

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0342-15

**DATE:** September 25, 2015

**TITLE OF RESOLUTION:** PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE LEASE MODIFICATION TO LEASE NO. TC-97-177 FOR GREGORY AND MYRA DRAPER DBA DRAPER GLASS COMPANY TO CHANGE THE INTEREST RATE FOR UNPAID LEASE RENT FROM 18% TO 5% PER ANNUM

**PURPOSE:** The purpose of the resolution is to approve modification number one to Business Site Lease No. TC-97-177 for Gregory and Myra Draper dba Draper Glass Company to change the interest rate for unpaid lease rent from 18% to 5% per annum..

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

PROPOSED STANDING COMMITTEE RESOLUTION

23<sup>rd</sup> NAVAJO NATION COUNCIL -- First Year, 2015

INTRODUCED BY

  
\_\_\_\_\_  
OTTSO  
(Prime Sponsor)

TRACKING NO. D342-15

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE LEASE  
MODIFICATION TO LEASE NO. TC-97-177 FOR GREGORY AND MYRA  
DRAPER DBA DRAPER GLASS COMPANY TO CHANGE THE INTEREST RATE  
FOR UNPAID LEASE RENT FROM 18% TO 5% PER ANNUM

BE IT ENACTED:

Section One. Findings

- A. The Resources Committee is established as a standing committee of the Navajo Nation Council. 2 N.N.C. §500(A).
- B. The Resources Committee of the Navajo Nation Council is empowered to grant final approval for non-mineral leases. 2 N.N.C. §501(B)(2).
- C. A request for a lease modification to Business Site Lease No. TC-97-177, attached as Exhibit B, to change the interest rate for unpaid rent from 18% to 5% per annum is attached as Exhibit C.
- D. The Navajo Business and Procurement Act Clearance Check is attached as Exhibit D.

Section Two. Approval

- A. The Navajo Nation hereby approves the Lease Modification One to Lease No. TC-97-177, as set forth in the documents as Exhibit A, to change the interest rate for unpaid rent from 18% to 5% per annum.

1 B. The Navajo Nation hereby authorizes the President of the Navajo Nation to  
2 execute this Lease Modification and all other documents necessary to effectuate  
3 the intent of this resolution.

4 C. The Navajo Nation hereby directs the Division of Economic Development to take  
5 all action necessary to ensure that this Lease Modification is properly recorded  
6 and distributed.  
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## LEASE MODIFICATION ONE

It is hereby agreed by and between the NAVAJO NATION, Lessor, and Gregory and Myra Draper dba Draper Glass Company, Lessee and \_\_\_\_\_, Surety, that the Lease covering the Business Site Lease, TC-97-177 be modified this \_\_\_\_\_ day of \_\_\_\_\_ to provide:

### Section 6: RENTAL

Paragraph 6 to read as:

Rental unpaid ten (10) days after the due date shall bear interest at **five percent (5%)** 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.

This modification does not change any of the terms and conditions, or stipulations except as specifically set forth herein. All other terms and conditions shall remain in force and effect.

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Gregory Draper, Lessee

Date: \_\_\_\_\_

\_\_\_\_\_  
Myra Draper, Lessee

Date: \_\_\_\_\_

NAVAJO NATION, LESSOR

By: \_\_\_\_\_  
President, Navajo Nation

Date: \_\_\_\_\_

APPROVED: \_\_\_\_\_

Pursuant to Secretarial Redelelegation Order  
209 DM 8, 230 DM 1 and 3 IAM 4.

\_\_\_\_\_  
Regional Director, Navajo Region  
Bureau of Indian Affairs

## L E A S E

tabbies  
**B**

THIS LEASE, in sextuplicate, is made and entered into this 10th day of July 1997 by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is Post Office Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and Gregory and Myra Draper dba Draper Glass Company, hereinafter called the Lessee, whose address is P.O. Box 2986, Tuba City, Arizona 86045 in accordance with the provisions of 25 U.S.C., Section 415 and 635, as implemented by the regulations contained in 25 CFR Part 162, and any amendments thereto relative to business leases on restricted lands which by this reference are made a part hereto.

## 1. DEFINITIONS

- A. "Secretary" means the Secretary of the Interior or his authorized representative, delegate, or successor.
- B. "Gross Receipts" means all income, including money and any other thing or 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 from or on the leased premises or any portion thereof. All income accruing from credit transactions shall be treated as "gross receipts" as of the date credit is extended. Gross Receipts shall not include amounts collected and paid out for a sales or 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 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 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 sales of fixtures, or good will, or the sale of improvements, including, but not limited to, corrals, buildings, livestock scales and holding pins.

- C. "Hazardous Substances" means and includes but is not limited to asbestos, polychlorinated biphenyls (PCBs), lead-based paints, and petroleum products, including crude oil or any fraction of it, and any natural gas liquids, synthetic gas and liquefied natural gas.

## 2. LAND DESCRIPTION

For and in consideration of the rents, covenants, and agreements hereinafter set out, the Lessor hereby leases to the Lessee the following described premises:

A Parcel of Land situated within Land Management District No. 08 of the Navajo Indian Reservation in the vicinity of Kayenta, Navajo County, Station of Arizona and is being more particularly described as follows:

COMMENCE at the Navajo Control System "KAY 27", a found Limbaugh Aerial Survey Brass Cap:

THENCE run N 37° 27' 28" E, 3,881.42 feet to the POINT OF BEGINNING of the herein described parcel of land; THENCE N 27° 03' 44" W, 217.80 feet; THENCE N 62° 56' 16" E, 200.00 feet; THENCE S 27° 03' 44" E, 217.80 feet; THENCE S 62° 56' 16" W, 200.00 feet to the Point of Beginning.

Being 1.00 acre(s), more or less, in area and being subject to any and all existing easements for underground utilities located therein.

All of the above land is located in Kayenta, County of Navajo State of Arizona, subject to any prior, valid, existing rights-of-way. There is reserved from the perimeter of the demised premises a right of way for utilities constructed by or on authority of the Lessor.

## 3. PURPOSE, UNLAWFUL USES

Lessee shall develop, use and operate the leased premises for the following purposes only:

Glass shop operation include sale of glass products and services.

The leased premises shall not be used by Lessee, Sublessee(s) or Assignee(s) for any purpose or purposes other than those set out above, except with the prior written consent of Lessor and the Secretary, which consent may be withheld, granted, or granted upon conditions, in the sole discretion of Lessor and the Secretary.

Lessee agrees that it will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

**4. TERM**

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

**5. CONDITION OF LEASED PREMISES**

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 and Lessee warrants that it has not relied on any warranty or representation made by or for Lessor or the United States, but solely upon Lessee's independent investigation.

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 the underground storage tank and/or other hazardous materials.

**6. RENTAL**

The Lessee, in consideration of the foregoing, covenants and agrees to pay in advance 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 greater of the following amounts as annual rental hereunder.

- (a) A percentage of gross receipts of business as specified below, whether such businesses are operated by Lessee, Sublessee, Assignee or operated under a management agreement.

Year 1-2: No Rental (Development Period)  
Year 3-15: 1.5% Gross Receipts  
Year 16-25: 2.0% Gross Receipts

- (b) The sum of \$3,600 as a Guaranteed Minimum Annual Rental (GMAR) hereunder.

It is acknowledged and agreed that Lessee's rental obligation hereunder is an obligation to pay either the percentage rental amounts more specifically defined in Section 6(a) above or the guaranteed minimum annual rent (GMAR) as more specifically set forth in Section 6(b) above, whichever amount is greater.

The Lessee shall make monthly payments in advance equal to at least one-twelfth of the aforementioned minimum annual rental not later than the tenth (10th) day after the first day of the month for which the rental is due. Lessee may elect to pay monthly rental in an amount based on the percentage rental rate on the month's gross receipts; however, no payment shall

be less than one-twelfth on the minimum rental. Monthly payments based on the percentage rental rate on gross receipts shall be paid not later than the tenth (10th) day after the end of the month for which the rental is due. All rental shall be deposited with the Controller of the Navajo Nation. When the annual accounting required by Section 7 of this Lease is completed, the Lessee shall pay any balance due on any percentage rental, or if there is overpayment, the overpayment shall be credited toward future rents.

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.

While the leased premises are in trust or restricted status, the Secretary may in his discretion suspend the direct rental payment provisions of this Lease, in which event the rental shall be paid to the Secretary or his authorized representative.

In the event a sublease, assignment, management agreement or transfer of this Lease or any right to or interest in this Lease or any improvements on the leased premises shall be entered into, the rent and other terms of this Lease shall be subject to renegotiation and the provisions of Section 14 of this Lease.

## **7. ACCOUNTING**

The Lessee shall, not later than April 15, of each successive calendar year or fraction thereof following the date the term of this Lease begins, submit to Lessor and the Secretary individually, 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 for the preceding calendar year under the percentage rental fee as set forth in Section 6 above. Said statement shall be prepared by a Certified Public Accountant, licensed in the State of Arizona, New Mexico, or Utah, in conformity with standard accounting procedures. 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 the Lessee and the 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 or the Secretary of any monies paid to Lessor or the Secretary 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 or the Secretary 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 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 Lessor or the Secretary of 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.

#### 8. IMPROVEMENTS

The Lessee, in consideration for the granting of this Lease, covenants and agrees that Lessee will construct a building with equipment and gravel parking lot at a cost of and having a reasonable value of \$100,000 or more. All buildings and improvements, excluding removable personal property and trade fixtures, on the leased property shall remain on said property after termination of this Lease and shall thereupon become the property of Lessor, who may require Lessee, at Lessee's expense, to remove improvements and restore the premises to its original state upon termination of this Lease. The term "removable personal property" as used in this Section shall not include property which normally would be attached or affixed to the buildings, improvements or land in such a way that it would become a part of the realty, regardless of whether such property is in fact so placed in or on or affixed to the buildings, improvements or land in such a way as to legally retain the characteristics of personal property. 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.

Any hazardous materials or petroleum product manufacturing, processing, surface storage, underground storage tanks system, or conveyance facilities placed on the leased land are the property of the Lessee who installed them, unless specifically stipulated to revert to the Lessor or another party (Tribe, BIA, U.S. Government, or a subsequent tenant). Within a reasonable time frame, stipulated in the Lease, prior to vacation of the property the Lessee shall remove any of the above improvements, assess the site for potential

contamination, remediate any contamination discovered, and address any third party damages which may have occurred, unless otherwise stipulated in the Lease. Should any of the above activities extend past the termination date of the Lease, the Lessee shall still be financially responsible for completing these activities, and shall be required to post a bond to ensure that the activities are completed after termination of the Lease.

#### **9. PLANS AND DESIGNS**

Within one hundred eighty (180) days from the date this Lease is approved by the Secretary, 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 Lessor. Lessor's review of all plans or 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, nor 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 Lessor. Approval of the general plan, architect's design, and/or a phased program of development shall in no way be deemed a waiver of the requirements of applicable Tribal law and Lessee shall comply with all applicable Tribal laws and regulations. Upon completion of the proposed improvements the Lessee shall provide the Lessor "as built" drawings depicting the improvements as a completed structure.

#### **10. COMPLETION OF DEVELOPMENT**

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 9 above, within 24 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.

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.

#### **11. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION**

All 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 visible to the public or from adjacent properties shall present a pleasant appearance as determined by Lessor and all service areas shall be screened from public view to the satisfaction of Lessor. Lessee shall, at all times during the term of this Lease and at Lessee's sole cost and expense, maintain the premises and all improvements thereon and any alterations, additions, or appurtenances thereto, in good order and repair and in a safe, sanitary, neat and attractive condition, and shall otherwise comply with all laws, ordinances and regulations applicable to said premises. 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 \$30,000 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 and the United States Government against liability for all claims arising from Lessee's failure to maintain said premises and the improvements thereon as hereinabove provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

#### **12. RENTAL AND PERFORMANCE BOND**

Upon approval of this Lease by Secretary, Lessee agrees to post a corporate surety bond or other security acceptable to Lessor and the Secretary in a penal sum of \$3,600, which bond shall be deposited with the Secretary and shall remain in force for the full term of this Lease, at the discretion of Lessor and the Secretary.

It is understood and agreed that bond or 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, copy of which certificate shall be furnished the Secretary 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 and the Secretary reserve the right to request that Lessee furnish bond or security at a later date and Lessee hereby agrees to comply with said request.

#### **13. CONSTRUCTION BOND**

At Lessor's option, prior to the commencement of construction of any improvement on the leasehold premises, the Lessee will

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:

A. Posting a corporate surety bond in an amount equal to the cost of each improvement, said bond to be deposited with the Secretary 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 of action 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 agrees to make up any deficiency in the value deposited that might occur due to a decrease in the value of the bonds. Interest on said bonds shall be paid to Lessee.

B. Depositing in escrow with the Secretary or an institution acceptable to the Secretary and Lessor, negotiable United States Treasury Bonds, or cash, or furnishing a non-revocable letter of credit satisfactory to Lessor and Secretary 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 and the Secretary, 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.

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.

#### **14. SUBLEASE, ASSIGNMENT, MANAGEMENT AGREEMENT, TRANSFER**

Notwithstanding the provisions of 5 N.N.C. Sections 2313(c), Lessee shall not sublease, assign, place under a management agreement, or in any manner whatsoever transfer this Lease or any right to or interest in the 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, the Secretary 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.

For purposes of this Section, the creation of any 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 and the Secretary.

Approval or disapproval of any sublease, assignment, management agreement, or transfer, for any purpose whatsoever, by the Lessee shall be within the sole discretion of Lessor. Approval of any sublease, assignment, management agreement, or transfer is subject to the approval of the Secretary. Lessor reserves the right to adjust the rental provisions of this Lease upon any sublease, assignment or transfer.

#### **15. ENCUMBRANCE**

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, the Secretary and sureties and no such encumbrance shall be valid without said approval.

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 the Lessor's interest in the land. Lessee agrees to furnish as requested any financial statements or analyses pertinent to the encumbrance that the Lessor and the Secretary may deem necessary to justify the amount, purpose and terms of said encumbrance.

**"Approved encumbrance"** herein shall mean an encumbrance approved by the Secretary, the Lessor, and sureties, if any, in the manner provided herein. **"Encumbrancer"** herein shall mean the owner and holder of an approved encumbrance.

1. 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, the Secretary, 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, 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.

(a) 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.

(b) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Secretary, 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.

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 Lessee or Lessor 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 Lessee or Lessor 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 and the Secretary 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.

2. 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 of the leasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor and the Secretary notice of the same character and duration as is required to be given Lessee by such encumbrance and/or by applicable law. If notice of such sale be given, and the defaults 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:

(a) 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.

(b) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Secretary, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution, plus sales 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.

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.

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 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 Lessor and the Secretary 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.

#### **16. 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 and the Secretary 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, the Secretary 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, and other utility services supplied to said premises.

**17. 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 or Secretary 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.

**18. SANITATION**

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 3 hereinabove. 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 premises in a safe, sanitary condition, presenting a good appearance both inside and out in all buildings operated on the leased premises.

Lessee further agrees to comply with applicable Federal, State, Navajo Nation or local laws, statutes, ordinances or regulations, court or administrative orders or decrees pertaining to environmental matters or hazardous substances. No materials shall be maintained or located on the premises that would violate any environmental requirements or give rise to liability for hazardous substances (including, without limitation, solid wastes, toxic materials, radon, asbestos and oil) or that would require special handling in collection, storage, treatment, or disposal.

**19. HAZARDOUS SUBSTANCES**

Lessee shall not cause or permit any hazardous substance to be used, stored, generated or disposed of on or in the premises without first obtaining Lessor's written consent. If hazardous 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 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 tenant. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by the federal government or Navajo Nation. Without limitation of the foregoing, if Lessee causes or permits the presence of any hazardous substance on the premises and such results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the premises to the condition existing prior to the presence of any such hazardous substance on the premises. Lessee shall first obtain Lessor's approval for any such remedial action.

## **20. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

At all times during the term of this Lease, Lessee shall carry a Public liability insurance policy in the amount of \$50,000 for personal injury to one person and \$100,000 per occurrence, and \$25,000 for property damage. 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, Lessor and the United States of America and shall provide for notification to Lessor prior to any cancellation or non-renewal of said policy for any reason including non-payment of premiums. A copy of said policy shall be furnished Lessor and the Secretary. 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 Lessor or the United States. Neither Lessor nor the United States Government, nor their 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 for this Lease, hereby waives on Lessee's behalf all claims against Lessor and the United States Government and agrees to hold Lessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death

arising from the condition of the premises or use of the premises by Lessee, together with all costs and expenses in connection therewith.

## **21. FIRE AND DAMAGE INSURANCE**

Lessee, shall, from the date of approval of this Lease, 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 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, Lessor and the United States of America and shall provide for notification to the Lessor and the Secretary prior to any change in said policy or any cancellation or non-renewal of said policy for any reason, including non-payment or premiums. A copy of said policy shall be deposited with Lessor and the Secretary. 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 and the Secretary. 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.

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 in Section 32. In the event Lessee does not reconstruct, all insurance proceeds shall be paid to Lessor.

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 with respect to which it was 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.

## **22. FINANCIAL RESPONSIBILITY (UST)**

If the Lessee wishes to install or operate underground storage tanks on the leased property, the Lessee will 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 CFR Subpart H.

## **23. 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 the takings of 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. 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 or condemnation.

#### 24. DEFAULT

Time is declared to be of the essence of this Lease. Should Lessee default in any payment of monies when due, fail to post bond or be in violation of any other provision of this Lease, said violation may be acted upon by the Secretary in accordance with Title 25, Chapter 1, Part 162 of the Code of Federal Regulations or any amendments thereto. In addition to the rights and remedies provided by the aforementioned regulations, Lessor or the Secretary may exercise the following options upon Lessee's default;

A. 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

B. Re-enter the premises and remove all persons and property therefrom, excluding the property belonging to authorized Sublessees, 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 and the Secretary 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 or the Secretary may sue thereafter as each monthly deficiency shall arise; or

C. Take any other action deemed necessary to protect any interest of Lessor.

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.

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 the Secretary, or any other rights or remedies now held or which may be held by Lessor in the future.

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 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 federal statute and regulation 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.

**25. ATTORNEY'S FEES**

Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor or the Secretary in enforcing provisions of this Lease.

**26. NO PARTNERSHIP**

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

**27. TERMINATION OF FEDERAL TRUST**

Nothing contained in this Lease shall operate to delay or prevent a termination of Federal Trust responsibilities 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 surety or sureties shall be notified of any such change in the status of the land.

**28. OBLIGATIONS OF LESSEE**

While the leased premises are in trust or restricted status, all of Lessee's obligations under this Lease, and the obligations of their sureties, are to the United States as well as to the Lessor.

**29. 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.

**30. PAYMENTS AND NOTICES**

All notices, payments, and demands, shall be sent to the parties hereto at the addresses herein recited or to such addresses as the parties may hereafter designate in writing. Notices and demands shall be sent by certified mail return receipt requested. Service of any notice or demand shall be deemed complete ten (10) days after mailing or on the date actually received, whichever occurs first. Copies of all notices and demands shall be sent to the Secretary: Area Director, Bureau of Indian Affairs, Navajo Area Office, P.O. Box 1060, Gallup, New Mexico 87305-1060.

**31. INSPECTION**

The Secretary and Lessor and their 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.

**32. 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 hereunder or in or to the leased premises. 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 date of the Lease until Lessee vacates the premises.

**33. DELIVERY OF PREMISES**

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

**34. 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 Navajo individuals and certified contractors in compliance with the Navajo Preference in Employment Act, 15 NNC Section 601 et seq. ("NPEA"), and the Navajo Nation Business Preference Law, 5 NNC Section 201 et seq. ("NNBPL"). The terms and provisions of the NPEA and NNBPL 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 NNBPL.

**35. MINERALS**

All minerals and sand and gravel contained in or on leased premises, in whatever concentration are hereby reserved for the use of Lessor, together with the right of Lessor or its authorized agents or representatives at any time, to enter upon the land and prospect for, mine, and remove same, paying just compensation for any damage or injury caused to Lessee's personal property or improvements constructed by Lessee; said compensation to be determined by the Secretary.

**36. LEASE BINDING**

This Lease and the covenants, conditions and restrictions hereof shall extend to and be binding upon the successors, heirs, assigns, executors, and administrators of the parties hereto.

**37. 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 for its general benefit.

**38. 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 Secretary.

**39. USE OF NAVAJO PRODUCED GOODS AND SERVICES**

Lessee agrees to make all purchases of materials, equipment, goods, services and transportation from Navajo owned businesses as required by Navajo law.

**40. AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS**

The Lessee and the Lessee's employees and 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.

**41. JURISDICTION AND GOVERNING LAW**

The laws of the Navajo Nation and applicable laws of the United States shall govern the construction, performance and enforcement of this Lease. Lessee, Lessee's employees, agents and successors in interest hereby consent to the jurisdiction of the courts of the Navajo Nation. Lessee agrees that any action or proceeding brought by Lessee against Lessor in

connection with or arising out of the terms and provisions 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 Lessor in any court of the state in which the leased premises are located. Nothing herein shall prevent the Lessee's employees, agents and successors in interest from enjoying rights and privileges granted them by applicable federal laws.

**42. SOVEREIGN IMMUNITY**

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

IN WITNESS WHEREOF, the parties hereto have set their hands.

LESSEE

BY: M. S. D.

BY: M. A. Draper

DATE: July 10, 1997

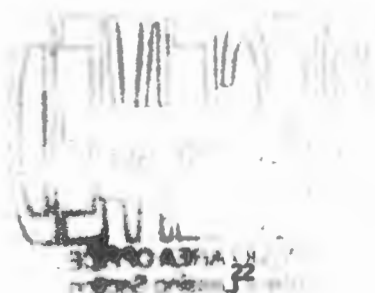
THE NAVAJO NATION, LESSOR

BY: [Signature]  
President, Navajo Nation

DATE APPROVED: July 14, 1997

APPROVED: SEP - 3 1997  
Pursuant to Secretarial Redelelegation  
Order 209 DM 8, Secretary's Order  
Nos. 3150 and 3177, and 10 BIAM  
Bulletin 13, as amended.

By: [Signature]  
Acting Area Director, Navajo Area  
Bureau of Indian Affairs





**THE NAVAJO NATION**


**RUSSELL BEGAYE** PRESIDENT  
**JONATHAN NEZ** VICE-PRES

EXHIBIT

C

## MEMORANDUM

TO: Resource and Development Committee

FROM:   
Genevieve Keetso-Bighorse, EDS  
Western Regional Business Development Office  
Division of Economic Development

DATE: July 23, 2015

SUBJECT: Doc. # 004158: Lease Modification for Gregory and Myra Draper dba Draper Glass Company located in Kayenta, Arizona

This memorandum is a summary on the above subject. This package is a Lease Modification for Gregory and Myra Draper to change the interest rate for unpaid rent from 18% to 5% per annum on Lease No. TC-97-177.

Business Site Lease No. TC-97-177 is not novated therefore does not meet the Navajo Nation Business Site Lease Management Plan. This Lease is under the authority of the Bureau of Indian Affairs (BIA) and requires approval from the Navajo Nation Resource and Development Committee and BIA.

Enclosed are the procurement clearances from Accounts Receivable and Credit Services. Your favorable consideration and approval of this Lease Modification will be appreciated. If you have any questions, call me at (928) 283-3013.



# THE NAVAJO NATION

RUSSEL BEGAYE, PRESIDENT

JONATHAN NEZ, VICE PRESIDENT

EXHIBIT


D

E-MAILED  
6/2/2015

May 21, 2015

## MEMORANDUM

TO: Genevieve Keetso - Bighorse, EDS  
Regional Business Development Office  
Division of Economic Development

FROM:   
Lena D. Arviso, Accounting Manager  
Accounts Receivable Section, OOC

RECEIVED

MAY 27 2015

Western Regional  
Business Development Office

SUBJECT: "Navajo Business and Procurement Act clearance check"

Pursuant to your memorandum dated May 4, 2015 (*Received in Account Receivable on 05/05/15 @ 11:00 a.m.*) seeking a procurement clearance check on the following individual/ Business is as follows:

| Name/ Address   | BSL No./ Store Location                                       | A. R.<br>Debt Due | Action  |
|---|---|-------------------|---|
| <b>Draper Glass Company</b><br>EIN: 86-0722588<br>Post Office Box 2986<br>Tuba City, AZ 86045<br><br>Gregory & Myra Draper, Lessees | <b>BSL# TC93-137</b><br>AB# 186155<br>Location: Tuba City, AZ | \$ 0.00           | <b>Procurement cleared.</b> Though this business site lease account has a credit balance of (\$773.04) at 05/21/2015. The profit & loss statements are current. |
|   | <b>BSL# TC97-177</b><br>AB# None<br>Location: Kayenta, AZ     | \$ 0.00           | <b>Procurement cleared.</b> This business site lease account has a zero balance as of 05/21/2015. The profit & loss statements are current.                     |
|   | <b>Promissory Note</b><br><b>BSL# TC97-177</b>                | \$ 0.00           | <b>Procurement cleared.</b> The promissory note on file has a credit balance of (\$0.04) as of 05/19/2015.  |

*This revised correspondence supersedes previous memorandum dated May 19, 2015.*

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 to the 164 reviewers, block out information that are not applicable to the SAS package if this procurement memo is to be included.

Should you have any questions, please contact Accounts Receivable Section at 871-6771 or 6127. Thank you.

mj

CC: Accounts Receivable File

# THE NAVAJO NATION



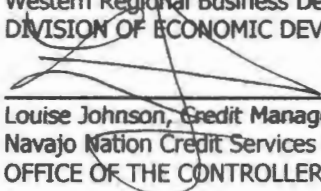
BEN SHELLY  
REX LEE JIM

**Louise Johnson, Credit Manager**

VIA: FACSIMILE

## MEMORANDUM

**TO:** Genevieve Keetso-Bighorse, EDS  
Western Regional Business Development Office  
DIVISION OF ECONOMIC DEVELOPMENT

**FROM :**   
Louise Johnson, Credit Manager  
Navajo Nation Credit Services Department  
OFFICE OF THE CONTROLLER

**DATE:** March 10, 2015

**SUBJECT:** **PROCUREMENT CLEARANCE**

# RECEIVED

MAR 18 2015

Western Regional  
Business Development Office

Pursuant to your memo requesting for procurement clearance on the individual(s)/business is as follows:

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

|   |                                      |                     |
|---|--------------------------------------|---------------------|
| Draper Glass Company<br>Gregory and Myra Draper<br>EIN#: 86-0722588 | P.O. Box 2986<br>Tuba City, AZ 86045 | Procurement Cleared |
|---|--------------------------------------|---------------------|

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

ye;lj;br  
Xc: File/Chrono



## MEMORANDUM

TO: ALL CONCERNED  
OFFICE OF THE CONTROLLER

FROM: Lena D. Arviso  
Lena D. Arviso, Accounting Manager  
Cashier's Section  
Accounts Receivable  
Office Services  
OFFICE OF THE CONTROLLER

DATE: February 27, 2014

SUBJECT: STANDING DELEGATION OF AUTHORITY



Please be informed that this memorandum will serve as a standard delegation of authority in the following order when the Accounting Manager for the above mentioned sections is on leave, travel status, or attending meetings away from the office

The individuals will be delegated the responsibility to sign any documents that are of a "routine" nature, and all other documents considered "significantly questionable" will be referred to the Accounting Manager upon her return

This delegation will be continuous until rescinded or revised in writing

1 Herman McClanahan, Jr.  
Herman McClanahan, Jr., Supervisor

2 Roberta Holyan  
Roberta Holyan, Accountant

2 Judy Cordero  
Judy Cordero, Accountant

Your cooperation with the delegated individuals is expected and appreciated

cc Distribution  
Chrono file

**Lease Modification for  
Lease No. TC-97-177  
Kayenta, Arizona**

**Executive Summary**

- 1. Memorandum – Summary dated July 23, 2015**
- 2. Lease Modification**
- 3. Business Site Lease No. TC-97-177**
- 4. Account Receivable Procurement Clearance**
- 5. Credit Services Procurement Clearance**



**THE NAVAJO NATION**

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

July 23, 2015

Council Delegate Otto Tso  
ToNaneesDizi Chapter  
Tuba City, Arizona 86045

Dear Delegate Tso:

Enclosed please find Document #: 004158 (Lease Modification for Lease No. TC-97-177) and requesting you to sponsor Document #: 004158 for Western RBDO. Business Site Lease No. TC-99-187 is a Bureau of Indian Affairs (BIA) lease and requires approval from the Resource & Development Committee. The purpose of this Lease Modification is to change the interest rate for unpaid lease rent from 18% to 5% per annum.

Business Site Lease No. TC-97-177 is not novated therefore does not meet the Navajo Nation Business Site Lease Management Plan. This Lease is under the authority of the Bureau of Indian Affairs (BIA) and requires approval from Resource & Development Committee and BIA.

Your cooperation and assistance to sponsor Document #: 004158 will be appreciated. If you have any questions, please call me at (928) 283-3013.

Sincerely,

Genevieve Keetso-Bighorse  
Economic Development Specialist

Enclosure

Document No. 004158

Date Issued: 06/10/2015

### EXECUTIVE OFFICIAL REVIEW

Title of Document: Approving BSL Modification Draper Glass Contact Name: KEETSO-BIGHORSE, GENEVIEVE

Program/Division: DIV. OF ECONOMIC DEVELOPMENT

Email: gkeetsobighorse@navajobusiness.com Phone Number: (928) 283-3013

☒ **Business Site Lease**

|   |                    | Date:           | Sufficient                          | Insufficient             |
|---|--------------------|-----------------|-------------------------------------|--------------------------|
| 1. Division:  | <u>[Signature]</u> | <u>6-11-15</u>  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Controller:  | <u>[Signature]</u> | <u>06-11-15</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review) |                    |                 |                                     |                          |
| 3. Office of the Attorney General:  | <u>[Signature]</u> | <u></u>         | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

☐ **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:                       | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Attorney General: | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |

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

|                                     |         |       |         |                          |                          |
|-------------------------------------|---------|-------|---------|--------------------------|--------------------------|
| 1. Office of Management and Budget: | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Controller:        | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Office of the Attorney General:  | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |

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

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

☐ **Lease Purchase Agreements**

|                                    |         |       |         |                          |                          |
|------------------------------------|---------|-------|---------|--------------------------|--------------------------|
| 1. Office of the Controller:       | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |
| (recommendation only)              |         |       |         |                          |                          |
| 2. Office of the Attorney General: | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Grant Applications**

|                                     |         |       |         |                          |                          |
|-------------------------------------|---------|-------|---------|--------------------------|--------------------------|
| 1. Office of Management and Budget: | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Controller:        | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Office of the Attorney General:  | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **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:                       | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Attorney General: | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **Relinquishment of Navajo Membership**

|                                    |         |       |         |                          |                          |
|------------------------------------|---------|-------|---------|--------------------------|--------------------------|
| 1. Land Department:                | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Elections:                      | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Office of the Attorney General: | <u></u> | Date: | <u></u> | <input type="checkbox"/> | <input type="checkbox"/> |

☐ **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



☐ RESUBMITTAL

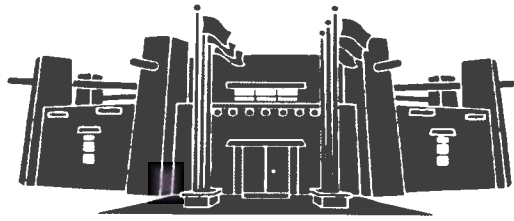
|   |        |
|---|--------|
| DOJ                                     |        |
| 06-1210 4438                            |        |
| DATE / TIME                             |        |
| <input type="checkbox"/> 7 Day Deadline |        |
| DOC #:                                  | 004158 |
| SAS #:                                  |        |
| UNIT:                                   | ECD    |

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

|  |                 |  |               |
|--|-----------------|--|---------------|
| DATE OF REQUEST: 6/10/2015   |                 | DIVISION: Economic Development               |               |
| CONTACT NAME: Genevieve Keetso-Bighorse  |                 | DEPARTMENT: Western RBDO                     |               |
| PHONE NUMBER: (928) 283-3013   |                 | E-MAIL: gkeetsobighorse@navajobusiness.com   |               |
| TITLE OF DOCUMENT: Approving a Lease Modification for Gregory and Myra Draper dba Draper Glass Company.. |                 |  |               |
| DATE/TIME IN UNIT: 6-15-15 12pm  |                 | REVIEWING ATTORNEY/ADVOCATE: Bo Karis Begaye |               |
| DATE TIME OUT OF UNIT:   |                 |  |               |
| DOJ SECRETARY CALLED: [Signature]  |                 |  |               |
| REVIEWED BY: (Print)   | Date / Time     | SURNAMED BY: (Print)                         | Date / Time   |
| [Signature]  | 6/15/15 12:15pm | [Signature]                                  | 6/15/15 8:41g |
| DOJ Secretary Called: [Signature]  |                 |  |               |
| PICKED UP BY: (Print)  |                 | DATE / TIME:                                 |               |

NNDJ/DRRF-July 2013





## MEMORANDUM

TO: Honorable Otto Tso  
To Nanees Dizi Chapter

FROM: Mariana Kahn  
Mariana Kahn, Attorney  
Office of Legislative Counsel

DATE: September 25, 2015

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE LEASE MODIFICATION TO LEASE NO. TC-97-177 FOR GREGORY AND MYRA DRAPER DBA DRAPER GLASS COMPANY TO CHANGE THE INTEREST RATE FOR UNPAID LEASE RENT FROM 18% TO 5% PER ANNUM

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

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

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0342-15\_\_\_\_\_ SPONSOR: Otto Tso

**TITLE: An Action Relating To Resources And Development; Approving The Lease Modification To Lease No. TC-97-177 For Gregory And Myra Draper DBA Draper Glass Company To Change The Interest Rate For Unpaid Lease Rent From 18% To 5% Per Annum.**

**Date posted: September 28, 2015 at 3:00pm**

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Written comments may be mailed to:

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

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

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

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

**LEGISLATION NO.:** 0342-15

**SPONSOR:** Honorable Otto Tso

**TITLE** An Action Relating To Resources And Development; Approving The Lease Modification To Lease No. TC-97-177 For Gregory And Myra Draper DBA Draper Glass Company To Change The Interest Rate For Unpaid Lease Rent From 18% To 5% Per Annum.

**Posted:** September 28, 2015 at 3:06PM

**5 DAY Comment Period Ended:** October 3, 2015

**Digital Comments received:**

|                                  |  |
|----------------------------------|--|
| <b>Comments Supporting</b>       | <i>None</i>  |
| <b>Comments Opposing<br/>(1)</b> | <b>1. Gabriel Yazzie, Town Manager;<br/>Kayenta Township</b> |
| <b>Inclusive Comments</b>        | <i>None</i>  |

  
\_\_\_\_\_  
**Executive Director  
Office of Legislative Services**

10/05/15 9:24 a.m.  
\_\_\_\_\_  
**Date/Time**

## Legislation No 0342-15

**Gabriel Yazzie** <[gyazzie@kayentatownship-nsn.gov](mailto:gyazzie@kayentatownship-nsn.gov)>

Thu 10/1/2015 9:29 AM

To: comments <[comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)>;

importance: High

1 attachment

KTC Comments to Legislation No 0342-15.pdf;

Good Morning,

Here are my comments regarding legislation No 0342-15. If you have any questions please do not hesitate to contact me directly.

**Gabriel Yazzie**

**Town Manager**

928.697.8451 Office | 928.697.8461 Fax | [gyazzie@kayentatownship-nsn.gov](mailto:gyazzie@kayentatownship-nsn.gov)

**Kayenta Township**

P.O. Box 1490 | Kayenta, AZ 86033

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 *Please consider the environment before printing this email*

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## MEMORANDUM

**TO:** Executive Director, Office of Legislative Services  
(via email [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov))

**FROM:** Gabriel Yazzie, Town Manager, Kayenta Township

**RE:** Legislation No. 0342-15

**DATE:** October 1, 2015

The Navajo Nation Council initially created the Kayenta Township as a pilot project to see if alternative government structures might provide better services and infrastructure to Navajo citizens. After the Township proved its capacity to do so, the Navajo Nation Council granted the Township "home-rule municipality" status, by Resolutions Nos. CJY-47-03 (Jul. 25, 2003) and CAU-47-03 (Aug. 29, 2003) (overriding veto). *See* 2 N.N.C. § 4081 *et seq.*

Under its unique status under Navajo law, the Kayenta Township Commission has authority over all business site leasing within the Township boundaries. The Navajo Nation Supreme Court so ruled in *Kayenta Township Commission v. Ward*, No. SC-CV-29-07 (Nav. Sup. Ct. Feb. 25, 2011). The Supreme Court cited opinions of the Attorney General also opining that the Township has such business site leasing authority. *See* attached. Since the *Ward* decision was handed down, the Township has undertaken to get businesses to abide by their leases, pay their taxes, and otherwise comply with applicable law.

Most businesses operate lawfully and contribute through taxes and lease payments to the betterment of the community, for the benefit of all residents, visitors, and other businesses. However, a handful have not complied with their legal obligations and the Township has had to resort to court action to enforce applicable law, and the Township has prevailed in all of these cases, including litigation involving the former Speedy's gas station, the Golden Sands Café, and Native Sun Materials.

Unfortunately, according to the Township's records, the Draper Glass Company ("Draper") is seriously delinquent in its tax payments to the Township and on or about September 19, 2013, the Township formally notified Draper that its privilege to do business in the Township was preliminarily suspended because of its tax liabilities. Apparently, Draper is also delinquent in its lease payment obligations as the subject legislation would amend its business site lease so that its arrearages would bear interest at a 5%, rather than an 18%, rate.

The Township respectfully submits that Draper should be required to work with the Township and the Navajo Nation Department of Justice to address its tax and lease debts in a manner that, depending on the good faith exhibited by Draper, might result in amendments to the business site lease. In 2 N.N.C. § 4081 *et seq.*, the Navajo Nation Council has effectively delegated to the Township expansive business site leasing and administration authority, and the proposed legislation would be contrary to Title 2 of the Navajo Nation Code for that reason. We therefore respectfully request that the legislation not be passed.

Thank you for the opportunity to comment on the proposed legislation. Please do not hesitate to contact me if additional information is desired.



NAVAJO NATION DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

LOUIS DENETSOSIE  
ATTORNEY GENERAL

HARRISON TSOSIE  
DEPUTY ATTORNEY GENERAL

M E M O R A N D U M

TO: Hon. Joe Shirley, Jr., President  
THE NAVAJO NATION

FROM: Louis Denetsosie  
Louis Denetsosie, Attorney General  
Office of the Attorney General

DATE: October 18, 2010

SUBJECT: Current Authority of Kayenta Township Commission to  
Approve Business Site Leases and Clarification of April  
26, 2006 Attorney General Opinion

The Navajo Nation Department of Justice is in receipt of a request to clarify the current business leasing authority of the Kayenta Township. This is because of the existing Attorney General Opinion issued on April 26, 2006 that found the Kayenta Township no longer had the authority to approve business site leases. However, since 2006, the legal framework for business site leasing authority has drastically changed, both federally and locally. Thus, much of the legal authority relied on in the 2006 opinion is no longer applicable. Therefore, this opinion shall supersede the 2006 opinion and shall be relied on as to the business site leasing authority for Kayenta Township.

As mentioned above the 2006 opinion found Kayenta Township did not have the authority to issue business site leases. The opinion specifically examined two legal concepts: 1) "home-rule" status and 2) non-delegation doctrine. The 2006 opinion went into depth on both concepts. The opinion concluded that the home rule status did not fit within Navajo law and a specific delegation must be granted from the Navajo Nation Council. Its second conclusion to the non-delegation doctrine was there must be standards/guidelines created to show the scope of authority. When the 2006 opinion was issued, Kayenta Township did not meet either element. The 2006 opinion ultimately concluded that only the Economic Development Committee held final approval authority over business site leases. However, it did find that Kayenta Township did hold management authority over business site leases.

Memorandum to: Hon. Joe Shirley, Jr., President  
RE: Current Authority of Kayenta Township Commission to Approve  
Business Site Leases and Clarification of April 26, 2006  
Attorney General Opinion  
October 18, 2010  
Page 2

Then, on July 11, 2006, a historical moment occurred for the Navajo Nation. The Navajo Nation and Department of the Interior executed the Navajo Nation Business Leasing Regulations of 2005 ("Tribal Regulations"), implementing 25 U.S.C. 415(e). This action granted the Navajo Nation the ability to issue its own business site leases without any further approval from the Secretary of the Interior. Because of this federal delegation there were several amendments made to Navajo law and new regulations and policies were implemented.

These Tribal Regulations also redefined the authority of Kayenta Township. On February 26, 2008, Ms. Karis Begaye issued an opinion finding that the Tribal Regulations had removed the Kayenta Township's ability to manage leases. The rationale was the classification of the Kayenta Township under the Tribal Regulations as a local government unit. Since it was placed under this definition, it was required to seek a specific delegation from the Economic Development Committee for final approval authority and the Division of Economic Development for management authority.

The implementation of the Tribal Regulations caused amendments to be made to Title 2, Division of Economic Development Master Plan of Operation, implementation of the Economic Development Committee Uniform Business Leasing Regulations ("Uniform Regulations") and approval of the Navajo Nation Business Site Leasing Management Plan. The various amendments, regulations and policies also addressed the non-delegation issue raised in the 2006 opinion, not just for Kayenta Township but for all entities impacted.

The amendments to Title 2, pursuant to Resolution No. CD-48-07, amended 2 N.N.C. §§ 271 et seq., which is the Economic Development Committee's authority. It specifically provided for a delegation of final approval authority to "Townships," upon approval of an administrative and business site lease management plan and recommendation by the Division of Economic Development. However, this delegation was subject to "rules and regulations" governing such delegation.

Memorandum to: Hon. Joe Shirley, Jr., President  
RE: Current Authority of Kayenta Township Commission to Approve  
Business Site Leases and Clarification of April 26, 2006  
Attorney General Opinion  
October 18, 2010  
Page 3

On January 20, 2008, such "rules and regulations" were implemented by the Economic Development Committee. The Uniform Regulations outlined the process to receive final approval authority from the Economic Development Committee. This included seeking a delegation from the Division of Economic Development for management authority, prior to seeking final approval authority from the Economic Development Committee.<sup>1</sup> This delegation from both entities was to be outlined in an administrative and business site leasing management plan ("Plan"). The Plan which constitutes the standards in which the delegated entity would exercise the authority delegated.

Upon finalization of the legal structure for business site leasing authority, the Kayenta Township followed this process to seek both approval and management authority. On June 3, 2009, pursuant to Resolution No. EDCJN-28-09, the Economic Development Committee "authorize[d] the delegation of approval authority for business site leases to Kayenta Township except for those business site leases under the leasing authority of the Navajo Nation Shopping Centers Corporation ... approve[d] the Administrative and Business Site Leasing Management Plan for the Kayenta Township." This Plan was signed by the Division of Economic Development and concurred by me.

As a result of this action, at present, the Kayenta Township is fully empowered with the authority to approve, manage, enforce and monitor business site leases within the boundaries of the Kayenta Township. This must however, be in accordance with the approved Administrative and Business Site Leasing Management Plan. To the extent that the Navajo Nation may have had claims against third parties relating to business site leasing and related activities have effectively assigned such claims to the Kayenta Township.

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<sup>1</sup> On April 10, 2007, the Division of Economic Development Master Plan of Operation was amended. These amendments authorized the Division of Economic Development to delegate its management authority.

Memorandum to: Hon. Joe Shirley, Jr., President  
RE: Current Authority of Kayenta Township Commission to Approve  
Business Site Leases and Clarification of April 26, 2006  
Attorney General Opinion  
October 18, 2010  
Page 4

If there are any further questions, please contact Karis  
N. Begaye at 928-871-6933. Thank you.

LD/483

xc: Harrison Tsosie, Deputy Attorney General  
Office of the Attorney General

Karis N. Begaye, Attorney  
Economic/Community Development Unit, Dept. Of Justice

Michelle Dotson, Legal Counsel  
Office of the President/Vice President

Lawrence Morgan, Speaker  
Navajo Nation Council

Frank Seanez, Chief Legislative Counsel  
Office of Legislative Counsel

Allan Begay, Division Director  
Division of Economic Development

Economic Development Committee

Kayenta Township Commission

Paul Frye, Esq.  
Frye Law Firm



NAVAJO NATION DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

HERB YAZZIE  
ATTORNEY GENERAL

AG-01-99

OPINION OF THE ATTORNEY GENERAL  
OF THE NAVAJO NATION

January 7, 1999

Authority of the Kayenta Township Commission to Approve  
and Enter into Leases of Navajo Trust Lands within the  
Withdrawn Area Designated as the Township Site

QUESTION PRESENTED:

Does the Kayenta Township Commission have authority to approve and enter into leases of Navajo Trust Lands within the Kayenta Township Site?

SHORT ANSWER:

The Kayenta Township Commission has been delegated governmental authority to negotiate and approve leases on lands within the Kayenta Township Site without further review and/or approval by the Navajo Nation, including the Navajo Nation Council and the President of the Navajo Nation.

FACTS:

INTRODUCTION

In 1985, the Navajo Nation created the Kayenta Township Pilot Project ("Township") and in 1986, approximately 3606.43 acres were withdrawn for the Township. Since its creation, the Navajo Nation Council has made changes to further define the Township's underlying concept of local governance.

On December 16, 1998, the Kayenta Township Commission requested an opinion from this office on their authority to lease property on the lands withdrawn for the Project site. This Opinion of the Attorney General is issued in response to the Commission's request.

## ANALYSIS

The Township and its authority is a creation of the Navajo Nation Council, at the request of the Kayenta Chapter. See Resolution of the Kayenta Chapter dated June 10, 1985, and Resolution CN-86-85 dated November 5, 1985, codified at 2 N.N.C. § 4081 et seq. The 1986 withdrawal of lands for the townsite was duly authorized by the Advisory Committee, at the request of the Kayenta Chapter, thus establishing the territorial boundaries of the Township. See Resolution of the Kayenta Chapter dated June 18, 1986, and ACN-181-86 dated November 13, 1986.

1996 amendments to the Township Plan of Operation established the governing body as an elected commission rather than an appointed planning committee and amended the Kayenta Township Commission ("Commission") Plan of Operation, giving authority, inter alia, to "fully administer" the Project with "jurisdiction over all planning and control of that area" withdrawn for the Project. The Commission's authority was defined as prevailing "over all other authority contingent upon its consistency and compliance with existing policies and regulatory statutes of the Federal Government and the Navajo Nation."<sup>1</sup>

The Commission is held responsible "for implementing and enforcing adherence to all the specifications, mandates, ordinances and laws" of the Commission. Section IV(B)(4), Project Plan of Operation. The Commission has the authority "to be recognized and accepted as the official representative agent for the Navajo Nation as issues arise in relation to carrying out the [Commission] Plan of Operation and specifics of the Kayenta Infrastructure Development as it relates to the Kayenta Township area." Section IV(C)(3), Project Plan of Operation. These provisions clearly demonstrate Navajo Nation Council intent that the Commission will act as a governing body with "original jurisdiction over the withdrawal of land within the Kayenta Township area and the governance of such land by zoning and any other laws...." Section II(D)(2). Project Plan of Operation.

## LOCAL GOVERNANCE ACT

On April 20, 1998, the Navajo Nation Council enacted the Local Governance Act ("LGA"), authorizing chapters to assume governance at the local level consistent with Navajo Nation law. Resolution CAP-34-98. All prior inconsistent law was superseded by and/or amended to comply with the LGA, which is codified at 2 N.N.C. § 4001; et seq.

Township authority is not inconsistent with and is not

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<sup>1</sup> Section III, Jurisdiction, Plan of Operation, as amended by Navajo Nation Council Resolution CN-76-96.

affected by the authority of the Kayenta Chapter, even with passage of the LGA. While the LGA grants extensive powers to the chapters, including the amendment of prior inconsistent law, Township authority was delegated by recommendation of the Kayenta Chapter and authorization of the Navajo Nation Council. Consequently, it is clear that for activities within the withdrawn area, both the Kayenta Chapter and the Navajo Nation Council have authorized the Kayenta Township to have extensive and primary authority. This conclusion is buttressed by the legislative history concerning the passage of the original Township Pilot Project:

The emergence of the township entity and its assumption of certain functions and decision-making roles cannot be seen as being a substitute [for], nor in opposition to, those powers and responsibilities held by the Chapter and the Navajo Nation.... Local creativity, inventiveness, and energy must be unleashed as a cooperative and coordinated venture and partnership among Kayenta Chapter, the Navajo Nation and a newly created Township. (CN-86-85, Exhibit "C" pp. 5-6)

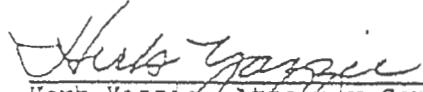
While the Kayenta Chapter has general authority over activities within Chapter boundaries, the Council, by creating the Township project and withdrawing an area within Chapter boundaries for the exercise of Township authority, has effectively given the Township primary authority within the Township's reserved area for the life of the Township project.

This is not to suggest that the Chapter and Township do not need to work together. Rather, as noted above, the Township and Chapter's authorities are complementary. Working together on projects of mutual interest strengthens and enhances both the Chapter and the Township, providing a model for municipalities and chapters. If, on the other hand, the Chapter and the Township project cannot work in a cooperative and coordinated manner, then a message is sent to the Navajo Nation Council and the Chapter membership that the project "experiment" is demonstrating that a chapter and a smaller government such as township or municipality might not be able to co-exist in the Navajo system of government. I would strongly urge the Chapter and the Townsite to show the Navajo public that this experiment in local governance can work.

#### CONCLUSION:

It is within the Township's authority to approve and execute the proposed post office lease agreement. Of course, such execution must comply with all applicable Navajo Nation and federal laws. Thus, for example, the Township cannot on its own authority waive the sovereign immunity of the Navajo Nation. Further, the lease agreement after execution by the Township requires review and

execution by the Secretary of the Department of the Interior, with a copy of the executed lease to be filed with the Land Administration Department in the Division of Natural Resources. The Department of the Interior, Bureau of Indian Affairs, may rely on this Opinion in consideration of the authority of the Township to execute the proposed post office lease and other similar agreements.

  
Herb Yazzie, Attorney General  
Office of the Attorney General

RESOURCES AND DEVELOPMENT COMMITTEE  
23rd NAVAJO NATION COUNCIL

FIRST YEAR 2015

COMMITTEE REPORT

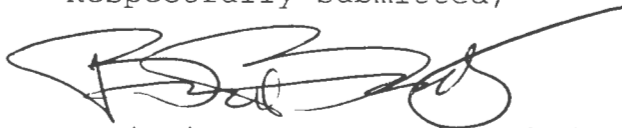
Mr. Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

**Legislation # 0342-15:** An Action Relating to Resources and Development; Approving the Lease Modification to Lease No. TC-97-177 for Gregory and Myra Draper, DBA Draper Glass Company to Change the Interest Rate for Unpaid Lease Rent from 1 8% to 5% Per Annum. *Sponsor: Honorable Otto Tso*

Has had it under consideration and report the same that the matter was **RULED OUT OF ORDER** by Vice Chairman Bennett due to the properly lease documents are not attached for consideration by the Committee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Bennett', with a long, sweeping horizontal stroke extending to the right.

Benjamin Bennett, Vice-Chairperson  
Resources and Development Committee  
of the 23<sup>rd</sup> Navajo Nation Council

Date: October 13, 2015

**MAIN MOTION:** Leonard H. Pete  
**Second:** Walter Phelps