

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
23rd Navajo Nation Council --- Fourth Year, 2018

AN ACTION
RELATING TO RESOURCES AND DEVELOPMENT; APPROVING BUSINESS SITE
LEASE FOR SO'SILA, LLC FOR TSAYATOH PELLET MANUFACTURING PLANT
ON FEE LAND WITHIN THE TSAYATOH CHAPTER, NAVAJO NATION (MCKINLEY
COUNTY, NEW MEXICO)

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee is established as a standing committee of the Navajo Nation Council. 2 N.N.C. §500(A).
- B. The Resources and Development Committee of the Navajo Nation Council is empowered to grant final approval for non-mineral leases. 2 N.N.C. §501(B)(2).

SECTION TWO. FINDINGS

- A. So'Sila, L.L.C., has requested that the Resources and Development Committee approve a Business Site Lease for a Wood Manufacturing Plant within the Tsayatoh Chapter. See **Exhibit C**.
- B. The Business Site is on 10 acres of fee land contained within the 100 acres withdrawn for the Tsayatoh community purposes. The description of the site is described within **Exhibit A** and **Exhibit B (pages 2 and 3)**.
- C. The Environmental Summary is attached as **Exhibit D**. The Procurement Clearance is attached as **Exhibit E**. The Appraisal report is attached as **Exhibit F**. The Certificate of Good Standing is attached as **Exhibit G**. Tsayatoh Community Governance Resolution TSAY-17-05-06, is attached as **Exhibit H**.
- D. The Executive Official Review for this request for a Business Site Lease has been reviewed by the Division of Economic

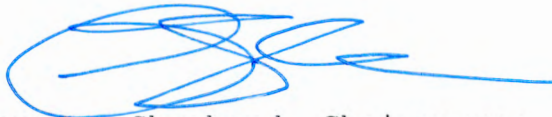
Development, the Office of the Controller and the Department of Justice and found "Sufficient" by the reviewers. See **Exhibit I**.

SECTION THREE. APPROVAL

- A. The Navajo Nation Council's Resources and Development Committee hereby approves the Business Site Lease, attached as **Exhibit A**, between the Navajo Nation and So'Sila, L.L.C.
- B. The Navajo Nation hereby authorizes the Navajo Nation President to execute the Business Site Lease as approved by this resolution.
- C. The Navajo Nation hereby directs the Economic Development Division to ensure that this lease is properly recorded and distributed.

CERTIFICATION

I, hereby certify that the following resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at the Navajo Division of Transportation, Tse Bonito, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 3 in favor, 0 opposed, 1 abstained on this 12th day of March, 2018.



Alton Joe Shepherd, Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Jonathan Perry
Second: Honorable Leonard Pete



OFF RESERVATION
LEASE (FEE LAND)

LEASE NO. _____

THE NAVAJO NATION
and
SO'SILA, LLC

THIS LEASE is made and entered into this ____ day of January, 2018, by and between THE NAVAJO NATION, hereinafter called the "Lessor," whose address is P.O. Box 7440, Window Rock, Navajo Nation (Arizona) 86515, and the So'Sila, LLC hereinafter called the "Lessee," whose address is P.O. Box 682, Navajo, New Mexico 87328, in accordance with the provisions of 25 U.S.C. § 415(e), as amended, and 2 N.N.C. § 724(B)(2), and as implemented by the regulations contained in the Navajo Nation Business Site Leasing Regulations of 2005, and the Economic Development Committee Uniform Business Leasing Regulations, and the Navajo Nation Business Site Lease Management Plans, hereinafter collectively referred to as the Tribal Regulations; and any amendments thereto relative to business site leases, which by this reference are made a part hereto.

1. DEFINITIONS

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

(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 under the provisions of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14), including all amendments or successors thereto, and "petroleum" as defined under the provisions of section 9001(7) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991(7).

(D) *"Regulated Substance"* is as defined at 42 U.S.C. 6991(7), which is any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (42 U.S.C. 9601(14)) (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. 6921 et seq.) and petroleum).

(E) "Storage Tank" is any tank which is defined by either of the following subsections:

1. An underground storage tank as defined at 42 U.S.C. 6991(10), or any storage tank, regardless of the percentage of such tank which is located above or below ground, which is not excluded under 42 U.S.C. 6991(10) and which is used for the storage of regulated substances; or
2. Any above-ground storage tank as defined in the Navajo Nation Above-Ground Storage Tank Act.

(F) Federal Laws

1. "CERCLA" is the Comprehensive Environmental Response, Compensation and Liability act of 1980, 42 U.S.C. 9601 et seq.
2. "RCRA" is the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

2. LEASED PREMISES

For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to Lessee the following described Leased Premises:

A tract of land situate in the SW1/4 of Section 12, T16N, R20W, N.M.P.M., near Tsayatoh Chapter, McKinley County, New Mexico and more particularly described as follows:

Commencing at a common corner for Sections 11, 12, 13 & 14 and being the Southwest of the herein described tract of land and the Real Point of Beginning;

Thence N00°52'00"E along section line a distance of 568.92' to the Northwest corner;

Thence S89°08'00"E along a distance of 780.00' to the Northeast corner;

Thence S00°52'00"W a distance of 548.00' to a point on Southerly section line of Section 12 and the Southeast corner;

Thence N89°19'50"W along said section line a distance of 780.29' to the Southwest corner and the Point of Beginning.

Containing 10.00 acres more or less and being subject to any and all existing easements and/or Rights-of-Way.

Said Property is shown on the attached survey plat marked as an exhibit, which by reference is made part hereof.

3. PURPOSE, UNLAWFUL USES

(A) Lessee shall develop, use and occupy the Leased Premises for the purpose of:

Lessee will construct and operate a wood pellet manufacturing plant on the Leased Premises.

(B) The Leased Premises shall not be used by Lessee for any other purpose, except with the prior written consent of Lessor. The consent of Lessor may be withheld, granted or granted upon conditions, in the sole discretion of Lessor.

(C) Lessee agrees not to use or permit to be used any part of the Leased Premises for any unlawful conduct or purpose.

4. TERM

(A) The term of this Lease shall be twenty-five (25) years, beginning on the date this Lease is approved by the Lessor.

(B) Lessee may exercise options to renew for one additional term of twenty-five (25) years, and a second additional term of twenty-five (25) years. Both options may be granted provided the Lease is not in default. Lessee shall give written notice of its intent to renew this Lease to the Division Director of the Division of Economic Development at least one year, prior to the expiration date of this Lease. Renewal of this Lease is subject to the written approval of the Navajo Nation President and applicable provisions of Navajo Nation law and the Tribal Regulations, including all amendments and successors thereto.

5. CONDITION OF LEASED PREMISES

(A) Lessee has examined and knows the Leased Premises and improvements thereon and accepts the same as-is. No representations as to the condition of the Leased Premises have been made by Lessor or any agent of Lessor prior to or at the time of execution of this Lease. Lessee warrants that it has not relied

on any warranty or representation made by or on behalf of Lessor, but solely upon Lessee's independent investigation.

(B) The independent investigation shall include an environmental site assessment which provides the Lessee with knowledge of the environmental status of the Leased Premises, including the status of storage tanks and/or other regulated substances present, if any.

6. RENTAL

(A) The Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America to the Controller of the Navajo Nation for the use and benefit of the Lessor the following:

Year 1	\$0.00 per year	Secure Financing
Years 2-4	\$1.00 per year	Development Period
Years 5-9	\$12,000.00 per year or \$ 1,000.00 per month	
Years 10-14	\$13,080.00 per year or \$ 1,090.00 per month	
Years 15-19	\$14,257.20 per year or \$ 1,188.10 per month	
Years 20-24	\$15,540.35 per year or \$ 1,295.03 per month	
Year 25	\$16,938.98 per year or \$ 1,411.58 per month	

(B) Monthly rental payments shall be paid not later than the tenth (10th) day after the first day of the month for which the rental is due. All rental payments shall be made by check or money order made payable to the Navajo Nation and deposited with the Controller of the Navajo Nation at his office in Window Rock, Navajo Nation (Arizona).

(C) Failure to make rental payments when due shall constitute a default under this Lease. Rental unpaid ten (10) days after the due date shall bear interest at eighteen percent (18%) per annum, from the date it becomes due until paid, but this provision shall not be construed to relieve the Lessee from any default in making any rental payment at that time and in the manner herein specified. The rents called for hereunder shall be paid without prior notice or demand.

(D) In the event of a sublease, assignment, amendment or transfer of this Lease, or any right to or interest in this Lease, or any improvements are made to the Leased Premises, the rent and other terms of this Lease shall be subject to renegotiation. In addition, if the Lessee exercises any options to renew, the Lessor reserves the right to renegotiate the rent, for any change in economic conditions and other terms of the Lease.

(E) Lessor reserves the right to inspect the books and records of Lessee and any Sublessee or Assignee to verify the accuracy of the rentals paid.

7. IMPROVEMENTS

(A) The Lessee, in consideration for the granting of this Lease, covenants and agrees that Lessee will construct a wood pellet manufacturing plant at a cost of and having a reasonable value of \$100,000, or more.

(B) All buildings and other improvements, if any, on the Leased Premises, excluding removable personal property and trade fixtures, shall remain on the Leased Premises after termination of this Lease. At its option, Lessor may require Lessee to remove said buildings and other improvements and to restore the Leased Premises to its original state upon termination of this Lease.

(C) Lessee shall remove all removable personal property and trade fixtures prior to termination of this Lease. Should Lessee fail to remove said personal property and trade fixtures prior to termination of this Lease, said property shall thereupon become property of Lessor, and may be disposed of in any manner by Lessor.

(D) As used in this Section, the term "removable personal property" shall not include property which normally would be attached or affixed to buildings, other improvements, or land in such a way that it would become a part of the realty, regardless of whether such property in fact is so attached or affixed.

(E) All Hazardous Substances, Hazardous Substance storage systems or conveyance facilities, including but not limited to Storage Tanks placed on or under the Leased Premises are the property of Lessee and shall remain the property of Lessee upon termination of this Lease. Within a reasonable time prior to termination of this Lease, Lessee shall remove any such substances or improvements, shall assess the Leased Premises for contamination, shall remediate all contamination, if any, and shall address any third party damages occasioned by any contamination or otherwise by the use or storage of such substances or improvements on the Leased Premises. Should Lessee fail to complete such responsibilities prior to the termination of this Lease, Lessee shall remain responsible therefor, and shall be required to post a bond in an amount reasonably required to ensure that such responsibilities are completed within a reasonable time after termination of this Lease.

(F) Notwithstanding any provisions of this Lease, the terms of this and the immediately following paragraphs govern ownership and removal responsibility for any Regulated Substances or Petroleum product manufacturing, processing, storage, or conveyance facilities placed in or on the leased land. Any such facilities must comply with applicable federal, Navajo Nation and local law including, in the case of Storage Tanks, requirements for corrosion protection, spill and overfill protection and leak detection. Any repairs made to such facilities must comply with applicable repair standards. Lessee shall provide the appropriate Navajo Nation Regional Business Development Office or its successor with complete and legible copies of all documents establishing Lessee's ownership of, lease of, or acquisition of, any other use interest in any Storage Tanks installed on the Leased Premises.

(G) Unless otherwise notified by the Lessor, Regulated Substances and Storage Tanks are the property of the Lessee who placed them on the property and do not become property of the Lessor for RCRA liability purposes or otherwise upon the expiration of the Lease. Lessee is the owner for RCRA, 42 U.S.C. 6991(3), purposes of any Storage Tanks placed on the Leased Premises. Petroleum manufacturing, processing, storage, Storage Tanks, or conveyance facilities shall be removed by Lessee unless notified by Lessor in writing not to remove all or part of such property. Whatever property remains on the Leased Premises as a result of such notification, shall become the property of Lessor upon termination of the Lease.

(H) Prior to termination of the Lease and prior to vacancy of the property, the Lessee shall remove any of the improvements subject to removal as described above, and below, assess the site for potential contamination, remediate any contamination discovered, and satisfy or actively and in good faith seek resolution of any third party damages which may have occurred. Should any of the above activities extend past the termination date of the Lease, the Lease shall be extended pursuant to Section 29 and Lessee shall remain financially responsible for completing these activities. The bond or insurance required to be posted under Section 11 of this Lease shall not be released or terminated until these activities are completed.

(I) Separate and apart from the above-stated property removal obligations and prerogatives, upon notice from Lessor within a reasonable period after expiration of the Lease, Lessee shall remove all improvements from the Leased Premises named in

Lessor's request or shall restore all or part of the premises to its original condition, as designated in Lessor's notice.

8. PLANS AND DESIGNS

Within one hundred eighty (180) days from the date this Lease is approved by the Lessor, Lessee shall submit to Lessor for approval a general plan and architect's design for the complete development of the entire Leased Premises, together with a phased program, by specific areas, of the developments included as a part of the general plan. Approval or disapproval of the general plan, architect's design or phased development programs shall be within the sole discretion of the Lessor. Lessor's review of all plans and specifications pursuant to this Section is solely to protect the interests of the Lessor in the Leased Premises and the Lessor shall not be the guarantor of, not be responsible for, the accuracy or correctness of any such plans. No change will be made in the general plan, architect's design, plots, surveys or specifications without the consent of the Lessor. Approval of the general plan, architect's design, and/or phased program of development shall in no way be deemed a waiver of the requirements of applicable Navajo Nation law and Lessee shall comply with all applicable Navajo Nation laws and regulations. Upon completion of the proposed improvements the Lessee shall provide Lessor "as-built" drawings depicting the improvements as a completed structure.

9. COMPLETION OF DEVELOPMENT

(A) The Lessee shall complete the full improvement and development of the Leased Premises in accordance with the general plan and architect's design, submitted in accordance with Section 8 above, within 36 months from the beginning date of the term of this Lease. If Lessee fails to complete full development within such period, such failure shall constitute a breach of the terms of this Lease and shall be cause for cancellation.

(B) Whenever under this Lease a time is stated within which or by which original construction, repairs, or reconstruction of improvements shall be made and during such period a general or sympathetic strike or lock-out occurs, war or rebellion ensues, or some event unquestionably beyond Lessee's power to control, the period of delay so caused shall be added to the period limited herein for the completion of such work.

10. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION

(A) All buildings and other improvements placed on the Leased Premises 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 and all service areas shall be screened from public view.

(B) Lessee shall, at all times during the term of this Lease and at Lessee's sole cost and expense, 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.

(C) Lessee shall have the right during the term of this Lease to make limited alterations, additions or repairs to improvements on the premises in an amount not to exceed \$100,000 per year. Alterations, additions or repairs in excess of the above amount or any removal or demolition of an improvement shall not be made without the prior written approval of Lessor. Lessee shall indemnify and hold harmless the Lessor against liability for all claims arising from Lessee's failure to maintain said premises and the improvements thereon as herein provided, or from Lessees' non-observance of any law, ordinance or regulation applicable thereto.

11. RENTAL AND PERFORMANCE BOND

(A) Upon approval of this Lease by the Lessor, Lessee agrees to post a corporate surety bond or other security acceptable to Lessor in a penal sum of \$7,500, which bond shall be deposited with the Lessor and shall remain in force for the full term of this Lease, at the discretion of the Lessor.

(B) It is understood and agreed that bond and security required by this Section will guarantee performance of the contractual obligations under this Lease, and that a corporate surety bond may be furnished annually or may be continued from year to year by a certificate of renewal, a copy of which certificate shall be furnished by Lessee. If U.S. Treasury Bonds are provided, Lessee agrees to make up any deficiency in the value of the bonds. Interest on said U.S. Treasury Bonds shall be paid to Lessee. Should waiver of bond or security be granted during the term of this Lease, Lessor reserves the right to request that Lessee furnish bond or security at a later date and Lessee hereby agrees to comply with said request.

12. CONSTRUCTION BOND

(A) Prior to the commencement of construction of any improvement on the leasehold premises where said construction shall be performed in whole or in part by a construction contractor, the Lessee shall post, or shall cause his construction contractor to post a construction bond in favor of Lessor and Lessee. If the construction contractor cannot post such a bond, the Lessee shall post the construction bond. The purpose of the construction bond is to guarantee the completion of the improvements and payment in full of valid claims of all persons for work performed in or materials furnished for construction of the improvements. The construction contractor or the Lessee may provide security by either:

1. Posting a corporate surety bond in an amount equal to the cost of each improvement, bond to be deposited with the Lessor and to remain in effect until the improvement is satisfactorily completed. Said bond shall be conditioned upon faithful performance by Lessee or his construction contractor and shall give all claimants a right to recover upon said bond in any suit brought to foreclose on any mechanic's or materialmen's liens against the property. If United States Treasury Bonds are provided, Lessee or his construction contractor agree to make up any deficiency in the value deposited that might occur due to a decrease in the value of bonds. Interest on said bonds shall be paid to Lessee.
2. Depositing in escrow with Lessor or an institution acceptable to the Lessor, negotiable United States Treasury Bonds, or cash, or furnishing a non-revocable letter of credit satisfactory to Lessor in an amount sufficient to pay the entire cost of construction of each building or other improvement then to be erected on the premises. If United States Treasury Bonds are provided, Lessee or his construction contractor shall make up any deficiency of the value deposited that might occur due to a decrease in the value of said bonds. Interest on said bonds shall be paid to Lessee or his construction contractor. The funds so deposited may then be used, at the option of Lessor, to discharge any valid mechanic's or materialmen's liens; if no such liens exist, the withheld funds shall be disbursed to Lessee or his construction contractor.

(B) If Lessee enters into a construction loan agreement with a financial institution, said loan agreement shall be

subject to the approval of Lessor. Prior to such approval, Lessee shall perform all conditions precedent to the assumption of obligations under the agreement by the financial institution and Lessee shall deposit with the lending institution the difference between the amount of the loan and the total cost of the improvement.

13. SUBLEASE, ASSIGNMENT, TRANSFER

(A) Lessee shall not sublease, assign, or transfer this Lease or any right to or interest in this Lease or any of the improvements on the Leased Premises, or sell, assign or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee without the written approval of Lessor and sureties, if any, and no such sublease, assignment, sale, amendment or transfer shall be valid or binding without such approval, and then only upon the condition that the Sublessee, Assignee or other successor in interest, excepting an approved encumbrancer, shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make any such sublease, assignment, sale, amendment or transfer except as aforesaid, such action shall be deemed a breach of this Lease, excepting that an encumbrancer, as herein set forth, may enforce his rights in the manner hereinafter provided. Approval of one sublease, assignment, sale, amendment or transfer shall not validate a subsequent sublease, assignment, sale, amendment or transfer, and the restrictions of this Section shall apply to each successive sublease, assignment, sale, amendment or transfer hereunder and shall be severally binding upon each and every Sublessee, Assignee, Transferee and other successor in interest of the Lessee, excepting an encumbrancer.

(B) For purposes of this Section, the creation of a partnership, corporation, joint venture, management agreement or any other arrangement under which any person or entity, other than Lessee is entitled to share in profits derived directly or indirectly from the Leased Premises or activities carried out thereon, shall be considered a sublease or assignment of this Lease, and therefore shall require the approval of Lessor.

(C) Approval or disapproval of any sublease, assignment, or transfer, for any purpose whatsoever, by the Lessee shall be within the sole discretion of Lessor. Lessor reserves the right to adjust the rental provisions of this Lease upon any sublease, assignment or transfer.

14. ENCUMBRANCE

(A) This Lease, or any right to or interest in this Lease or any of the improvements on the Leased Premises, may not be encumbered without the written approval of the Lessor and sureties, if any, and no such encumbrance shall be valid without said approval. The Lessor shall not unreasonably withhold its approval to an encumbrance.

(B) An encumbrance must 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 as requested any financial statements or analysis pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of said encumbrance.

(C) An encumbrancer of any Sublease, in the event of default by Sublessee of the terms of an approved encumbrance, may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor and Lessee hereunder notice of the same character and duration as is required to be given to the Sublessee by the encumbrancer and/or by applicable law.

If notice of such sale shall be given and the defaults of any of them upon which such notice of sale is based shall then continue, Lessee, or Lessor, if Lessee fails to act, shall have the following rights which may be exercised at any time prior to the completion of sale proceedings.

1. To pay the encumbrancer the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such payment, plus foreclosure or sale costs incurred to the date of such payment.
2. To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Lessor, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note issued by the reputable title insurance company, and

insuring that the new encumbrance is a first lien upon the subleasehold described in said sublease subject only to current taxes and to conditions, restrictions, and reservations of record at the time of recording the approved encumbrance.

If Lessee or Lessor exercises either of the above rights, all of the rights, title, and interest of the Sublessee in the Sublease shall automatically terminate on the same date the right is exercised and the Lessor or Lessee shall, on the same date, acquire the subleasehold; however, the acquisition of the subleasehold by Lessee or Lessor under these circumstances shall not serve to extinguish the sublease by merger with the Lease or otherwise.

In the event Lessor or Lessee does not avail itself of the above rights and any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Sublessee in the subleasehold covered by said encumbrance. It is further agreed that if the purchaser at such a sale is the encumbrancer, the encumbrancer may sell and assign the subleasehold without any further consent, provided that the Assignee shall agree in writing to be bound by all the terms and conditions of the sublease. If the encumbrancer is the purchaser, it shall be required to perform the sublease only so long as it retains title thereto. If a sale under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by Lessor of any assignment will be required and said purchaser, as successor in interest to the Sublessee, shall be bound by all the terms and conditions of the sublease and will assume in writing all the obligations thereunder.

(D) In the event of default by the Lessee of the terms of an approved encumbrance, the encumbrancer may exercise any rights provided in such approved encumbrance, provided that before any sale or foreclosure, the encumbrancer shall give to Lessor notice of the same character and duration as is required to be given Lessee by such encumbrance and/or by applicable law. If notice of such sale be given, and the default of any of them upon which notice of sale is based shall then continue, Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:

1. To pay to the encumbrancer the full unpaid principal amount of the approved encumbrance plus unpaid interest accrued to the date of such payment, plus sale costs incurred to the date of such payment.

2. To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by Lessor, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution, plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note, issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the property described in this Lease subject only to current taxes and to conditions, restrictions and reservations of record at the time of recording the new encumbrance.

(E) If Lessor exercises either of the above rights, all rights, title and interest of Lessee in the Lease shall terminate and Lessor shall acquire the Lease; provided, however, that such termination shall not relieve the Lessee from any obligation or liability which had accrued prior to the date of termination. Acquisition of the Lease by Lessor under these circumstances shall not serve to extinguish the Lease by merger or otherwise.

(F) In the event Lessor does not avail itself of the rights set forth in this Section and any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all or the rights, title, and interest of the Lessee in the leasehold estate covered by said approved encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may sell and assign the leasehold interest without any further consent, provided that the assignee shall agree in writing to be bound by all the terms and conditions of this Lease. If the encumbrancer is the purchaser, it shall be required to perform this Lease only so long as it retains title thereto. If a sale under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by the Lessor of any assignment will be required and said purchaser, as successor in interest to the Lessee, shall be bound by all the terms and conditions of this Lease and will assume in writing all the obligations thereunder.

15. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES

(A) Lessee shall not permit any liens arising from any work performed, materials furnished, or other obligations incurred by Lessee to be enforced against the Leased Premises, any interest

therein or improvements thereon. Lessee shall discharge all such liens before any action is brought to enforce same.

(B) Lessee shall pay, before becoming delinquent, all taxes, assessments and other like charges levied upon or against the Leased Premises, any interest therein or improvements thereon, for which either Lessee or Lessor may become 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.

(C) Lessee shall have the right to contest any claim, asserted tax, or assessment against the property, by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless Lessor and the Leased Premises and all interest therein and improvements thereon from any and all claims, taxes, assessments, and like charges and from any lien therefor or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessor shall execute and file any appropriate documents with reference to real estate tax exemption of the land when requested by Lessee.

(D) In addition to the rents, taxes and other charges herein described, Lessee shall pay charges for water, sewage, gas, electricity, telephone, and other utility services supplied to said premises.

16. LESSOR'S PAYING CLAIMS

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 legal rate from the date of payment or incursion thereof by Lessor until repayment is made by Lessee.

17. SANITATION

(A) Lessee hereby agrees to comply with all applicable sanitation codes, requirements, or laws which may be related to the purpose of this document as set forth in Section 17 hereinabove. Such compliance shall specifically include, but not be limited to, the sanitary regulations of the U.S. Public Health

Services. Lessee further agrees to maintain at all times the entire premises in a safe, sanitary condition, presenting a good appearance both inside and out in all buildings operated on the Leased Premises.

(B) Lessee agrees to comply with applicable Federal, Navajo Nation, or local laws, statutes, ordinances or regulations, environmental matters including but not limited to the storage and disposal of Regulated Substances. Lessee further agrees that all solid waste generated by the Lessee or by any Sublessee shall be disposed of only at a state or tribally-certified public or private landfill, and shall maintain record to demonstrate compliance with this requirement.

(C) Lessee agrees to maintain all records required by applicable law and regulations and to make such records available to appropriate officials of the Navajo Nation or federal government.

18. REGULATED OR HAZARDOUS SUBSTANCES

(A) Lessee shall not cause or permit any Regulated or Hazardous Substances to be used, stored, generated or disposed of on or in the Leased Premises without obtaining the prior written consent of the Navajo Nation Environmental Protection Agency. If Regulated Substances are used, stored, generated or disposed of on or in the premises except as permitted above, or if the premises become contaminated in any manner for which Lessee or Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee. This indemnification includes, without limitation, any and all cleanup, removal or restoration mandated by the federal government of Navajo Nation. Without limitation of the foregoing, if Lessee causes or permits the presence of any Regulated Substance on the premises and 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 premises to the condition existing prior to the contamination by any such regulated substance on the premises. Lessee shall first obtain Lessor's approval for

any such remedial action, unless the time required for seeking and obtaining such approval would cause an imminent danger to the public health and safety.

(B) Lessee shall provide the Navajo Nation Environmental Protection Agency and the Risk Management Department of the Navajo Nation with a clear and legible copy of all notices or reports concerning Storage Tank installation, testing, leakage, or remediation at the premises subject to this Lease which Lease 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 Nation Environmental Protection Agency shall be by first-class mail to:

UST-AST Program
Navajo nation Environmental Protection Agency
P.O. Box 339
Window Rock, Navajo Nation (Arizona) 86515

And

Risk Management Department
Division of General Services
P.O. Box 1690
Window Rock, Navajo Nation (Arizona) 86515

Or their respective institutional successors.

19. PUBLIC LIABILITY INSURANCE

(A) At all times during the term of this Lease, Lessee shall carry a public liability insurance policy in the amount of at least \$1,000,000 for personal injury to one (1) person and \$2,000,000 per occurrence, and \$500,000 for damage to property. Said policy shall be obtained from a reliable insurance company authorized to do business in the State in which the Leased Premises are located and shall be written to jointly protect Lessee and Lessor and shall provide for notification to Lessor prior to any material change, cancellation or non-renewal of said policy for any reason, including non-payment of premiums. Upon written request therefor, copies of said policy shall be furnished to Lessor.

(B) There shall be a periodic review, at not less than five (5) year intervals, of all insurance policies and coverage amounts held under this Lease. The review shall give consideration to the

economic conditions at the time and may result in adjustment of the type of insurance coverage or the amounts of any coverage whenever, in the discretion of Lessor, such adjustment is necessary for the protection of the Lessor. Neither Lessor nor its officers, agents or employees, 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, caused by any use of the Leased Premises, or by any defect in any structure existing or erected thereon, or arising from any accident, fire, or from any other casualty on said premises or from any other cause whatsoever and Lessee, as a material part of the consideration of this Lease, hereby waives on Lessee's behalf all claims against Lessor and agrees to hold Lessor 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 New Mexico law.

(C) With the prior written approval of Lessor, the insurance obligation under this Section may be satisfied by a self-insurance program maintained by Lessee or by other means of alternative performance satisfactory to Lessor.

20. PROPERTY DAMAGE, FIRE AND CASUALTY INSURANCE

(A) Lessee, shall, from the date of approval of this Lease, carry fire and casualty insurance with extended coverage endorsements, covering not less than full insurable value of all improvements on the Leased Premises. Said policy shall be obtained from a reliable insurance company licensed to do business in the State in which the Leased Premises are located and shall be written jointly to protect Lessee and Lessor and shall provide for notification to the Lessor prior to any change in said policy for any reason, including non-payment of premiums. A copy of said policy shall be deposited with Lessor. In the event of damage to any improvement on the Leased Premises, Lessee shall rebuild, repair or otherwise reinstate the damaged improvement or building in a good and substantial manner according to the plan and elevation of the improvement or building so destroyed or damaged or in accordance with any modified plan approved in writing by the Lessor prior to commencement of repair or reconstruction. Repair or reconstruction shall commence as soon as possible and, in any event, within one (1) year after the damage occurs and shall be pursued diligently. Insurance proceeds shall be deposited in an escrow account

with an institution approved by Lessor. Lessee shall also deposit in said escrow account all additional funds required to reconstruct the damaged improvement. Escrow instructions shall include provisions that all funds so deposited shall be used to reconstruct the damaged improvements and that funds shall be disbursed during the progress of reconstruction on proper architect's, engineer's, or contractor's certificates. All money in escrow after reconstruction has been completed shall be paid to Lessee.

(B) In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all improvements on the Leased Premises during the term of this Lease, Lessee shall have the option to reconstruct said improvements. Lessee shall have the option to reconstruct said improvements. Lessee shall provide Lessor with a written notice of the exercise of Lessee's reconstruction option within thirty (30) days of the event of damage giving rise to Lessee's reconstruction option. Should Lessee exercise its option to reconstruct, Lessee shall commence reconstruction of the damaged improvements within ninety (90) days of Lessee's exercise of its reconstruction option and shall diligently pursue the reconstruction to completion. Should Lessee not exercise its option to reconstruction, this Lease shall terminate one hundred and twenty (120) days after the event of damage giving rise to Lessee's reconstruction option. The Leased Premises shall be cleared of debris at Lessee's expense prior to termination of the Lease. Lessee shall not be charged rent during the period of debris removal unless Lessee occupies the Leased Premises beyond the Lease termination date, after which the Lessee will be charged hold over rental as provided in Section 29 In the event Lessee does not reconstruct, all insurance proceeds shall be paid to Lessor.

(C) Any encumbrancer shall be named as a beneficiary under all insurance policies required by this paragraph and in the event of loss or damage to the buildings on the Leased Premises while an approved encumbrance remains unpaid, the amount of such loss or damage (but not exceeding the remaining balance of the approved encumbrance) shall be paid to the encumbrancer on the condition that the encumbrancer agrees to comply with the reconstruction obligations set forth herein. If such amount paid to the encumbrancer is sufficient to repair the loss or damage with respect to which it is paid, or if Lessor or Lessee shall within three (3) months after such payment by the insurer to the encumbrancer deposit with the encumbrancer enough money to completely repair the loss or damage, when added to the amount

paid by the insurer to the encumbrancer, the encumbrancer shall, upon written order of Lessor or Lessee, pay such monies for such repair, and it shall not be deemed a payment or credit on the encumbrance; but otherwise, at the expiration of such three (3) months said sum so paid by the insurer to the encumbrancer shall be applied and credited upon the approved encumbrance. It is understood and agreed that nothing stated herein shall relieve Lessee of its obligation to repair and/or replace the damaged improvement to a condition as good or better than before the damage occurred.

21. FINANCIAL RESPONSIBILITY FOR STORAGE TANKS

The Lessee may not install or operate an underground Storage Tank without first obtaining the consent of the Navajo Nation. Such consent may be given only in the event that the Lessee agrees to comply with all current federal laws and regulations regarding underground Storage Tanks as well as any additional requirements imposed by the Navajo Nation, whether through legislation or as the Lessor. The Lessee shall be required to post a bond in an amount to adequately ensure compliance with the financial responsibility requirements for underground Storage Tanks as indicated in 40 C.F.R. Part 280, Subpart H.

If the Lessee or Sublessee installs or operates storage tanks on the Leased Premises, the Lessee or Sublessee shall post a bond, obtain insurance or provide such other evidence of financial responsibility that meets all the requirements of 40 C.F.R. Part 280, Subpart H regardless of whether the Storage Tank in question is an above-ground or underground Storage Tank. Lessee shall provide proof of this bond, insurance or other qualifying financial responsibility mechanism to the Risk Management Department of the Navajo Nation. This bond or insurance shall remain in effect for the terms of the base lease or sublease, and any renewals thereof, and shall not be released or terminated until such time as the Risk Management Department of the Navajo Nation certifies that the facility is in compliance with all applicable laws and regulations, or that the tanks have been removed and the site has been remediated, or that the base lease or sublease has been transferred and the new operator has provided proof of an adequate bond, insurance, or otherwise satisfied the 40 C.F.R. Part 280, Subpart H financial responsibility requirements. It shall be the responsibility of the Lessee or Sublessee to provide the Risk Management Department of the Navajo Nation with all proof required for release of bond or termination of insurance coverage.

22. EMINENT DOMAIN

If, at any time during the term of this Lease, the Leased Premises or any part thereof is taken or condemned under the laws of eminent domain, then and in every such case, the leasehold estate and interest of the Lessee in said premises or part thereof taken shall forthwith cease and terminate. All compensation awarded by reason of any takings of the leased land and any taking of or injury to the buildings or improvements located thereon shall be awarded to the Lessee and the Lessor as their interests appear at the time of such taking provided that, Lessee's rights to such awards shall be subject to the rights of an encumbrancer to receive such awards as set out in an approved encumbrance. The rental thereafter payable hereunder to the remainder of the terms of this Lease shall be reduced in the proportion that the value of the entire premises is reduced by such taking and condemnation.

23. DEFAULT

(A) Time is declared to be of the essence of this Lease. Should Lessee default in any payment of monies due, fail to post bond or be in violation of any other provision of this Lease, said violation may be acted upon. Lessor may exercise the following options upon Lessee's default:

1. Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease; or
2. Re-enter the premises and remove all persons and property therefrom, excluding the property belonging to authorized Sublessee(s), and re-let the premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to terminate the Lease thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor who shall have the right to alter and repair the 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 re-letting, collection, altering, and repairing, including attorney's fees and any real estate commission actually paid, insurance, taxes and assessments 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 deemed necessary to protect any interest of Lessor.

(B) No waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant of this Lease.

(C) Exercise of any of the remedies outlined in this Section 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) If any approved encumbrances shall give Lessor, before any default shall have occurred in this Lease, a written notice containing the name and address and the interest in the premises of such encumbrancer, Lessor shall thereafter give to such encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given by Lessor to Lessee. Lessor shall accept such encumbrancer's performance of any of Lessee's covenants or other obligations under this Lease, with the same force and effect as though performed by Lessee. Upon providing such written notice, the encumbrancer shall have standing to pursue any appeals permitted by applicable Navajo Nation statutes and regulations that Lessee would be entitled to pursue. Further, Lessor shall not terminate the Lease if an encumbrancer has commenced and is diligently pursuing a foreclosure action to terminate Lessee's interest in said Lease and has cured or is taking action to cure the breach that is the cause of the termination.

24. 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.

25. NO PARTNERSHIP

No term of this agreement shall be so construed as to provide that a partnership exists between Lessor and Lessee; the only relationship between the parties being that of Landlord and Tenant.

26. STATUS OF SUBLEASES

Termination of this Lease, by cancellation or otherwise, shall not serve to cancel approved subleases and/or subtenancies, but shall operate as an assignment to Lessor of any and all such subleases and/or subtenancies.

27. NOTICES AND DEMANDS

(A) Any notices, demands, requests or other communications to or upon either party or the Secretary 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:

President
The Navajo Nation
Office of the President/Vice President
Post Office Box 7440
Window Rock, Navajo Nation (Arizona) 86515

Fax: (520) 871-4025

To or upon Lessee:

So'Sila, LLC
Post Office Box 682
Navajo, New Mexico 87328

Copies to:

Division Director
Division of Economic Development
Post Office Box 663
Window Rock, Navajo Nation (Arizona) 86515

Fax: (928) 871-7381

(B) All notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission, 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, followed by surface mail, on the next business day following actual delivery and receipt.

28. INSPECTION.

The Navajo Nation shall have the right, at any reasonable time during the term of this Lease, to enter upon the Leased Premises, or any part thereof, to inspect the Leased Premises and any buildings and other improvements erected or 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 and safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination in violation of applicable law, Lessee shall pay the costs of such testing. Nothing in this paragraph shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.

29. HOLDING OVER AND LEASE EXTENSION FOR REMEDIATION

(A) Holding over by Lessee after termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder or in or to the Leased Premises or to any improvements located thereon. Lessee agrees to pay as hold over rental a daily rental computed at the rate of double the daily rental charged during the year immediately preceding termination of the Lease, from the day following the termination of the Lease until Lessee vacates the premises.

(B) If at the expiration of the term of the Lease, or the expiration of any extension of the term of the Lease, Lessee has not completed all removal and remediation required by this Lease and applicable law, the term of this Lease shall automatically be extended until the Phase Two audit required by this Lease and any required removal and remediation is completed. Extension of the Lease pursuant to this paragraph does not extend Lessee's right to occupy the premises for purposes of conducting the business activities described in the provision entitled "Purpose, Unlawful Uses" of the Lease. Rather, extension of the Lease pursuant to this paragraph gives the Lessee or Lessee's agents the right to occupy the Leased Premises solely for the purposes of performing

any necessary environmental audit(s) and any necessary remediation. During any extension of the Lease term pursuant to this paragraph, Lessee shall pay rent at the rate at which rent obligations accrued during the last twelve months of the Lease's term. Lessor may, at its discretion, cancel the Lease extension set forth in this article with or without cause.

30. ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS

(A) Entry Audit: If Storage Tanks are located at the Lease site, the Lessee will supply the Navajo Nation Environmental Protection Agency, the Division of Economic Development, and the Risk Management Department of the Navajo Nation with a complete copy of the report and underlying data generated in preparation of a Phase Two environmental audit before Lessee places any regulated substance in the Storage Tanks or releases any regulated substances from the Storage Tanks but no later than ninety (90) days after the Lease is approved by the Lessor. Lessee shall notify the Navajo Nation Environmental Protection Agency and Risk Management Department at the addresses provided in Section 18 and shall notify the Division of Economic Development at the Regional Business Development Office responsible for supervision of the Leased Premises.

The Lessee shall notify the Risk Management Department of the Navajo Nation, or any institutional successor, of the firm chosen to perform the Phase Two environmental audit prior to the performance of such audit. Lessor may accept or decline the choice of environmental auditor within twenty (20) days of written notice to Lessee. If Lessor does not respond within twenty (20) days of Lessee's written notice, the environmental auditor is deemed accepted. If, however, the most recent prior tenant of the premises or the Navajo Nation has performed a Phase Two environmental audit on the premises at or after the termination of the prior tenancy, Lessee is not required to perform a Phase Two environmental audit if Lessee agrees to be conclusively legally bound by the findings of the above-referenced Phase Two environmental audit.

(B) Environmental Audit(s): Lessee shall pay to the Navajo Nation the amount of \$15,000.00 which will be held by the Navajo Nation during the term of the Lease. One year after Lessee's rental obligation commences, Lessee shall pay \$5,000.00 toward payment of the \$15,000.00 and shall pay \$5,000.00 at the end of each of the second and third years of Lessee's rent payment obligation.

This sum is in addition to any other rental obligations of Lessee. This sum shall be used to pay for a Phase Two environmental audit to be performed during the last year of the Lease and any other environmental audit(s) during the term of the Lease, which Lessor determines, based on probable cause, to be reasonably necessary to ascertain whether environmental contamination by regulated substances has occurred. The Risk Management Department of the Navajo Nation shall determine whether an audit shall be performed.

If Lessor determines an environmental audit should be performed at the leased premises prior to the Lessee's deposit of the entire \$15,000.00 deposit and the amount deposited is insufficient to pay for the environmental audit, and the environmental audit determines Regulated Substances are unlawfully present, Lessee shall, upon written demand by Lessor, promptly deposit with Lessor an amount sufficient to pay for the environmental audit or to bring Lessee's deposit to \$15,000.00, whichever is less. If Lessor performs an environmental audit pursuant to this article during the term of the Lease which finds Regulated Substances unlawfully present and which is financed by all or part of the above-referenced sum, Lessee shall, at the end of the year in which the audit is completed, deposit funds with the Navajo Nation sufficient to re-establish the amount deposited prior to the audit and to reimburse the Navajo Nation for any amount the Navajo Nation spent on the environmental audit in excess of the \$15,000.00 deposit.

The deposit shall be kept in an interest bearing account by the Division of Finance on behalf of the Lessee to meet the expenses of the obligation stated above. At the termination of the Lease and upon completion of all environmental audits, removal and remediation to be performed on the premises, the Navajo Nation shall return any of the money so deposited to the Lessee which was not spent to conduct environmental audits of the Leased Premises or to remediate or remove substances which were released on the Leased Premises.

Nothing stated herein shall be construed to limit Lessee's liability for costs associated with investigation, remediation, or Regulated Substances located on the Leased Premises including Lessee's liability for litigation costs and attorney fees.

31. DELIVERY OF PREMISES

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

(B) Upon the written request of the Navajo Nation, Lessee shall provide to the Navajo Nation, at Lessee's sole cost and expense, an environmental audit assessment of the Leased Premises at least sixty (60) days prior to delivery of said premises.

32. MINERALS

All minerals, including sand and gravel, contained in or on the Leased Premises which are owned by Lessor 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 improvements constructed by Lessee.

33. AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS

In all activities conducted by Lessee within the Navajo Nation, Lessee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect, or as may come into force and effect.

34. GOVERNING LAW AND CHOICE OF FORUM

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

35. CONSENT TO JURISDICTION

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

36. DISPUTE RESOLUTION

In the event that a dispute arises under this Lease, the Parties agree, prior to pursuing litigation, to use their good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution.

37. 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 Navajo Nation.

38. 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.

39. INDEMNIFICATION

To the extent permitted by New Mexico law, Lessee shall defend, indemnify and hold harmless the Navajo Nation and their authorized agents and employees 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.

40. EFFECTIVE DATE; VALIDITY

This Lease shall take effect on the date it is approved by the Lessor. This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party until it is approved by the Lessor.

41. APPLICABLE TERMS AND CONDITIONS

The Standard Terms and Conditions for Economic Development Leases on Navajo Nation Trust Land in Part II of this Lease apply to this Lease and are incorporated herein in their entirety.

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

SO'SILA, LLC, LESSEE

By: _____
Brian Halona, Chief Executive Officer

Date: _____

THE NAVAJO NATION, LESSOR

By: _____
Russell Begaye, President

Date: _____

**Navajo Nation
Business Site Lease
Agreement – Part 2**

PART II

STANDARD TERMS AND CONDITIONS FOR NAVAJO NATION ECONOMIC DEVELOPMENT LEASES (Navajo Nation Trust Land)

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1.0 STANDARD TERMS AND CONDITIONS FOR ALL NAVAJO NATION BUSINESS SITE LEASES

1.1 DEFINITIONS.

- A. "Approved Encumbrance" means an encumbrance approved in writing by the Lessor, and sureties, if any, in accordance with the terms and conditions of this Lease.
- B. "Condemnation" means the taking of any real property right thereof, in condemnation proceeding, by right of eminent domain, or by conveyance in lieu of or in settlement of a condemnation or eminent domain proceeding brought by any governmental authority having jurisdiction and power over the property.
- C. "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.
- D. "Federal Laws" means all applicable federal laws, including:
- i) "CERCLA," the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, and
 - ii) "RCRA," the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*
- E. "Gross Receipts" means all income, including money and other things of value, received by or paid to Lessee or its affiliates, whether individuals, corporations, partnerships, or other legal entity, or received by or paid to others for Lessee's or its affiliates' use and benefit, derived from business done, sales made, or services rendered directly or indirectly or on the leased premises or any portion thereof. All income accruing from credit transactions will be treated as "gross receipts" as of the date credit is extended. Gross Receipts will not include amounts collected and paid out for a sales and excise tax imposed by any duly constituted governmental authority where such tax is billed to the purchaser as a separate item. Any taxes paid by the Lessee as a part of the cost of merchandise purchased by the Lessee are not to be excluded or deducted. It shall not include credits for the exchange of goods or merchandise between stores, if any, of Lessee or its affiliates where such exchange is made solely for the convenient operation of business and not for the purpose of consummating a sale previously made directly from or on the leased premises. It shall not include the amount of any refund where the merchandise sold, or some part thereof is returned by the purchaser and accepted by Lessee or its affiliates. It shall not include income from the sale of fixtures, or good will, or the sale of improvements, including, but not limited to, corrals, buildings, livestock scales, and holding pens.
- F. "Lessor" means the Navajo Nation who conveys property under a lease agreement.

G. "Secretary" means the Secretary of the Interior or his/her authorized representative, delegate, or successor.

1.2 CONDITION OF LEASED PREMISES.

- A. Lessee has examined and knows the leased premises and improvements thereon and accepts the same as-is. No representations as to the condition of the leased premises have been made by Lessor, any agent of Lessor or the United States prior to or at the time of execution of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or on behalf of Lessor or the United States, but solely upon Lessee's independent investigation.
- B. The independent investigation, which shall be conducted prior to entering into the Lease, shall include an environmental review which provides the Lessee with knowledge of the environmental status of the leased premises, including the status of the storage tanks and/or other regulated substances.

1.3 ACCOUNTING.

- A. Lessee shall maintain full and adequate books of account and such other records as are necessary to reliably reflect the financial position and results of the operation in accordance with Generally Accepted Accounting Principles ("GAAP") or other comprehensive basis of accounting deemed acceptable by the Navajo Nation Office of Auditor General.
- B. The Navajo Nation Office of Auditor General or any of its duly authorized representatives, shall at any time up until the expiration of five (5) years after the expiration of this Lease, have access to and the right to examine any of Lessee's books of account, documents, papers, and records, including Federal and State income tax returns, and such documents of any affiliated companies of Lessee, in connection with any transaction related to this Lease. Lessee shall insert a similar provision in all subleases and shall make available to said representative, agent, or agents, all books and records of Lessee's tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises.

1.4 UTILITY SERVICE LINE AGREEMENTS.

- A. Lessee will identify the rights-of-way necessary or appropriate for construction, operation and maintenance of any improvements. Lessee shall obtain approval from any third parties, Lessor and Secretary as may be necessary or appropriate as required by 25 U.S.C. §415 and 25 C.F.R. § 169.
- B. Lessee is authorized to enter into appropriate service line agreements with utility companies for the provision of necessary or appropriate utility services to the leased premises, including gas, water, sewer, electricity,

telephone, television, internet, and other utilities, without further consent by Lessor, on the condition that:

- (1) such agreements are for the sole purpose of supplying utility services to the leased premises; and
- (2) such agreements authorize utility service lines only within the leased premises; and
- (3) such agreements do not extend beyond the term of this Lease, including any extensions thereof; and
- (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 within thirty (30) days of their execution; and
- (5) such agreements are in accordance with the provisions of 25 C.F.R. § 169.22, including any amendments or successors thereto.

C. Lessor reserves the right for Lessor's benefit or for the benefit of other land users, whether or not adjacent to the leased premises, to enter into service line agreements with utility companies for service lines across the leased premises, provided that, after consultation, Lessor and Lessee determine such service lines do not unreasonably interfere with Lessee's use of the leased premises nor otherwise affect any property rights reserved to Lessor.

1.5 SUBLEASE, ASSIGNMENT, AMENDMENT, TRANSFER.

A. Lessee shall not sublease, assign, amend, or in any manner whatsoever transfer this Lease or any right to or interest in this Lease or any of the improvements on the leased premises, or sell, assign or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee without the written consent of the Lessor and Lessee, as well as the sureties. Lessor, however, in its sole discretion may authorize the Lessee to enter into subleases without further consent from Lessor, which must be specifically provided for in Part I. Unless otherwise provided for in Part I, no such sublease, assignment, sale, amendment or transfer shall be valid or binding without such approval and then only upon the condition that the Sublessee, Assignee or other successor in interest, excepting an approved encumbrancer(s), shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make any such sublease, assignment, sale, amendment, or transfer, except as, set forth herein, such action shall be deemed a breach of this Lease, excepting that an encumbrancer may enforce his rights in the manner hereinafter provided. Unless otherwise provided for in Part I, approval of one sublease, assignment, sale, amendment or transfer shall not validate a subsequent sublease, assignment, sale, amendment or

transfer, and the restrictions of this Section shall be severally binding upon each and every Sublessee, Assignee, Transferee and other successor in interest of the Lessee, excepting an encumbrancer.

B. For purposes of this Section, the creation of a partnership, corporation, joint venture, management agreement or other arrangement under which any person or entity other than Lessee is entitled to share in profits derived directly or indirectly from the leased premises or activities carried out thereon, shall require the written consent of Lessor and Lessee, unless Lessee is the majority owner (i.e. majority shareholder, majority partner, etc) of the business that is reorganized, then only written notice will be required.

C. Approval or disapproval of any sublease, assignment, amendment or transfer for any purpose whatsoever by the Lessee shall be within the sole discretion of Lessor. Lessor reserves the right to adjust the rental provisions of this Lease upon any sublease, assignment, amendment, or transfer, unless the Lessee is pre-authorized to approve subleases.

1.6 ENCUMBRANCE.

A. This Lease, or any right to or interest in this Lease or any of the improvements on the leased premises, may be encumbered for the purposes of securing a line of credit to develop and improve the leased premises.

B. Any encumbrance will:

- (1) be limited to the leasehold interest of the Lessee or subleasehold interest of the Sublessee; and
- (2) not jeopardize in any way Lessor's interest in the land; and
- (3) be subject to the written approval of the Lessor as well as the sureties. The Lessor shall not unreasonably withhold its approval to an encumbrance.

C. Lessee agrees to furnish as requested any financial statements or analysis pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of said encumbrance.

D. Lessor shall give each encumbrancer notice of, and the right to cure within a reasonable time, a default by Lessee or Sublessee under this Lease or Sublease, whichever is applicable. Lessor shall accept performance by the encumbrancer for covenants or other obligations under the Lease or Sublease, with the same force and effect as though performed by the Lessee or Sublessee.

E. In the event of default by Sublessee, an encumbrancer of any Sublease may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor and Lessee notice of the same character and duration as is required to be given to the Sublessee by the encumbrancer. If

notice of such sale is given and the Lessee fails to act, Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings.

- (1) to pay the encumbrancer the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such payment, plus foreclosure or sale costs incurred to the date of such payment; and
- (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Lessor, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the subleasehold described in said sublease subject only to current taxes and to conditions, restrictions, and reservations of record at the time of recording the approved encumbrance.

F. Each encumbrancer must provide, if Lessee or Lessor exercises the foregoing rights, all of the right, title, and interest of the Sublessee in the Sublease shall automatically terminate on the same date the right is exercised and the Lessor or Lessee, as the case may be, shall, on the same date, acquire the subleasehold interest; provided however, the acquisition of the subleasehold by Lessee or Lessor under these circumstances shall not serve to extinguish the sublease by merger with the Lease or otherwise. As between the Lessor and Lessee, Lessee shall have the first right to exercise the right to pay the amounts due as described above and to obtain the subleasehold interest. The Sublease shall require that the Sublessee will have the duty to execute any documents and take any action needed to effectuate the termination and transfer of Sublessee's subleasehold interest.

G. In the event Lessor or Lessee does not avail itself of the above rights and a sale occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Sublessee in the subleasehold covered by said encumbrance. It is further agreed that if the purchaser at such a sale is the encumbrancer, the encumbrancer may assign the subleasehold without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of the Sublease. If the encumbrancer is the purchaser, it shall be required to perform the Sublease only so long as it retains title thereto. If a sale, of the subleasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by Lessor will be required and said purchaser,

as successor in interest to the Sublessee, shall be bound by all the terms and conditions of the sublease and will assume in writing all the obligations thereunder.

H. In the event of default by the Lessee, the encumbrancer may exercise any rights provided for in such approved encumbrance, provided that before any sale of the leasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor notice of the same character and duration as is required to be given Lessee by such encumbrance and/or by applicable law. If notice of such sale be given, and the default of any of them upon which notice of sale is based shall then continue, Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:

- (1) To pay to the encumbrancer the full unpaid principal amount of the approved encumbrance plus unpaid interest accrued to the date of such payment, plus sale costs incurred to the date of such payment.
- (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Lessor, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution, plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note, issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the property described in this Lease subject only to current taxes and to conditions, restrictions and reservations of record at the time of recording the new encumbrance.

I. Each encumbrancer must provide, if Lessor exercises the foregoing rights, all right, title and interest of Lessee in the Lease shall terminate and Lessor shall acquire the Lease; provided, however, that such termination shall not relieve the Lessee from any obligation or liability which had accrued prior to the date of termination. Acquisition of the Lease by Lessor under these circumstances shall not serve to extinguish the Lease by merger or otherwise. The Lessee shall have the duty to execute any documents and take any action necessary to effectuate the termination and transfer of the Lessee's leasehold interest.

J. In the event Lessor does not avail itself of the rights set forth in this Section and any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Lessee in the leasehold estate covered by said approved

encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may assign the leasehold interest without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of this Lease. If the encumbrancer is the purchaser, it shall be required to perform this Lease only so long as it retains title thereto. If a sale, of the subleasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by Lessor of any assignment will be required and said purchaser, as successor in interest to the Lessee, shall be bound by all the terms and conditions of this Lease and will assume in writing all the obligations thereunder.

1.7 LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.

Lessee shall not permit to be enforced against the leased premises or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by Lessee.

Lessee shall discharge all such liens before any action is brought to enforce same; further, Lessee shall pay before becoming delinquent, all taxes, assessments, licenses, fees, and other like charges levied during the term of this Lease upon or against the leased land and all interests therein and property thereon, for which either Lessee or Lessor may become liable.

Upon request Lessee shall furnish Lessor written evidence duly certified that any and all taxes required to be paid by Lessee have been paid, satisfied, or otherwise discharged. Lessee shall have the right to contest any claim, asserted tax, or assessment against the property, by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless Lessor, United States and the leased premises and all interest therein and improvements thereon from any and all claims, taxes, assessments, and like charges and from any lien therefor, or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessor shall execute and file any appropriate documents with reference to real estate tax exemption of the land when requested by Lessee.

In addition to the rents, taxes and other charges herein described, Lessee shall pay charges for water, sewage, gas, electricity, telephone, trash, and other utility services as required for construction and or operation and maintenance of any improvements or as necessary for said leased premises.

1.8 LESSOR'S PAYING CLAIMS.

Lessor shall have the option to pay any lien or charge payable by Lessee under this Lease, or settle any action therefor, if the Lessee after written notice from the Lessor fails to pay or to post bond against enforcement. All costs and other expenses incurred by Lessor in so doing shall be paid to Lessor by Lessee on demand, with interest at the rate of eighteen percent (18%) per annum from the date of Lessor's payment until repayment is made. Failure to make such repayment on demand shall constitute a breach of this Lease.

1.9 SANITATION.

A. Lessee hereby agrees to comply with all applicable sanitation codes, requirements, or laws which may be related to the purpose of this document as set forth in Section B(1). Such compliance shall specifically include, but not be limited to, the sanitary regulations of the

U.S. Public Health Service. Lessee further agrees to at all times maintain the entire leased premises in a safe, sanitary condition, presenting a good appearance both inside and out in all buildings operated on the leased premises. Non-compliance with Section 1.9 shall constitute a breach of this Lease.

B. Lessee further agrees to comply with applicable, state, Navajo Nation and local laws, statutes, ordinances, regulations, court and administrative orders and decrees pertaining to all sanitation matters including but not limited to the storage and disposal of refuse, rubbish, other non-hazardous trash and any other regulated substances. Lessee further agrees that all solid waste, including but not limited to refuse, rubbish, other non-hazardous trash and any other regulated substance generated by the Lessee or by any Sublessee shall be disposed of only at a state or tribally certified public or private landfills, and Lessee or Sublessee as applicable shall maintain records to demonstrate compliance with this requirement.

C. Lessee agrees to maintain all records required by applicable law and regulations and to make such records available to appropriate officials of the Navajo Nation and federal government.

1.10 REGULATED SUBSTANCES.

Lessee shall not cause or permit any regulated substance (as defined in 2.1(A)) to be used, stored, generated or disposed of, on, or in the leased premises without first obtaining written consent from the Navajo Nation Environmental Protection Agency. If the Navajo Nation Environmental Protection Agency does not respond to a request for consent within thirty (30) days such consent shall be deemed given.

If regulated substances are used, stored, generated or disposed of, on, or in the leased premises, or if the leased premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor 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, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee.

This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, restoration or other costs of regulatory compliance mandated by the federal government or Navajo Nation. Without limitation of the foregoing, if Lessee causes or permits the presence of any regulated substance on the leased premises and such results in any contamination of the leased premises or other property 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 regulated substance on the leased premises. Lessees will first obtain Lessor's approval for any such remedial action.

1.11 LIABILITY INSURANCE

Unless otherwise provided, without limiting any liabilities or any other obligations of Lessee, Lessee will provide and

maintain, from the date the lease is approved and continuing until the Lease is terminated or expired, the minimum insurance coverages listed below. Coverage will be provided with forms and insurers acceptable to the Lessor until all obligations under this Lease are satisfied. All insurers must be a Nationally Accredited Insurance Company with a financial strength rating of "A" or the equivalent, and authorized to do business in the State where the leased premises are located. All policies required under this Lease shall name the Lessor and the United States as additional named insureds. These coverages are as follows:

- A. Workers' compensation insurance to cover obligations imposed by federal and state statutes of the entity having jurisdiction over the Lessee's employees working on the leasehold, and Employers' Liability insurance with a minimum amount as is required and regulated by the state in which the leased premises is located. In case of any contracted work on the leasehold, the Lessee will require the Contractor, and all subcontractors, to provide the same as above.
- B. Commercial General Liability Insurance to cover:
- (1) the minimum single amount, including a General Aggregate Limit, sufficient for each occurrence, as provided for in Part I.
 - (2) this policy shall cover property business interruption, bodily injury, broad form property damage, personal injury, death, blanket contract, independent contractor, product, completed operations coverage. The policy shall contain a severability of interests provision.
 - (3) If the leased premise is undeveloped, the Lessee must obtain the appropriate insurance, which shall, include the Lessor and the United States as additional named insureds.
- C. Commercial Automobile liability insurance with a combined single limit for bodily injury and property damage for each occurrence with respect to Lessee's owned, hired and non-owned vehicles assigned to or used in Lessee's business, shall be based upon the minimum amount required and regulated under the State in which the lease premises is located.
- D. If the Lessee is engaged in a profession, the Lessee shall carry Professional Liability insurance in an amount as is required and regulated under the State or Association for which the professional is licensed.
- E. Lessee, at its cost, shall maintain insurance coverage for full replacement cost on all of Lessee's personal property, Lessee's alterations, Lessee's utility installations, and Lessee's trade fixtures in, or about the leased premises. The proceeds from any such insurance shall be used by Lessee for the replacement of Lessee's personal property, alterations, utility installations, or trade fixtures only if Lessor repairs or rebuilds the leased premises.

F. The policies required by Sections B and C shall be endorsed to include the Navajo Nation, its agents, representatives, officers, directors, officials and employees and the United States as additional insureds and shall require that the insurance provided by Lessee shall be primary insurance and that any insurance carried by the Navajo Nation its agents, officials or employees shall be excess and not contributory insurance to that provided by Lessee.

G. An acceptable certificate of insurance shall be issued to the Navajo Nation by the Lessee, on the date the lease is approved or unless granted a postponement, by the Division of Economic Development or successors, as evidence that the required coverages are in full force and effect. The certificate shall indemnify this Lease and indicate the policies will not be canceled, terminated or materially altered unless at least thirty (30) days prior written notice is given to the Lessor.

Certificates of insurance shall be addressed as follows: Navajo Nation Division of Economic Development, P.O. Box 663 Window Rock, Arizona 86515

H. The Lessee may request to postpone the insurance requirements until either (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received; subject to Section 1.11 (B)(3). Such postponement shall be provided for in Part I and shall be at the sole discretion of the Division of Economic Development and shall not be unreasonably withheld.

I. Failure on the part of the Lessee to procure or maintain required insurance shall constitute a material breach of contract upon which the Lessor may immediately terminate this Lease.

J. Lessor reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.

K. Lessee and its insurers providing the required coverages shall waive all rights of recovery against the Navajo Nation and its agents, officials and employees, and the United States.

L. The insurance limits required under this Lease shall not limit the liability of the Lessee, nor relieve the Lessee of any obligation under this lease.

M. The Lessee shall not do or commit to be done anything in or upon any portions of the leased premises or bring or keep anything there which would in any way conflict with the conditions of any insurance policy upon the leased premises or in any way increase the rate of insurance upon the leased premises or on property kept there.

N. Lessor will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by Lessee proves to be inadequate or otherwise insufficient for any reason whatsoever.

FIRE AND CASUALTY INSURANCE.

- A. Lessee shall carry from the date the lease is approved, the minimum insurance coverages, unless granted a postponement, which shall be provided for in Part I, for either (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received. Lessee shall carry fire and casualty insurance with extended coverage endorsement, covering not less than full insurable value of all improvements on the leased premises. Said policy shall be obtained from a Nationally Accredited Insurance Company, with a financial rating of A or equivalent, licensed to do business in the State in which the leased premises are located and shall be written jointly to protect Lessee, Lessor and the United States and shall provide for notification to the Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason, including non payment of premiums.

A copy of said policy shall be sent to Lessor at the following address: Navajo Nation Division of Economic Development, P.O. Box 663, Window Rock, AZ, 86515.

- B. In the event of damage to any improvement on the leased premises, Lessee shall rebuild, repair or otherwise reinstate the damaged improvement or building in a good and substantial manner according to the plan and elevation of the improvement or building so destroyed or damaged or in accordance with any modified plan approved in writing by the Lessor prior to commencement of repair or reconstruction. Repair or reconstruction shall commence as soon as possible and, in any event, within one (1) year after the damage occurs and shall be pursued diligently. Insurance proceeds shall be deposited in an escrow account with an institution approved by Lessor. Lessee shall also deposit in said escrow account all additional funds required to reconstruct the damaged improvement. Escrow instructions shall include provisions that all funds so deposited shall be used to reconstruct the damaged improvements and that funds shall be disbursed during the progress of reconstruction on proper architect's, engineer's, or contractor's certificates. All money in escrow after reconstruction has been completed shall be paid to Lessee.

- C. In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all improvements on the leased premises during the last five (5) years of the term of this Lease, Lessee shall have the option to reconstruct said improvements. Lessee shall provide Lessor with a written notice of the exercise of Lessee's reconstruction option within thirty (30) days of the event of damage giving rise to Lessee's reconstruction option. Should Lessee exercise its option to reconstruct, Lessee shall commence reconstruction of the damaged improvements within ninety (90) days of Lessee's exercise of its reconstruction option and shall diligently pursue the reconstruction to completion. Should Lessee not exercise its option to reconstruct, this Lease shall

terminate one hundred and twenty (120) days after the event of damage giving rise to Lessee's reconstruction option. The leased premises shall be cleared of debris at Lessee's expense prior to termination of the Lease. Lessee shall not be charged rent during the period of debris removal unless Lessee occupies the leased premises beyond the Lease termination date, after which the Lessee will be charged hold over rental as provided herein. In the event Lessee does not reconstruct, all insurance proceeds shall be paid to Lessor.

- D. Any encumbrancer shall be named as a beneficiary under all insurance policies required by this paragraph and in the event of loss or damage to the buildings on the leased property while an approved encumbrance remains unpaid, the amount of such loss or damage (but not exceeding the remaining balance of the approved encumbrance) shall be paid to the encumbrancer on the condition that the encumbrancer agrees to comply with the reconstruction obligations set forth herein. If such amount paid to the encumbrancer is sufficient to repair the loss or damage or if Lessor or Lessee shall within three (3) months after such payment by the insurer to the encumbrancer deposit with the encumbrancer enough money to completely repair the loss or damage, when added to the amount paid by the insurer to the encumbrancer, the encumbrancer shall, upon written order of Lessor or Lessee, pay such monies for such repair, and it shall not be deemed a payment or credit on the encumbrance; but otherwise, at the expiration of such three (3) months said sum so paid by the insurer to the encumbrancer shall be applied and credited upon the approved encumbrance. It is understood and agreed that nothing herein shall relieve Lessee of its obligation to repair and/or replace the damaged improvement to a condition as good or better than before the damage occurred.

INDEMNIFY, DEFEND AND HOLD HARMLESS.

Except for Lessor's sole Negligence, Lessee shall indemnify, protect, defend and hold harmless the Lessor and the United States from and against any and all claims, loss of rents damages, costs, liens, judgments, penalties, permits, attorney's or consultant's fees, expenses and/or liabilities arising out of, involving, or dealing with, the occupancy of the leased premises by Lessee, the conduct of the Lessee's business, any act, omission, neglect or misconduct of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on the Lessee's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not litigated and/or reduced to judgment, and whether well-founded or not. In case any action or proceeding be brought against Lessor or the United States by reason of any of the foregoing matters, Lessee, upon notice from any Lessor or the United States, shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and the United States, and the Lessor and the United States shall cooperate with Lessee in such defense. Lessee shall have the right to control such defense and to settle or compromise the claim in cooperation with Lessor and the United States as long as such defense, settlement or compromise does not unduly prejudice Lessor and the United States.

1.14

EMINENT DOMAIN.

If, at any time during the term of this Lease, the leased premises or any part thereof is taken or condemned under the laws of eminent domain, then and in every such case, the leasehold estate and interest of the Lessee in said leased premises or part thereof taken shall forthwith cease and terminate. All compensation awarded by reason of any takings of the leased land and any taking of or injury to the buildings or improvements located thereon shall be awarded to the Lessee and the Lessor as their interests appear at the time of such taking provided that Lessee's right to such awards shall be subject to the rights of an encumbrancer to receive such awards as set out in an approved encumbrance. If the condemnation is less than the entire leased premises and/or improvements, the lease shall continue as for the remainder of the term of the lease, however the rental shall be reduced proportionately. If a temporary condemnation of all or a portion of the leased premises and/or improvements, lessee will be entitled to the entire amount of an award, whether paid by way of damages, rent or otherwise; however, if such condemnation extends beyond the term of the lease, such amounts will be apportioned among Lessor and Lessee based upon the duration of the term remaining following the condemnation and the duration of the condemnation following the end of the term of the lease.

C.

Lessee shall, within ten (10) days, from the mailing of the notice of default either:

- (1) Notify in writing to the Lessor that the default has been cured and submit documentation necessary to indicate the default has indeed been cured; or
- (2) Submit in writing to the Lessor a statement and explanation disputing the Lessor's determination that the Lease is in default and why the Lease should not be terminated; or
- (3) Request in writing to be given an additional ten (10) days to cure unless found not reasonably susceptible to cure within ten (10) days there is no default for such longer period of time as is reasonably required to cure. Any additional time granted to cure shall be in the discretion of the Division of Economic Development.

1.15

DEFAULT.

A. Time is declared to be of the essence of this Lease.

B. Lessor may determine the Lessee is in default for the following:

- (1) Lessee fails to pay monies or any other amounts such as posting a bond or acquiring insurance when due and such failure continues for ten (10) business days after notice of default is sent to Lessee.
- (2) Lessee fails to perform any of its material non-monetary obligations or duties under the lease when required and such failure continues for a period of ten (10) days after notice of default is sent to Lessee that such obligation or duty has not been performed; provided that if such failure is not reasonably susceptible to cure within ten (10) days, there is no default for such longer period of time as is reasonably required to cure such failure provided that Lessee commences a cure within ten (10) days after the notice of default is mailed and Lessee diligently pursues the cure.
- (3) Lessee abandons or surrenders the leased premises and if the operations required hereunder are not operated for a period of sixty (60) consecutive days for any reason other than a closure for major repairs or renovation, acts of god, casualty, war or insurrection, strikes or labor disputes or other matters beyond the reasonable control of Lessee after written notice thereof has been received by Lessee from Lessor.

D.

Should a default occur the Lessor may take any action in accordance with § 503 of the Navajo Nation Business Site Leasing Regulations of 2005. Additionally, Lessor may exercise the following options upon Lessee's default:

- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease; or
- (2) Re-enter the leased premises if the Lessee has abandoned the leased premises or has failed to conduct business for a period of time without notice and remove all persons and property therefrom, excluding the property belonging to authorized Sublessees, and re-let the leased premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to terminate the Lease thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of such 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 re-letting, collection, altering, and repairing, including attorney's fees and any real estate commissions actually paid, insurance, taxes and assessments 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

Initials: _____

	(3)	Take any other action deemed necessary to protect any interest of Lessor.		payments, as well as comply with the terms of the Lease.
	E.	No waiver of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant of this Lease.		D. If a grant of extension for time to cure is given, the Lessee shall diligently perform and complete the corrective actions within a time frame agreed, in writing, between the Lessor and Lessee.
	F.	Exercise of any of the remedies outlined in this Section shall not exclude recourse as 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.	1.17	MUTUAL TERMINATION
	G.	If any approved encumbrancer shall give Lessor, before any default shall have occurred in this Lease, a written notice containing the name and address and the interest in the leased premises of such encumbrancer, Lessor shall thereafter give to such encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given by Lessor to Lessee. Lessor shall accept such encumbrancer's performance of any of Lessee's covenants or other obligations under this Lease, with the same force and effect as though performed by Lessee. Upon providing such written notice, the encumbrancer shall have standing to pursue any appeals permitted by applicable statutes and regulations that Lessee would be entitled to pursue. Further, Lessor shall not terminate the Lease if an encumbrancer has commenced and is diligently pursuing a foreclosure action to terminate Lessee's interest in said Lease and has cured or is taking action to cure the breach that is the cause of the termination.	1.18	ATTORNEY'S FEES.
			1.19	NO PARTNERSHIP.
			1.20	TERMINATION OF FEDERAL TRUST.
1.16	REMEDIES			Nothing contained in this Lease shall operate to delay or prevent a termination of Federal Trust responsibility with respect to the land by the issuance of a fee patent or otherwise during the term of this Lease; however, such termination shall not serve to abrogate the Lease. The owners of the land and Lessee and their approved encumbrancers, surety or sureties, if any, shall be notified of any such change in the status of the land.
	A.	If the Lessee fails to cure pursuant to Section 1.15 the Lessor may at its option pursue the following:	1.21	OBLIGATIONS OF LESSEE.
	(1)	terminate this Lease, as a matter of law; or		While the leased premises are in trust or restricted status, all of Lessee's obligations under this Lease, and the obligations of their approved encumbrancers and sureties, are to the United States as well as to the Lessor.
	(2)	grant an extension of time to cure the default; or	1.22	STATUS OF SUBLEASES.
	(3)	pursue the execution on bonds or collection of insurance proceeds; or		Termination of this Lease, by cancellation or otherwise, shall not serve to cancel approved subleases and/or subtenancies, but shall operate as a temporary assignment to Lessor, without merger of the Lease and sublease or subtenancy, of any and all such subleases and/or subtenancies, until a lease can be obtained between the Sublessee, Assignee, and the Lessor, which such parties shall diligently pursue.
	(4)	pursue any other remedy set forth in the business site lease management plan.		
	B.	If the Lessor terminates the Lease, the Lessor shall send a termination letter to Lessee within a reasonable time period from the date of determination by the Lessor to terminate, by certified mail, return receipt requested. Lessee shall vacate the premises within thirty (30) days upon receipt of the termination letter, unless a appeal has been filed.	1.23	INSPECTION.
	C.	The termination shall become effective 31 days after mailing the letter. Any filing of an appeal shall not change the effective date of a cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite		A. Lessor and its authorized representatives, shall have the right, at any reasonable time during the term of this Lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the leased 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. Nothing in this paragraph shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.		Employment Act, 15 N.N.C. §§ 601 et seq. ("NPEA"), and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq. ("NBOA"). The terms and provisions of the NPEA and NBOA are specifically incorporated in, and become a part of this Lease. Violation of such laws by the Lessee shall constitute a breach of this Lease and provide grounds for suspension or termination of the Lease or any other remedy prescribed by the NPEA and NBOA, provided such compliance does not violate applicable federal laws.
	B. Lessor and its authorized representatives, shall have the right, during normal business hours, during the term of this Lease and if the Lease is terminated or expired, at any time, enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements as is required under the Navajo Nation Lease Compliance Form, and the Lessor and its authorized Representatives shall notify the Lessee not less than three (3) days before conducting the inspection. Such inspection shall not unreasonably interfere with the Lessee's business operations, unless the Lease has expired or is terminated.	1.28	MINERALS. All minerals, including sand and gravel, contained in or on the lease premises are reserved for the use of Lessor, unless placed on the leased premises by the Lessee. 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 improvements constructed by Lessee.
		1.29	SUCCESSORS AND ASSIGNS. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, 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, assigns, executors, administrators, employees and agents.
1.24	HOLDING OVER. Holding over by the Lessee after the termination of this Lease shall not constitute a renewal or extension thereof or give the Lessee any rights in or to the leased premises. In the event of a holding over by Lessee, the Lessee shall be subject to immediate removal and shall agree to pay as hold over rental an annual rental computed at double the rental amount charged during the twelve months immediately preceding the commencement of the holding over period. Accepting holdover rent from Lessee does not extend the Lease or constitute an election of remedies or adversely affect any of Lessor's other remedies.	1.30	INTEREST OF MEMBER OF CONGRESS. No member of, or delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this Lease if made with a corporation or company.
1.25	LEASE REQUIREMENTS NOT EXCLUSIVE. Nothing in this Lease shall be construed to relieve Lessee of any obligations pursuant to any Federal or Navajo Nation law for the protection of the environment or the public health, safety, or general welfare which is currently enacted or which may be enacted at a later date.	1.31	USE OF NAVAJO PRODUCED GOODS AND SERVICES. Lessee agrees to make all purchases of materials, equipment, goods, services and transportation from Navajo-owned businesses, whenever such purchase is economically feasible, as required by Navajo law.
1.26	DELIVERY OF LEASED PREMISES. A. At the termination or expiration 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. B. Lessee agrees to allow the Navajo Nation Environmental Protection Agency to conduct an environmental audit 360 days prior to the expiration or termination of such Lease. Such assessment shall be delivered to the Navajo Nation Division of Economic Development sixty (60) days prior to the expiration or termination or the delivery of the leased premises, whichever occurs first, in turn the Division of Economic Development shall submit to the Lessee a copy of such audit within ten (10) days of receipt.	1.32	AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS. The Lessee and the Lessee's employees, agents, and sublessees and their employees and agents agree to abide by all laws, regulations, and ordinances of the Navajo 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.
		1.33	GOVERNING LAW AND CHOICE OF FORUM. Except as may be prohibited by federal applicable law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of this Lease. All actions or proceedings brought by Lessee against the Navajo Nation in connection with or arising out of the terms and conditions of this Lease shall be brought only in the Courts of the Navajo Nation, and no action or proceeding shall be brought by Lessee against the Navajo Nation in any court or administrative body of any state.
1.27	NAVAJO PREFERENCE. In connection with all employment and contracting opportunities arising out of Lessee's activities under this Lease, Lessee shall give preference in employment and contracting to qualified Navajo individuals and certified contractors in compliance with the Navajo Preference in	1.34	CONSENT TO JURISDICTION. Lessee hereby consents to the legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Lessee within the Navajo Nation.

1.35 COVENANT NOT TO CONTEST JURISDICTION.

Lessee hereby covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full 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 similar challenges 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 Navajo Nation.

1.36 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 Navajo Nation.

1.37 SAVINGS CLAUSE.

It is agreed that if any provision of this Lease shall be determined to be void then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Lease is capable of two interpretations, one of which would render the provision void and the other of which would render the provisions valid, then the provision shall have the meaning which renders it valid.

1.38 QUALIFICATIONS OF BUSINESS.

In the event Lessee hereunder is a business entity, the person(s) executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee is a duly qualified business entity and all steps have been taken prior to the date hereof to qualify the Lessee to do business in the Navajo Nation; all franchise and corporate taxes have been paid to date; and all future forms, reports, fees, and other documents necessary to comply with applicable laws will be filed when due.

1.39 COMPLIANCE WITH NAVAJO NATION BUSINESS SITE LEASING REGULATIONS OF 2005.

Lessee, its sublessees and assignees and other successors in interest shall comply with the provisions of the Navajo Nation Business Site Leasing Regulations of 2005, which prescribe rules for the regulation of reservation business for the protection of Indian consumers on the Navajo Nation as required by 25 U.S.C. §415(e)

1.40 NO ORAL AGREEMENTS.

It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Lessor to Lessee with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this Lease.

1.41 VALIDITY.

This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party hereto until approved by the Economic Development Committee of the Navajo Nation Council and/or any other

2.0 SPECIAL TERMS AND CONDITIONS FOR NAVAJO NATION BUSINESS SITE LEASES WITH STORAGE TANKS

2.1 DEFINITIONS.

A. "Regulated Substance" is defined in Section 9001(7) of the Resources Conservation and Recovery Act, 42 U.S.C. 6991(7), which is any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (42 U.S.C. 9601(14)) (but not including any substances regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. 6921 et seq.) and petroleum).

B. "Storage Tank" is any tank which is defined by either of the following subsections.

(1) An underground storage tank as defined at 42 U.S.C. 6991 (1), or any storage tank, regardless of the percentage of such tank which is located above or below ground, which is not excluded under 42 U.S.C. 6991 (1) and which is used for the storage of regulated substances, or;

(2) Any above ground storage tank as defined in the proposed Navajo Nation Above Ground Storage Tank Act or underground storage tank as defined in the proposed Navajo Nation Underground Storage Tank Act upon passage of each respective proposed Act.

permits the presence of any hazardous or regulated substance on the premises and such results in any contamination of the leased premises or other property 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 premises to the condition existing prior to the contamination by any such regulated substance on the premises. Lessee shall first obtain Lessor's approval for any such remedial action.

B. Lessee shall provide the Navajo Nation Environmental Protection Agency and the Navajo Nation Division of Economic Development with a clear and legible copy of all notices or reports concerning storage tank installation, testing, leakage, 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 Nation Environmental Protection Agency shall be by first class mail to:

UST-AST Program
Navajo Nation Environmental Protection Agency
Post Office Box 339
Window Rock, Navajo Nation (Arizona) 86515

2.2 REGULATED SUBSTANCES.

A. Lessee shall not cause or permit any regulated substance (as defined in 2.1(A)) to be used, stored, generated or disposed of on or in the premises without first obtaining written consent of the Navajo Nation Environmental Protection Agency. If the Navajo Nation Environmental Protection Agency does not respond to a request for consent within thirty (30) days consent shall be deemed granted.

If regulated substances are used, stored, generated or disposed of on or in the premises, or if the premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee.

This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, restoration or other costs of regulatory compliance mandated by the federal government or Navajo Nation. Without limitation of the foregoing, if Lessee causes or

and,

Navajo Nation Division of Economic Development
Post Office Box 663
Window Rock, Navajo Nation (Arizona) 86515
or their respective institutional successors.

2.3 FINANCIAL RESPONSIBILITY FOR STORAGE TANKS.

If Lessee or Sublessee installs or operates storage tanks on the leased property, the Lessee or Sublessee shall post a bond, obtain insurance or provide such other evidence of financial responsibility that meets all the requirements of 40 C.F.R. Part 280, Subpart H regardless of whether the storage tank in question is an aboveground or underground storage tank. Lessee shall provide proof of this bond, insurance, or other qualifying financial responsibility mechanism to the Division of Economic Development. The bond, insurance or other qualifying financial responsibility mechanism shall remain in effect for the term of the base lease or sublease, and any renewals thereof, and shall not be released or terminated until such time as the Division of Economic Development certifies that the facility is in compliance with all applicable law and regulations, or that the tanks have been removed and the site has been remediated, or that the base lease or sublease has been transferred and the new operator has provided proof of an adequate bond, insurance or otherwise satisfied the 40 C.F.R. Part 280, Subpart H financial responsibility requirements. It shall be the responsibility of the Lessee and the Sublessee to provide the Navajo Nation Division of Economic Development with all proof required for release of bond or termination of insurance coverage.

2.4 ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS.

A. Entry Audit: If storage tanks are located at the Lease site, the Lessee will supply the Navajo Nation Environmental Protection Agency and

the Navajo Nation Division of Economic Development with a complete copy of the report and underlying data generated in preparation of a Phase Two environmental audit before Lessee places any regulated substance in the storage tanks or releases any regulated substances from the storage tanks but no later than ninety (90) days after the Lease is approved by the Lessor.

The Lessee shall notify the Navajo Nation Environmental Protection Agency and the Division of Economic Development, or any institutional successor, of the firm chosen to perform the Phase Two Environmental audit prior to the performance of such audit. Lessor may accept or decline the choice of environmental auditor within twenty (20) days of written notice by Lessee. If Lessor does not respond within twenty (20) days of receipt of the Lessee's written notice, the environmental auditor is deemed accepted. If, however, the most recent prior Lessee of the premises of the Navajo Nation has performed a Phase Two environmental audit on the premises at or after the termination of the prior tenancy, Lessee is not required to perform a Phase Two environmental audit if Lessee agrees to be conclusively legally bound by the findings of the above referenced Phase Two environmental audit.

- B. Environmental Audit(s): Lessee shall pay to the Navajo Nation the amount of \$15,000 which will be held by the Navajo Nation during the term of the Lease. One year after Lessee's rental obligation commences Lessee shall pay \$5,000 toward payment of the \$15,000 and shall pay \$5,000 at the end of second and third years of Lessee's rent payment obligation.

The amounts shall be deposited at the Navajo Nation Division of Economic Development:

P.O. Box 663
Window Rock, Arizona 86515

This sum is in addition to any other rental obligations of Lessee. This sum shall be used to pay for a Phase Two environmental audit to be performed during the last year of the Lease and any other environmental audit(s) during the term of the Lease which Lessor determines, based on probable cause, to be reasonably necessary to ascertain whether environmental contamination by regulated substances has occurred. The Navajo Nation Environmental Protection Agency shall determine whether an audit shall be performed.

If the Navajo Nation Environmental Protection Agency determines an environmental audit should be performed at the leased premises prior to the Lessee's deposit of the entire \$15,000 deposit and the amount deposited is insufficient to pay for the environmental audit, and the environmental audit determines regulated substances are unlawfully present, Lessee shall, upon written demand by Lessor, promptly deposit with Lessor an amount sufficient to pay for the environmental audit or to bring Lessee's deposit to \$15,000, whichever is less. If Lessor performs an environmental audit pursuant to this article during the term of the Lease which finds

regulated substances unlawfully present and which is financed by all or part of the above referenced sum, Lessee shall, at the end of the year in which the audit is completed, deposit funds with the Navajo Nation sufficient to reestablish the amount deposited prior to the audit and to reimburse the Navajo Nation for any amount the Navajo Nation spent on the environmental audit in excess of the \$15,000 deposit.

The deposit shall be kept in an account by the Navajo Nation Division of Finance on behalf of the Lessee to meet the expenses of the obligations stated above. At the termination of the Lease and upon completion of all environmental audits, removal and remediation to be performed on the premises, the Navajo Nation shall return any of the money deposited to the Lessee which was not spent to conduct environmental audits of the leased premises or to remediate or remove regulated substances which were released on the leased premises.

Nothing stated herein shall be construed to limit Lessee's liability for costs associated with investigation, or remediation, of regulated substances located on the leased premises including Lessee's liability for litigation costs and attorneys fees.

2.5 OWNERSHIP AND REMOVAL OF STORAGE TANKS

- A. The ownership and removal responsibility for any regulated substances or petroleum product manufacturing, processing, storage, or conveyance facilities placed in or on the leased premises shall be the responsibility of the Lessee. All facilities or storage tanks must comply with applicable federal, state, Navajo Nation and local law including requirements for corrosion protection, spill and overfill protection and leak detection. Any repairs made to such facilities or storage tanks must comply with applicable repair standards. Lessee shall provide the appropriate Division of Economic Development department with complete and legible copies of all documents establishing Lessee's ownership of, lease of, or acquisition of any other use interest in any storage tanks installed on the leased premises.
- B. Unless otherwise notified by the Lessor, regulated substances and storage tanks are the property of the Lessee who placed them on the property and do not become the property of the Lessor for RCRA liability purposes unless, or upon the expiration of the Lease. Lessee is the owner for RCRA, 42 U.S.C. 6991(3), purposes of any storage tanks placed on the leased premises. Petroleum manufacturing, processing, storage, storage tanks, or conveyance facilities shall be removed by Lessee unless notified by Lessor in writing not to remove all of part of such property.
- C. Prior to termination or expiration of the Lease and prior to vacancy of the property the Lessee shall remove those improvements that are subject to removal as described above and below, assess the site for potential contamination, remediate any contamination discovered, and satisfy or actively and in good faith seek resolution of any third party damages which may have occurred. Should

any of the above activities extend past the termination or expiration date of the Lease, the Lease shall be extended and Lessee shall remain financially responsible for completing these activities. The bond, unless waived, or the insurance of this Lease shall not be released or terminated until these activities are completed.

3.0 SPECIAL TERMS AND CONDITIONS FOR NAVAJO NATION BUSINESS SITE LEASES WITHIN THE NAVAJO NATION SHOPPING CENTERS

3.1 SPECIAL ACCOUNTING PROVISION FOR SHOPPING CENTERS.

When an accounting of Gross Receipts is required under the Lease in order to determine a percentage rent, the Lessee shall on a quarterly basis submit to Lessor, no later than , certified statements of gross receipts. Failure to submit aforementioned statements on a timely basis shall be considered a breach of the Lease and the Lease may be subject to cancellation. With said statements, Lessee shall tender payment of any balance due under the percentage rental fee as set forth in Section D. Said statement shall be prepared by a Certified Public Accountant, licensed in the State of Arizona, New Mexico or Utah, in conformity with GAAP. Any duly authorized representative of the United States Government, or any qualified accounting agent or agents appointed by the Lessor, shall have access to and the right to examine and audit any pertinent books, documents, papers, and records of Lessee's tenants, if any, relating to this Lease during the normal business hours of any working day. Lessee shall insert a similar provision in all subleases and shall make available to said representative, agent, or agents, all books and records of Lessee's tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises. The acceptance by the Lessor of any monies paid to Lessor by Lessee as percentage rental for the leased premises as shown by any statement furnished by Lessee shall not be an admission of the accuracy of said statement, or of the sufficiency of the amount of said percentage rental payment, but the Lessor shall be entitled at any time within four (4) years after receipt of any such percentage rental payment to question the sufficiency of the amount thereof and/or the accuracy of the statements furnished by Lessee to justify the same and shall have the right to examine and/or audit as hereinbefore described. Therefore, Lessee shall for said period of four (4) years after submission to the Lessor any such statement keep safe and intact all of Lessee's records, books, accounts, and other data which in any way bears upon or are required to justify in detail any such statement, and Lessee shall insert a provision in all subleases requiring similar retention of records.

3.2 FIXTURES AND PERSONAL PROPERTY.

Any trade fixtures, signs, and other personal property of Lessee not permanently affixed to the premises shall remain the property of Lessee and Lessor agrees that Lessee shall have the right, provided that Lessee be not in default under the terms of this Lease, at any time, and from time to time, to remove any and all of its trade fixtures, signs, and other personal property which it may have stored or installed in the premises, including but not limited to counters, shelving, showcases, mirrors, and other movable personal property. Nothing contained in this Article shall be deemed or construed to permit or allow the Lessee to move such personal property, without the immediate replacement thereof with similar personal property or better quality, as to render the premises unsuitable for conducting the type of business specified in this Lease. Lessee, at its expense, shall immediately repair any damage occasioned to the premises by reason of the removal of any such trade fixtures, signs, and other personal property, and upon the last day of the Lease Term or a date of earlier termination of this Lease, shall leave the premises in a neat and clean condition, free of debris.

All improvements to the premises by Lessee including, but not limited to, light fixtures, floor coverings, and partitions, but excluding trade fixtures and signs, shall be considered

as improvements and shall become the property of Lessor upon expiration or earlier termination of this Lease, unless Lessor by written notice given prior to the date of expiration or upon the date of earlier termination of this Lease shall require Lessee to remove such improvements in which case Lessee shall repair any damage caused to the premises by such removal so as to return the premises to its original condition, ordinary wear and tear excepted.

Lessee shall pay before delinquency all taxes, assessments, license fees, and public charges levied, assessed, or imposed upon its business operation, as well as upon its trade fixtures, leasehold improvements (including, but not limited to, those which Lessee is required to make in accordance with the provisions of this Lease), merchandise, and other personal property in, on, or upon the premises. In the event any such items of property are assessed within property of the Lessor, then, and in such event, such assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessments. Lessor shall determine the basis of prorating of any such assessments and such determination shall be binding upon both Lessor and Lessee.

3.3 REPAIRS AND MAINTENANCE.

Lessee agrees at all times, and at its own cost and expense, to repair, replace, and maintain in good condition the premises and every part thereof, except that portion of the premises to be maintained by Lessor as hereinafter provided, and including without limitation the utility meters, pipes, and conduits, all fixtures, the store fronts, all Lessee's signs, locks, and closing devices, and all window sash, cases, or frames, door and door frames, floor coverings, including carpeting, terrazzo, and other special flooring, and all such items or repair, maintenance, alteration and improvement or reconstruction as may at any time or from time to time be required by any governmental agency having jurisdiction thereof. All glass, both exterior and interior, is at the sole risk of Lessee, and any glass broken shall be promptly replaced by Lessee with glass of the same kind, size, and quality.

On default of Lessee in making such repairs, replacements, or maintenance work and upon reasonable written notice to Lessee, not less than 30 days, Lessor may, but shall not be required to make such repairs, replacements and other such work for Lessee's account, and the expense thereof shall constitute and be collectible as additional rent.

A. Lessor shall keep and maintain in good and leasable condition the roof, exterior walls, structural parts of the premises, the fire protection system, structural floor, and pipes and conduits outside the premises for the furnishings to the premises of various utilities (except to the extent that the same are the obligations of the appropriate public utility company); provided, however, that Lessor shall not be required to make repairs necessitated by reason of the negligence of Lessee or anyone claiming under Lessee, or by reason of the failure of Lessee to perform or observe any conditions or agreements in this Lease contained, or caused by alterations, additions, or improvements made by Lessee or anyone claiming under Lessee. Anything to the contrary notwithstanding contained in this Lease, Lessor shall not in any way be liable to Lessee for failure to make repairs as herein

specifically required unless the Lessee has previously notified Lessor in writing of the need of such repairs and Lessor has failed to commence and complete said repairs within a reasonable period of time following receipt of the Lessee's written notification. As used in this Section, the expression "exterior walls" shall not be deemed to include store fronts, plate glass, window cases, or window frames, door or door frames security grills, or similar enclosures. It is understood and agreed that Lessor shall be under no obligation to make any repairs, alterations, renewals, replacements, or improvements to and upon the premises of property installed or kept thereon by Lessee.

- B. Lessee agrees to permit Lessor and any of their authorized representatives to enter the premises at all times during usual business hours for the purpose of inspecting the same. Lessee further covenants and agrees that Lessor may go upon the premises and make any necessary repairs to the premises and perform any work thereon (i) which may be necessary to comply with any laws, ordinances, rules, or regulations of any public authority or terms of any insurance policy or policies or (ii) that Lessor may deem necessary to prevent waste or deterioration in connection with the premises if Lessee does not make or cause such repairs to be made or performed or cause such work to be performed promptly after receipt of written demand from Lessor or (iii) that Lessor may deem necessary to perform construction work incidental to any portion of the Shopping Center adjacent to, above, or below the premises. Nothing herein contained shall imply any duty on the part of Lessor to do any such work which, under any provisions of this Lease, Lessee may be required to do, nor shall it constitute a waiver of Lessee's default in failing to do the same. No exercise by Lessor of any rights herein reserved shall entitle Lessee to any damage for any injury or inconvenience occasioned thereby nor to any abatement of rent.

3.4 LESSEE'S RIGHT TO MAKE ALTERATIONS.

Lessor agrees that Lessee may, at its own expense and after giving Lessor notice in writing of its intention to do so, from time to time during the term hereof, make alterations, additions, and changes in and to the interior of the premises (except those of a structural nature) as it may find necessary or convenient for its purposes, provided that the value of the premises is not thereby diminished, and provided, however, that no alterations, additions, or changes costing in excess of those allowed under the terms of the lease may be made without first procuring the approval in writing of Lessor. In addition, no alterations, additions, or changes shall be made to any store front, mechanical systems, the exterior walls, or roof of the premises, nor shall Lessee erect any mezzanine or increase the size of same, if one be initially constructed, unless and until the written consent and approval of Lessor shall first have been obtained. In no event shall Lessee make or cause to be made any penetration through the roof of the premises without the prior written approval of Lessor. Lessee shall be directly responsible for any and all damages resulting from any violation of the provisions of this Article. All alterations, additions, or changes to be made to the premises which require the approval of Lessor shall be under the supervision of a competent architect, competent licensed structural engineer, or competent licensed and bonded contractor and made in accordance with plans and specifications with

respect thereto, approved in writing by Lessor before the commencement of work, where such approval is required pursuant to the provisions of this Article. All work with respect to any alterations, additions, and changes must be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the premises shall at all times be a complete unit except during the period of work. Upon termination of Lessee's leasehold estate such alterations, additions, or changes shall be considered as improvements and shall not be removed by Lessee, but shall become a part of the premises, unless Lessor by written notice given prior to the date of expiration or upon the date of earlier termination of this lease shall require Lessee to remove such improvements in which case Lessee shall repair any damage caused to the premises by such removal so as to return the premises to its original condition, ordinary wear and tear excepted. Any such changes, alterations, and improvements shall be performed and shall have the work performed in such a manner as not to obstruct the access to the premises or any other Lessee in the Shopping Center.

In the event that Lessee shall make any permitted alterations, additions, or improvements to the premises under the terms and provisions of this Article, Lessee agrees to carry insurance covering any such alteration, addition, or improvement; it being expressly understood and agreed that none of such alterations, additions, or improvements shall be insured by Lessor under such insurance it may carry upon the building of which the premises are a part, nor shall Lessor be required under any provisions for reconstruction of the premises to reinstall any such alterations, improvements, or additions.

3.5 POSSESSION AND USE.

Possession of the premises shall be delivered to Lessee free and clear of all tenants and occupants and the rights of either. Lessee shall use the premises solely for the purposes and under the trade names specified in Article 9 hereof. Lessee shall not use or permit the premises to be used for any other purpose or purposes or under any other trade name whatsoever without the written consent of the Lessor. Lessee shall not, without the prior written consent of Lessor, sell merchandise from vending machines or allow any coin operated vending machines on the premises without the written consent of the Lessor. Lessee further covenants and agrees that it will not use or suffer or permit any person or persons to use the premises or any part thereof for conducting therein a secondhand store, auction, distress or fire sale or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations, and requirements of the Navajo Nation, and where applicable, the state, county, and city wherein the Shopping Center is situated, or of other lawful authorities, and that during said term the premises, and every part thereof, shall be kept by the Lessee in a clean condition, free of any objectionable noises, odors, or nuisances, and that all health, fire, and police regulations shall, in all respects and at all times be fully complied with by Lessee.

Lessee may not display or sell merchandise or allow carts, portable signs, devices or any other object to be stored or to remain outside the defined exterior walls or roof, permanent doorways of the premises, or in hallways. No aerial or antenna shall be erected on the roof or exterior walls of the premises without first obtaining, in each instance, the written consent of Lessor. Any aerial or antenna so installed without such written consent shall be subject to removal without notice at any time. In addition, Lessee will not solicit in any manner in any of the automobile parking lots and common areas of the enclosed mall of the Shopping Center without having first obtained the written approval of Lessor. Lessor reserves the right to further regulate the activities of Lessee in

regard to deliveries and servicing of the premises, and Lessee agrees to abide by such further regulations of Lessor.

3.6 LESSEE'S CONDUCT OF BUSINESS.

Lessee covenants and agrees that, continuously and uninterrupted from and after its initial opening for business, it will operate and conduct the business for which it is permitted except while the premises are uninhabitable by reason of fire or other casualty or condemnation. Lessee agrees that it will keep the premises in neat, clean and orderly condition. Lessee agrees that all trash and rubbish of the said Lessee shall only be deposited within receptacles as provided by Lessor and that there shall be no other trash receptacles permitted to remain outside of the building. Lessor agrees to cause such receptacles to be emptied and trash removed at Lessee's cost and expense as set out in Article 11 hereof.

Lessee agrees that commencing with the opening for business by Lessee in the premises and for the remainder of the term of this Lease, Lessee shall remain open for business those hours and days which are regular and customary for such business. Lessee further agrees to have its window displays, exterior signs and exterior advertising displays adequately illuminated continuously during such hours. It is agreed, however, that the foregoing provision shall be subject to any governmental regulations or labor union contracts in its hours of operation so prescribed by such governmental regulations or labor union contracts, as the case may be.

Lessee will not allow the premises to be used for any organized political or religious meetings or activity. Lessee shall, at all times during the term hereof, comply with all laws and regulations of the United States and the Navajo Nation applicable to Lessee's conduct of business on the premises. Lessee shall employ its best efforts to operate the business conducted on the premises in a manner that will produce the maximum volume of gross sales. Lessee shall use only such space in the premises for office, clerical and other non-selling purposes as is reasonably required for Lessee's business on the premises.

If Lessee sells Franchise Products or Services, and where it is so required by the Franchisor, Lessor agrees throughout the term of this Lease not to lease any other space in the Shopping Center to any Lessee whose primary business is the sale of the same Franchise Products or Services. Lessee must inform Lessor in writing, and provide written documentation, of this Franchise Requirement.

3.7 ADVERTISING MEDIA.

Lessee shall not affix or maintain upon the glass panes and supports of the show windows (and within 24 inches of any window), doors and the exterior walls of the premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items unless Lessee shall have first received the written approval of Lessor as to size, type, color, location, copy, nature and display qualities. Anything to the contrary of this Lease notwithstanding, Lessee shall not affix any sign to the roof of the premises. In addition, no advertising medium shall be utilized by Lessee which can be heard or experienced outside Lessee's premises, including without limiting the generality of the foregoing: flash lights, searchlights, loudspeakers, phonographs, radios or televisions; nor shall Lessee display, paint or place or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center, whether belonging to Lessee, or to Lessee's agent or to any other person; nor shall Lessee distribute, or

cause to be distributed, in the Shopping Center, any handbills or other advertising devices without having first obtained the written approval of Lessor.

3.8 COMMON AREAS.

The term "common areas" refers to all areas within the exterior boundaries of the Shopping Center which are now or hereafter made available for general use, convenience and benefit of Lessor and other persons entitled to occupy Floor Area in the Shopping Center, including, but not limited to, automobile parking areas, parking structures, driveways, sidewalks, walkways, and landscaped and planted areas.

Lessee and its employees, agents, patrons and invitees are, except as otherwise specifically provided in this Lease, authorized, empowered and privileged to use the common areas in common with other persons during the term of this Lease. The Lessor agrees, without cost or expense to Lessee, to construct or cause to be constructed, such common areas generally as are necessary for the successful operation of the Shopping Center and to maintain and operate, or cause to be maintained and operated (except as hereinafter provided with reference to cost of maintenance), said common areas at all times following completion thereof, for the benefit and use of the customers and patrons of Lessee, and other Lessees, owners and occupants of the Land constituting the Shopping Center of which the premises are a part.

Lessor shall keep or cause to be kept said common areas in a neat, clean and orderly condition, properly lighted and landscaped, and shall repair any damage to the facilities thereof, but all expense in connection with said common areas shall be charged to the Lessee and prorated in the manner hereinafter set forth. It is understood and agreed that the phrase "expenses in connection with said common areas" as used herein shall be construed to include, but not be limited to, all expenses in connection with said common areas for (i) a management fee (not to exceed five percent (5%) of minimum annual and percentage rent collections); (ii) bookkeeping and accounting; (iii) legal services; (iv) all general maintenance and repairs, or painting, restriping, cleaning, sweeping and janitorial services; maintenance and repair of sidewalks, curbs, and Shopping Center signs; maintenance and repair of sprinkler systems, planting and landscaping; (v) lighting and other utilities; (vi) directional signs and other markers and bumpers; (vii) personnel to implement such services including, if Lessor deems necessary, the cost of security guards; (viii) applicable real and personal property taxes and assessments on the improvements and land comprising said common areas; (ix) any governmental imposition or surcharge imposed upon Lessor or assessed against any portion of the common areas; (x) a security alarm system for the Lessees in the Shopping Center; (xi) depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); and (xii) adequate public liability and property damage insurance on the Shopping Center building and common areas; Lessor may cause any or all of said services to be provided by any independent contractor or contractors. Anything to the contrary contained hereinabove notwithstanding, all expenses in connection with the original construction and installments of the common areas shall be at the sole cost and expense of Lessor of the Shopping Center and shall not in any event be charged to Lessee.

Should Lessor add to or make available additional common areas not originally contemplated as part of the Shopping Center, then said expenses in connection with maintenance of said common areas shall also include all of the aforementioned expenses incurred and paid in connection with said additional common areas.

Lessor shall at all times have the right and privilege of determining the nature and extent of the common areas and of making such changes therein and thereto which in its opinion are deemed to be desirable and for the best interest of all persons using said common areas, including but not limited to the location and relocation of driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, and all other facilities thereof. Nothing contained herein shall be deemed to create any liability upon Lessor or the United States for any damage to motor vehicles of customers or employees, or for loss of property within such motor vehicles.

Lessor shall also have the right to establish, change, alter and amend, and to enforce against Lessee and the other users of said common areas such reasonable rules and regulations (including the exclusion of employee's parking therefrom) as may be deemed necessary or advisable for the proper and efficient operation and maintenance of said common areas. The rules and regulations herein provided may include without limitation, the hours during which the common areas shall be open for use. Lessor may establish a system or systems of validation or other type of operation, including a system of charges against nonvalidated parking checks of users, and the Lessee agrees to conform to and abide by all such rules and regulations in its use and the use of its customers and patrons with respect to the automobile parking areas of the common areas; provided, however, that all such rules and regulations and such types of operation or validation of parking checks and other matters affecting the customers and patrons of Lessee shall apply equally and without discrimination to all parties entitled to the use of said automobile parking facilities.

Lessor reserves the right, to utilize portions of the common areas for carnival-type shows and entertainment, outdoor shows, displays, product shows, advertising purposes, community activities and other uses which, in Lessor's reasonable judgment, serve the interest of the Shopping Center or provide a community service to the Navajo community. The above shall not include any prolonged activity which directly competes with or interferes with Lessee's business or any portion of Lessee's business.

Lessor shall at all times during the term of this Lease have the sole and exclusive control of the common areas, and may at anytime during the term exclude and restrain any person from use or occupancy thereof, excepting, however, bona fide customers, patrons and service - suppliers of Lessee, and other Lessees of Lessor who make use of said areas in accordance with the rules and regulations established by Lessor from time to time with respect thereto. In addition to the rights of Lessee hereunder in and to the areas in this Article referred to, it shall at all times be the duty of Lessee to keep all of said areas free and clear of any obstructions created or permitted by Lessee or resulting from Lessee's operation and to permit the use of any said areas only for normal parking and ingress and egress by the said customers, patrons, employees and agents.

If in the opinion of Lessor, unauthorized persons are using any of said areas by reason of the presence of Lessee in the premises, Lessee, upon demand of Lessor, shall enforce Lessor's rights against all such unauthorized persons by appropriate proceedings. Nothing herein shall affect the rights of Lessor at any time to remove any such unauthorized persons from said areas or to restrain the use of any said areas by unauthorized persons.

It is understood that the employees of Lessee and the other Lessees of Lessor within the Shopping Center and the employees of other businesses within the Shopping Center shall not be permitted to park their automobile in the automobile parking areas of the common areas which

may be designated for patrons of the Shopping Center. Lessor agrees to furnish and/or cause to be furnished either within the Shopping Center parking area, or reasonably close thereto, space for employee parking. Lessor at all times shall have the right to designate the particular parking area to be used by any or all of such employees and any such designation may be changed. Lessee and its employees shall park their cars only in those portions of the common areas, if any, designated by Lessor.

Lessee's share of common area expenses shall be equal to Lessee's proportionate percentage. The term "Lessee's proportionate percentage" as used through this Lease shall be equal to a fraction the numerator of which is the Floor Area of the premises and the denominator of which shall be the Floor Area of all the areas available for exclusive use and occupancy by the Lessees of the Shopping Center.

The term "Floor Area" as used throughout this Lease shall be deemed to mean and include all areas for the exclusive use and occupancy by the Lessees of the Shopping Center measured for each Lessee from the exterior surface of exterior walls (and from the extensions therefore, in the case of openings) and from the center of interior partitions, including mezzanines, warehousing or storage areas, clerical or office areas, employee areas and restrooms.

Within thirty (30) days following the end of each calendar quarter or, at Lessor's option, each calendar year, Lessor shall furnish Lessee a statement covering the calendar quarter or year just expired, certified as correct by a certified public accountant or an authorized representative of the Lessor, showing the total of such common area expenses, the amount of Lessee's share of such common area expense for such calendar quarter or year and the payments made by Lessee with respect to such period as set forth in (i) through (xii) of this Article. If Lessee's share of such common area expenses exceed Lessee's payments made, Lessee shall pay Lessor the deficiency within ten (10) days after receipt of such statement. If said payments exceed Lessee's share of such common area expenses, Lessee shall be entitled to offset the excess against payments next thereafter to become due Lessor.

Failure of Lessee to pay any of the charges required to be paid under this Article 11 shall constitute a default under the terms hereof in like manner as failure to pay rental when due.

3.9 SPECIAL SUBLEASE REQUIREMENT FOR SHOPPING CENTERS.

The Lessee may enter into subleases, in whole or in part, without the approval of the Lessor, provided:

- A. Lessee provides a copy of the sublease to the Lessor; and
- B. Lessor receives a portion of the rent from the subleasing, as agreed between the Lessor and Lessee; and
- C. the purposes set forth in the sublease is legitimate and for lawful purposes.

3.10 SPECIAL INSURANCE REQUIREMENT FOR SHOPPING CENTERS.

Certificates of insurance shall be addressed as follows: Navajo Nation Shopping Centers, P.O. Box 478, Window Rock, Arizona 86515

3.11

SPECIAL RECONSTRUCTION PROVISION FOR SHOPPING CENTERS.

In the event the premises be damaged by fire or other perils, covered by Lessor's Fire and Extended Coverage Insurance, Lessor shall:

- A. Within a period of one hundred and eighty (180) days thereafter, commence repairs, reconstruction and restoration of said premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect; or
- B. In the event of a partial or total destruction of the premises, only during the last three (3) years of the term hereof, Lessor and Lessee shall each have the option to terminate this Lease upon giving written notice to the other of exercise thereof within thirty (30) days after such destruction. For the purposes of this paragraph, "partial destruction" shall be a destruction of an extent of at least thirty-three and one-third percent (33 1/3%) of the then full replacement cost of the premises as of the date of destruction. All insurance proceeds, in the case of reconstruction shall be held in trust and applied to the payment of such reconstruction, as such reconstruction progresses.
- C. In the event the premises shall be damaged as a result of any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Lessor's Fire and Extended Coverage Insurance, to any extent whatsoever, the Lessor may, within one hundred and eighty (180) days following the date of such damage, commence repair, reconstruction or restoration of said premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect, or within said period elect not to so repair, reconstruct or restore said premises in which event this Lease shall cease and terminate. In either such event, Lessor shall give the Lessee written notice of its intention within said period.
- D. In the event of any reconstruction of the premises under this Article said reconstruction shall be in strict conformity with the provisions of this Lease set forth as "Description of Lessor's Work" and "Description of Lessee's Work." Notwithstanding that all reconstruction work shall be performed by Lessor's contractor, unless Lessor shall otherwise agree in writing, Lessor's obligation to reconstruct the premises shall be only to the extent of the work as described in "Description of Lessor's Work"; Lessee, at its sole cost and expense, shall be responsible for the repairs and restorations of all items set forth in "Description of Lessee's Work" and the replacement of its stock in trade, trade fixtures, furniture, furnishings and equipment. Lessee shall commence such installation of fixtures, equipment and merchandise promptly, upon delivery to it of possession of the premises and shall diligently prosecute such installation to completion.
- E. Upon any termination of this Lease under any of the provisions of this Article, the parties shall be released thereby without further obligations to the other party coincident with

the surrender of possession of the premises to the Lessor, except for items which have theretofore accrued and be then unpaid. In the event of termination, all proceeds from Lessor's Fire and Extended Coverage Insurance covering items set forth in "Description of Lessor's Work" and Lessor's premises shall go to Lessor.

- F. All items of rent must abate for any period of time that Lessee is prevented from operating in the Premises due to such damage and destruction.

3.12

SIGNS.

Subject to specific requirements for each shopping center included as an attachment to each shopping center lease, and incorporated therein as a material term, Lessee shall, at its own cost and expense, install a suitable identification sign of such size, design and character as Lessor shall first approve in writing at a place or places designated by Lessor. Lessee shall maintain any such sign or other installation in good condition and repair. Other than such permitted signs, Lessee shall not place or install or suffer to be placed or installed or maintain any sign upon or outside the Premises or in the Shopping Center. Lessee shall not place or install or suffer to be placed or installed on the exterior of the Premises any awning, canopy, banner, flag, pennant, aerial, antenna or the like; nor shall Lessee place or maintain on the glass of any window or door of the Premises any sign, decoration, lettering, advertising matter, shade or blind or other thing of any kind. Lessor shall have the right, without liability and with or without notice to Lessee, to remove any signs installed by Lessee in violation of this Paragraph and to charge Lessee for the cost of such removal and/or any repairs necessitated thereby.

3.13

ADDITIONAL NOTICE REQUIREMENT FOR SHOPPING CENTERS.

In addition to all other Notice requirements in the Lease, Notices relating to Navajo Nation Shopping Centers shall be sent to:

General Manager
Navajo Nation Shopping Centers
P.O. Box 478
Window Rock, (Navajo Nation) Arizona 86515

3.14

LESSOR'S RESERVATIONS AND RIGHTS

Lessor reserves the absolute right to effect such other tenancies in the Shopping Center as Lessor, in the exercise of its sole business judgment, shall determine to best promote the interests of the Shopping Center, subject to the terms of this Lease. Lessee does not rely on the fact, nor does Lessor represent, that any specific Lessee or number of Lessees shall during the term of this Lease occupy any space in the Shopping Center. This Lease is and shall be considered to be the only agreement between the parties hereto and their representatives and agents. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations and warranties between the parties and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

**** END OF PART II ****

A tract of land situate in the SW 1/4 of Section 12, T16N, R20W, N.M.P.M., near TSAYATOH Chapter, McKinley County, New Mexico and more particularly described as follows:

Commencing at a common corner for Sections 11, 12, 13 & 14 and being the Southwest of the herein described tract of land and the Real Point of Beginning;

Thence $N00^{\circ}52'00''E$ along section line a distance of 568.92' to the Northwest corner;

Thence $S89^{\circ}08'00''E$ along a distance of 780.00' to the Northeast corner;

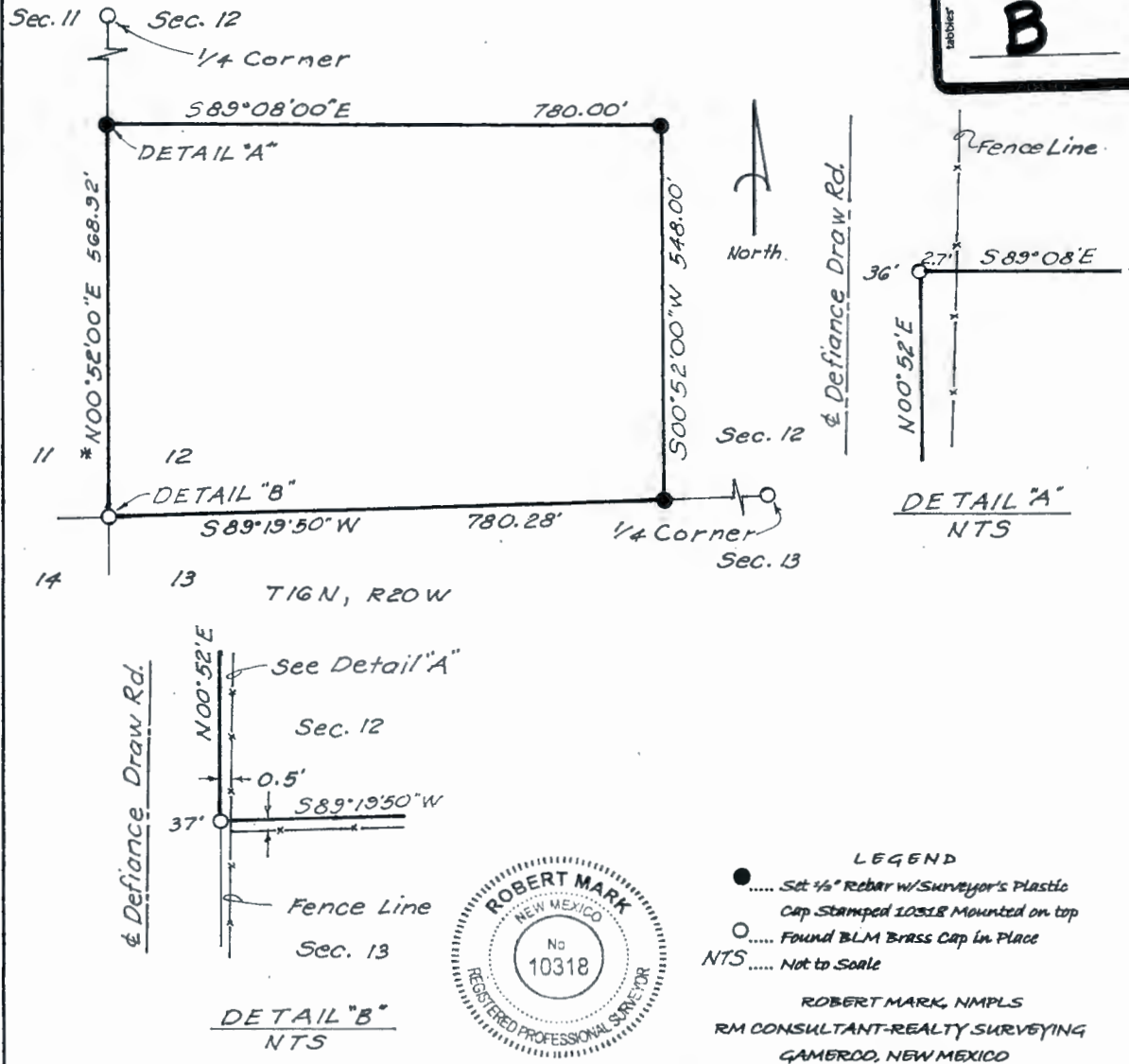
Thence $S00^{\circ}52'00''W$ a distance of 548.00' to a point on southerly section line of Section 12 and the Southeast corner;

Thence $S89^{\circ}19'50''W$ along said section line a distance of 780.28' to the Southwest corner and the Point of Beginning.

Containing 10.00 acres more or less and being subject to any and all existing easements and/or Rights-of-Way.

Notes: 1. Section 12 is Navajo Nation Fee Land recorded as Chisilley Land Code #2-115-096-275-264 filed in the Office of the Clerk of McKinley County, New Mexico.

2. Section line bearing shown as $N00^{\circ}52'00''E$ is used for bearing reference and is derived from surveys in Section 11 by Depaull Engineering & Surveying LLC as shown on Boundary Surveys & Land Division Plat dated 12/28/07.



CERTIFICATE: I hereby certify that this Survey Plat shown hereon is prepared from an actual field survey performed by me; that the survey meets the Minimum Standard for Land Surveys in New Mexico and that the survey is true and correct to the best of my knowledge and belief.

Robert Mark 6-6-2016
Robert Mark, N.M.P.L.S. No. 10318 DATE

BOUNDARY SURVEY PLAT
OF 10.00 ACRE TRACT OF LAND
ECONOMIC DEVELOPMENT PROJECT
SW 1/4, SECTION 12, T16N, R20W, N.M.P.M.,
TSAYATOH, MCKINLEY CO., NEW MEXICO

Surveyed By: RM Date: 6-8-2016
Drawn By: RM Date: 6-10-2016
Scale: 1" = 200' Dwg. No. NWQ-15



THE NAVAJO NATION

RUSSELL BEGAYE
JONATHAN NEZ

October 7, 2016

Eastern Regional Business Development
ATTN: John Largo
PO Box 250
Church Rock, NM 87311

Re: Land Withdrawal for Eastern Regional Business Development Office

Dear Mr. John Largo:

Enclosed for your information and use is an approved Land Withdrawal Designation for Tsayatoh Chapter. The Designation is for 100 acres for Community Development purposes located on Navajo Nation Fee Lands within Southwest Quarter of Section 12, Township 16 North, Range 20 West., NMPM, McKinley County, New Mexico.

On June 16, 2015, the Resources and Development Committee of the Navajo Nation Council (RDCJN-33-15) delegated the Director of Navajo Land Department (NLD), Division of Natural Resources (DNR), the power and authority to give final approval of all Land Withdrawal Designations on the Navajo Nation.

The Land Withdrawal Designation has been approved for five (5) years if no development has transpired during the (5) year period you must notify and request another five (5) year designation from Navajo Land Department (NLD). Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Mike Halona", is written over a horizontal line. The signature is stylized and cursive.

W. Mike Halona, Department Manager III
Navajo Land Department
Division of Natural Resources

xc: Project Review



12/23/2015

John Largo, Sr. Economic Development Specialist
D.E.D. - Eastern RBDO
Navajo Nation
PO Box 250
Church Rock, NM 87311

Mr. Largo,

I wish to secure a Business Site Lease consisting of 10 acres for a wood pellet manufacturing plant within the TsaYaToh Chapter at the corner of Highway 264 and County Road 1. The business will focus on providing reasonably priced wood pellets and in the future a number of environmentally friendly products.

Based on having worked for the Bureau of Indian Affairs and the Navajo Nation, there is a need for independent and entrepreneurial individuals. The business would bring another source of income for the community of Navajo and its community members. This business will be the seed for things to come based on the success of the business along with research and development; composite boards, briquette logs, recycling of paper and plastic, and off the grid pellet stoves would be based on the current manufacturing process.

The business would be a responsible and efficient consumer of the Nation's forest having minimal impact on land and air quality. The wood pellets are easier to handle and provide an efficient output of heat compared to less efficient sources like split wood and electricity. The consumer will have a product that maximizes the amount of heat provided for their home and peace of mind by utilizing a renewable energy.

I have a Bachelor's of Science in Business Administration with an emphasis in Management and an Associate of Science in Natural Science from Haskell Indian Nations University in Lawrence, K.S. I am available to answer any questions or address any concerns you may have, I can be reached at (505) 592-6082 or by email at sosila.llc@gmail.com. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Halona". The signature is stylized with a large, sweeping "B" and a cursive "H".

Brian Halona, CEO



4/28/2017

Resource Development Committee
164 Reviewers
Navajo Nation
PO Box 3390
Window Rock, AZ 86515

Committee Members & 164 Reviewers,

I wish to request a reduced amount for annual rent in order to ensure success for a wood pellet manufacturing plant in the community of Tse Ya Toh area utilizing approximately (10) ten acres upon which site improvements and a building approximately 5,000 square feet in size will be built. The business will focus on providing reasonably priced wood pellets and in the future, a number of environmentally friendly products.

Currently on Part 1. Section D. Rental of the Lease:

Year 1	\$0.00 per year	Rental Postponement
Year 2-4	\$1.00 per year	Development Period
Years 5-9	\$17,000 per year (or \$1,416.67 per month)	
Years 10-14	\$17,850 per year (or \$1,487.50 per month)	
Years 15-19	\$18,743 per year (or \$1,561.92 per month)	
Years 20-24	\$19,680 per year (or \$1,640.00 per month)	
Year 25	\$20,664 per year (or \$1,722.00 per month)	

My request:

Year 1	\$0.00 per year	Rental Postponement
Year 2-4	\$1.00 per year	Development Period
Years 5-9	\$12,000.00 per year (or \$1,000.00 per month)	
Years 10-14	\$13,080.00 per year (or \$1,090.00 per month)	
Years 15-19	\$14,257.20 per year (or \$1,188.10 per month)	
Years 20-24	\$15,540.35 per year (or \$1,295.03 per month)	
Year 25	\$16,938.98 per year (or \$1,411.58 per month)	

The requested rental change would help to offset personnel costs, equipment costs, operating expenses, equipment depreciation, inflation and during this 25 year lease term the company will be making principal and interest payments on a BIDE Loan. The company would be paying taxes to the Navajo Nation and to McKinley county, along with rental and loan payments, the requested reduced rental rate will assure the company success.

Based on having worked for the Navajo Nation and the Bureau of Indian Affairs, there is a need for independent and entrepreneurial individuals. The business would bring another source of income for the community of Tse Ya Toh and its community members. This business will be the seed for things to come based on the success of the business along with research and development; composite boards, briquette logs, recycling of paper and plastic, and off the grid pellet stoves would be based on the current manufacturing process.

The business would be a responsible and efficient consumer of the Nation's forest having minimal impact on land and air quality, while minimizing the chance of large destructive fires like the Assayii Lake/Bowl Canyon Fire by reducing the wood fuel in our Nation's forest. The wood pellets are easier to handle and provide an efficient output of heat compared to less efficient sources like split wood and electricity. The consumer will have a product that maximizes the amount of heat provided for their home and peace of mind by utilizing a renewable energy. The air quality from burning coal is severely impacted in a negative way, causing respiratory illnesses and impacting the air quality of the local community.

I have a Bachelor's of Science in Business Administration with an emphasis in Management and an Associate of Science in Natural Science from Haskell Indian Nations University in Lawrence, K.S. I can be reached at (505) 592-6082 or by email at sosila.llc@gmail.com to answer any questions or address any concerns you may have on the feasibility of my business. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brian Halona', with a stylized, flowing script.

Brian Halona, CEO
SÓSILA, L.L.C.

ENVIRONMENTAL SUMMARY
Sosila Business Site



DATE: January 27, 2017

Requesting Party: John Largo, Eastern RBDO / DED

Reviewed by: Garyald Benally, Environmental Specialist, RED / DED

Summary of Compliance Determinations (if non-NEPA environmental review process):

1. Historic Preservation:

2. Fish and Wildlife:

3. Navajo Environmental Protection Agency: Reviewed by NNEPA

Summary of Compliance with Environmental Laws:

Supporting documentation for the following determinations are found in *An Environmental Investigation Report for the Sosila Business Site EAS-1602* attached to this *Environmental Summary*. The proposed undertaking is the approval of a business site lease for the Sosila Business and Navajo Division of Economic Development to be used for the construction and operation of a facility to produce, stock and distribute wood pellets. The Sosila Business Site contains approximately 10.0± acres.

1. National Historic Preservation:

In compliance with National Historic Preservation Act of 1988, as amended, Section 106 consultation and 26 CFR 800.9 (b). A complete cultural resource inventory of the proposed SB site was completed by Genevieve Pino. This work is the subject of *A Cultural Resource Inventory of the Proposed Business Site Lease Project near Tsayatoh, McKinley County, New Mexico; Report No. GP-16-092, 8-4-2016, NNHPD No. HPD-16-706; on November 17, 2016. (An Environmental Investigation Report for the Sosila Business Site EAS-1602: Section III. Description of the Affected Environment, E. Cultural Resources, Historic Preservation [36 CFR Part 800]).*

2. Floodplain Management:

The Navajo Nation has not been included in the National Flood Insurance Program (NFIP) and there are no floodplain maps published which identify Special Flood Hazard Areas (SFHA) on the Navajo Nation. There is no evidence that any portion of SB site has even been inundated or impacted by flooding. (An Environmental Investigation Report for the Sosila Business Site EAS-1602: Section III. Description of the Affected Environment, B. Water Resources, a. Floodplain Management [Executive Order 11988]).

3. Wetlands Protection:

Potential impacts to wetlands by the proposed undertaking have been evaluated in accordance with Executive Order 11990. None of the jurisdictional wetlands characteristics as defined by the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers are present at the SB site. The soils at the SB site are not hydric soils as defined in AD-A176734, *Corps of Engineers Wetlands Delineation Manual, Jan 87. (An Environmental Investigation Report for the Sosila Business Site EAS-1602: Section IV. Environmental Consequences of the Proposed Action and Mitigation Measures, B. Water Resources, c. Wetland Protection [Executive Order 11990]).*

4. Endangered Species Act:

The Navajo Nation Natural Heritage Program (NNNHP) were consulted regarding the effect of the development and use of the SB site on federally listed threatened or endangered species: or any tribally listed species or other species of concern, on 03 August 2016 the NNHP responded with a determination that there are no species in proximity to the project. On September 1, 2016 Biological Resources Compliance Form NNDF&WL Review No. 16jrae103 was issued by the Navajo Nation Department of Fish and Wildlife with no Conditions of Compliance. Development is not expected to affect any federally listed threatened or endangered species: or any tribally listed species or other species of concern. (An Environmental Investigation Report for the Sosila Business Site EAS-1602: Section III. Description of the Affected Environment, D. Biotic Resources).

5. Air Quality:

Ambient air quality may be regarded as good to excellent, that is, near pristine. Primary pollution in the project area is primarily wind blown dust from loose topsoil common during times of high winds and dust from vehicular traffic along unimproved roads in the area. The SB site is not in a nonattainment area, an area that exceeds EPA air quality standards for pollutants (An Environmental Investigation Report for the Sosila Business Site EAS-1602: Section III. Description of the Affected Environment, C. Air Resources).

6. Sole Source Aquifer:

There are no designated sole source aquifers within the Navajo Nation. (An Environmental Investigation Report for the Sosila Business Site EAS-1602: Section III. Description of the Affected Environment, B. Water Resources, 2. Ground Water, a. Sole Source Aquifers [40CFR 149]).

7. Abandoned Mine Lands:

There are no abandoned mines on the SB site and no Abandoned Mine Lands (AML) project funding involved in the SB undertaking.

8. Navajo Nation's Solid Waste Act:

Solid wastes generated at SB will be collected and disposed of in conformance with applicable federal and Navajo Nation laws and regulations.;SB operations will not require use or generation of toxic or hazardous materials. (An Environmental Investigation Report for the Sosila Business Site EAS-1602: Section III. Description of the Affected Environment, G. Resource and Land Use Patterns, 3. Solid Waste a. Solid Waste b. Hazardous Waste.

I certify that the Environmental Review Process and the Compliance Determination Process in good faith has been complied with:



Environmental Reviewer
Division of Economic Development

DATE: 03-10-17



Environmental Reviewer
Navajo Nation Environmental Protection Agency

DATE: 03-10-17



THE NAVAJO NATION


RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT



March 31, 2017

MEMORANDUM

TO: John Largo, EDS
Regional Business Development Office
Division of Economic Development

FROM: 
Leha D. Arviso, Accounting Manager
Office of the Controller

SUBJECT: "Navajo Business and Procurement Act clearance check"

Pursuant to your memorandum dated March 30, 2017 (*Received in Account Receivable on 03/30/2017 @ 8:10 a.m.*) seeking a procurement clearance check on the following individual/ Business is as follows:

Name	Address/ BSL No./ Store Location	A. R. Debt Due	Action
So'Sila LLC	Post Office Box 682 Navajo, NM 87328	\$0.00	Procurement cleared

Thank you for complying with the "NNB&P ACT". Our office requests that all relevant information of the individual(s) / business (es) is provided to ensure accurate clearance check. The information contained in this memorandum is privileged and confidential. Therefore, when disseminating this information through the 164 review, block out information that are not applicable to the package if this procurement memo is to be included.

Should you have any questions, please contact Accounts Receivable Section at 871-6770. Thank you.

/mj

CC: Accounts Receivable



THE NAVAJO NATION


RUSSELL BEGAYE
PRESIDENT

OFFICE OF THE NAVAJO TAX COMMISSION
Post Office Box 1903 • Window Rock, Navajo Nation (Arizona) 86515-1903
(928) 871-6681 • (928) 871-7608 FAX

JONATHAN NEZ
VICE-PRESIDENT

MEMORANDUM

To: John Largo, Economic Development Specialist
Eastern Regional Business Development Office
Division of Economic Development

From: 
Effie Edsitty, Tax Compliance Officer
Office of the Navajo Tax Commission

Date: March 28, 2017

Subject: Procurement Clearance – So'Sila, LLC

Per your request, there was a review completed on:

So'Sila, LLC
P.O. Box 682
Navajo, NM 87328

As of today, So'Sila, LLC is **registered and is compliant** with our office under the Navajo Sales Tax and Possessory Interest Tax requirements.

If you have any questions or concerns, please contact me directly at (928) 871-7505 or eedstitty@navajotax.org

THE NAVAJO NATION



RUSSELL BEGAYE **PRESIDENT**
JONATHAN NEZ **VICE PRESIDENT**

Louise Johnson, Credit Manager

VIA: E-MAIL

MEMORANDUM

TO : John Largo, EDS
Eastern Regional Business Development Office
Division of Economic Development

FROM : ~~Louise Johnson, Credit Manager~~
~~Credit Services Department~~
~~Office of the Controller~~

DATE : March 30, 2017

SUBJECT : ***PROCUREMENT CLEARANCE***

To be in compliance with the Navajo Nation Business Procurement Act, you have requested procurement clearance by Letter dated March 30, 2017 for the following individual(s)/business. The following is our response:

XX The individual(s)/business listed ***do not have*** loans outstanding with the ***Navajo Nation Credit Services Department***.

Brian C. Halona So'Sila LLC. SSN#: XXX-XX-3392	PO BOX 682 Navajo, New Mexico 87328	Procurement Cleared
--	--	---------------------


Should you have any questions, please contact our office at (928) 871-6749.

xc: File/Chrono: lmc



M E M O R A N D U M

TO: John Largo, EDS
Eastern Regional Business Development Office
Division of Economic Development

FROM: 
Raymond Nopah, Chief Financial Officer
Division of Economic Development

DATE: March 31, 2017

SUBJECT: Procurement Clearance

Your request was received on **March 31, 2016** at the Support Services Department. The information is provided on the individual you requested for a Procurement Check and Clearance.

_____ The individual listed **do not** have any loans outstanding with the Navajo Nation Business Industrial Development Fund.

XXX The Following individual(s) listed **do** have a loan with the Navajo Nation Business Industrial Development Fund.

Brian C. Halona
D.B.A. So'Sila, LLC.
PO BOX 682
Navajo, NM 87328
**Cleared

If you have any questions, please do not hesitate to call me at (928) 871-7382.



NAVAJO
NATION
SHOPPING
CENTERS
INCORPORATED

Think. Plan. Live. Shop Navajo!

4/17/2017

John Largo, EDS
Eastern Regional Business Development Office/ DED
P. O. Box 250
Churchrock, NM 87311

VIA EMAIL

CROWNPOINT

PINEHILL

Dear Mr. Largo,

NAVAJO PINE

Pursuant to your letter seeking procurement clearance for So'Sila LLC., P.O. Box 682, Navajo, NM 87328. The Navajo Nation Shopping Centers, Inc. has never done business with the business, therefore, is cleared for procurement.

WINDOW ROCK

If you have any questions please call me at (928)871-2218 or email me at mjohn@nnsinc.com.

ST. MICHAELS

Thank you,

PINON

Melvilena John
Melvilena John
Accounts Receivable Technician
Navajo Nation Shopping Centers, Inc.

DILKON

xc: File

TUBA CITY

KAYENTA

SHIPROCK



**Estimate of Market Rent
Appraisal Report**

**Proposed Business Site Lease for
Tsayatoh Wood Pellet Manufacturing
County Road 1
McKinley County, NM**

**Effective Date of Appraisal
August 5, 2016**

**Date of Inspection
August 5, 2016**

**Date of Report
August 16, 2016**

**Prepared For:
Navajo Nation
Division of Economic Development
Eastern Regional Business Development Office
Church Rock, New Mexico**

**Prepared By:
James Q. Gipson**

Gipson Investments, Inc.

Appraisal and Consulting

3005 Northridge Drive, Suite I

P.O. Box 2458

Farmington, NM 87499

Phone 505-327-5470

August 16, 2016

Mr. John Largo, SEDS
Eastern Regional Business Development Office
P.O. Box 250
Church Rock, NM 87311

RE: Estimate of Market Rent, Tsayatoh Wood Pellet Manufacturing, located on County Road 1, south of NM 264, McKinley County, NM

As requested, I have estimated the market rent of the proposed business site lease, as of August 5, 2016, which is the date of the last inspection of the subject property. The intended use of this report is for negotiation of a lease rate. The client and intended user is the Shiprock Regional Business Development Office.

Attached is my Appraisal Report that outlines my analysis and conclusions. Please note the contingent and limiting conditions that are a part of this report. This report is prepared in accordance with the current version of the Uniform Standards for Professional Appraisal Practice (USPAP).

In my opinion, the market rent of the subject property is:

Current, as of August 5, 2016:

10.00 Acre Business Site Lease	\$17,000 / Year, or
	\$1,416.67 / Month

Respectfully submitted,



James Q. Gipson
NM 642-G (April 30, 2017)

RECONCILIATION AND FINAL ESTIMATE OF MARKET RENT

A summary of the indication provided by the approaches follows:

The Cost Approach was not performed.

Sales Comparison Approach:	\$ 650 / Year
Income Approach:	\$ 17,000 / Year

The two approaches fail to form a tight range of indicated market rent. Market extracted overall rates are based on estimated land values, both of which are difficult to support. Although the annual rent forms a wide range due to size differences, the rent per acre forms a much tighter range, with all of the lease comparables indicating from \$1,500 to \$2,000 per acre, ranging in size from 1.245 to 7.995 acres. Four of the five comparables were much smaller than the subject' however, adjustments for size did not appear to influence the data utilized.

Because the sales comparison approach included imputed interest rates which are difficult to support and formed a wide range with no obvious reason to choose one over the other, I choose the market rent conclusion from the income approach to arrive at the subject's market rent estimate. Therefore, it is my opinion that the best estimate of the Guaranteed Minimum Rent (GRM) for the subject property, as of August 5, 2016, is:

GMR - \$ 17,000 Per Year
(\$1,416.67 Per Month)

Market Conditions

Adjustments for market conditions are typical in long term leases and would be appropriate. A convenient method is an adjustment based on the change in the Consumer Price Index (CPI) or some other economic indicator, however, a valuation reflecting current market conditions could be undertaken. Whatever the method that is selected, an adjustment to reflect changes in market conditions is recommended at the end of each five year period.

Percentage Rent

None of the five rental comparables includes percentage rent, based on gross sales. Leases are examined during the lease and no percentage rent is supported at this time.

Term

A 25 year term is the most common in the data that is identified and would be selected for this parcel.

CONCLUSION

The rental amount for the subject should be as follows:

Rental Amount - \$17,000 Per Year (\$1,416.67 Per Month), with adjustments at
5 year intervals.
Lease Term - 25 Years

Appraisal Summary

The appraisal report submitted by James Q. Gipson, of Gipson Investments, Inc., provided an opinion of a starting rental rate of \$17,000 per year for the 10-acre wood pellet manufacturing site. This summary is attached for review.

Mr. Brian Halona has submitted the attached letter requesting a lower starting rental rate of \$12,000 per year. Please review the letter requesting the lower rental rate and his justifications for a lower rental rate.

Based on Mr. Halona receiving a small business loan for the entire portion of this project, the Eastern RBDO therefore agrees with Mr. Halona's request for a lower rental rate based on his \$650,000 investment into the project. Mr. Halona will be required to pay an average loan payment of \$4,000 per month for this small business loan. The lower rental per year will assist the tenant in paying back his loan investment.



NAVAJO NATION CORPORATION CODE

CERTIFICATE OF GOOD STANDING

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, the Director of the Business Regulatory Department, DO HEREBY
CERTIFY that

SO'SILA L.L.C.
File Number: 101926

a Corporation organized under the laws of the Navajo Nation Corporation Act,
did incorporate on December 23, 2014

I FURTHER CERTIFY that this corporation has filed all affidavits and
annual reports and has paid all annual filing fees required to date and, therefore,
is in good standing within the Navajo Nation.



IN WITNESS WHEREOF, I have hereunto
set my hand and affixed the official seal
of the Navajo Nation Corporation Code.
Done at Window Rock, the Capital of the
the Navajo Nation, this 13th
day of April, 2015 A.D.

Clarence Chee

Director, Business Regulatory
Division of Economic Development



RUSSELL BEGAY – President
JOHNATHAN NEZ – Vice President
SETH DAMON – Council Delegate



TSAYATOH COMMUNITY GOVERNANCE

P.O. Box 86
Mentmore, NM 87319
(505) 905-2649 : Fax (505) 905-0537
tsayatoh@navajochapters.org - Email
tsayatoh.nndes.org - Website

RESOLUTION OF THE TSAYATOH GOVERNANCE

TSAY-17-05-06

Resolution approving a business site lease between the Navajo Nation and Brian Halona, Chief Executive Officer of So'Sila LLC, for the Tsayatoh Wood Pellet Manufacturing business, and also supporting the approval of the business site lease for So'Sila LLC, to the Resources and Development Committee of the Navajo Nation Council, and further directing the Navajo Nation President to sign the lease on behalf of the Navajo Nation.

WHEREAS:

1. The Tsayatoh Governance Government is a duly certified Chapter of the Navajo Nation Code; Title II, Section 4001 and 4006. Therefore is authorized to address and take action on the needs and concerns for the betterment of its people; and
2. The Eastern Regional Business Development Office, under the Navajo Nation Division of Economic Development, has goals to promote and create employment and business opportunities in the private sectors of the Eastern Navajo Agency economy; and
3. Brian Halona, Chief Executive Officer of So'Sila LLC, submitted an application to the Eastern Regional Business Development Office within the Division of Economic Development to secure a business site lease on Navajo Nation Fee Land at Tsayatoh, Navajo Nation, New Mexico; and
4. The Eastern Regional Business Development Office has reviewed the application of So'Sila LLC, and recommends approval of a business site lease with So'Sila LLC on Navajo Nation Fee Land at Tsayatoh, New Mexico; and
5. The purpose of this lease is to formally designate a site for the So'Sila LLC Wood Pellet Manufacturing business. The business site shall be used by lessee to operate a wood pellet manufacturing business. The leased premises shall not be used by Lessee, Sub-lessee(s) or Assignee(s), for any purpose or purposes other than those set out above, except with the prior written consent of the Lessor. Consent may be withheld, granted, or granted upon conditions, in the sole discretion of the Lessor. Lessee agrees that it will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose; and
6. The people of the Tsayatoh Governance community, having reviewed the request and the need for the lease approval, hereby recommends approval of a lease to the Navajo Nation.

WALTER HUDSON
Chapter President

DAVID LEE
Chapter Vice President

SARPHINA BLACKGOAT
Secretary/Treasurer

TERI WATCHMAN
Land Board

VACANT
Community Service Coordinator

VACANT
Accounts Maintenance Specialist

NOW THEREFORE BE IT RESOLVED:


1. The Tsayatoh Governance approves a business site lease between the Navajo Nation and Brian Halona, Chief Executive Officer for So'Sila LLC, for the Wood Pellet Manufacturing Business, and also requests approval of the business site lease for So'Sila LLC, to the Resources and Development Committee of the Navajo Nation Council, and further directs the Navajo Nation President to sign the lease on behalf of the Navajo Nation.
2. The Tsayatoh Governance requests the Eastern Regional Business Development Office, within the Navajo Nation Division of Economic Development to take any and all necessary actions to process and obtain approval of the above transaction for So'Sila LLC to locate in Tsayatoh, Navajo Nation, and New Mexico.
3. The Tsayatoh Governance further recommends to the Resources and Development Committee of the Navajo Nation Council to approve of a lease between the Navajo Nation and So'Sila LLC.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Tsayatoh Governance at a duly called meeting in Tsayatoh, Navajo Nation, New Mexico, at which a quorum was present and that same was passed by a vote of 20 in favor, 1 opposed and 4 abstained this 16th day of May, 2017.

MOTION: Carlene Benally

SECOND: Anita Martinez


Walter Hudson
President

WALTER HUDSON
Chapter President

DAVID LEE
Chapter Vice President

SARPHINA BLACKGOAT
Secretary/Treasurer

TERI WATCHMAN
Land Board

VACANT
Community Service Coordinator

VACANT
Accounts Maintenance Specialist

EXECUTIVE SUMMARY

So'Sila, LLC

Navajo Nation Fee Land Business Site Lease Approval
for Tsayatoh Pellet Manufacturing Business
Navajo Nation Tribal Fee Land

This Navajo Nation Fee Land Business Site Lease, between the Navajo Nation, Division of Economic Development and So'Sila, LLC, is being submitted for consideration and approval to the 164 Reviewers and the Resources and Development Committee of the Navajo Nation Council. The 10-Acre So'Sila, LLC business site was a part of the 100-Acre site in Tsayatoh Chapter officially withdrawn for economic development purposes by the Navajo Land Department, within the Division of Natural Resources, on October 7, 2016.

The Navajo Nation Fee Land Business Site Lease will allow for the Construction, Operation and Management of a Pellet Manufacturing Business on Navajo Nation Tribal Fee Land in Tsayatoh, New Mexico. The attached Letter of Intent describes the intent of So'Sila, LLC for the business site lease.

The term of the Navajo Nation Fee Land Business Site Lease will be 25 years, with an option to renew for one additional term of 25 years, and a second additional term of 25 years, commencing on the approval date of the Navajo Nation President.

The rental is set at a flat rate determined by the appraisal, and further negotiated by the So'Sila, LLC and the Eastern RBDO. The rent will increase in five-year increments based on a lease escalator factor of nine percent for the first five-year period after the development period, and also by nine percent thereafter.

The Eastern Regional Business Development Office is respectfully requesting approval by the 164 reviewers and the Resources and Development Committee of the Navajo Nation Council to approve the Navajo Nation Fee Land Business Site Lease between the Navajo Nation and So'Sila, LLC.

**SUPPORTING DOCUMENTS
SO'SILA, LLC**

1. Executive Summary
2. Tsayatoh Chapter Resolution
3. Land Withdrawal
4. Legal Land Survey Document
5. Letter of Intent
6. Certificate of Good Standing
7. Procurement Clearances
 - a. Accounts Receivable, Office of the Controller
 - b. Navajo Tax Commission
 - c. Credit Services, Office of the Controller
 - d. Support Services, Division of Economic Development
 - e. Navajo Nation Shopping Center, Inc.
8. Environmental Summary
9. Navajo Nation Fee Land Business Site Lease Agreement
10. Navajo Nation Business Site Lease Agreement – Part II
11. Appraisal Summary



Document No. 008117

Date Issued: 06/05/2017

EXECUTIVE OFFICIAL REVIEW

Title of Document: BSL - NN & So'Sila LLC Contact Name: LARGO, JOHN P.

Program/Division: DIV. OF ECONOMIC DEVELOPMENT

Email: largojohn@hotmail.com Phone Number: 505-905-6400

☒ **Business Site Lease** Sufficient ☒ Insufficient ☐

1. Division: AP 4/1/17 Date: 10/2/17 ☒ ☐

2. Office of the Controller: 8/10/17 Date: 10/2/17 ☒ ☐

(only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review)

3. Office of the Attorney General: LPJ Date: 12/6/17 ☒ ☐

☐ **Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions**

1. Division: _____ Date: _____ ☐ ☐

2. Office of the Attorney General: _____ Date: _____ ☐ ☐

☐ **Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications**

1. Office of Management and Budget: _____ Date: _____ ☐ ☐

2. Office of the Controller: _____ Date: _____ ☐ ☐

3. Office of the Attorney General: _____ Date: _____ ☐ ☐

☐ **Navajo Housing Authority Request for Release of Funds**

1. NNEPA: _____ Date: _____ ☐ ☐

2. Office of the Attorney General: _____ Date: _____ ☐ ☐

☐ **Lease Purchase Agreements**

1. Office of the Controller: _____ Date: _____ ☐ ☐

(recommendation only)

2. Office of the Attorney General: _____ Date: _____ ☐ ☐

☐ **Grant Applications**

1. Office of Management and Budget: _____ Date: _____ ☐ ☐

2. Office of the Controller: _____ Date: _____ ☐ ☐

3. Office of the Attorney General: _____ Date: _____ ☐ ☐

☐ **Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval**

1. Division: _____ Date: _____ ☐ ☐

2. Office of the Attorney General: _____ Date: _____ ☐ ☐

☐ **Relinquishment of Navajo Membership**

1. Land Department: _____ Date: _____ ☐ ☐

2. Elections: _____ Date: _____ ☐ ☐

3. Office of the Attorney General: _____ Date: _____ ☐ ☐

☐ **Land Withdrawal or Relinquishment for Commercial Purposes**

Sufficient Insufficient

- | | | | | |
|------------------------------------|-------|-------------|--------------------------|--------------------------|
| 1. Division: | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Attorney General: | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases**

- | | | | | |
|-------------|-------|-------------|--------------------------|--------------------------|
| 1. NLD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. F&W | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. HPD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Minerals | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. NNEPA | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. DNR | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. DOJ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Rights of Way**

- | | | | | |
|------------------------------------|-------|-------------|--------------------------|--------------------------|
| 1. NLD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. F&W | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. HPD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Minerals | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. NNEPA | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Office of the Attorney General: | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. OPVP | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease**

- | | | | | |
|-------------|-------|-------------|--------------------------|--------------------------|
| 1. Minerals | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. OPVP | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. NLD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Assignment of Mineral Lease**

- | | | | | |
|-------------|-------|-------------|--------------------------|--------------------------|
| 1. Minerals | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. DNR | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. DOJ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **ROW (where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a ROW)**

- | | | | | |
|-------------|-------|-------------|--------------------------|--------------------------|
| 1. NLD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. F&W | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. HPD | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Minerals | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. NNEPA | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. DNR | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. DOJ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. OPVP | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **OTHER:**

- | | | | | |
|----------|-------|-------------|--------------------------|--------------------------|
| 1. _____ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. _____ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. _____ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. _____ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. _____ | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ
10/17/17 @ 1:53 pm
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 008117
SAS #:
UNIT: ECDU

☐ RESUBMITTAL

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

CLIENT TO COMPLETE	
DATE OF REQUEST: <u>OCT. 17, 2017</u>	ENTITY/DIVISION: <u>ECONOMIC DEVELOPMENT</u>
CONTACT NAME: <u>JOHN LARGO</u>	DEPARTMENT: <u>EASTERN RBDO</u>
PHONE NUMBER: <u>(505) 905-6400</u>	E-MAIL: <u>largejohn@hotmail.com</u>
TITLE OF DOCUMENT: <u>BUSINESS SITE LEASE Between Navajo Nation & So'sils LLC</u>	
DOJ SECRETARY TO COMPLETE	
DATE/TIME IN UNIT: <u>10/17/17 @ 2:55p</u>	REVIEWING ATTORNEY/ADVOCATE: <u>Christine Schwamberger</u>
DATE/TIME OUT OF UNIT:	
DOJ ATTORNEY / ADVOCATE COMMENTS	
<u>LEGALLY SUFFICIENT - SENT ELECTRONIC VERSION</u>	
<u>VIA EMAIL</u>	
REVIEWED BY: (PRINT) <u>CHRISTINE SCHWAMBERGER</u>	DATE / TIME <u>12.6.17 2:10</u>
SURNAMED BY: (PRINT) <u>AH</u>	DATE / TIME <u>12/6/17 3:06 pm</u>
DOJ Secretary Called: <u>John Largo</u>	for Document Pick Up on <u>12/6/17</u> At <u>336</u> By: <u>AH</u>
PICKED UP BY: (PRINT)	DATE / TIME:

NNDJ/DRRF-July 2013



RESOURCES AND DEVELOPMENT COMMITTEE
Special Meeting
March 12, 2018

ROLL CALL
VOTE TALLY SHEET:

Legislation # 0065-18: An Action Relating to Resources and Development Committee; Approving Business Site Lease for So'Sila, LLC for Tsayatoh Pellet Manufacturing Plant on Fee Land Within the Tsayatoh Chapter, Navajo Nation (McKinley County, New Mexico). *Sponsor: Honorable Seth Damon; Co-Sponsor: Honorable Benjamin Bennett*


MAIN MOTION: Jonathan Perry S: Leonard Pete V: 3-0-1 (CNV)

ROLL CALL VOTE TALLY:

YEAS: Benjamin Bennett, Jonathan Perry; and Leonard Pete

NOT VOTING: Alton Joe Shepherd (Presiding)

EXCUSED: Walter Phelps and Davis Filfred



Alton Joe Shepherd, Presiding Chairman
Resources and Development Committee

Shammie Begay, Legislative Advisor
Resources and Development Committee