Loan shall not be deemed a waiver of such right or remedy. No partial exercise by Lender of any right or remedy will preclude further exercise thereof. Notice or demand given to Guarantor in any instance will not entitle Guarantor to notice or demand in similar or other circumstances nor constitute Lender's waiver of its right to take any future action in any circumstance without notice or demand (except where expressly required by this Guaranty to be given). Lender may release other security for the Loan, may release any party liable for the Loan, may grant extensions, renewals or forbearances with respect thereto, may accept a partial or past due payment or grant other indulgences, or may apply any other security held by it to payment of the Loan, in each case without prejudice to its rights under this Guaranty and without such action being deemed an accord and satisfaction or a reinstatement of the Loan. Lender will

not be deemed as a consequence of its delay or failure to act, or any forbearances granted, or by any course of dealing on the part of Lender or its officers, employees, consultants or agents, to have waived or be estopped from exercising any of its rights or remedies.

3.03. Lender's Right to Cure. Lender shall have the right, at its option, but without any obligation to do so, either before, during or after commencing foreclosure or sale proceedings, as the case may be, and before, during or after pursuing any other right or remedy against Borrower or Guarantor, to perform any and all of the obligations of Borrower and/or Guarantor by or through any agent, contractor or subcontractor of its selection, all as Lender in its sole discretion deems proper, subject to any notice requirements set forth in the other Loan Documents, and Guarantor shall indemnify and hold Lender free and harmless from and against any and all loss, damage, reasonable out-of-pocket cost and expense, injury, or liability Lender may suffer or incur in connection with the exercise of its rights under this Guaranty or the performance of the Guaranteed Obligations except to the extent such loss, damage, cost, expense, injury or liability results solely from the fraud, gross negligence, or willful misconduct of Lender. Furthermore, Lender shall not have any obligation to protect or insure any collateral for the Loan, nor shall Lender have any obligation to perfect its security interest in any collateral for the Loan.

3.04. Enforcement Costs. Guarantor hereby agrees to pay, on written demand by Lender, all costs incurred by Lender in collecting any amount payable under this Guaranty or enforcing or protecting its rights under the Guaranty, in each case whether or not legal proceedings are commenced. Such fees and expenses include, without limitation, reasonable fees for attorneys, paralegals and other hired professionals, a reasonable assessment of the cost of services performed by Lender's default management staff, court fees, costs incurred in connection with arbitration and related court proceedings, pre-trial, trial and appellate level proceedings (including discovery and expert witnesses), costs incurred in post-judgment collection efforts or in any bankruptcy proceeding, in each case related to this Guaranty. Amounts incurred by Lender shall be immediately due and payable, and shall bear interest at the Default Rate from the date of disbursement until paid in full, if not paid in full within thirty (30) calendar days after Lender's written demand for payment.

3.05. Unimpaired Liability. Guarantor acknowledges and agrees that all obligations hereunder are and shall be absolute and unconditional under any and all circumstances without regard to the validity, regularity or enforceability of any or all of the Loan Documents or the existence of any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety. Without limiting the foregoing, Guarantor acknowledges and agrees that its liability hereunder shall in no way be released, terminated, discharged, limited or impaired by reason of any of the following (whether or not Guarantor has any knowledge or notice thereof): (a) Borrower's lack of authority or lawful right to enter into any of the Loan Documents; (b) any modification, supplement, extension, consolidation, restatement, waiver or consent provided by Lender with respect to any of the Loan Documents including, without limitation, approval of a transfer of any interest in the Property or Utility System, or the grant of extensions of time for payment or performance; (c) failure to record any Loan Document or to perfect any security interest intended to be provided thereby or otherwise to protect, secure or insure any collateral for the Loan; (d) Lender's failure to exercise, or delay in exercising, any rights or remedies Lender may have under the Loan Documents or under this Guaranty; (e) the release or substitution, in whole or in part, of any collateral for the Loan or

acceptance of additional collateral for the Loan; (f) the release of Guarantor from performance, in whole or in part, under this Guaranty or the release of Borrower from performance, in whole or in part, under any of the Loan Documents, in each case whether by operation of law, Lender's voluntary act, or otherwise; (g) any bankruptcy, insolvency, reorganization, adjustment, dissolution, liquidation or other like proceeding involving or affecting Borrower, Guarantor or Lender; (h) the termination or discharge of the Security Instrument; (i) the existence of any claim, setoff, counterclaim, defense or other rights which Guarantor may have against Borrower, Guarantor or Lender, whether in connection with the Loan or any other transaction; (j) the accuracy or inaccuracy of the representations and warranties made by Borrower in any of the Loan Documents; or (k) except to the extent prohibited by applicable law, any other action or circumstance whatsoever that constitutes, or might be construed to constitute, a legal or equitable discharge or defense (except full payment and satisfaction) of Borrower for its obligations under any of the Loan Documents or of Guarantor under this Guaranty; and, in any such case, whether with or without notice to Guarantor and with or without consideration.

3.06. Waivers. Guarantor hereby waives and relinquishes, to the fullest extent permitted by law: (a) all rights or claims of right to cause a marshalling of assets or to cause Lender to proceed against any of the collateral for the Loan before proceeding under this Guaranty against it or any other Guarantor; (b) all rights and remedies accorded by applicable law to sureties or guarantors, except any rights of subrogation and contribution (the exercise of which are subject to the terms of this Guaranty); (c) the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought by or against it; (d) notice of acceptance of this Guaranty and of any action taken or omitted in reliance hereon; (e) presentment for payment, demand, protest, notice of nonpayment or failure to perform or observe, or any other proof, notice or demand to which it might otherwise be entitled with respect to its obligations hereunder; and (f) all homestead or exemption rights against the obligations hereunder and the benefits of any statutes of limitation or repose.

3.07. Guarantor Bound by Judgment Against Borrower. Guarantor agrees that it shall be bound conclusively, in any jurisdiction, by the judgment in any action by Lender against Borrower in connection with the Loan Documents (wherever instituted) as if it were a party to such action even if not so joined as a party.

3.08. Certain Consequences of Borrower's Bankruptcy.

(a) If Borrower shall be subject to the protection of the United States Bankruptcy Code (the "Bankruptcy Code") or any insolvency law the effect of which is to prevent or delay Lender from taking any remedial action against Borrower, including the exercise of any option Lender has to accelerate and declare the Loan immediately due and payable, Lender may, as against Guarantor, nevertheless declare the Loan due and payable and enforce any or all of its rights and remedies against Guarantor as provided herein.

(b) Any payment made on the Loan, whether made by Borrower or Guarantor or any other Person, that is required to be refunded or recovered from Lender as a preference or a fraudulent transfer or is otherwise set-aside pursuant to the Bankruptcy Code or any insolvency or other debtor relief law shall not be considered as a payment made on the Loan or under this Guaranty. Guarantor's liability under this Guaranty shall continue with respect to any such

payment, or be deemed reinstated, with the same effect as if such payment had not been received by Lender, notwithstanding any notice of revocation of this Guaranty prior to such avoidance or recovery or payment in full of the Loan, until such time as all periods have expired within which Lender could be required to return any amount paid at any time on account of the Guaranteed Obligations. Guarantor further agrees that in the event any such payment is rescinded or must be restored or returned, all costs and reasonable expenses (including without limitation all reasonable attorneys', accountants', experts', consultants' fees and expenses) incurred by or on behalf of Lender in defending or enforcing such continuance or reinstatement, as the case may be, shall constitute costs of enforcement, included in the Guaranteed Obligations.

(c) Until payment in full of the Loan (including interest accruing on the Promissory Notes after the commencement of a proceeding by or against Borrower under the Bankruptcy Code, which interest the parties agree remains a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in cases under the Bankruptcy Code generally), Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of Borrower to Guarantor and hereby assigns such indebtedness to Lender, including the right (but not the obligation) to file proof of claim and to vote in any other bankruptcy or insolvency action, including the right to vote on any plan of reorganization, liquidation or other proposal for debt adjustment under Federal or state law.

3.09. Subrogation and Contribution. Guarantor agrees that no payment by it under this Guaranty shall give rise to (a) any rights of subrogation against Borrower or the collateral for the Loan, or (b) any rights of contribution against any other Guarantor, in each case unless and until Lender has received full and indefeasible payment of the Loan. If the deferral of such rights shall be unenforceable for any reason, Guarantor agrees that (a) its rights of subrogation shall be junior and subordinate to Lender's rights against Borrower and the collateral for the Loan, and (b) its rights of contribution against any other Guarantor shall be junior and subordinate to Lender's rights against each other Guarantor.

3.10. Subordination of Borrower's Obligations to Guarantor. Any indebtedness of Borrower to Guarantor, now or hereafter existing, together with any interest thereon, shall be and hereby is deferred, postponed and subordinated to the prior payment in full of the Loan. Further, Guarantor agrees that should it receive any payment, satisfaction or security for any indebtedness owed by Borrower to it, the same shall be delivered to Lender in the form received (endorsed or assigned as may be appropriate) for application on account of, or as security for, the Loan and until so delivered to Lender, shall be held in trust for Lender as security for the Loan.

3.11. Lender Transferees; Secondary Market Activities. Guarantor acknowledges and agrees that Lender, without notice to Guarantor or Guarantor's prior consent, may assign all or any portion of its rights hereunder in connection with any sale or assignment of the Loan or servicing rights related to the Loan, each grant of participations in the Loan, a transfer of the Loan as part of a securitization in which Lender assigns its rights to a securitization trustee, or a contract for the servicing of the Loan, and that each such assignee, participant or servicer shall be entitled to exercise all of Lender's rights and remedies hereunder. Guarantor further acknowledges that Lender may provide to third parties with an existing or prospective interest in the servicing, enforcement, ownership, purchase, participation or securitization of the Loan, including, without limitation, any rating agency rating the securities issued in respect of a securitization or

participation of the Loan, and any entity maintaining databases on the underwriting and performance of commercial mortgage loans, any and all information which Lender now has or may hereafter acquire relating to the Loan, the Property or with respect to Borrower or Guarantor, as Lender determines necessary or desirable. Guarantor irrevocably waives all rights it may have under applicable law, if any, to prohibit such disclosure, including, without limitation, any right of privacy.

3.12. Financial Reports, Inspection of Records.

(a) *Financial Statements.* Guarantor shall furnish the following financial information to Lender:

(i) *Guarantor's Quarterly Financial Statements.* As soon as available and in any event within forty-five (45) calendar days after the end of each of the first 3 fiscal calendar quarters of Guarantor, Guarantor's internally prepared statements of financial position and related statements of activities and cash flows for that quarter and year-to-date;

(ii) *Guarantor's Annual Financial Statements.* (i) As soon as available and in any event within one hundred twenty (120) calendar days after the end of each fiscal year of Guarantor (which fiscal year ends December 31), Guarantor's audited statement of financial position and related statements of activities and cash flows as of the end of and for such year, together with an unqualified opinion of an independent public accountant of nationally recognized standing; and (ii) as soon as available and in any event within ninety (90) calendar days after the end of each fiscal year of Guarantor, Guarantor's internally prepared annual statements of financial position and related statements of activities and cash flows as of the end of and for such year; and

(iii) *Operating Budget.* An operating budget for each fiscal year of Guarantor with respect to the Project, within thirty (30) days prior to the beginning of each calendar year.

(b) Guarantor shall, simultaneously with the delivery of each set of financial statements referred to in subsection (a)(i) – (ii) above, deliver a certificate of an authorized officer of Guarantor certifying that such financial statements fairly present the financial condition and the results of operations of the Guarantor on the dates and for the periods indicated, on the basis of general accepted accounting principles, subject, in the case of interim financial statements, to year-end adjustments.

(c) *NMTC Reports.* Promptly upon the reasonable request of Lender and in any event within 15 Business Days of such request, all information, reports and certifications required from Guarantor from time to time by Lender as Lender deems reasonably necessary to demonstrate compliance with any law, regulation or other guidance applicable to the New Markets Tax Credit Program, as such reporting requirements may change from time to time, including without limitation, (i) Section 45D of the Code and the Treasury Regulations and guidance issued pursuant to Section 45D of the Code and (ii) all information as specified in the Addendum to the Loan Agreement.

(d) *Litigation and Disputes.* Not later than 120 calendar days after the end of each fiscal year of Guarantor, a status report of any and all litigation or disputes threatened or instituted against or affecting Guarantor or its Affiliates.

(e) *Lease. Additional Information.* Guarantor shall promptly provide Lender with copies of all default notices received or sent by Guarantor pursuant to the Lease. In addition, promptly upon the reasonable request of Lender and in any event within 15 Business Days of such request, such other information regarding the business and affairs and financial condition of Guarantor or the Project as Lender may reasonably request.

3.13. Additional Covenants.

(a) *Lease.* Guarantor shall duly and promptly comply with all of the terms and conditions of the Lease and the Non-Disturbance, Attornment, Estoppel and Subordination Agreement entered into by Guarantor, the Navajo Nation, Borrower and Lender dated as of [_____, 2018] with respect to the Lease.

(b) *Accounts and Records.* Guarantor will keep books of record and accounts in which true and correct entries will be made as to all material matters of all dealings or transactions in relation to its business and activities, in accordance with generally accepted accounting principles, consistently applied except for changes in accounting principles or practices with which the independent certified public accountants for Guarantor concur.

(c) *Right of Inspection.* If an Event of Default occurs and is continuing, upon reasonable request by Lender, Guarantor will permit any officer, employee or agent of Lender to visit and inspect the Property, examine the books of record and accounts of Guarantor solely relating to the Loan, the Property and the Project, take copies and extracts therefrom, and discuss the affairs, finances and accounts of Guarantor with Guarantor's officers, accountants and/or auditors, all at such reasonable times and on reasonable prior notice and as often as Lender may reasonably request.

(d) *Compliance with Laws and Covenants.* Guarantor will observe and comply in all material respects with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, certificates, franchises, permits, licenses, authorizations, directions and requirements (including without limitation any of the foregoing relating to environmental standards or controls) of all Governmental Authorities applicable to Guarantor.

(e) *Non-Interference.* Guarantor covenants and agrees that so long as Borrower has obligations outstanding to Lender under the Loan Documents, not to: (i) dissolve the Borrower or NTUA Leverage Lending, Inc., or take action to impair the Borrower's obligations or the Lender's remedies under the Loan Documents; (ii) receive distributions from the Borrower in contravention of any Loan Document; (iii) seek to abrogate or support or advocate for any action of the Navajo Nation that would abrogate the limited waivers of sovereign immunity, consents to jurisdiction or any other dispute resolution provision given by the Guarantor or Borrower; (iv) impose any fee or charge on the operations of the Borrower or its assets or related revenues, other than charges for actual services rendered in an amount substantially similar to the amount the Borrower would pay in an arm's length transaction; (v) permit any lien or encumbrance to exist or

be imposed upon real property owned by the Guarantor and used by the Borrower or its patrons, clients or customers in connection with the Borrower's operations (other than liens or encumbrances permitted by the Loan Documents).

Article 4
Representations and Warranties

4.01. Guarantor Due Diligence and Benefit. Guarantor represents and warrants to Lender that (a) the Loan and this Guaranty are for commercial purposes, (b) it has had adequate opportunity to review the Loan Documents, (c) it is fully aware of obligations of Borrower thereunder and of the financial condition, assets and prospects of Borrower, and (d) it is executing and delivering this Guaranty based solely upon Guarantor's own independent investigation of the matters contemplated by clauses (a)-(c) above and in no part upon any representation, warranty or statement of Lender with respect thereto.

4.02. General. Guarantor represents and warrants that:

(a) *Authority.* (i) Guarantor is a public agency and enterprise of the Navajo Nation, duly organized and validly existing under Title 21, Chapter 1 of the Navajo Nation Code and in good standing under the laws of the Navajo Nation and each jurisdiction in which it operates; (ii) subject to prior written approval of the Navajo Nation Council's Resources and Development Committee, Guarantor has the full power and authority to execute and deliver this Guaranty and to perform its obligations hereunder; (iii) Guarantor has the full power and authority under its organizational act to establish and own the Borrower; (iv) Guarantor has the full power and authority under its organizational act to establish and own NTUA Leverage Lending, Inc.; (v) after giving effect to this Guaranty, the Guarantor's long-term debt outstanding is less than \$200,000,000; (vi) the Borrower is wholly owned by the Guarantor and formed under the laws of the Navajo Nation; (vii) the execution, delivery and performance of this Guaranty by Guarantor has been duly and validly authorized by the Guarantor's Management Board; and (viii) the person(s) signing this Guaranty on Guarantor's behalf has been validly authorized and directed to sign this Guaranty.

(b) *Valid and Binding Obligation.* This Guaranty constitutes Guarantor's legal, valid and binding obligation, enforceable against it in accordance with its terms, except to the extent enforceability may be limited under applicable bankruptcy and insolvency laws and similar laws affecting creditors' rights generally and to general principles of equity and does not require the approval of any other Governmental Authority except as set forth in subsection (a) of this Section 4.02.

(c) *No Conflicts.* Guarantor's execution, delivery and performance of this Guaranty will not (i) violate Guarantor's organizational documents, (ii) result in the breach of, or conflict with, or result in the acceleration of, any obligation under any guaranty, indenture, credit facility or other instrument to which Guarantor or any of its assets may be subject, or (iii) violate any law, regulation, injunction, order, judgment or decree to which Guarantor or any of its assets is subject. Further, the Loan Documents will not result in or require the creation or imposition of any Lien upon any property now owned or hereafter acquired by Guarantor other than Permitted Encumbrances and as contemplated by the Loan Documents.

(d) *No Pending Litigation.* No action, suit, proceeding or investigation, judicial, administrative or otherwise (including without limitation any reorganization, bankruptcy, insolvency or similar proceeding), currently is pending or, to the best of Guarantor's knowledge, threatened (in writing) against Guarantor which, either in any one instance or in the aggregate, is reasonably likely to have a material, adverse effect on Guarantor's ability to perform its obligations under this Guaranty. Guarantor has provided Lender a complete list of current litigation and proceedings to which it is a party, including an explanation thereof, attached hereto as Schedule 1. Without limiting the foregoing, there are no pending or, to the best of Guarantor's knowledge, threatened (in writing) proceedings or actions to revoke, invalidate, rescind or modify any permits heretofore issued with respect to the Property.

(e) *Consideration.* Guarantor owns a direct interest in Borrower and will derive substantial benefit from the Loan to Borrower.

(f) *Financial Condition.* Guarantor currently is solvent and will not be rendered insolvent by providing this Guaranty. All financial statements of Guarantor delivered to Lender: (A) are true, correct and complete in all material respects and (B) fairly and accurately present the financial condition of Guarantor as of the date of such financial statements, and there are no contingent liabilities not disclosed thereby that had or is reasonably likely to have a Material Adverse Effect (as defined in the Loan Agreement) on Guarantor. All financial projections given to Lender by Guarantor were prepared in good faith based on facts and circumstances existing at the time of preparation and were accurate in all material respects. No information, exhibit or report furnished by Guarantor to Lender in connection with the negotiation of the Loan Documents contains any material misstatement of fact or fails to state a material fact or any fact necessary to make the statements contained therein not materially misleading. Except as previously disclosed to Lender, Guarantor owes no outstanding Debt other than the indebtedness reflected in the financial statements provided to Lender in accordance with this Agreement. No change that would have a Material Adverse Effect has occurred in the financial condition of Guarantor since the date of its most recent financial statements submitted to Lender, other than has been disclosed in writing to Lender and acknowledged by Lender. Promptly after learning thereof, Guarantor shall give Lender written notice of the following:

(i) the occurrence of any Default or Event of Default, including a description of the same in reasonable detail;

(ii) the commencement (or written threatened commencement) of any legal or arbitral proceedings, and of all proceedings by or before any Governmental Authority that have or may reasonably be expected to have a material adverse effect on Borrower or Guarantor or the Project;

(iii) copies of any notices or documents sent to or received by Guarantor from any Governmental Authority that have or may reasonably be expected to have a material adverse effect on Borrower, Guarantor or the Project; and

(iv) any other development that results in, or is reasonably likely to result in, a material adverse effect on Borrower, Guarantor or the Project.

(g) *Taxes and Governmental Charges.* Guarantor has filed all federal, state, Navajo Nation and any other tax returns and reports required to be filed, if any, and has paid all taxes, assessments, fees and other governmental charges levied upon it or upon its property or income, if any, which are due and payable, including interest and penalties, or has provided adequate reserves for the payment thereof.

(h) *Defaults.* Guarantor is not in default under the Lease, the Sublease, any indenture, mortgage, deed of trust, agreement or other instrument to which it is a party or by which it is bound, which default had or is reasonably likely to have a Material Adverse Effect on or to it.

(i) *Compliance with the Law.* Guarantor (i) is not in violation of any law, judgment, decree, order, ordinance, or governmental rule or regulation to which it or its property is subject, which violation or failure had or is reasonably expected to have a Material Adverse Effect on or to it, or (ii) except as otherwise set forth in this Agreement, has obtained each license, permit, franchise and/or other governmental authorization necessary to the ownership of any of its property or the conduct of its business.

(a) *Environmental Matters.* Guarantor represents and warrants the following to Lender: (i) to the best of its knowledge, information and belief, no part of the Property constitutes "wetlands", as such term is defined by applicable federal law and no permit is needed for the Project from the U.S. Army Corps of Engineers or any other Governmental Authority not disclosed in writing to Lender; (ii) except as disclosed in the Environmental Reports or as permitted by applicable Environmental Law (as defined in the Environmental Indemnity), it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of Hazardous Materials at, upon, under or within the Property; and (iii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a Release of any Hazardous Materials at, upon, under or within the Property or on any contiguous real estate that is not permitted under the Environmental Indemnity.

(b) *No Licensing.* No licensing or registration of any Lender is required under any law of the Navajo Nation by reason of the execution, delivery, performance or enforcement of this Guaranty or the Loan Documents.

(c) *Sovereign Immunity.* The waivers of sovereign immunity and consents to the jurisdiction of specified courts made by the Guarantor in this Guaranty and by each of the Guarantor and the Borrower in the other Loan Documents to which each is a party (i) have been duly authorized by all necessary action of the Management Board and the Borrower's board, respectively; (ii) comport in all respects with applicable laws; (iii) with respect to this Guaranty, the Guarantor has provided the Speaker of the Navajo Nation Council with 30 days' notice of its intent to waive its sovereign immunity to state and federal courts and arbitrate disputes as set forth in this Agreement; (iv) upon execution of this Guaranty and each of the other Loan Documents to which the Guarantor and Borrower are a party, such documents will effectively waive the sovereign immunity of each of the Guarantor and Borrower in accordance with their terms, constitute valid consents to the jurisdiction of the specified courts, will be irrevocable, validly and legally binding on the Guarantor and Borrower, will be enforceable against each of the Borrower and Guarantor in accordance with their terms, and after giving effect to the notice and approval set forth in Section 5.02(1)(iii), no further action will be required to make each such waiver effective.

(d) *Nation Approvals.* The Guarantor has obtained all consents and approvals and provided all written notices of this Guaranty and the provisions of Section 5.07 that are required under the laws of the Navajo Nation and the Guarantor's organizational documents.

Article 5
Miscellaneous

5.01. Notices. All notices and other communications under this Guaranty are to be in writing and sent to the addresses set forth below. Default or demand notices shall be deemed to have been duly given upon the earlier of: (a) actual receipt; (b) one (1) business day after having been timely deposited for overnight delivery, fee prepaid, with a reputable overnight courier service, having a reliable tracking system; (c) upon confirmation of receipt by the intended recipient after having been sent by electronic mail; or (d) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by certified mail, postage prepaid, return receipt requested, and in the case of clauses (b) and (e) irrespective of whether delivery is accepted. A new address for notice may be established by written notice to the other parties; provided, however, that no address change will be effective until written notice thereof actually is received by the party to whom such address change is sent.

If to Guarantor:	Navajo Tribal Utility Authority P.O. Box 170 Fort Defiance, Arizona 86504 Attn: Walter W. Hasse, P.E. Email: walterh@ntua.com
with a copy to:	Law Office of Warren Denetsosie, LLC P. O. Box 1833 Flagstaff, Arizona 86002 Attn: Warren Denetsosie, Esq. Email: wdenetsosie@gmail.com
And to:	Ginsberg Jacobs LLC 300 South Wacker Drive, Suite 2750 Chicago, Illinois 60606 Attn: Darryl P. Jacobs Email: djacobs@ginsbergjacobs.com
If to Lender:	Ecotrust Sub-CDE XXV, LLC c/o Ecotrust CDE, LLC 721 NW 9 th Avenue, Suite 200 Portland, Oregon 97209 Attn: Adam Lane, CFO Email: adam@ecotrust.org
with a copy to:	Future Unlimited Law PC P.O. Box 2776 Yelm, Washington 98597

Attn: Ruth Sparrow
Email: rsparrow@futureunlimitedlaw.com

And to: COCRF Investor 115, LLC
c/o Capital One, National Association
Debt Capital Markets
Place St. Charles, Suite 2900
201 St. Charles Avenue
New Orleans, LA 70170
Attention: Spencer Gagnet
Email: spencer.gagnet@capitalone.com

And to: Jones Day
100 High Street, 21st Floor
Boston, MA 02110
Attention: Jeff Gaulin, Esq.
Email: jgaulin@jonesday.com

5.02. Entire Agreement; Modification; Governing Law. This Guaranty is the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes and replaces all prior discussions, representations, communications and agreements (oral or written). This Guaranty shall not be modified, supplemented, or terminated, nor any provision hereof waived, except by a written instrument signed by the party against whom enforcement thereof is sought, and then only to the extent expressly set forth in such writing. This Guaranty shall be governed by the laws of the State of Arizona and shall be construed in accordance with and governed by the laws of the State of Arizona, without regard to the choice of law rules of that State, except to the extent that any laws of the State of Arizona may now or hereafter be preempted by Federal Law, provided, however, that in the event the Lender initiates legal proceedings in the courts of the Navajo Nation, such legal proceedings shall be governed by the procedural law of the courts of the Navajo Nation.

5.03. Binding Effect; Joint and Several Obligations. This Guaranty is binding upon and inures to the benefit of Guarantor, Lender and their respective heirs, executors, legal representatives, successors, and assigns, whether by voluntary action of the parties or by operation of law. Guarantor may not delegate or transfer its obligations under this Guaranty.

5.04. Unenforceable Provisions. Any provision of this Guaranty which is determined by a court of competent jurisdiction or government body to be invalid, unenforceable or illegal shall be ineffective only to the extent of such determination and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

5.05. Duplicate Originals; Counterparts. This Guaranty may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Guaranty (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed

Guaranty even though all signatures do not appear on the same document. A faxed, scanned or photocopied signature to this Guaranty shall be deemed equivalent to an original signature.

5.06. Construction of Certain Terms. Defined terms used in this Guaranty may be used interchangeably in singular or plural form, and pronouns shall be construed to cover all genders. Article and section headings are for convenience only and shall not be used in interpretation of this Guaranty. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Guaranty as a whole and not to any particular section, paragraph or other subdivision; and the word “section” refers to the entire section and not to any particular subsection, paragraph of other subdivision; and “Guaranty” and each of the Loan Documents referred to herein mean the agreement as originally executed and as hereafter modified, supplemented, extended, consolidated, or restated from time to time.

5.07. Sovereign Immunity, Jurisdiction and Enforcement.

(a) *Limited Waiver of Sovereign Immunity.* Pursuant to and in accordance with Resolution No. CAP-18-10 adopted by the Navajo Nation Council on April 10, 2010, the Guarantor hereby expressly, unequivocally and irrevocably grants this limited waiver of its sovereign immunity to suit, arbitration, service of process and other legal proceedings for claims arising from or related to this Guaranty and the obligations of the parties (including any permitted successors of the parties) under this Agreement, provided that the satisfaction of any monetary judgments against the Guarantor resulting from any legal proceedings brought pursuant to this limited waiver shall be limited to the assets, revenues and income of Guarantor. For the avoidance of doubt: (i) Guarantor’s waiver of sovereign immunity is not subject to or limited by the Navajo Sovereign Immunity Act, 1 N.N.C. §§ 551 *et seq.*, as amended, and (ii) this waiver shall not and does not waive the sovereign immunity of the Navajo Nation nor extend any liability to the assets, revenues or income of the Navajo Nation. With respect to the Guarantor’s foregoing limited waiver, Guarantor represents and warrants that all notices and other actions required to authorize such waiver under its organizational documents and the laws of the Navajo Nation have been given and done.

(b) *Jurisdiction/Enforcement.* The Guarantor acknowledges and agrees that this Agreement and the duties and obligations of the Guarantor hereunder shall be enforceable against Guarantor in any of the following forums: (i) the United States District Court for the District of Arizona, and all appellate courts with jurisdiction over appeals therefrom (the “Federal Courts”); (ii) the Superior Court of Arizona in Navajo County, Arizona and all appellate courts with jurisdiction over appeals therefrom (the “State Courts”); and (iii) at the election of the Lender and in its sole discretion, the courts of the Navajo Nation. (The “Nation Courts,” the Federal Courts and State Courts are collectively referred to herein as the “Permitted Courts”).

(c) *Permitted Courts.* If a party hereto seeks enforcement of any duty or obligation hereunder by suit or injunction or other legal proceeding, the following provisions shall apply:

(i) actions filed in any of the Permitted Courts shall be governed by the procedural laws of the forum in which they are initiated and the substantive laws governing this Agreement;

(ii) the Guarantor hereby submits to the jurisdiction of the Permitted Courts, waives any objection, including, without limitation, any objection to the laying of venue on the grounds of forum non conveniens, which it may have or hereafter have to the bringing of any action or proceeding in the Permitted Courts, waives any right to the exhaustion of tribal remedies or requirement that the foregoing must be brought in the courts of the Navajo Nation, agrees that all claims in respect of this Agreement or any Loan Document or related transaction may only be heard and determined in the Permitted Courts and agrees not to initiate any action against Lender in the Nation Courts; and

(iii) Guarantor irrevocably consents to the service of process of any of the Permitted Courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Guarantor at its address provided herein. Nothing contained in this Section shall affect the right of Lender to serve process in any other manner permitted by law. Guarantor hereby explicitly consents to the jurisdiction of each of the Permitted Court systems for proceedings brought pursuant to this Section.

(iv) *Arbitration.* The Lender (may, in its sole discretion), elect to resolve disputes through arbitration conducted pursuant to the American Arbitration Association's Commercial Rules ("Arbitration"), and the Guarantor agrees its limited waiver of sovereign immunity set forth herein extends to arbitration. The Lender also may consent in writing to the Guarantor's request for Arbitration. The parties agree that the American Arbitration Association's Commercial Rules may be modified and supplemented as follows:

(v) unless otherwise agreed to in writing by the parties hereto, all arbitration procedures shall be held in Navajo County, Arizona;

(vi) the arbitration shall be conducted by an arbitration panel consisting of three (3) AAA available arbitrators, with at least one arbitrator possessing at least ten (10) years of experience in federal Indian law, with each party choosing one arbitrator and the two arbitrators choosing a third;

(vii) actions to compel arbitration, seek preliminary or injunctive relief, or enforce awards resulting from arbitration shall proceed as provided in subparagraph (b) hereof and Section 5.02;

(viii) Guarantor expressly consents to submit to the Permitted Courts (including all courts to which decisions may be appealed) with regard to actions to compel Guarantor's participation in an arbitration proceeding, actions for injunctive relief and to enforce an award resulting from such arbitration. Such actions shall be governed by the procedural laws of the forum in which they are initiated and the governing law of this Agreement; and

(ix) Commencement of arbitration in accordance with the foregoing provisions of this Section shall be a complete defense to any suit, action or proceeding instituted in any Permitted Court with respect to any dispute or controversy arising out of this Agreement that is arbitrated as set forth herein.

(d) **Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY**

JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(e) *Survival.* The provisions of this Section 5.07 shall, with respect to such any dispute or controversy arising out of this Agreement, survive the termination or expiration of this Agreement.

(f) *Relationship Between the Parties.* The relationship between Lender, on the one hand, and Guarantor, on the other, will be solely that of lender and guarantor, and such relationship will not, under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.

(g) *Section 81 Compliance.* For the avoidance of any doubt, it is acknowledged that the Guaranty is not intended to “encumber Indian land” within the meaning of 25 U.S.C. § 81, and no interpretation shall be given to the Guaranty which would have the effect of such an encumbrance. Notwithstanding any right of Lender in the Guaranty, any right, requirement or restriction that “encumbers Indian land” within the meaning of 25 U.S.C. § 81, shall not be effective for longer than six years, 364 days.

(h) *Legal Opinion.* It shall be a condition precedent to the disbursement of the Loan that Lender shall have been provided with an opinion of counsel to Guarantor that the provisions of Section 5.02 and this Section 5.07 and all legal prerequisites to validity thereto have been duly authorized, executed and delivered, (ii) are valid and binding obligations of Guarantor, subject only to the effect of bankruptcy and similar laws and general principles and equity, and (iii) are not subject to the approval of the Bureau of Indian Affairs in order for the foregoing provisions to be valid and binding obligations of Guarantor.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned hereby signs, seals and delivers this Repayment Guaranty as of the date first written above.

GUARANTOR:

NAVAJO TRIBAL UTILITY AUTHORITY, an
enterprise of the Navajo Nation

By: _____
Walter W. Haase, P.E., General Manager

SCHEDULE 1

CURRENT LITIGATION AND PROCEEDINGS

None



**NON-DISTURBANCE, ATTORNMENT,
ESTOPPEL AND SUBORDINATION AGREEMENT**

THIS NON-DISTURBANCE, ATTORNMENT, ESTOPPEL AND SUBORDINATION AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 2018, by, between and among **Ecotrust Sub-CDE XXV, LLC**, a Delaware limited liability company (and its successors and assigns, "Beneficiary"), **Navajo Tribal Utility Authority**, an enterprise organized and duly formed under the laws of, and owned entirely and exclusively by, the Navajo Nation, a federally recognized tribe ("NTUA"), **NTUA New Markets V, Inc.**, a corporation formed under the laws of the Navajo Nation ("NNM V"), and **Navajo Nation [also known as the Navajo Tribe of Indians]**, a federally recognized tribe ("Navajo Nation"). Sometimes herein Beneficiary, NTUA, NNM V and Navajo Nation are collectively referred to hereinafter as the "Parties" or individually as a "Party."

RECITALS:

A. Beneficiary is the owner and holder of those certain promissory notes dated as of [_____, 2018] (the "Notes") in the principal sum of Eight Million Two Hundred Forty-Five Thousand Dollars (\$8,245,000.00) (the "Loan"), secured by, among other documents, a "Security Agreement," a "Subleasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Subleasehold Mortgage"), , and a "Guaranty" each of even date with the Note, which Security Agreement, and Subleasehold Mortgage constitute liens or encumbrances on, among other things, the Sublease (defined below) held by NNM V. The Loan is being advanced by Beneficiary to NNM V pursuant to that certain Loan Agreement between Beneficiary and NNM V dated as of the date hereof (the "Loan Agreement", and together with the Notes, the Security Agreement, the Subleasehold Mortgage, the Guaranty, and all other documents executed by Borrower, NTUA or any other person in connection with the Loan, are collectively referred to herein as the "Loan Documents").

B. NTUA is the holder of that certain Kayenta Chapter Solar Site Lease and Right-of-Way between NTUA and the Navajo Nation dated June 24, 2016, approved by the Secretary of the U.S. Interior on July 27, 2016, as amended effective [_____, 2018], as it may be amended, assigned, restated, modified or supplemented from time to time, a copy of which is attached hereto as Exhibit A (the "Lease"), within which is the secured property.

C. NTUA is granting a "Sublease" to NNM V with respect to the property legally described on Exhibit B attached hereto (the "Property"), which is a portion of the property subject to the Lease, pursuant to that certain Kayenta Chapter Solar Site Sublease between NTUA, as Sublessor, and NNM V, as Sublessee, dated as of [_____, 2018], as approved by the Secretary of the U.S. Interior on [_____, 2018], as amended, assigned, restated, modified, or supplemented from time to time dated as of the date hereof (the "Sublease"), in order for NNM V to have the ability to operate the Utility System (as defined in the Loan Agreement), including without limitation, making necessary repairs and changes, on the Sublease.

D. NNM V is granting a “Sub-sublease” to NTUA of the Property and the Utility System, pursuant to that certain Kayenta Chapter Solar Site Sublease (Operating Sublease) between NNM V as Sub-lessor, and NTUA, as Sub-sublessee, dated as of [_____, 2018], as approved by the Secretary of the U.S. Interior on [_____, 2018], as amended, assigned, restated, modified, or supplemented from time to time dated as of the date hereof (the “Operating Sublease”).

E. A copy of the Lease, the Sublease and Operating Sublease are being contemporaneously or have previously been delivered to Beneficiary and have not been amended, modified or terminated as of the date hereof.

F. The Lease, Sublease and Operating Sublease are hereby referred to herein as the “Conveyances”.

G. Navajo Nation agrees that, with respect to NNM V, at all times, and, with respect to Beneficiary, in the Event of Default in the agreements described above or in the event that Beneficiary obtains possession of the Sublease pursuant to the Security Agreement and/or Subleasehold Mortgage and any other security instrument(s) executed in connection herewith, the terms and conditions of this Agreement shall apply.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Full Force And Effect of Conveyances; Non-Disturbance. Whether or not Beneficiary may succeed to the interests of NNM V under the Conveyances by reason of judicial foreclosure, power-of-sale foreclosure or other proceedings brought by Beneficiary, or by any other manner, including, but not limited to, the institution of a receiver for the Conveyances or Beneficiary's exercise of its rights under any of the Loan Documents, and subject to and with respect to NNM V, so long as NNM V is not in default (beyond any period given NNM V to cure such default under the Conveyances or otherwise) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Conveyances on NNM V's part to be performed, Navajo Nation and NTUA agree, for the benefit of NNM V and Beneficiary, on behalf of their successors-in-interest, assigns and for any other person acquiring title to any of the Conveyances, that:

(i) Neither NNM V's nor Beneficiary's possession and occupancy of the premises set forth in the Conveyances shall be interfered with or disturbed by the Navajo Nation and/or NTUA during the term of the Conveyances or any extension thereof duly exercised thereunder; and

(ii) The Conveyances shall continue in full force and effect as direct conveyances between NNM V and the Navajo Nation and NNM V and NTUA, and between Beneficiary and the Navajo Nation and the Beneficiary and NTUA, as applicable, upon and subject to the terms, covenants and conditions of the Conveyances, for the balance of the term of each such instrument.

2. Consent To Subleasehold Mortgage.

2.1 The Navajo Nation and NTUA hereby consent to the assignment to and pledge by NNM V to Beneficiary of NNMV's right, title and interest in the Sublease and Operating Sublease pursuant to the Subleasehold Mortgage and the other Loan Documents.

2.2 In addition to the non-disturbance provisions of Section 1. above, if the interests of NNM V shall be transferred to and/or owned by Beneficiary by reason of judicial foreclosure, power-of-sale foreclosure or other proceedings brought by Beneficiary, or by any other manner, including, but not limited to, the institution of a receiver for the Conveyances or Beneficiary's exercise of its rights under the Subleasehold Mortgage, the Navajo Nation and NTUA shall be bound to Beneficiary under all of the terms, covenants and conditions of the Conveyances for the balance of the remaining term(s) thereof (including any applicable extension(s)), with the same force and effect as if Beneficiary were NNM V under the Conveyances, and Beneficiary does hereby attorn to NTUA or Navajo Nation, as applicable, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the Parties.

2.3 Beneficiary shall be under no obligation to direct its payment of rent to Navajo Nation until Beneficiary receives written notice from Navajo Nation to do so.

3. Attornment; Exceptions.

3.1 Beneficiary shall not be:

(i) Liable for any act or omission of any prior lessee or sublessee (including NTUA and NNM V) or for any monetary damages incurred by Navajo Nation or for any act or omission prior to Beneficiary's succession to NNM V's interest in the Conveyances; or

(ii) Subject to any offsets or counterclaims, which Navajo Nation might have against any prior lessee or sublessee (including NTUA and NNM V) or accruing prior to Beneficiary's succession to NNM V's interest in the Conveyances; or

(iii) Liable for any past due rent or other financial obligation arising out of the Conveyances, additional rent or any other financial obligation arising out of the Conveyances, prior to Beneficiary's succession of interests therein; or

(iv) Bound by any amendment or modification of the Conveyances made without Beneficiary's consent and written approval; provided, however, an amendment or modification of the Lease shall be deemed consented to by Beneficiary if Beneficiary does not disapprove the amendment or modification within ten (10) business days after receipt from Navajo Nation, NTUA, or NNM V of the amendment or modification executed by the Parties. The actual written consent of Beneficiary shall be required to any amendment or modification of the Sublease or Operating Sublease.

4. Subordination. Subject to the terms of this Agreement, including, but not limited to, those in Section 2 hereof, the Sublease and Operating Sublease and the terms thereof are, and shall at all times continue to be, subject and subordinate in each and every respect, to the Security Agreement and the Subleasehold Mortgage and the terms thereof, and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Security Agreement and/or Subleasehold Mortgage. Nothing herein contained shall be deemed or construed as limiting or restricting the enforcement by Beneficiary of any of the terms, covenants, provisions or remedies of the Security Agreement, or the Subleasehold Mortgage.

5. Representations And Warranties. Navajo Nation and NTUA represent and warrant to Beneficiary as follows:

(i) that the Conveyances, as amended, are presently in full force and effect and unmodified or changed;

(ii) that the Lease commenced on June 24, 2016;

(iii) that all conditions required under the Conveyances have been met;

(iv) that no default or event, which with the giving of notice, passage of time, or both, would constitute a default, exists under the Conveyances;

(v) that the Navajo Nation, as of this date, has no charge, lien or claim under the Conveyances or otherwise, against rents or other charges due or to become due thereunder;

(vi) that the only persons, firms or corporations in possession of the interests as described in the Conveyances or having any right thereto are those who are parties under the Conveyances.

6. **Negative Covenants.** In the absence of the prior written consent of Beneficiary, NTUA agrees not to do any of the following:

(i) enter into any agreement with the Navajo Nation or NNM V that amends or modifies the Conveyances;

(ii) voluntarily surrender the Lease or terminate the Conveyances prior to the expiration date thereof set forth in the Conveyances; and

(iii) further sublease, encumber, pledge or assign the Sublease or the Operating Sublease.

7. **Required Notice To Beneficiary.**

7.1 In the event NTUA shall fail to perform or observe any of the terms, conditions or agreements in the Conveyances (hereinafter defined as a “Default” or an event of default), Navajo Nation shall give prompt written notice thereof to Beneficiary and Beneficiary shall have the right (but not the obligation) to cure such failure. Navajo Nation shall not take any action with respect to such failure to terminate, rescind or avoid the Conveyances, for the greater of a period of sixty (60) days after Beneficiary’s actual receipt of written notice of such Default, and the cure period granted to NTUA pursuant to the Lease.

7.2 Upon request, NTUA shall provide and deliver all documents and other information that pertain to this Agreement.

8. **Inspection Rights.** So long as the Loan is outstanding, upon reasonable prior written notice, Beneficiary or its designee may enter upon the Property at all reasonable times to visit or inspect the Conveyances and/or discuss the affairs, finances and accounts of NTUA and NNM V applicable to the Conveyances. Beneficiary agrees to indemnify, defend and hold harmless the Navajo Nation, NNM V, and NTUA harmless from all cost, expense, claim, liability, injury or damages to persons or property arising out of Beneficiary’s gross negligence in the exercise of such rights of entry onto the Property.

9. **Sovereign Immunity, Jurisdiction and Enforcement.**

(a) *No Waiver of Sovereign Immunity for the Navajo Nation.* Nothing in this Agreement shall be deemed a waiver of the Navajo Nation’s sovereign immunity pursuant to the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq.

(b) *Limited Waiver of Sovereign Immunity for NTUA and NNM V.* Nothing in this Agreement shall be deemed a waiver of NTUA’s or NNM V’s sovereign immunity pursuant to the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq. If a court of competent

jurisdiction should find or conclude that NTUA or NNM V does enjoy sovereign immunity, NTUA and NNM V hereby irrevocably waive their sovereign immunity on a limited basis and consents to be sued should an action be commenced to determine and enforce the obligations of NTUA and NNM V (including any permitted successors of NTUA and NNM V) under this Agreement pursuant to and in accordance with that Resolution No. CAP-18-10 adopted by the Navajo Nation Council on April 10, 2010, and by Resolution No. NTUA-28-10 of the Management Board of the Navajo Tribal Utility Authority dated June 25, 2010; and provided further that such limited waiver shall be limited to the assets, revenues and income of NTUA and NNM V, and shall not waive the sovereign immunity of the Navajo Nation nor extend any liability to the assets, revenues or income of the Navajo Nation. With respect to the foregoing limited waiver, NTUA and NNM V represent and warrant that all notices and other actions required to authorize such waiver have been given and done.

(c) *Jurisdiction/Enforcement.* NTUA, NNM V and Beneficiary hereto acknowledge and agree that this Agreement and the duties and obligations of NTUA, NNM V or Beneficiary shall be enforceable against the other party in any of the following forums: (a) the United States District Court for the District of Arizona, the Superior Court for Navajo County, Arizona, or, if and only if elected or consented to in writing by NTUA, NNM V and Beneficiary, the courts of the Navajo Nation (“Permitted Courts”), or (b) if and only if elected or consented to in writing by NTUA and NNM V and Beneficiary, arbitration pursuant to and in accordance with arbitration procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. § 554 J and § 554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§ 1101 et seq. (“Arbitration”).

(d) *Permitted Courts.* If NTUA, NNM V or Beneficiary seeks enforcement of any duty or obligation hereunder by suit or injunction or other legal proceeding, the following provisions shall apply:

(i) actions filed in any of the Permitted Courts shall be governed by the laws of the forum in which they are initiated;

(ii) each of NTUA, NNM V and Beneficiary hereby submits to the jurisdiction of the Permitted Courts, waives its rights to bring any action or proceeding against the other in any court except the Permitted Courts, waives any objection, including, without limitation, any objection to the laying of venue on the grounds of *forum non conveniens*, which either may have or hereafter have to the bringing of any action or proceeding in the Permitted Courts, waives any requirement of exhaustion of tribal remedies or that the foregoing must be brought in the tribal courts of the Navajo Nation, and agrees that all claims in respect of this Agreement or related transaction may only be heard and determined in the Permitted Courts; and

(iii) NTUA, NNM V and Beneficiary irrevocably consent to the service of process of any of the Permitted Courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to NTUA, NNM V and Beneficiary at their address provided herein. Nothing contained in this Section shall affect the right of Beneficiary, NTUA or NNM V or to serve process in any other manner permitted by law. NTUA, NNM V and Beneficiary hereby explicitly consent to the

jurisdiction of each of the Permitted Court systems for proceedings brought pursuant to this Section.

(e) *Arbitration.* If either NTUA or NNM V seeks enforcement of any duty or obligation or resolution of any dispute hereunder by Arbitration, or if NTUA or NNM V shall consent (in their sole discretion) to other party's enforcement of any duty or obligation or resolution of any dispute hereunder by Arbitration (if the Beneficiary shall have consented thereto), the Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

(i) unless otherwise agreed to in writing by the NTUA, NNM V and Beneficiary, all arbitration procedures shall be held in Navajo County, Arizona;

(ii) the arbitration shall be conducted by an arbitration panel consisting of three (3) AAA available arbitrators, with at least one arbitrator possessing at least ten (10) years of experience in federal Indian law, with each party choosing one arbitrator and the two arbitrators choosing a third;

(iii) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. § 555;

(iv) the result of any arbitration award provided for herein shall be in strict conformance with the provisions of 1 N.N.C. § 554 K 1-6;

(v) notwithstanding the provisions herein, the laws of the Navajo Nation shall exclusively govern the arbitration provisions set forth herein and the arbitration procedures conducted pursuant thereto (but actions to enforce this Agreement pursuant to a waiver of sovereign immunity described herein and to actions to compel arbitration and enforce awards resulting from arbitration as provided in subparagraph (b)(vi) shall be subject to the provisions herein);

(vi) NTUA, NNM V and Beneficiary expressly consent to submit to the Permitted Courts (including all courts to which decisions of the federal court may be appealed) with regard to actions to compel the other party's participation in an arbitration proceeding and to enforce an award resulting from such arbitration. Such actions shall be governed by laws of the forum in which they are initiated; and

(vii) Commencement of arbitration in accordance with the foregoing provisions of this Section shall be a complete defense to any suit, action or proceeding instituted in any federal, state, or tribal court or any administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is arbitrated as set forth herein.

(f) *Survival.* The provisions of this Section 8 shall, with respect to such any dispute or controversy arising out of this Agreement, survive the termination or expiration of this Agreement

10. Miscellaneous.

Navajo Nation and NTUA hereby represent and warrant to Beneficiary that the Conveyances and this Agreement have been duly authorized and that each of the Navajo Nation and NTUA has received all approvals necessary to enter into the Conveyances and this Agreement.

10.2 This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the Parties and their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors and assigns. In the event of a conflict between the provisions of this Agreement and the provisions of the Conveyances, the provisions of this Agreement shall control.

10.3 This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on each of the Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile machine, portable document format ("PDF") or other electronic means shall be as effective as delivery of a manually executed counterpart of this Agreement.

10.4 All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be in writing and shall be considered as properly given: (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; or (ii) by delivering same in person to the intended addressee; or (iii) by prepaid telegram. Notice so given in person or by telegram shall be effective upon its deposit. Notice so given by mail shall be effective two (2) days after deposit in the United States mail. Notice given in any other manner shall be effective only, if and when, received by the addressee. For purposes of notice, the addresses of the Parties shall be:

<u>If to Navajo Nation:</u>	Navajo Nation P.O. Box 9000 Window Rock, AZ 86515
<u>With a Required Copy To:</u>	Law Office of Warren Denetsosie P. O. Box 1833 Flagstaff, Arizona 86002 Attn: Warren Denetsosie, Esq. Facsimile: (602) 926-0349
<u>If To NTUA:</u>	Navajo Tribal Utility Authority P.O. Box 170 Fort Defiance, Arizona 86504 Attn: Walter W. Haase, P.E. Facsimile: (928) 729-2135
<u>With a Required Copy To:</u>	Law Office of Warren Denetsosie P. O. Box 1833 Flagstaff, Arizona 86002

Attn: Warren Denetsosie, Esq.
Facsimile: (602) 926-0349

If to NNM V:

NTUA New Markets V, Inc.
P.O. Box 170
Fort Defiance, Arizona 86504
Attn: Walter W. Haase, P.E.
Facsimile: (928) 729-2135

With a Required Copy To:

Ginsberg Jacobs, LLC
300 South Wacker Drive, Suite 2750
Chicago, Illinois 60606
Attn: Darryl P. Jacobs, Esq.
Facsimile: (312) 660-9612

And

Law Office of Warren Denetsosie
P. O. Box 1833
Flagstaff, Arizona 86002
Attn: Warren Denetsosie, Esq.
Facsimile: (602) 926-0349

If To Beneficiary:

Ecotrust Sub-CDE XXV, LLC
% Ecotrust CDE, LLC
721 NW 9th Street, Suite 200
Portland, Oregon 97209-3448
Attn: Adam Lane, CFO
Facsimile: (503) 222-1517

With a Required Copy To:

Future Unlimited Law PC
P.O. Box 2776
Yelm, WA 98597
Attn: Ruth Sparrow
Facsimile: (360) 458-2509

And

Capital One, N.A.
201 St. Charles Ave., 29th Floor
New Orleans, LA 70170

And

Jones Day
100 High Street 21st Floor
Boston, MA 02110
Attn: Jeffrey Gauldin, Esq.

provided, however, that any Party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other Parties in the manner set forth hereinabove.

10.5 Capitalized terms, not otherwise defined in this Agreement, shall have the meaning ascribed to such term in the Loan Agreement.

10.6 Navajo Nation, NTUA and NNM V each agree to perform such further and additional acts and to execute and deliver any and all such further and additional instruments and documents as may be reasonably necessary in order to carry out the provisions and effectuate the intent of this Agreement.

10.7 The statements and definitions set forth in the "Whereas" clauses above are incorporated herein word for word and made a part of this Agreement for all purposes.

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

IN WITNESS WHEREOF, the Parties hereto execute this Agreement as of the date first above written.

NTUA:

NAVAJO TRIBAL UTILITY AUTHORITY,
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: _____
Walter W. Haase, P.E., General Manager

NNM V:

NTUA New Markets V, Inc., a Navajo Nation corporation

By: _____
Walter W. Haase, P.E., President

Navajo Nation:

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

By: _____
Printed Name: Russell Begaye
Title: President

BENEFICIARY:

ECOTRUST SUB-CDE XXV, LLC, a Delaware limited liability company

By: Ecotrust CDE, LLC, a Delaware limited liability company

By: _____

Printed Name: Adam Lane

Title: Chief Financial Officer

(This area for official notarial seal)

COUNTY OF _____)
) ss.
STATE OF ARIZONA)

On _____, 2018, before me, personally appeared Walter W. Haase,, President of NTUA New Markets V, Inc., a corporation organized, and formed under the laws of the Navajo Nation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(This area for official notarial seal)

COUNTY OF MULTNOMAH)
) ss.
STATE OF OREGON)

On _____, 2018, before me, personally appeared Adam Lane, the Chief Financial Officer of **Ecotrust Sub-CDE XXV, LLC**, a Delaware limited liability company,, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(This area for official notarial seal)

EXHIBIT "A"

LEASE

EXHIBIT B
LEGAL DESCRIPTION AND SURVEY MAP OF THE PROPERTY

Document No. 010105

Date Issued: 04/13/2018

SECTION 164 REVIEW FORM

Title of Document: Kayenta New Market Credit Agreement Contact Name: YAZZIE, ELERINA B

Program/Division: DIVISION OF NATURAL RESOURCES

Email: elerina_yazzie@frontier.com Phone Number: 928/871/6447

Division Director Approval for 164A: _____

Check document category; only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.

Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council

<input checked="" type="checkbox"/>	Statement of Policy or Positive Law:			Sufficient	Insufficient
	1. OAG:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)				
	1. OMB:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OOC:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OAG:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

Section 164(B) Final approval rests with the President of the Navajo Nation

<input type="checkbox"/>	Grant/Funding Agreement or amendment:				
	1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OMB:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OOC:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	4. OAG:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Subcontract/Contract expending or receiving funds or amendment:				
	1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. BRD:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OMB:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	4. OOC:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	5. OAG:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Letter of Assurance/M.O.A./M.O.U/Other agreement not expending funds or amendment:				
	1. Division:	<u>MPH South - by email</u>	Date: <u>5/22/2018</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	2. OAG:	<u>V. Stanton</u>	Date: <u>5/31/18</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	M.O.A. or Letter of Assurance expending or receiving funds or amendment:				
	1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OMB:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OOC:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	4. OAG:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ 05/23/18 8040 DATE/TIME 7 Day Deadline DOC #: 010105 SAS #: UNIT: New

RESUBMITTAL

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST: 5/22/2018 ENTITY/DIVISION: DNR CONTACT NAME: 928 871 6592 DEPARTMENT: " " PHONE NUMBER: Bidatah Becker E-MAIL: bidatah.becker

TITLE OF DOCUMENT: Non Disturbance Attachment, Estoppel + Subordination Agreement (shorthand guaranty) Doc# 1005

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 5.23.18 9:30am REVIEWING ATTORNEY/ADVOCATE: Veronica B. 6.5.18

DATE/TIME OUT OF UNIT: 5.31.18 3:55

DOJ ATTORNEY / ADVOCATE COMMENTS

Sufficient

REVIEWED BY: (PRINT) DATE / TIME SURNAMED BY: (PRINT) DATE / TIME VP/Clark 5/31/19 1:45 pm

DOJ Secretary Called: Aldrian for Document Pick Up on 5.31.18 at 3:54 By: B

PICKED UP BY: (PRINT) DATE / TIME:

**RESOLUTION
OF THE MANAGEMENT BOARD
OF THE NAVAJO TRIBAL UTILITY AUTHORITY**

NTUA-49-17

Approving a Limited Waiver of Sovereign Immunity to Ecotrust CDE LLC and Ecotrust Sub-CDE XXV LLC in Furtherance of New Markets Tax Credit for Kayenta Solar Project and Connection of Homes to the Grid

WHEREAS:

1. The Management Board of the Navajo Tribal Utility Authority (“NTUA” or “Authority”) is delegated authority and responsibility for the management and operation of NTUA pursuant to 21 N.N.C. § 7(A)(1); and
2. The Management Board of NTUA has the power to contractually waive NTUA’s sovereign immunity on a limited basis pursuant to 21 N.N.C. §7(14); and
3. Ecotrust CDE LLC and Ecotrust Sub-CDE XXV LLC are considering committing up to \$10 million of Ecotrust federal NMTC allocation to facilitate a new markets tax credit financing to NTUA for construction and operation of the Kayenta Solar Project and connection of existing homes on the Nation to the grid; and
4. NTUA has been informed that a limited waiver of sovereign immunity may be required in order to secure this potential new markets tax credit transaction; and
5. NTUA Management deems it appropriate for the NTUA Management Board to grant a limited waiver of sovereign immunity pursuant to 21 N.N.C. §7(14) in favor of Ecotrust CDE and/or its subsidiaries, as well as its affiliates and agents and Ecotrust Sub-CDE XXV LLC and/or its subsidiaries, as well as its affiliates and agents in order to complete the transaction described above.

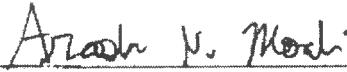
NOW THEREFORE BE IT RESOLVED THAT:

1. The Management Board of NTUA hereby grants and approves a limited waiver of sovereign immunity pursuant to 21 N.N.C. §7(14) in favor of Ecotrust CDE and/or its subsidiaries, as well as its affiliates and agents and Ecotrust Sub-CDE XXV LLC and/or its subsidiaries, as well as its affiliates and agents in order to secure the potential new markets tax credit transaction described above.
2. The Management Board of NTUA hereby approves the General Manager of NTUA’s notification to the Speaker of the Navajo Nation Council of the Management Board’s intention to waive NTUA’s sovereign immunity pursuant to 21 N.N.C. §7(14) in favor of Ecotrust CDE and/or its subsidiaries, as well as its affiliates and agents and Ecotrust Sub-CDE XXV LLC and/or its subsidiaries, as well as its affiliates and agents.
3. The Management Board of NTUA further authorizes the General Manager of NTUA, or appropriate Staff Member, to take the necessary actions to comply with and carry out the terms and conditions outlined in the transaction described above.

NTUA-49-17

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Management Board of the Navajo Tribal Utility Authority at a duly called teleconference meeting at which a quorum was present and that the same was passed by a vote of 5 in favor, 0 opposed, 0 abstaining this 20th day of October, 2017.



Arash N. Moalemi, Secretary



March 21, 2018

Honorable President Begaye
Navajo Nation
Post Office Box 9000
Window Rock, Arizona 86515

Dear President Begaye:

The Navajo Tribal Utility Authority (NTUA) is submitting the documents listed below, attached hereto, for review, approval and execution by your office. The purpose of the following documents are to re-finance the Kayenta Solar Substation and related infrastructure facilities within the Kayenta Chapter pursuant to the federal New Markets Tax Credits program:

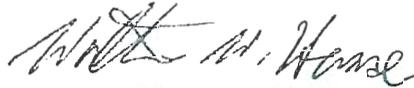
1. Kayenta Chapter Solar Site Sublease between NTUA and NTUA New Markets V, Inc.;
2. Kayenta Chapter Solar Site Sublease between NTUA New Markets V, Inc. and NTUA (Operating Sublease);
3. Subleasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing among NTUA New Markets V, Inc. and Commonwealth Land Title Insurance Co. for the benefit of Ecotrust Sub-CDE XXV, LLC;
4. Repayment Guaranty by NTUA in favor of Ecotrust Sub-CDE XXV, LLC;
– and
5. Non-Disturbance, Attornment, Estoppel and Subordination Agreement by
– the Navajo Nation, NTUA, NTUA New Markets V, Inc., and Ecotrust Sub-CDE XXV, LLC.

Refinancing the Kayenta Solar Substation with New Markets Tax Credits will result in a net benefit of \$1.8 million, which will help NTUA maintain low rates for electric customers and continue to improve on the Navajo people's electric system. NTUA has successfully closed three other New Markets Tax Credits financings, which helped NTUA build two new electrical substations in the Shiprock area, helped defray construction costs of the NTUA Chinle Headquarters building, and resulted in the upgrade of the Window Rock Wastewater Treatment Plant.

On March 13, 2018, NTUA submitted a proposed lease modification of the underlying Kayenta Chapter Solar Site Lease that would extend the term of that lease by 10 years and add another 65 acres. This New Markets Tax Credits financing is dependent upon the lease term extension of 10 years.

There are numerous other transactional documents that do not require the Navajo Nation's approval. They are available upon request. If you have any questions, please contact Ms. Bernice Tsosie, Assistant Manager, directly at (928) 729-6204. Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Walter W. Haase". The signature is written in a cursive style with some flourishes.

Walter W. Haase, P.E.
General Manager



420 Division of Real Estate Services

United States Department of the Interior

Bureau of Indian Affairs
Navajo Region
P. O. Box 1060
Gallup, New Mexico 87305



HAND DELIVERY

JUL 27 2016

Mr. Walter Haase, General Manager
Navajo Tribal Utility Authority
P. O. Box 170
Fort Defiance, Arizona 86504

Attention: Bernice Tsosie, Assistant Manager
Navajo Tribal Utility Authority

Dear Mr. Haase:

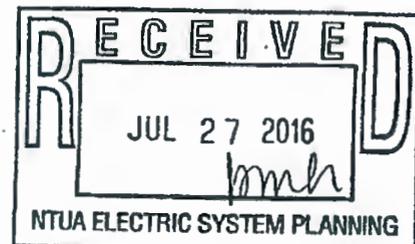
Enclosed for your use and distribution are three (3) copies of the approved Kayenta Chapter Solar Site Lease for the Navajo Tribal Utility Authority. The telecommunication site is located in the vicinity of Kayenta, Arizona.

The Bureau of Indian Affairs retained one copy for our record. If you have any questions the Realty Specialist may be reached at 505-863-8208.

Sincerely,

Acting Regional Realty Officer

Enclosure



LEASE NO. TC-16-236

**KAYENTA CHAPTER SOLAR SITE LEASE AND RIGHT-OF-WAY
BETWEEN
THE NAVAJO NATION
AND THE
NAVAJO TRIBAL UTILITY AUTHORITY**

THIS LEASE is made and entered into this 24th day of JUNE, 2016, by and between THE NAVAJO NATION, hereinafter called the "Lessor," or the "Nation," whose address is P.O. Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and THE NAVAJO TRIBAL UTILITY AUTHORITY (NTUA), hereinafter called the "Lessee," whose address is P.O. Box 170, Fort Defiance, AZ 86504. This Lease is made in accordance with the provisions of 2 N.N.C. § 501(B)(2)(a) and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162, and all amendments or successors thereto, which by this reference are made a part hereof.

1. DEFINITIONS.

(A) "Approved Encumbrance" means an encumbrance approved in writing by Lessor in accordance with the terms and conditions of this Lease.

(B) "Sublease" means an agreement that allows Lessee to sublease the site to Lessee's subsidiary to secure the most favorable financing for the Kayenta Solar Project.

(C) "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.

(D) "Hazardous Substance" means any "hazardous substance as defined at § 2104 Q. of the NNCERCLA, 4 N.N.C. § 2101 *et seq.*, including all amendments or successors thereto.

(E) "NNCERCLA" means the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act, 4 N.N.C. § 2101 *et seq.*

(F) "Regulated Substance" means any regulated substance as defined at § 1502 V. of the Navajo Nation Underground and Aboveground Storage Act, 4 N.N.C. § 1501 *et seq.*, which includes petroleum and petroleum products.

(G) "Secretary" means the Secretary of the United States Department of the Interior or a duly authorized representative or successor, such as the Bureau of Indian Affairs ("BIA").

2. LEASED PREMISES.

For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to Lessee all, or a portion of, that tract or parcel of land situated within the Chapter of Kayenta, Navajo Nation, state of Arizona more particularly described in the survey map with legal description attached hereto as Exhibit "A," and by this reference made a part hereof, containing approximately 300 acre(s), more or less, together with the right of reasonable ingress and egress, and the right to install utilities pursuant to Section 10 below, hereinafter called the "Leased Premises." The access road is approximately 0.03 miles, comprised of 0.18 acres. The legal description for this road is contained within Exhibit "A".

3. COMPLIANCE WITH FEDERAL LAW.

This Lease hereby incorporates by reference, and shall be deemed to include, all the mandatory provisions regarding a business lease set forth in 25 C.F.R. §162.413 (the "Mandatory Provisions"). Incorporation of the Mandatory Provisions into this Lease is designed to assure that the Lease complies with all applicable requirements of federal law and to facilitate the processing and administration of this Lease. The Mandatory Provisions require compliance with federal and tribal laws pursuant to the 25 C.F.R. §162.014. Please note this requires compliance with all federal and tribal historic and cultural preservation laws—specifically all work must cease and the Nation must be notified if artifacts are discovered to prevent unauthorized destruction of resources pursuant to 16 U.S.C. §470ee. In no circumstances shall the Lease be construed to waive any requirement of federal law or to prevent the Secretary from exercising any right granted to the Secretary with respect to this Lease. The parties understand and agree the Lessor determined the Secretary will approve the Lease pursuant to 25 CFR §162 until such time that the Navajo Nation regulations are amended and the Navajo Nation is prepared to approve Leases. During this time, any rights granted to Lessor under this Lease shall be granted to the Secretary, including any notice to which Lessor is entitled, or which Lessor may provide may be given by the Secretary.

4. PURPOSE, UNLAWFUL USES.

(A) Lessee shall develop, use and occupy the Leased Premises solely for the purpose of constructing, operating and maintaining a solar energy project and related interconnection facilities. Lessee shall have the right to fence all, or any portion, of the Leased Premises as may be necessary to conduct Lessee's operations. Whether or not Lessee chooses to fence the Leased Premises, Lessee shall be solely responsible for securing the Leased Premises so as to protect Lessee's solar energy project, related structures and any related interconnection facilities located on the Leased Premises and for protecting members of the general public, as well as Lessee's agents and invitees, from personal injury on the Leased Premises.

(B) The Leased Premises shall not be developed or used by Lessee for any purpose other than as described in Section 4(A) above, except upon grant of a Sublease or with the prior written consent of Lessor.

(C) Lessee shall not use, or permit to be used, any part of the Leased Premises for any unlawful conduct or purpose, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises.

5. TERM.

(A) **Primary Term.** The Primary Term of this Lease shall be for a period of twenty-five (25) years, commencing on the later date the Lease is approved by the Nation or by the Secretary, if the Secretary's approval is necessary (the "Effective Date").

6. RENTAL.

(A) Lessor hereby waives an annual rental payment so long as NTUA uses the Leased Premises for non-commercial purposes. When NTUA desires to use the Leased Premises for commercial operation(s), it must obtain approval from the Resources and Development Committee.

(B) The Lessee shall make an additional annual of payment of \$2,000.00 to the Nation for each Sublease proposed by the Lessee and approved by the Nation. Annual payments shall be paid in advance in the same manner as required by this Lease.

(C) Payments under this Lease shall be addressed to: Navajo Nation, Accounts Receivable Section, Post Office Box 3150, Window Rock, Arizona 86515.

(D) The consideration for the right-of-way associated with this lease is assessed at \$42,724.00. The Navajo Nation's contributes this amount to the project, pursuant to Exhibit B.

The NTUA must obtain the approval of the Resources and Development Committee if any portion of the right-of-way is used to serve commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation

7. CONDITION OF LEASED PREMISES.

Lessee has examined the Leased Premises and any improvements thereon and accepts the same in "as-is" condition. No representations as to the condition of the Leased Premises have been made by Lessor, any agent of Lessor, or the Secretary, prior to or at the time of execution of this Lease. Lessee warrants that its decision to enter into this Lease is based solely upon Lessee's independent investigation of the Leased Premises.

8. IMPROVEMENTS.

(A) All buildings and other improvements to the Leased Premises, including, but not limited to, the solar panels, inverters, structures, interconnection facilities, as well as any and all equipment, conduits, fixtures and personal property, shall remain the property of Lessee during and after the Term.

(B) Lessor agrees and acknowledges that Lessee shall have the right to remove all property, without limitation and including, but not limited to, buildings, improvements, equipment, conduits, fixtures and personal property of Lessee, at any time during the term, up to twelve months past the expiration of the Term. Prior and up to twelve months past the expiration of the Term, at Lessee's expense, Lessee shall remove any buildings, improvements and all personal property in a workmanlike manner, and shall restore the Leased Premises to substantially

the same condition, including reasonable wear and tear, as existed prior to the installation of Lessee's improvements. The solar plant foundations may be excluded from removal if the Nation determines in writing its beneficial use to the Nation. Lessee will be released from liability when approved by an inspection of the premises. Any structures, buildings and other improvements which are not removed within twelve months after the expiration or termination of the lease shall become the property of the Navajo Nation. The Lessee shall remain liable for any and all clean up and removal costs of any property not removed within the twelve month window.

9. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.

(A) All buildings and other improvements placed on the Leased Premises by Lessee or its Subtenant shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance. The Nation reserves the right to require Lessee to modify or remove any improvements to the Leased Premises that do not comply with the requirements of this Section 9(A).

(B) Lessee shall maintain the Leased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition.

10. UTILITY SERVICE LINE AGREEMENTS.

(A) Lessee is authorized to enter into appropriate service line agreements with utility companies for the provision of utility services, such as electricity and telecommunication services, to the Leased Premises on the condition that:

- (1) such agreements are for the sole purpose of supplying utility services, such as electricity and telecommunication services, to the Leased Premises;
- (2) such agreements authorize utility service lines only within the Leased Premises;
- (3) such agreements do not extend beyond the Term of this Lease;
- (4) executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Lessor and the Secretary within thirty (30) days of their execution;
- (5) such agreements make Lessee and its Sublessee solely responsible for any charges; and
- (6) such agreements are otherwise in accordance with the provisions of 25 C.F.R. Part 169.22, including any amendments or successors thereto.

(B) Although Lessor has the right to enter into service line agreements with utility companies for service lines across the Leased Premises, the Lessor shall ensure that any such

agreements do not interfere with Lessee's use of the Leased Premises, e.g., solar photovoltaic energy collection, transmission and distribution. For the avoidance of any doubt regarding potential interference, Lessor agrees to coordinate with Lessee prior to entering into any such agreements.

11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.

(A) Lessee shall not permit any liens arising from any work performed, materials furnished, or obligations incurred by Lessee to be enforced against the Leased Premises, any interest therein or any improvements thereon. Lessee shall discharge all such liens before any action is brought to enforce same.

(B) Lessee shall pay, before becoming delinquent, all property, use or gross receipts taxes or assessments, or any other like charges levied upon or against the Leased Premises, any interest therein or any improvements thereon, for which Lessee is liable. Upon request by Lessor, Lessee shall furnish Lessor written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Lessee have been paid, satisfied or otherwise discharged. Lessee shall have the right to contest any asserted tax, assessment or other like charge against the Leased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom.

(C) Lessee agrees to protect and hold harmless Lessor, the Secretary and the Leased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefor, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Upon request by Lessee, Lessor shall execute and deliver any appropriate documents with reference to real estate tax exemption of the Leased Premises, any interest therein or improvements thereon.

(D) Lessee shall pay, before becoming delinquent, all charges for utility services, including electricity and telecommunication services, supplied to the Leased Premises. Lessee may permit Sublessees to pay such charges directly, but in the event of nonpayment by Sublessee, Lessee shall be responsible for paying such charges. Lessee shall have no right to recover any payment on behalf of a Sublessee from Lessor or to offset such payments against rent owed to Lessor.

(E) Lessor shall have the right to pay any lien, tax, assessment or other charge payable by Lessee under this Lease, or to settle any action therefor, if, within a reasonable time after written notice thereof from Lessor, Lessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Lessor in so doing shall be repaid by Lessee to Lessor on demand, together with interest at the greater of (a) ten percent (10%) per annum, or (b) the highest allowable rate from the date of payment or incursion thereof by Lessor until repayment is made by Lessee. Interest shall accrue from the date of payment or incursion thereof by Lessor until repayment is made by Lessee.

12. ASSIGNMENTS AND SUBLEASES.

With the exception of ability of Lessee to sublease to a direct subsidiary for financing purposes, as provided in Exhibit C, the Lessee shall not assign, convey, or otherwise transfer this

Lease without the prior written approval of Lessor, and then only upon the condition that the assignee or other successor in interest shall agree, in writing, to be bound by each and every covenant, agreement, term and condition of this Lease. Any such attempted assignment, conveyance, or transfer, without Lessor's prior written approval shall be void and of no effect. The approval of Lessor may be granted, granted upon conditions, or withheld at the sole discretion of Lessor. Any Sublease of the Leased Premises shall be effective only upon approval of the Sublease by the Nation, as provided in Section 14 below. The Leasehold may be sold, assigned or transferred by the Lessee, with approval or consent of the Lessor, to Lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder. The Lessor shall provide BIA a copy of the assignment within 30 days after it is executed. Lessor permits the Lessee to sublease, assign, convey or otherwise transfer this Lease only to a direct subsidiary solely for the purpose of securing financing for the Kayenta Solar Project.

13. QUIET ENJOYMENT.

Lessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Lease, Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons claiming from or under Lessor.

14. ENCUMBRANCE.

- A. This Lease or any right to or interest therein may not be encumbered without the prior written approval of the Lessor and the Secretary, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the leasehold interest of the Lessee or the subleasehold interest of a Sublessee and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish any requested financial statements or analyses pertinent to the encumbrance that the Lessor and the Secretary may deem necessary to justify the amount, purpose and terms.
- B. In the event of default by Lessee or Sublessee of the terms of an approved encumbrance, Encumbrancer may exercise any rights provided in such approved encumbrance, provided that prior to any sale of leasehold, whether under power of sale or foreclosure, the Encumbrancer shall give to Lessor and the Secretary notice of the same character and duration as is required to be given to Lessee by the terms of such Approved Encumbrance and by applicable law. In the event of such default, Lessor shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.
- C. If Lessor exercises the above right, all right, title and interest of Lessee in this Lease shall terminate and Lessor shall acquire this Lease; provided, however, that such termination shall not relieve Lessee of any obligation or liability which shall have accrued prior to the date of termination. Acquisition of this Lease by Lessor under these circumstances shall not serve to extinguish this Lease by merger or otherwise.

D. If Lessor declines to exercise the above right and sale of the leasehold under the Approved Encumbrance shall occur, the purchaser at such sale shall succeed to all of the right, title and interest of Lessee in this Lease. It is further agreed that the purchaser at such sale if it is the Encumbrancer, the Encumbrancer may sell and assign this Lease without any further approval by Lessor and the Secretary, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Lease only so long as it retains title thereto. If the purchaser is other than the Encumbrancer, the purchaser shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such purchase shall be valid unless and until purchaser shall so agree.

15. DEFAULT.

(A) Time is declared to be of the essence in this Lease. Should Lessee default in any payment of monies when due under this Lease, fail to post any required bond, failure to cooperate with a BIA request to make appropriate records, reports, information available or be in violation of any other provision of this Lease, and should such violation not be cured within thirty (30) days of written notice from Lessor, or, with respect to any default other than a failure to make a timely payment of monies due and owed, within such additional time as is needed to cure provided Lessee is diligently prosecuting the same to completion, said violation may be acted upon by the Nation in accordance with the provisions of 25 C.F.R. Part 162, including any amendments or successors thereto.

(B) In addition to the rights and remedies provided by the aforementioned regulations, Lessor or the Secretary, either jointly or severally, may exercise the following options upon Lessee's default, authorized by applicable law subject to the provisions of subsection (D) below:

- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Lessee's compliance with all provisions of this Lease; or
- (2) Re-enter the premises, if the Lessee has abandoned the premises and defaulted on payment of rent, or has failed to conduct its solar operations for twelve months without notice, and remove all property therefrom, and re-let the premises without terminating this Lease, for the account of Lessee, but without prejudice to Lessor's right to terminate the Lease under applicable law thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of any re-letting shall be in the sole discretion of Lessor, who shall have the right to alter and repair the Leased Premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of altering and repairing or re-letting the Leased Premises and collecting any related expenses, including reasonable attorney's fees and any reasonable real estate commission actually paid, together with any insurance, taxes and assessments paid, and thereafter toward payment to liquidate the total

liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor may sue thereafter as each monthly deficiency shall arise; or

(3) Take any other action authorized or allowed under applicable law.

(C) No waiver of a breach of any of the terms and conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Lease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor, or any other rights or remedies now held or which may be held by Lessor in the future.

(D) Lessor and/or the Secretary shall give to an Encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given to Lessee. Lessor and the Secretary shall accept performance by an Encumbrancer of any of Lessee's obligations under this Lease, with the same force and effect as though performed by Lessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Lessee would be entitled to pursue. Neither Lessor nor the Secretary shall terminate this Lease if an Encumbrancer has cured or is diligently taking action to cure Lessee's default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

16. SANITATION.

Lessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Nation, and to dispose of all solid waste in compliance with applicable federal and Nation law. Lessee further agrees at all times to maintain the entire Leased Premises in a safe and sanitary condition, presenting a good appearance both inside and outside the Leased Premises.

17. HAZARDOUS AND REGULATED SUBSTANCES.

(A) Lessee shall not cause or permit any Hazardous or Regulated Substance to be used, stored, generated or disposed of on or in the Leased Premises without first notifying Lessor and obtaining Lessor's prior written consent. If Hazardous or Regulated Substances are used, stored, generated or disposed of on or in the Leased Premises, with or without Lessor's consent, or if the premises become contaminated in any manner, Lessee shall indemnify and hold harmless the Lessor and the Secretary from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Leased Premises, damages due to loss or restriction of rentable or usable space, any and all sums paid for settlement of claims, and any costs related to marketing the Leased Premises), as well as attorneys' fees, consultant and expert fees arising during or after the Lease term and arising as a result of such contamination regardless of fault, with the exception that the lessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by the federal government or the Nation. Without limitation of the foregoing, if Lessee causes or permits any Hazardous or Regulated Substance on the Leased Premises and the presence of such results in any

contamination of the Leased Premises, including, but not limited to, the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the contamination by any such Hazardous or Regulated Substance on the Leased Premises. Lessee shall first obtain Lessor's approval for any such remedial action.

(B) Lessee shall provide the Navajo Environmental Protection Agency and the Risk Management Department of the Nation with a clear and legible copy of all notices or reports concerning release of Hazardous or Regulated Substance, testing, or remediation at the premises subject to this Lease which Lessee is required by applicable law, or regulation, to provide to the United States Environmental Protection Agency or which Lessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Lease upon the Navajo Environmental Protection Agency shall be by first class mail to:

Waste Regulatory and Compliance Program
Navajo Environmental Protection Agency
Post Office Box 3089
Window Rock, Navajo Nation (Arizona) 86515

and,

Risk Management Department
Navajo Environmental Protection Agency
Post Office Box 1690
Window Rock, Navajo Nation (Arizona) 86515

or their respective institutional successors.

18. PUBLIC LIABILITY INSURANCE.

(A) Lessee shall obtain and maintain a commercial public liability insurance policy in an amount of no less than \$1,000,000.00 for personal injury to one person and \$1,000,000.00 per occurrence and \$500,000.00 for damage to property. Lessor and the United States shall be named as an Additional Insured with respect to this Lease. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage by primary, contributing or excess. Lessee shall provide for notification to Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason including non-payment of premium. Certificate of Insurance evidencing the above coverage shall be furnished to Lessor annually, or upon written request.

(B) Lessor may require that the amount of the insurance policy required by subsection (A) of this Section 20 be increased at any time, whenever either shall determine that such increase reasonably is necessary for the protection of Lessor or the United States.

(C) In no event shall the amount of Lessee's insurance policy limit Lessee's liability or its duty to indemnify Lessor under this Agreement.

19. PERFORMANCE BOND

NTUA is a wholly owned enterprise of the Navajo Nation. The Nation waives the Performance Bond Requirements pursuant to 16 N.N.C. §2335(B), which permits waiver of the Performance Bond where the Nation waives the rent; or the waiver of the bond is in the best interest of the Nation. Since NTUA was created by the Nation as an enterprise of the Nation, no performance bond is required.

20. NON-LIABILITY.

Neither Lessor nor the United States Government, nor their officers, agents, or employees (collectively, the "Lessor Parties"), shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Lessee or any other person whomsoever, that is caused by any use of the Leased Premises by Lessee or any Sublessee, or that results from any defect in any structure existing or erected thereon, or that arises from accident, fire, or from any other casualty on said premises or from any other cause whatsoever, except to the extent of the Lessor Parties' negligence or intentional misconduct. Lessee, as a material part of the consideration for this Lease, hereby waives on Lessee's behalf all claims against Lessor and the United States Government and agrees to defend and hold Lessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death arising from the condition of the premises or use of the premises by Lessee, together with all costs and expenses in connection therewith to the full extent permitted by applicable law, excepting however, all claims to the extent arising from the Lessor Parties' negligence or intentional misconduct.

21. INSPECTION.

The Lessor, Secretary, and their authorized representatives shall have the right, upon reasonable notice to Lessee, to enter upon the Leased Premises, or any part thereof, to inspect the same and all improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the premises, the protection of the Leased Premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Lessee shall pay the costs of such testing provided such contamination arose due to Lessee's acts or omissions. Nothing in this section shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.

22. MINERALS.

All minerals, including sand and gravel, contained in or on the Leased Premises are reserved for the use of Lessor. Lessor also reserves the right to enter upon the Leased Premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Lessee's personal property or any improvements constructed by Lessee.

23. EMINENT DOMAIN.

If the Leased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Lease, Lessee's interest in the Leased Premises or the part of the Leased Premises taken shall thereupon cease. Compensation awarded for the taking of the Leased Premises or any part thereof, including any improvements located thereon, shall be awarded to Lessor and Lessee as their respective interests may appear at the time of such taking, provided that Lessee's right to such awards shall be subject to the rights of an Encumbrancer under an Approved Encumbrance.

24. DELIVERY OF LEASED PREMISES.

At the termination of this Lease, Lessee will peaceably and without legal process deliver up the possession of the Leased Premises, in good condition, usual wear and tear excepted.

25. HOLDING OVER.

Except as otherwise provided, holding over by Lessee after termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder in or to the Leased Premises or to any improvements located thereon.

26. ATTORNEY'S FEES.

Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor in enforcing the provisions of this Lease or in pursuing an action against Lessee for breach, default or liability arising under this Lease. Lessee will not be liable for costs incurred by Lessor if a judgment is rendered in favor of Lessee.

27. INDEMNIFICATION.

Except to the extent of the negligence or intentional misconduct of Nation and the Secretary, and their agents, employees and contractors, Lessee shall defend, indemnify and hold harmless the Nation and the Secretary and their authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the construction on or maintenance, operation, occupancy or use of the Leased Premises by Lessee or any Sublessee.

28. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.

Lessee and Lessee's employees or agents, and Sublessees and their employees or agents agree to abide by all laws, regulations, and ordinances of the Nation and all applicable laws, regulations and ordinances of the United States now in force and effect or as may be hereafter in force and effect including, but not limited to:

- a. Title 25, Code of Federal Regulations, Part 169 subject to the terms of the right-of-way;
- b. The Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.* (NPEA);
- c. The Navajo Nation Business Opportunity Act, (NNBOA), 5 N.N.C. § 201 *et seq.*; and
- d. The Navajo Nation Water Code, 22 N.N.C. § 1101 *et seq.* Lessee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

29. GOVERNING LAW.

Except as may be prohibited by applicable federal law, the laws of the Nation shall govern the construction, performance and enforcement of this Lease. Any action or proceeding brought by Lessee against the Nation in connection with or arising out of the terms and conditions of this Lease, to the extent authorized by Navajo law, shall be brought only in the courts of the Nation, and no such action or proceeding shall be brought by Lessee against the Nation in any court or administrative body of any State.

30. AIR QUALITY.

The Lessee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the Lease.

31. KEEPING LANDS CLEAR

The Lessee shall clear and keep clear the lands within the Lease and right-of-way to the extent compatible with the purpose of this Lease, and shall dispose of all vegetation and other materials cut, uprooted or otherwise accumulated during any surface disturbance activities.

32. RECLAIMED LANDS

The Lessee shall reclaim all surface lands disturbed related to the Lease and right-of-way, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA) prior to commencement of such a plan.

33. MAINTENANCE OF LAND

The Lessee shall at all times during the term of the Lease and at the Lessee's sole cost and expense, maintain the land subject to the Lease and all improvements located thereon and make all necessary reasonable repairs resulting from any damages caused by the Navajo Nation, its employees and any entity to which the Navajo Nation has granted a lease or right-of-way.

34. PERMISSION TO CROSS

The Lessee is responsible for securing written permission to cross existing rights-of-way, if any, from the appropriate parties.

35. TERMINATION

The Navajo Nation may recommend termination of the Lease by DOI for violation of any of the terms and conditions stated herein.

At the termination of this Lease, the Lessee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Lessee shall provide the Navajo Nation, at the Lessee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.

36. ENTRY UPON PREMISES

The Navajo Nation and the Secretary of the Interior shall have the right, at any reasonable time during the term of the Lease, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.

37. DISPUTE RESOLUTION.

In the event that a dispute arises under this Lease, Lessee, before initiating any action or proceeding, agrees to use good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution in connection with this Lease.

38. CONSENT TO JURISDICTION.

Lessee hereby consents to the legislative, executive and judicial jurisdiction of the Nation in connection with all activities conducted by the Lessee within the Nation.

39. COVENANT NOT TO CONTEST JURISDICTION.

Lessee hereby covenants and agrees not to contest or challenge the legislative, executive or judicial jurisdiction of the Nation in connection with any enforcement of this Lease, on the basis that such jurisdiction is inconsistent with the status of the Nation as an Indian nation, or that the Nation government is not a government of general jurisdiction, or that the Nation government does not possess police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing in this section shall be construed to negate or impair federal responsibilities with respect to the Leased Premises or to the Nation.

40. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Nation.

41. INTEREST OF MEMBER OF CONGRESS.

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise here from. This provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

42. OBLIGATIONS TO THE UNITED STATES.

It is understood and agreed that while the Leased Premises are in trust or restricted status, all of Lessee's obligations under this Lease and the obligations of its sureties are to the United States as well as to Lessor.

43. NOTICES AND DEMANDS.

(A) Any notices, demands, requests or other communications to or upon either party provided for in this Lease, or given or made in connection with this Lease, (hereinafter referred to as "Notices,") shall be in writing and shall be addressed as follows:

To or upon Lessor:

W. Mike Halona, Director
Navajo Land Department
DIVISION OF NATURAL RESOURCES
P.O. Box 2249
Window Rock, Navajo Nation (Arizona) 86515
Fax: 1- 928-871-7039

To or upon Lessee:

Navajo Tribal Utility Authority
P.O. Box 170
Fort Defiance, Arizona 86504
Fax: 1-928-729-2135

To or upon the Secretary (if approval by the Secretary is required):

Regional Director
Navajo Region
Bureau of Indian Affairs
United States Department of the Interior
301 West Hill Street
P.O. Box 1060
Gallup, New Mexico 87305
Fax: 1-505-863-8324

(B) All Notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission or e-mail, followed by surface mail. Notices shall be

effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours; or if not, during normal business hours on the next business day following delivery; if by registered or certified mail, or by facsimile transmission or e-mail, followed by surface mail, on the next business day following actual delivery and receipt.

(C) Copies of all Notices shall be sent to the Secretary if approval of this Lease is required.

(D) Lessor, Lessee and the Secretary may at any time change its address for purposes of this section by Notice.

45. SUCCESSORS AND ASSIGNS.

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors of Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

46. RESERVATION OF JURISDICTION.

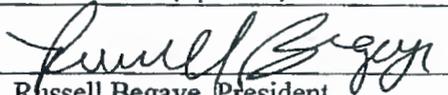
There is expressly reserved to the Nation full territorial legislative, executive and judicial jurisdiction over the area under the Lease and all lands burdened by the Lease, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the area under the Lease; and the area under the Lease and all lands burdened by the Lease shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

47. EFFECTIVE DATE; VALIDITY.

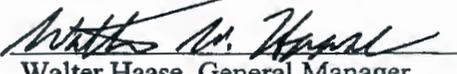
This Lease shall take effect on the date it is executed by both parties, or approved by the Secretary if the Navajo Nation determines that its approval is required. No modification of or amendment to this Lease shall be valid or binding on either party until it is executed by both parties and approved by the Secretary when necessary until the Navajo Nation commences leasing authority pursuant to 25 U.S.C. 415(e).

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

THE NAVAJO NATION, LESSOR

Date: 10/19/2015
By: 
Russell Begaye, President
Navajo Nation

THE NAVAJO TRIBAL UTILITY
AUTHORITY, LESSEE

Date: 9/26/2015
By: 
Walter Haase, General Manager

APPROVED: NOV 24 2015
Pursuant to Secretarial Redelelegation Order
209 DM 8, 230 DM 1 and 3 IAM 4.


Regional Director, Navajo Region
Bureau of Indian Affairs

EXHIBIT A

SKETCH SHOWING A PROPOSED NTUA'S KAYENTA SOLAR GENERATION PLANT TRACT
 WITH DISTRIBUTION LINE
 IN SECTIONS 13 & 24, T39N, R19E, G&SRM
 IN SECTION 18, T39N, R20E, G&SRM
 KAYENTA, NAVAJO COUNTY, ARIZONA
 NTUA WORK ORDER NUMBER 6213786



S & D Services
 Transmission & Distribution Services, LLC
 Consulting Engineers & Surveyors
 8208B Adama Street NE
 Albuquerque, NM 87113

F.B.
 AZ27-29
 Instrument
 R6-TSC3

NAVAJO TRIBAL UTILITY AUTHORITY
 ARIZONA 27 SHIPROCK

SCALE: 1"=1000' HORZ.

DATE: OCT. 27, 2014



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

EXHIBIT B

July 24, 2015

Navajo Tribal Utility Authority
P.O.Box 170
Fort Defiance, Arizona 86504
Attention: Berniece Tsosie

RE: PROPOSED: lease (ROW) located within the Kayenta chapter vicinity.

Dear Ms. Tsosie:

Our office received a written memorandum to address comments that our office cannot answer and hereby forwarding comments to Navajo Tribal Utility Authority (NTUA) for appropriate response. The comments are from the Navajo Minerals Department and they have changed their initial recommendation from sufficient to *insufficient*. Therefore it is advised that NTUA properly respond to said comments and copy our office for recordation.

If you have further questions please call the Navajo Land Department Project Review Section Office at (928) 871-6447 or 6695 if you have any questions. Thank you.

Sincerely,

Howard Phillip Draper, Program & Project
Specialist
NLD Project Review Section

ATTACHMENTS

- cc: Chrono/Project File
- Bidtah Becker, (*Acting*) Division Director
Division of Natural Resources (DNR) Administration
- W. Mike Halona, Department Director
Navajo Land Department (NLD)
- Toni Flora, Acting Assistant Attorney General
Navajo Nation Department of Justice (NNDJ)

Received

JUL 24 2015

NTUA
General Manager's Office

1. As indicated on Executive Official Review sheet that it is a non-commercial project, which is not true, the power produced will be sold to the other entities and we are sure that there will be a power sale contract between Navajo Tribal Utility Authority (NTUA) and the power purchaser(s) before the facility is constructed.
2. The right-of-way consideration (\$42,734.00) is assessed in parity with an alike commercial 230KV commercial transmission line for 25 year term.
3. The project site if dedicated entirely for a commercial operation, the assessed annual rental will be \$234,000 not considering the full economic beneficial use of the land. NTUA is proposing a \$2,000.00 rental payment per year to the Navajo Nation; we can't figure out the rationale of the proposed annual rent.
4. Is the NTUA Generating Inc. (Sublease) a non/profit entity? It seems to us that it is a for profit commercial entity.
5. Section 24 of the lease reserves the mineral rights to the Navajo Nation, but the same section of the sublease reserves the mineral rights to NTUA.
6. No royalty / sharing gross proceeds to the Navajo Nation is addressed in the lease.
7. What constitutes commercial / non-commercial use it should be clearly address in Section 6. (Rental) of the lease.

Any questions contact Mr. Steven Prince, Acting Principal Mining Engineer at (928) 871-6587.

EXHIBIT C

KAYENTA CHAPTER SOLAR SITE SUBLEASE BETWEEN NAVAJO TRIBAL UTILITY AUTHORITY AND THE NGI-KAYENTA, INC.

THIS SUBLEASE is made and entered into this 1st day of March, 2016, by and between THE NAVAJO TRIBAL UTILITY AUTHORITY (NTUA), hereinafter called the "Sublessor," whose address is P.O. Box 170, Fort Defiance, AZ 86504, and NTUA GENERATION, INC., hereinafter called the "Sublessee," whose address is P.O. Box 170, Fort Defiance, AZ 86504. This Sublease shall follow the the provisions of 2 N.N.C. § 501(B)(2)(a) and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162, and all amendments or successors thereto, which by this reference are made a part hereof.

1. DEFINITIONS.

(A) "Approved Encumbrance" means an encumbrance approved in writing by Sublessor in accordance with the terms and conditions of this Sublease.

(C) "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.

(D) "Hazardous Substance" means any "hazardous substance as defined at § 2104 Q. of the NNCERCLA, 4 N.N.C. § 2101 *et seq.*, including all amendments or successors thereto.

(E) "NNCERCLA" means the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act, 4 N.N.C. § 2101 *et seq.*

(F) "Navajo Nation" or "Nation" means the government of the Navajo Nation, as engaged under this Sublease through the Navajo Land Department.

(G) "Regulated Substance" means any regulated substance as defined at § 1502 V. of the Navajo Nation Underground and Aboveground Storage Act, 4 N.N.C. § 1501 *et seq.*, which includes petroleum and petroleum products.

2. SUBLEASED PREMISES.

For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Sublessor hereby subleases to Sublessee all, or a portion of, that tract or parcel of land situated within the Chapter of Kayenta, Navajo Nation, state of Arizona more particularly described in the survey map with legal description attached hereto as Attachment "1," and by this reference made a part hereof, containing approximately 300 acre(s), more or less, together with the right of reasonable ingress and egress, and the right to install utilities pursuant to Section 10 below, hereinafter called the "Subleased Premises." The access road is approximately 0.03 miles, comprised of 0.18 acres. The legal description for this road is contained within Attachment "1".

3. COMPLIANCE WITH FEDERAL LAW.

This Sublease hereby incorporates by reference, and shall be deemed to include, all the mandatory provisions regarding a business lease set forth in 25 C.F.R. §162.413 (the “Mandatory Provisions”). Incorporation of the Mandatory Provisions into this Sublease is designed to assure that the Sublease complies with all applicable requirements of federal law and to facilitate the processing and administration of this Sublease. The Mandatory Provisions require compliance with federal and tribal laws pursuant to the 25 C.F.R. §162.014. Please note this requires compliance with all federal and tribal historic and cultural preservation laws—specifically all work must cease and the Nation must be notified if artifacts are discovered to prevent unauthorized destruction of resources pursuant to 16 U.S.C. §470ee. In no circumstances shall the Sublease be construed to waive any requirement of federal law or to prevent the Secretary from exercising any right granted to the Secretary with respect to this Sublease. The parties understand and agree the Sublessor determined Navajo Nation Land Department will approve the Sublease pursuant to form.

4. PURPOSE, UNLAWFUL USES.

(A) Sublessee shall develop, use and occupy the Subleased Premises solely for the purpose of constructing, operating and maintaining a solar energy project and related interconnection facilities. Sublessee shall have the right to fence all, or any portion, of the Subleased Premises as may be necessary to conduct Sublessee’s operations. Whether or not Sublessee chooses to fence the Subleased Premises, Sublessee shall be solely responsible for securing the Subleased Premises so as to protect Sublessee’s solar energy project, related structures and any related interconnection facilities located on the Subleased Premises and for protecting members of the general public, as well as Sublessee’s agents and invitees, from personal injury on the Subleased Premises.

(B) The Subleased Premises shall not be developed or used by Sublessee for any purpose other than as described in Section 4(A) above.

(C) Sublessee shall not use, or permit to be used, any part of the Subleased Premises for any unlawful conduct or purpose, creation of a nuisance, illegal activity, or negligent use or waste of the subleased premises.

5. TERM.

(A) Primary Term. The Primary Term of this Sublease shall be for a period of twenty-five (25) years, commencing on the later date the Lease is approved (the “Effective Date”).

6. RENTAL.

(A) Sublessor shall pay \$2,000 as an annual rental payment so long as Sublessee uses the Leased Premises for the development and operation of 27.5 MW delivered photovoltaic facility. Annual payments shall be paid in advance, by the December 15 of the year prior to the commencement of each annual term. .

(B) Payments under this Sublease shall be addressed to: The Navajo Tribal Utility Authority, Accounts Receivable Section, Post Office Box 170, Fort Defiance, Arizona 86516.

7. CONDITION OF SUBLEASED PREMISES.

Sublessee has examined the Subleased Premises and any improvements thereon and accepts the same in "as-is" condition. No representations as to the condition of the Subleased Premises have been made by Sublessor, any agent of Sublessor, or the Secretary, prior to or at the time of execution of this Sublease. Sublessee warrants that its decision to enter into this Sublease is based solely upon Sublessee's independent investigation of the Subleased Premises.

8. IMPROVEMENTS.

(A) All buildings and other improvements to the Subleased Premises, including, but not limited to, the solar panels, inverters, structures, interconnection facilities, as well as any and all equipment, conduits, fixtures and personal property, shall remain the property of Sublessee during and after the Term.

(B) Sublessor agrees and acknowledges that Sublessee shall have the right to remove all property, without limitation and including, but not limited to, buildings, improvements, equipment, conduits, fixtures and personal property of Sublessee, at any time during the term, up to twelve months past the expiration of the Term. Prior and up to twelve months past the expiration of the Term, at Sublessee's expense, Sublessee shall remove any buildings, improvements and all personal property in a workmanlike manner, and shall restore the Subleased Premises to substantially the same condition, including reasonable wear and tear, as existed prior to the installation of Sublessee's improvements. The solar plant foundations may be excluded from removal if the Nation determines in writing its beneficial use to the Nation. Sublessee will be released from liability when approved by an inspection of the premises. Any structures, buildings and other improvements which are not removed within twelve months after the expiration or termination of the Sublease shall become the property of the Navajo Nation. The Sublessee shall remain liable for any and all clean up and removal costs of any property not removed within the twelve month window.

9. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.

(A) All buildings and other improvements placed on the Subleased Premises by Sublessee or its Subtenant shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance. The Nation reserves the right to require Sublessee to modify or remove any improvements to the Subleased Premises that do not comply with the requirements of this Section 9(A).

(B) Sublessee shall maintain the Subleased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition.

10. UTILITY SERVICE LINE AGREEMENTS.

(A) Sublessee is authorized to enter into appropriate service line agreements with utility companies for the provision of utility services, such as electricity and telecommunication services, to the Subleased Premises on the condition that:

- (1) such agreements are for the sole purpose of supplying utility services, such as electricity and telecommunication services, to the Subleased Premises;
- (2) such agreements authorize utility service lines only within the Subleased Premises;
- (3) such agreements do not extend beyond the Term of this Sublease;
- (4) executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Sublessor and the Secretary within thirty (30) days of their execution;
- (5) such agreements make Sublessee solely responsible for any charges; and
- (6) such agreements are otherwise in accordance with the provisions of 25 C.F.R. Part 169.22, including any amendments or successors thereto.

(B) Although Sublessor has the right to enter into service line agreements with utility companies for service lines across the Subleased Premises, the Sublessor shall ensure that any such agreements do not interfere with Sublessee's use of the Subleased Premises, e.g., solar photovoltaic energy collection, transmission and distribution. For the avoidance of any doubt regarding potential interference, Sublessor agrees to coordinate with Sublessee prior to entering into any such agreements.

11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.

(A) Sublessee shall not permit any liens arising from any work performed, materials furnished, or obligations incurred by Sublessee to be enforced against the Subleased Premises, any interest therein or any improvements thereon. Sublessee shall discharge all such liens before any action is brought to enforce same.

(B) Sublessee shall pay, before becoming delinquent, all property, use or gross receipts taxes or assessments, or any other like charges levied upon or against the Subleased Premises, any interest therein or any improvements thereon, for which Sublessee is liable. Upon request by Sublessor, Sublessee shall furnish Sublessor written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Sublessee have been paid, satisfied or otherwise discharged. Sublessee shall have the right to contest any asserted tax, assessment or other like charge against the Subleased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom.

(C) Sublessee agrees to protect and hold harmless Sublessor, the Secretary and the Subleased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefor, any sale or other proceedings to enforce

payment thereof, and all costs in connection therewith. Upon request by Sublessee, Sublessor shall execute and deliver any appropriate documents with reference to real estate tax exemption of the Subleased Premises, any interest therein or improvements thereon.

(D) Sublessee shall pay, before becoming delinquent, all charges for utility services, including electricity and telecommunication services, supplied to the Subleased Premises. .

(E) Sublessor shall have the right to pay any lien, tax, assessment or other charge payable by Sublessee under this Sublease, or to settle any action therefor, if, within a reasonable time after written notice thereof from Sublessor, Sublessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Sublessor in so doing shall be repaid by Sublessee to Sublessor on demand, together with interest at the greater of (a) ten percent (10%) per annum, or (b) the highest allowable rate from the date of payment or incursion thereof by Sublessor until repayment is made by Sublessee. Interest shall accrue from the date of payment or incursion thereof by Sublessor until repayment is made by Sublessee.

12. ASSIGNMENTS AND SUBLEASES.

The Sublessee shall not assign, convey, or otherwise transfer this Sublease without the prior written approval of Sublessor, and then only upon the condition that the assignee or other successor in interest shall agree, in writing, to be bound by each and every covenant, agreement, term and condition of this Sublease. Any such attempted assignment, conveyance, or transfer, without Sublessor's prior written approval shall be void and of no effect. The approval of Sublessor may be granted, granted upon conditions, or withheld at the sole discretion of Sublessor. Any assignment of the Subleased Premises shall be effective only upon approval of the assignment by the Sublessor and the Navajo Nation, as provided in Section 14 below. The Subleasehold may not be sold, assigned or transferred by the Sublessee, with approval or consent of the Sublessor, to Sublessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Sublessee's assets by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of Sublessee or transfer upon partnership or corporate dissolution of Sublessee shall constitute an assignment hereunder.

13. QUIET ENJOYMENT.

Sublessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Sublease, Sublessee shall peaceably and quietly have, hold and enjoy the Subleased Premises without any hindrance, interruption, ejection or molestation by Sublessor or by any other person or persons claiming from or under Sublessor.

14. ENCUMBRANCE.

A. This Sublease or any right to or interest therein may not be encumbered without the prior written approval of the Sublessor, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the subleasehold interest of a Sublessee and shall not jeopardize in any way Sublessor's interest in the land. Sublessee agrees to furnish any requested financial statements or

analyses pertinent to the encumbrance that the Sublessor may deem necessary to justify the amount, purpose and terms.

- B. In the event of default by Sublessee of the terms of an approved encumbrance, Encumbrancer may exercise any rights provided in such approved encumbrance, provided that prior to any sale of leasehold, whether under power of sale or foreclosure, the Encumbrancer shall give to Sublessor notice of the same character and duration as is required to be given to Sublessee by the terms of such Approved Encumbrance and by applicable law. In the event of such default, Sublessor shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.
- C. If Sublessor exercises the above right, all right, title and interest of Sublessee in this Sublease shall terminate and Sublessor shall acquire this Sublease; provided, however, that such termination shall not relieve Sublessee of any obligation or liability which shall have accrued prior to the date of termination. Acquisition of this Sublease by Sublessor under these circumstances shall not serve to extinguish this Sublease by merger or otherwise.
- D. If Sublessor declines to exercise the above right and sale of the leasehold under the Approved Encumbrance shall occur, the purchaser at such sale shall succeed to all of the right, title and interest of Sublessee in this Sublease. It is further agreed that the purchaser at such sale if it is the Encumbrancer, the Encumbrancer may sell and assign this Sublease without any further approval by Sublessor, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Sublease, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Sublease only so long as it retains title thereto. If the purchaser is other than the Encumbrancer, the purchaser shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Sublease, and no such purchase shall be valid unless and until purchaser shall so agree.

15. DEFAULT.

(A) Time is declared to be of the essence in this Sublease. Should Sublessee default in any payment of monies when due under this Sublease, fail to post any required bond, failure to cooperate with a BIA request to make appropriate records, reports, information available or be in violation of any other provision of this Sublease, and should such violation not be cured within thirty (30) days of written notice from Sublessor, or, with respect to any default other than a failure to make a timely payment of monies due and owed, within such additional time as is needed to cure provided Sublessee is diligently prosecuting the same to completion, said violation may be acted upon by the Nation in accordance with the provisions of 25 C.F.R. Part 162, including any amendments or successors thereto.

(B) In addition to the rights and remedies provided by the aforementioned regulations, Sublessor, either jointly or severally, may exercise the following options upon Sublessee's default, authorized by applicable law subject to the provisions of subsection (D) below:

- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Sublessee's compliance with all provisions of this Sublease; or
- (2) Re-enter the premises, if the Sublessee has abandoned the premises and defaulted on payment of rent, or has failed to conduct its solar operations for twelve months without notice, and remove all property therefrom, and re-let the premises without terminating this Sublease, for the account of Sublessee, but without prejudice to Sublessor's right to terminate the Sublease under applicable law thereafter, and without invalidating any right of Sublessor or any obligations of Sublessee hereunder. The terms and conditions of any re-letting shall be in the sole discretion of Sublessor, who shall have the right to alter and repair the Subleased Premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of altering and repairing or re-letting the Subleased Premises and collecting any related expenses, including reasonable attorney's fees and any reasonable real estate commission actually paid, together with any insurance, taxes and assessments paid, and thereafter toward payment to liquidate the total liability of Sublessee. Sublessee shall pay to Sublessor monthly when due, any deficiency and Sublessor may sue thereafter as each monthly deficiency shall arise; or
- (3) Take any other action authorized or allowed under applicable law.

(C) No waiver of a breach of any of the terms and conditions of this Sublease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Sublease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Sublessor, or any other rights or remedies now held or which may be held by Sublessor in the future.

(D) Sublessor shall give to an Encumbrancer a copy of each notice of default by Sublessee at the same time as such notice of default shall be given to Sublessee. Sublessor shall accept performance by an Encumbrancer of any of Sublessee's obligations under this Sublease, with the same force and effect as though performed by Sublessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Sublessee would be entitled to pursue. Sublessor shall not terminate this Sublease if an Encumbrancer has cured or is diligently taking action to cure Sublessee's default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

16. SANITATION.

Sublessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Nation, and to dispose of all solid waste in compliance with applicable federal and Nation law. Sublessee further agrees at all times to maintain the entire Subleased Premises in a safe and sanitary condition, presenting a good appearance both inside and outside the Subleased Premises.

17. HAZARDOUS AND REGULATED SUBSTANCES.

(A) Sublessee shall not cause or permit any Hazardous or Regulated Substance to be used, stored, generated or disposed of on or in the Subleased Premises without first notifying Sublessor and obtaining Sublessor's prior written consent. If Hazardous or Regulated Substances are used, stored, generated or disposed of on or in the Subleased Premises, with or without Lessor's consent, or if the premises become contaminated in any manner, Sublessee shall indemnify and hold harmless the Sublessor and the Secretary from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Subleased Premises, damages due to loss or restriction of rentable or usable space, any and all sums paid for settlement of claims, and any costs related to marketing the Subleased Premises), as well as attorneys' fees, consultant and expert fees arising during or after the Sublease term and arising as a result of such contamination regardless of fault, with the exception that the Sublessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by the federal government or the Nation. Without limitation of the foregoing, if Sublessee causes or permits any Hazardous or Regulated Substance on the Subleased Premises and the presence of such results in any contamination of the Subleased Premises, including, but not limited to, the improvements, soil, surface water or groundwater, Sublessee shall promptly, at its sole expense, take any and all necessary actions to return the Subleased Premises to the condition existing prior to the contamination by any such Hazardous or Regulated Substance on the Subleased Premises. Sublessee shall first obtain Sublessor's approval for any such remedial action.

(B) Sublessee shall provide the Navajo Environmental Protection Agency and the Risk Management Department of the Nation with a clear and legible copy of all notices or reports concerning release of Hazardous or Regulated Substance, testing, or remediation at the premises subject to this Sublease which Sublessee is required by applicable law, or regulation, to provide to the United States Environmental Protection Agency or which Sublessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Sublease upon the Navajo Environmental Protection Agency shall be by first class mail to:

Waste Regulatory and Compliance Program
Navajo Environmental Protection Agency
Post Office Box 3089
Window Rock, Navajo Nation (Arizona) 86515

and,

Risk Management Department
Navajo Environmental Protection Agency
Post Office Box 1690
Window Rock, Navajo Nation (Arizona) 86515

or their respective institutional successors.

18. PUBLIC LIABILITY INSURANCE.

(A) Sublessee shall obtain and maintain a commercial public liability insurance policy in an amount of no less than \$1,000,000.00 for personal injury to one person and \$1,000,000.00 per occurrence and \$500,000.00 for damage to property. Sublessor and the United States shall be named as an Additional Insured with respect to this Sublease. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage by primary, contributing or excess. Sublessee shall provide for notification to Sublessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason including non-payment of premium. Certificate of Insurance evidencing the above coverage shall be furnished to Sublessor annually, or upon written request.

(B) Sublessor may require that the amount of the insurance policy required by subsection (A) of this Section 20 be increased at any time, whenever either shall determine that such increase reasonably is necessary for the protection of Sublessor or the United States.

(C) In no event shall the amount of Sublessee's insurance policy limit Sublessee's liability or its duty to indemnify Sublessor under this Agreement.

21. PERFORMANCE BOND

NTUA is a wholly owned enterprise of the Navajo Nation. The Nation waives the Performance Bond Requirements pursuant to 16 N.N.C. §2335(B), which permits waiver of the Performance Bond where the Nation waives the rent; or the waiver of the bond is in the best interest of the Nation. Since NTUA was created by the Nation as an enterprise of the Nation, no performance bond is required.

22. NON-LIABILITY.

Neither Sublessor nor their officers, agents, or employees (collectively, the "Sublessor Parties"), shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Sublessee or any other person whomsoever, that is caused by any use of the Subleased Premises by Sublessee, or that results from any defect in any structure existing or erected thereon, or that arises from accident, fire, or from any other casualty on said premises or from any other cause whatsoever, except to the extent of the Sublessor Parties' negligence or intentional misconduct. Sublessee, as a material part of the consideration for this Sublease, hereby waives on Sublessee's behalf all claims against Sublessor and the United States Government and agrees to defend and hold Sublessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death arising from the condition of the premises or use of the premises by Sublessee, together with all costs and expenses in connection therewith to the full extent permitted by applicable law, excepting however, all claims to the extent arising from the Sublessor Parties' negligence or intentional misconduct.

23. INSPECTION.

The Sublessor, Secretary, and their authorized representatives shall have the right, upon reasonable notice to Sublessee, to enter upon the Subleased Premises, or any part thereof, to inspect

the same and all improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the premises, the protection of the Subleased Premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Sublessee shall pay the costs of such testing provided such contamination arose due to Sublessee's acts or omissions. Nothing in this section shall limit Sublessee's obligation under applicable law or this Sublease to perform testing or remediation or otherwise limit Sublessee's liability.

24. MINERALS.

All minerals, including sand and gravel, contained in or on the Subleased Premises are reserved for the use of Sublessor. Sublessor also reserves the right to enter upon the Subleased Premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Sublessee's personal property or any improvements constructed by Sublessee.

25. EMINENT DOMAIN.

If the Subleased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Sublease, Sublessee's interest in the Subleased Premises or the part of the Subleased Premises taken shall thereupon cease. Compensation awarded for the taking of the Subleased Premises or any part thereof, including any improvements located thereon, shall be awarded to Sublessor and Sublessee as their respective interests may appear at the time of such taking, provided that Sublessee's right to such awards shall be subject to the rights of an Encumbrancer under an Approved Encumbrance.

26. DELIVERY OF SUBLEASED PREMISES.

At the termination of this Sublease, Sublessee will peaceably and without legal process deliver up the possession of the Subleased Premises, in good condition, usual wear and tear excepted.

27. HOLDING OVER.

Except as otherwise provided, holding over by Sublessee after termination of this Sublease shall not constitute a renewal or extension thereof or give Sublessee any rights hereunder in or to the Subleased Premises or to any improvements located thereon.

28. ATTORNEY'S FEES.

Sublessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Sublessor in enforcing the provisions of this Sublease or in pursuing an action against Sublessee for breach, default or liability arising under this Sublease. Sublessee will not be liable for costs incurred by Sublessor if a judgment is rendered in favor of Sublessee.

29. INDEMNIFICATION.

Except to the extent of the negligence or intentional misconduct of Nation and the Secretary, and their agents, employees and contractors, Sublessee shall defend, indemnify and hold harmless the Nation and the Secretary and their authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the construction on or maintenance, operation, occupancy or use of the Subleased Premises by Sublessee.

30. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.

Sublessee and Sublessee's employees or agents, agree to abide by all laws, regulations, and ordinances of the Nation and all applicable laws, regulations and ordinances of the United States now in force and effect or as may be hereafter in force and effect including, but not limited to:

- a. Title 25, Code of Federal Regulations, Part 169 subject to the terms of the right-of-way;
- b. The Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.* (NPEA);
- c. The Navajo Nation Business Opportunity Act, (NNBOA), 5 N.N.C. § 201 *et seq.*; and
- d. The Navajo Nation Water Code, 22 N.N.C. § 1101 *et seq.* Lessee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

31. GOVERNING LAW.

Except as may be prohibited by applicable federal law, the laws of the Nation shall govern the construction, performance and enforcement of this Sublease. Any action or proceeding brought by Sublessee against the Nation in connection with or arising out of the terms and conditions of this Sublease, to the extent authorized by Navajo law, shall be brought only in the courts of the Nation, and no such action or proceeding shall be brought by Sublessee against the Nation in any court or administrative body of any State.

30. AIR QUALITY.

The Lessee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the Lease.

31. KEEPING LANDS CLEAR

The Lessee shall clear and keep clear the lands within the Lease and right-of-way to the extent compatible with the purpose of this Lease, and shall dispose of all vegetation and other materials cut, uprooted or otherwise accumulated during any surface disturbance activities.

32. RECLAIMED LANDS

The Lessee shall reclaim all surface lands disturbed related to the Lease and right-of-way, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA) prior to commencement of such a plan.

33. MAINTENANCE OF LAND

The Lessee shall at all times during the term of the Lease and at the Lessee's sole cost and expense, maintain the land subject to the Lease and all improvements located thereon and make all necessary reasonable repairs resulting from any damages caused by the Navajo Nation, its employees and any entity to which the Navajo Nation has granted a lease or right-of-way.

34. PERMISSION TO CROSS

The Lessee is responsible for securing written permission to cross existing rights-of-way, if any, from the appropriate parties.

35. TERMINATION

The Navajo Nation may recommend termination of the Lease by DOI for violation of any of the terms and conditions stated herein.

At the termination of this Lease, the Lessee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Lessee shall provide the Navajo Nation, at the Lessee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.

36. ENTRY UPON PREMISES

The Navajo Nation and the Secretary of the Interior shall have the right, at any reasonable time during the term of the Lease, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.

37. DISPUTE RESOLUTION.

In the event that a dispute arises under this Sublease, Sublessee, before initiating any action or proceeding, agrees to use good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution in connection with this Sublease.

38. CONSENT TO JURISDICTION.

Sublessee hereby consents to the legislative, executive and judicial jurisdiction of the Nation in connection with all activities conducted by the Sublessee within the Nation.

39. COVENANT NOT TO CONTEST JURISDICTION.

Sublessee hereby covenants and agrees not to contest or challenge the legislative, executive or judicial jurisdiction of the Nation in connection with any enforcement of this Sublease, on the basis that such jurisdiction is inconsistent with the status of the Nation as an Indian nation, or that

the Nation government is not a government of general jurisdiction, or that the Nation government does not possess police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing in this section shall be construed to negate or impair federal responsibilities with respect to the Subleased Premises or to the Nation.

40. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Sublease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Nation.

41. INTEREST OF MEMBER OF CONGRESS.

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Sublease or to any benefit that may arise here from. This provision shall not be construed to extend to this Sublease if made with a corporation or company for its general benefit.

42. OBLIGATIONS TO THE UNITED STATES.

It is understood and agreed that while the Subleased Premises are in trust or restricted status, all of Sublessee's obligations under this Sublease and the obligations of its sureties are to the United States as well as to Sublessor.

43. NOTICES AND DEMANDS.

(A) Any notices, demands, requests or other communications to or upon either party provided for in this Sublease, or given or made in connection with this Sublease, (hereinafter referred to as "Notices,") shall be in writing and shall be addressed as follows:

To or upon Navajo Nation:

W. Mike Halona, Director
Navajo Land Department
DIVISION OF NATURAL RESOURCES
P.O. Box 2249
Window Rock, Navajo Nation (Arizona) 86515
Fax: 1- 928-871-7039

To or upon Sublessor:

Navajo Tribal Utility Authority
P.O. Box 170
Fort Defiance, Arizona 86504
Fax: 1-928-729-2135

To or upon the Sublessee:

NGI-KAYENTA, INC.
P.O. Box 170
Fort Defiance, Arizona 86504
Fax: 1-928-729-2135

(B) All Notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission or e-mail, followed by surface mail. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours; or if not, during normal business hours on the next business day following delivery; if by registered or certified mail, or by facsimile transmission or e-mail, followed by surface mail, on the next business day following actual delivery and receipt.

(C) Copies of all Notices shall be sent to the Secretary if approval of this Sublease is required.

(D) Sublessor, Sublessee and the Secretary may at any time change its address for purposes of this section by Notice.

44. SUCCESSORS AND ASSIGNS.

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors of Sublessee. Except as the context otherwise requires, the term "Sublessee," as used in this Sublease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

45. RESERVATION OF JURISDICTION.

There is expressly reserved to the Nation full territorial legislative, executive and judicial jurisdiction over the area under the Sublease and all lands burdened by the Sublease, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the area under the Sublease; and the area under the Sublease and all lands burdened by the Sublease shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

46. EFFECTIVE DATE; VALIDITY.

This Sublease shall take effect on the date it is executed by both parties, or approved by the Secretary if the Navajo Nation determines that its approval is required. No modification or amendment to this Sublease shall be valid or binding on either party until it is executed by both parties and approved by the Secretary when necessary until the Navajo Nation commences leasing authority pursuant to 25 U.S.C. 415(e).

IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed as of the date first above written.

**THE NAVAJO TRIBAL UTILITY
AUTHORITY, SUBLESSOR**

Date: _____

By: _____
Tom Nelson, CFO

**THE NGI-KAYENTA, INC.
AUTHORITY, SUBLESSEE**

Date: _____

By: _____
Walter Haase, President

ATTACHMENT 1

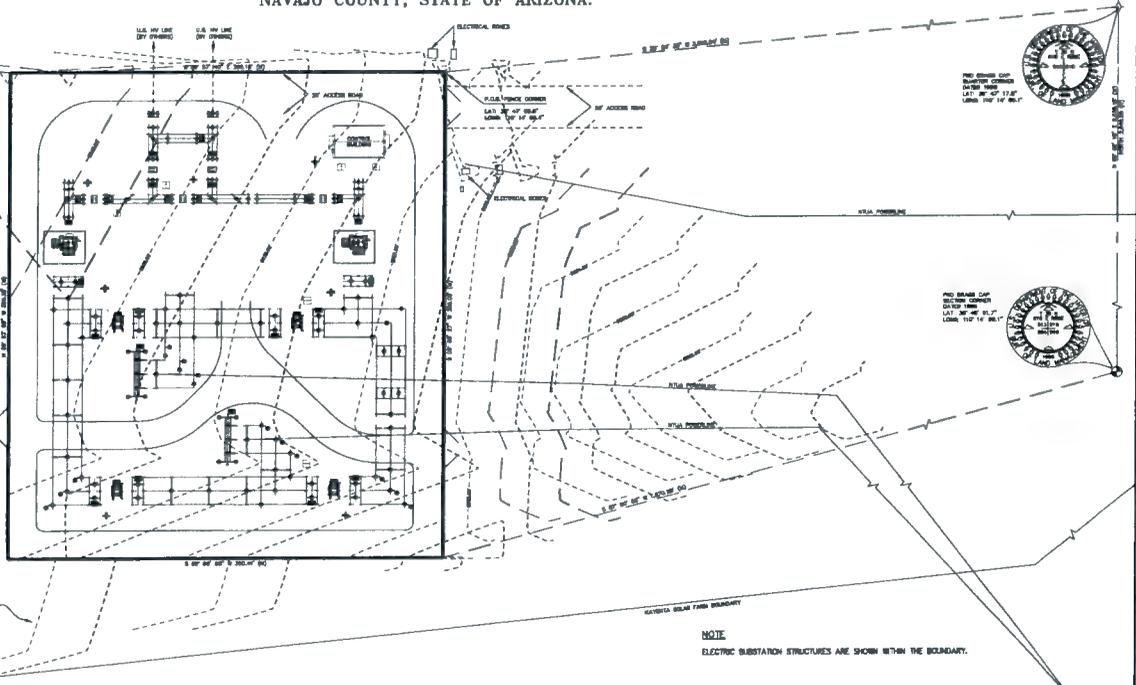
**Legal Description
and Survey Map of Subleased Premises**

ALTA / NSPS LAND TITLE SURVEY

KAYENTA PRIMARY SUBSTATION TRACT
 LOCATED IN UNSURVEYED SECTIONS OF 13 & 24,
 TOWNSHIP 39 NORTH, RANGE 19 EAST,
 GILA AND SALT RIVER BASE MERIDIAN, ARIZONA
 IN THE VICINITY OF KAYENTA,
 NAVAJO COUNTY, STATE OF ARIZONA.

LEGEND/SYMBOLS

- FOUND SECTION CORNER
- FOUND QUARTER CORNER
- BEARING
- CHAIN LINE PEICES
- ELECTRICAL WIRING
- BOUNDARY LINE
- MEASURED
- RECORDED
- FOUND



NOTE
 ELECTRIC SUBSTATION STRUCTURES ARE SHOWN WITHIN THE BOUNDARY.

SCALE
 1"=30'

JOB NO.
 6258028

SECTION 13&24
 TOWNSHIP 39N
 RANGE 19E

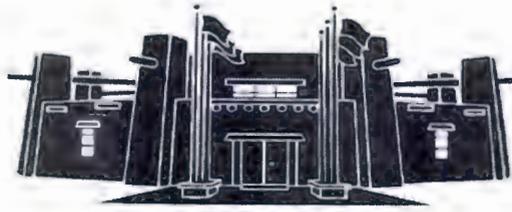


NAVAJO TRIBAL UTILITY AUTHORITY
 P.O. BOX 170
 FORT DEFIANCIE, ARIZONA
 86504

ORDER BY: JLR			
CHECKED BY: A.A.			
DATE: 02/20/18	DATE:	REVISION:	BY:

ALTA / NSPS LAND TITLE SURVEY
 KAYENTA PRIMARY SUBSTATION TRACT
 LOCATED IN UNSURVEYED SECTIONS OF 13 & 24,
 TOWNSHIP 39 NORTH, RANGE 19 EAST,
 GILA AND SALT RIVER BASE MERIDIAN, ARIZONA
 IN THE VICINITY OF KAYENTA,
 NAVAJO COUNTY, STATE OF ARIZONA.

SHEET
 2 OF 2



MEMORANDUM

To : Honorable Otto Tso
Navajo Nation Council Delegate

From : Mariana Kahn
Mariana Kahn, Attorney
Office of Legislative Counsel

Date : June 5, 2018

Re : PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A SUBLEASE TO NTUA NEW MARKETS V, INC, AN OPERATING SUBLEASE TO NAVAJO TRIBAL UTILITY AUTHORITY, A SUBLEASEHOLD DEED OF TRUST, A REPAYMENT GUARANTY, AND AN ATTORNMENT, ESTOPPEL AND SUBORDINATION AGREEMENT BY THE NAVAJO NATION, NTUA, NTUA NEW MARKETS V, INC., IN FAVOR OF ECOTRUST SUB-CDE XXV, LLC

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of challenge. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

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).

If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment. If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Thank you for your service to the Navajo Nation.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0189-18 _____ SPONSOR: Otto Tso

TITLE: An Action Relating to Resources and Development; Approving a Sublease to NTUA New Markets V, Inc, an Operating Sublease to Navajo Tribal Utility Authority, a Subleasehold Deed of Trust a Repayment Guaranty, and an Attornment, Estoppel and Subordination Agreement by the Navajo Nation, NTUA, NTUA New Markets V, Inc., in favor of Ecotrust Sub-CDE XXV, LLC

Date posted: June 5, 2018 at 5:11pm

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.: 0189-18

SPONSOR: Honorable Otto Tso

TITLE: An Action Relating to Resources and Development; Approving a Sublease to NTUA New Markets V, Inc, an Operating Sublease to Navajo Tribal Utility Authority, a Subleasehold Deed of Trust a Repayment Guaranty, and an Attornment, Estoppel and Subordination Agreement by the Navajo Nation, NTUA, NTUA New Markets V, Inc., in favor of Ecotrust Sub-CDE XXV, LLC

Posted: June 5, 2018 at 5:11pm

5 DAY Comment Period Ended: June 10, 2018

Digital Comments received:

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



**Policy Analyst
Office of Legislative Services**

06-12-18 @ 8:15 AM

Date/Time