

RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
Of the 23rd Navajo Nation Council---Second Year 2016

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING MODIFICATION NUMBER FOUR FOR BUSINESS SITE LEASE NO. FD-03-219 TO NAVAJO TRIBAL UTILITY AUTHORITY ON TRUST LAND WITHIN THE FORT DEFIANCE CHAPTER VICINITY, NAVAJO NATION

BE IT ENACTED:

**SECTION ONE. AUTHORITY**

A. The Resources and Development Committee is established as a standing committee of the Navajo Nation Council. 2 N.N.C. § 500 (A).

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

**SECTION TWO. FINDINGS**

A. Navajo Tribal Utility Authority requests that the Resources and Development Committee approve Modification Number Four to Business Site Lease No. FD-03-219, **Exhibit B**.

B. The location of the Business Site Lease No. FD-03-219 is within the Fort Defiance Chapter on Trust Land. See legal description on pages one and two of Business Site Lease No. FD-03-219, **Exhibit B**.

C. It is in the best interest of the Navajo Nation to approve Modification Number Four to Business Site Lease No. FD-03-219, attached as **Exhibit A**.

**SECTION THREE. APPROVAL**

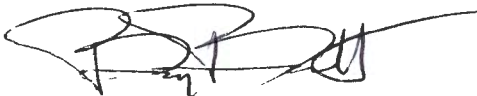
A. The Navajo Nation Council's Resources and Development Committee hereby approves Modification Number Four, attached as **Exhibit A**, to Business Site Lease No. FD-03-219, between the Navajo Nation and Navajo Tribal Utility Authority.

B. The Navajo Nation hereby authorizes the Navajo Nation President to execute Modification Number Four as approved by this resolution.

C. The Navajo Nation hereby directs the Economic Development Division to ensure Modification Number Four to Business Site Lease No. FD-03-219 is properly recorded and distributed.

**CERTIFICATION**

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at Navajo Department of Transportation Administrative Complex, (Navajo Nation) Tse Bonito, New Mexico, at which quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 1 abstained this 27<sup>th</sup> day of December, 2016.



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

Motion: Honorable Davis Filfred  
Second: Honorable Leonard Pete

Document No. 007076

Date Issued: 11/22/2016

## EXECUTIVE OFFICIAL REVIEW

Title of Document: Modification #4 for BSL#FD-03-219 Contact Name: BEGAY-PLATERO, SHARLENE R.

Program/Division: DIV. OF ECONOMIC DEVELOPMENT

Email: srhp@navajoadvantage.com Phone Number: (505) 905-6414

<input checked="" type="checkbox"/>	<b>Business Site Lease</b>			<b>Sufficient</b>	<b>Insufficient</b>
	1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Controller:	<u>N/A</u>	Date: _____	<input 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:	_____	Date: _____	<input 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:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

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

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

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

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

☐ **Lease Purchase Agreements**

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

☐ **Grant Applications**

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

☐ **Relinquishment of Navajo Membership**

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



## REQUEST FOR SERVICES

☐ RESUBMITTAL

DOJ

DATE / TIME

RFS #

UNIT

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

### CLIENT TO COMPLETE

DATE OF REQUEST: 11/21/2016 ENTITY/DIVISION: Division of Economic Development

CONTACT NAME: Sharlene Begay-Platero DEPARTMENT: Proj. Dev. Department

PHONE NUMBER: 505-905-6414 E-MAIL: srbp@navajoadvantage.com

COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (Attach Documents):  
*Review of Proposed Modifications #4 to FD-03-219 (copy attached hereto). This BSL is a NN Business Site Lease.*

DEADLINE: 12/19/2016 REASON: Need to Process through the 164 Review

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: REVIEWING ATTORNEY/ADVOCATE:

DATE TIME OUT OF UNIT: PREPARED BY (initial):

### DOJ ATTORNEY / ADVOCATE COMMENTS

REVIEWED BY: (PRINT) DATE / TIME:

DOJ Secretary Called: for Document Pick Up on at By

PICKED UP BY: (PRINT) DATE / TIME:





**LEASE MODIFICATION #4**  
Lease No.: FD-03-219

It is hereby agreed by and between the Navajo Nation, Lessor, and Navajo Tribal Utility Authority, Lessee, and (none), Surety, that Business Site Lease No.: FD-03-219, be modified this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

WHEREAS, Great Western Bank, N.A., which has provided financing to the Navajo Tribal Utility Authority, requests for modification of the lease to Part II of the lease between the Navajo Nation and the Navajo Tribal Utility Authority as set forth herein, and the Navajo Tribal Utility Authority has agreed pursuant to the \_\_\_\_\_ to exercise best efforts to pursue the amendments herein.

**NOW THEREFORE,**

Amendments to **Section L. Exceptions To Standard Terms and Conditions** as follows:

*Section 1.5 of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby amended to add the following new Section 1.5(D):*

D. Lessee and its subtenant, NTUA Headquarters, LLC ("Subtenant"), and their successor and assigns, may sublease, in whole or in part, any facilities, building or other improvements built by Lessee or Subtenant on the leased premises without the approval of Lessor, Lessee or any other legislative branch of the Navajo Nation (i.e. the Division of Economic Development or the Resources and Development Committee of the Navajo Nation).

*Section 1.6(E) of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:*

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

*Section 1.6(H) of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:*

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

*Section 1.12 of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby amended to add the following new Section 1.12(D):*

*D. Notwithstanding any provision to the contrary in this Lease, the Approved Encumbrancer may apply any insurance proceeds to repayment of the Loan in accordance with the terms of the Approved Encumbrance and other loan documents.*

*Section 1.34 of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:*

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation; provided, however, Lessor may provide, in a separate written agreement, a limited waiver of sovereign immunity in accordance with the Navajo Nation's Sovereign Immunity Act to allow an Approved Encumbrancer or its assignee to enforce this Lease in Navajo Court against Lessor.

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

[SIGNATURE PAGE FOLLOWS]

NAVAJO TRIBAL UTILITY AUTHORITY, LESSEE

By: \_\_\_\_\_

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

THE NAVAJO NATION, LESSOR

By: \_\_\_\_\_  
President

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

Approved by Navajo Nation Department of Justice:

By: \_\_\_\_\_

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



**BSL# FD-03-219**



LEASE NO. FD-03-219

Filing Fee: \$165.00

**PART I**  
**NAVAJO NATION ECONOMIC DEVELOPMENT LEASE**  
**(Navajo Nation Trust Land)**

☒ Standard Business Site Lease

☐ Shopping Center Lease

(From) NOV 18, 2003 - (Until) NOV 17, 2053

THIS LEASES, in sextuplicate, is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2003, by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is Post Office Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and NAVAJO TRIBAL UTILITY AUTHORITY, hereinafter called the Lessee, whose address is Post Office Box 170, Ft. Defiance, Arizona 86504, in accordance with the provisions of 25 U.S.C. §§ 415 as amended, and as implemented by the regulations contained in 25 C.F.R. Part 162; and any amendments thereto relative to business leases on restricted lands which by this reference are made a part hereto.

**A. LAND DESCRIPTION.**

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

A certain tract of land located within Section 26, T. 18 N., R. 21 W., NMPM, Navajo Nation, McKinley County, New Mexico, being more particularly described as follows:

Commencing for a tie at the Real Point of Beginning from whence a US Department of Interior Brass Cap, 86 M.C. bears S00°22'00"W along the State Line between the States of New Mexico and Arizona a distance of 565.63 feet to the East ¼ Corner of Section 8, T.27N., R. 31 E., G&SRM within the State of Arizona, and continuing S00°22'00"W along the State Line a distance of 191.45 feet to that Brass Cap. Thence Due East a distance of 2.32 feet to a Point of Curvature.

Thence along a Curve to the Right whose  $\Delta = 39^\circ 19' 50''$ ,  $R = 210.435$  feet,  $Lc = S70^\circ 20' 05'' E$  141.63 feet, a distance of 144.45 feet to a Point of Tangency;

Thence S50° 40' 10"E a distance of 615.57 feet to a Point on the West Right of Way line of BIA Route N12;

Thence N39° 19' 50"E along the West Right of Way line a distance of 900.00 feet to the North East corner;

Thence N50° 40' 10"W a distance of 615.57 feet to a Point of Curvature;

791-284-04

 REC-  
 2004 HY 18 P.  
 LAND TITLES & RECORDS  
 BUR INDIAN AFFAIRS  
 ALBUQUERQUE, N.M.



Thence along a Curve to the Left whose  $\Delta = 39^\circ 09' 12''$ ,  $R = 1,110.435$  feet,  $Lc = N70^\circ 14' 45''W$  744.14 feet, a distance of 758.811 feet to a point on the State Line between the States of New Mexico and Arizona.

Thence along said State Line  $S00^\circ 22' 00''W$  a distance of 900.01 feet to the Real Point of Beginning

Said Tract contains 22.074 acres more or less, which includes a 100 feet wide proposed access road along the south boundary.

Basis of Bearing:  $N00^\circ 22' 00''E$  along State Line from survey by George Perce W/O# 00-06-274.

Said property is shown on the attached survey plat marked as Exhibit "A", which by reference is made a part hereof.

2. All of the above land is located in Ft. Defiance Chapter of the Navajo Nation, County of Apache, State of Arizona, subject to any prior, valid, existing rights-of-way and easements. There is hereby reserved and excepted from the leased premises rights-of-way for utilities constructed by or on authority of the Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the leased premises.

B. PURPOSE, UNLAWFUL USES.

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

Navajo Tribal Utility Authority headquarters and affiliated enterprise operations in accordance with the Plan of Operation.

2. 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. Consent may be withheld, granted, or granted upon conditions, in the sole discretion of Lessor and the Secretary.
3. Lessee agrees that it will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

C. TERM.

The term of this Lease shall be fifty (50) years, beginning on the date this Lease is approved by the Secretary.

D. RENTAL.

1. The Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America the fair market value based on an appraisal of the business site lease, in its current state, annually for each five years of the lease. This rental payment shall be made in twelve (12) monthly installments, payable on the first day of the month for which the rent is due and owing or the payment may be made annually in one installment. The first five years annual rental rate shall be based on the Bureau of Indian Affairs Appraisal Report dated June 27, 2002 in the amount of \$5,500.00.
2. At the end of each five year period of the Lease, the property will be reappraised and the annual rental will be recomputed in compliance with the provisions of 25 CFR 162.8, which

requires that the fair market value of any leasehold interest that is not based on a percentage of income be recomputed every five years. At the time of reappraisal, the appraised value shall be based on value of the land in its unimproved condition, less any improvements made to the land by the Lessee. The Lessor will obtain and pay for the appraisal and provide the rental value of its appraisal to the Lessee, if the Lessee objects to the rental value proposed under Lessors appraisal, it may obtain its own appraiser and prepare its own appraisal. If the Lessor and Lessee are unable to reach a compromise between the conflicting appraisals, the two appraisers shall appoint a third professional certified appraiser and the determination of that appraiser as to the fair market value shall be used for the five year interval until the next appraisal.

3. 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 rental is due. All rental shall be deposited with the Controller of the Navajo Nation. When the annual accounting required by Section 1.3, Part II, of this Lease is completed, the Lessee shall pay any balance due on any percentage rental, or if there is an overpayment, the overpayment shall be credited toward future rents.
4. 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.
5. 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.
6. 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 are made to the leased premises, the rent and other terms of this Lease shall be subject to renegotiation.

#### E. IMPROVEMENTS.

1. The Lessee, in consideration for the granting of this Lease, covenants and agrees that Lessee will construct new facilities for the headquarters operation at a cost of and having a reasonable value of \$8,000,000 or more.
2. Except as otherwise provided in this Lease, 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. Lessor may require Lessee, at Lessee's expense, to remove improvements and restore the premises to the 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.



F. COMPLETION OF DEVELOPMENT.

1. 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 E above, within 60 months from the date which the Navajo Nation approves the plans and designs described in that Section. If Lessee fails to complete full development within such period, such failure shall constitute a breach of the terms of this Lease and may be cause for cancellation.
2. 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.

G. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION.

All improvements placed on the leased premises shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. All parts of building 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 \$2,000,000 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 herein above provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

H. RENTAL AND PERFORMANCE BOND.

1. Upon approval of this Lease by the Lessor and the Secretary, Lessee agrees to post a corporate surety bond or other security acceptable to Lessor and the Secretary in a penal sum of \$5,500.00, 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. From time to time the amount of such bond may be increased or decreases by the Lessor and the Secretary, at the Lessor's and the Secretary's reasonable discretion, to more accurately reflect the actual damage which would be suffered by the Lessor in the event of a default in any performance required of the Lessee.
2. 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, a copy of which certificate shall be furnished to 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.

I. CONSTRUCTION BOND.

1. 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 Lessor and to remain in effect until the improvement is satisfactorily completed. Said bond shall be conditioned upon faithful performance by Lessee or his construction contractor and shall give all claimants a right 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 Lessor or an institution acceptable to the Lessor, negotiable United States Treasury Bonds, or cash, or furnishing a non-revocable letter of credit satisfactory to Lessor in an amount sufficient to pay the entire cost of construction of each building or other improvement then to be erected on the premises. If United States Treasury Bonds are provided, Lessee or his construction contractor shall make up any deficiency of the value deposited that might occur due to a decrease in the value of said bonds. Interest on said bonds shall be paid to Lessee or his construction contractor. The funds so deposited may then be used, at the option of Lessor, to discharge any valid mechanic's or materialmen's liens; if no such liens exist, the withheld funds shall be disbursed to Lessee or his construction contractor.
2. If Lessee enters into a construction loan agreement with a financial institution, said loan agreement shall be subject to the approval of Lessor and the Secretary. 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, or otherwise secure by means of a performance bond, the difference between the amount of the loan and the total cost of improvement.

J. NOTICES AND DEMANDS.

1. All notices, demands, requests or other communications to or upon either party provided for in this Lease, or given or made in connection with this Lease, shall be in writing and shall be addressed as follows:

To or upon Lessor: President  
The Navajo Nation  
Post Office Box 9000  
Window Rock, Navajo Nation (Arizona) 86515  
  
Telefax: 1-520-871-4025

To or upon Lessee: General Manager  
Navajo Tribal Utility Authority  
Post Office Box 170  
Ft. Defiance, Arizona 86504

Telefax: 1-928-729-2135

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

Regional Director  
Navajo Regional Office  
Bureau of Indian Affairs  
Post Office Box 1060  
Gallup, New Mexico 87305-1060

2. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid or by facsimile transmission, followed by surface mail. Notices shall be effective and shall be deemed delivered when dispatched and may be delivered by personal delivery, registered or certified mail, or by facsimile transmission, followed by surface mail.
3. Lessor and Lessee may at any time change its address for purposes of this Section by notice.

K. APPLICABLE TERMS AND CONDITIONS

The Standard Terms and Conditions for Economic Development Leases on Navajo Nation Trust Land in Part II of this Lease apply to this Lease and are incorporated herein in their entirety (NOTE: The Terms and Conditions for a Standard Business Site Lease apply to all Leases. The Terms and Conditions for Business Site Leases with Underground Storage Tanks apply where they are appropriate. If Underground Storage Tanks are on the premises when the Lessee signs the Lease, or are installed after the Lessee signed the Lease, these Terms and Conditions will apply to the Lease as a matter of law. Special Terms and Conditions for Navajo Nation Business Site Leases Within Navajo Nation Shopping Centers apply only to Leases in Navajo Nation Shopping Centers).

The specific Version of Standard Terms and Conditions for Navajo Nation Economic Development Leases (Trust Land) is **Version 1.4 dated 8/24/01**.

- L. EXCEPTIONS TO STANDARD TERMS AND CONDITIONS (Insert and justify any deviations from the Standard Terms and Conditions in Part II of this Lease).

791-284-04



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

RECEIVED  
2004117 18 PM 2:35

FOR INDIAN AFFAIRS  
ALBUQUERQUE

NAVAJO TRIBAL UTILITY AUTHORITY, LESSEE

By: [Signature]  
General Manager

Date: 8-27-03

THE NAVAJO NATION, LESSOR

By: [Signature]  
President

Date: SEP 05 2003

**APPROVED:**

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

By: [Signature]  
**ACTING** Regional Director, Navajo  
BUREAU OF INDIAN AFFAIRS

Date: November 18, 2003

791-284-04



## PART II

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

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

### 1.1 DEFINITIONS.

- A. "Approved Encumbrance" means an encumbrance approved in writing by the Lessor, the Secretary and sureties, if any, in accordance with the terms and conditions of this Lease.
- B. "Encumbrance" means the owner and holder of an Approved Encumbrance, including all successors and assigns.
- C. "Gross Receipts" means all income, including money and other things of value, received by or paid to Lessee or its affiliates, whether individuals, corporations, partnerships, or other legal entity, or received by or paid to others for Lessee's or its affiliates' use and benefit, derived from business done, sales made, or services rendered directly or indirectly on the leased premises or any portion thereof. All income accruing from credit transactions will be treated as "gross receipts" as of the date credit is extended. Gross Receipts will not include amounts collected and paid out for a sales and excise tax imposed by any duly constituted governmental authority where such tax is billed to the purchaser as a separate item. Any taxes paid by the Lessee as a part of the cost of merchandise purchased by the Lessee are not to be excluded or deducted. It shall not include credits for the exchange of goods or merchandise between stores, if any, of Lessee or its affiliates where such exchange is made solely for the convenient operation of business and not for the purpose of consummating a sale previously made directly from or on the leased premises. It shall not include the amount of any refund where the merchandise sold, or some part thereof is returned by the purchaser and accepted by Lessee or its affiliates. It shall not include income from the sale of fixtures, or good will, or the sale of improvements, including, but not limited to, corrals, buildings, livestock scales, and holding pens.
- D. "Secretary" means the Secretary of the Interior or his authorized representative, delegate, or successor.

### 1.2 CONDITION OF LEASED PREMISES.

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

### 1.3 ACCOUNTING.

When an accounting of Gross Receipts is required under the Lease in order to determine a percentage rent, 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 D 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 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 the same and shall have the right to examine and/or audit as hereinbefore described. Therefore, Lessee shall for said period of four (4) years after submission to the Lessor 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.

### 1.4 UTILITY SERVICE LINE AGREEMENTS.

- A. Lessee specifically is authorized to enter into appropriate service line agreements with utility companies for the provision of utility services to the leased premises, including gas, water, sewer, electricity, telephone, television and other utilities, without further consent by Lessor and with the Secretary, on the condition that:
- (1) such agreements are for the sole purpose of supplying utility services to the leased premises; and
  - (2) such agreements authorize utility service lines only within the leased premises; and
  - (3) such agreements do not extend beyond the term of this Lease, including any extensions thereof; and

- (4) executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Lessor within thirty (30) days of their execution; and

- (5) such agreements are otherwise in accordance with the provisions of 25 C.F.R. § 169.22, including any amendments or successors thereto.

- B. Nothing contained herein shall be construed to limit the right of Lessor to enter into service line agreements with utility companies for service lines across the leased premises, provided that such service lines do not unreasonably interfere with Lessee's use of the leased premises, nor otherwise to affect the rights-of-way reserved to Lessor in Section 2 of this Lease.

1.5 SUBLEASE, ASSIGNMENT, MANAGEMENT AGREEMENT, TRANSFER.

- A. 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 this Lease or any of the improvements on the leased premises, or sell, assign or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee without the written approval of Lessor, 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(s), shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make any such sublease, assignment, sale, amendment, or transfer, except as aforesaid, such action shall be deemed a breach of this Lease, excepting that an encumbrancer, as herein set forth, may enforce his rights in the manner hereinafter provided. Approval of one sublease, assignment, sale, amendment or transfer shall not validate a subsequent sublease, assignment, sale, amendment or transfer, and the restrictions of this Section shall apply to each successive sublease, assignment, sale, amendment or transfer hereunder and shall be severally binding upon each and every Sublessee, Assignee, Transferee and other successor in interest of the Lessee, excepting an encumbrancer.

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

- C. 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 Lessor. Lessor reserves the right to adjust the rental provisions of this Lease upon any sublease, assignment or transfer.

1.6 ENCUMBRANCE.

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

- B. An encumbrance must be confined to the leasehold interest of the Lessee or the subleasehold interest of a Sublessee and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish as requested any financial statements or analysis pertinent to the encumbrance that the Lessor and the Secretary may deem necessary to justify the amount, purpose and terms of said encumbrance.

- C. An encumbrancer of any Sublease, in the event of default by Sublessee of the terms of an approved encumbrance, may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor, 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.

- (1) To pay the encumbrancer the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such payment, plus foreclosure or sale costs incurred to the date of such payment.
- (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the 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.



D. If Lessee or Lessor exercises either of the above rights, all of the right, title, and interest of the Sublessee in the Sublease shall automatically terminate on the same date the right is exercised and the Lessor or Lessee 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.

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

F. 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 default of any of them upon which notice of sale is based shall then continue, Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:

- (1) To pay to the encumbrancer the full unpaid principal amount of the approved encumbrance plus unpaid interest accrued to the date of such payment, plus sale costs incurred to the date of such payment.
- (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the 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 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.

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

H. 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.

1.7

#### LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.

Lessee shall not permit to be enforced against the leased premises or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by Lessee. Lessee shall discharge all such liens before any action is brought to enforce same; further, Lessee shall pay before becoming delinquent, all taxes, assessments, licenses, fees, and other like charges levied during the term of this Lease upon or against the leased land and all interests therein and property thereon, for which either Lessee or Lessor may become liable. Upon request Lessee shall furnish Lessor 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, 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.

1.8

**LESSOR'S PAYING CLAIMS.**

Lessor shall have the option to pay any lien or charge payable by Lessee under this Lease, or settle any action therefor, if the Lessee after written notice from the Lessor 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.

1.9

**SANITATION.**

- A. Lessee hereby agrees to comply with all applicable sanitation codes, requirements, or laws which may be related to the purpose of this document as set forth in Section B(1). Such compliance shall specifically include, but not be limited to, the sanitary regulations of the U.S. Public Health Service. Lessee further agrees to at all times maintain the entire premises in a safe, sanitary condition, presenting a good appearance both inside and out in all buildings operated on the leased premises.
- B. Lessee further agrees to comply with applicable, state, Navajo Nation or local laws, statutes, ordinances or regulations, court or administrative orders or decrees pertaining to all environmental matters including but not limited to the storage and disposal of regulated substances. Lessee further agrees that all solid waste generated by the Lessee or by any Sublessee shall be disposed of only at a state or tribally certified public or private landfill, and shall maintain records to demonstrate compliance with this requirement.
- C. Lessee agrees to maintain all records required by applicable law and regulations and to make such records available to appropriate officials of the Navajo Nation or federal government.

1.10

**HAZARDOUS AND REGULATED SUBSTANCES.**

Lessee shall not cause or permit any hazardous substance (as defined by RCRA, 42 U.S.C. §§ 9601 et seq., CERCLA, 42 U.S.C. §§ 9601 et seq., or other federal laws and regulations) to be used, stored, generated or disposed of on or in the premises without first obtaining written consent of the Navajo Nation Environmental Protection Agency. If hazardous or regulated substances (as defined above) are used, stored, generated or disposed of on or in the premises, or if the premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor and the United States from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal 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 or regulated substance on the premises and such results in any contamination of the leased premises including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the

premises to the condition existing prior to the contamination presence by any such hazardous or regulated substance on the premises. Lessees will first obtain Lessor's approval for any such remedial action.

1.11

**LIABILITY INSURANCE**

Policies required under Subparagraph B of this Lease shall also name the United States of America as an additional named insured. Without limiting any liabilities or any other obligations of Lessee, Lessee will provide and maintain the minimum insurance coverages listed below. Coverage will be provided with forms and insurers acceptable to the Navajo Nation until all obligations under this Lease are satisfied. All insurers must be duly licensed and have a current AM Best rating of at least A-VII and if unlicensed, be an admitted surplus lines insurer. All policies required under this Lease shall name the Navajo Nation as an additional named insured.

- A. Workers' compensation insurance to cover obligations imposed by federal and state statutes of the entity having jurisdiction over the Lessee's employees working on the lease hold, and Employers' Liability insurance with a minimum of ONE MILLION DOLLARS (\$1,000,000.00). In case of any contracted work on the lease hold, the Lessee will require the Contractor, and all subcontractors, to provide comparable coverage.
- B. Commercial General Liability Insurance with an unimpaired minimum combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000.00) Each Occurrence with a TWO MILLION DOLLARS (\$2,000,000.00) General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, blanket contract, independent contractor, product, and completed operations coverage. The policy shall contain a severability of interests provision.
- C. Commercial and/or Business Automobile liability insurance with a combined single limit for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence with respect to Lessee's owned, hired and non-owned vehicles assigned to or used in Lessee's business.
- D. If the Lessee is engaged in a profession, the Lessee shall carry Professional Liability insurance in an amount satisfactory to the Risk Management Department of the Navajo Nation. In the event that the insurance coverage is written on a "claims made" basis, the Risk Management Department of the Navajo Nation may, at its discretion, require "tail coverage" beyond the term of the Lease.
- E. Lessee, at its cost, shall maintain insurance coverage for full replacement cost on all of Lessee's personal property, Lessee's alterations, Lessee's utility installations, and Lessee's trade fixtures in, or about the Premises. The proceeds from any such insurance shall be used by Lessee for the replacement of Lessee's personal property, alterations, utility installations, or trade fixtures only if Lessor repairs or rebuilds the Premises.
- F. The policies required by Sections B and C shall be endorsed to include the Navajo Nation, its agents, representatives, officers, directors, officials and employees as additional insureds



and shall require that the insurance provided by Lessee shall be primary insurance and that any insurance carried by the Navajo Nation its agents, officials or employees shall be excess and not contributory insurance to that provided by Lessee.

- G. An acceptable certificate of insurance shall be issued to the Navajo Nation by the Lessee prior to commencement of the Lease as evidence that policies providing the required coverages, conditions and limits are in full force and effect. A copy of such certificate shall be furnished to the Secretary. Such certificate shall indemnify this Lease and contain provisions that coverage afforded under the policies will not be canceled, terminated or materially altered until at least thirty (30) days prior written notice has been given to the Lessor.

Certificates of insurance shall be addressed as follows: Navajo Nation Department of Risk Management, P.O. Box 1690, Window Rock, Arizona 86515

- H. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the Lessor.
- I. Failure on the part of the Lessee to procure or maintain required insurance shall constitute a material breach of contract upon which the Lessor may immediately terminate this Lease.
- J. The Navajo Nation reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.
- K. Lessee and its insurers providing the required coverages shall waive all rights of recovery against the Navajo Nation and its agents, officials and employees, and the Secretary. The insurance limits required under this Lease shall not limit the liability of the Lessee, nor relieve the Lessee of any obligation under this lease.
- L. The Lessee shall not do or commit to be done anything in or upon any portions of the Premises or bring or keep anything there which would in any way conflict with the condition of any insurance policy upon the Premises or in any way increase the rate of insurance upon the Premises or on property kept there.

1.12 FIRE AND CASUALTY INSURANCE.

- A. 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 of 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.

- B. In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all improvements on the leased premises during the 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 1.21. In the event Lessee does not reconstruct, all insurance proceeds shall be paid to Lessor.

- C. Any encumbrancer shall be named as a beneficiary under all insurance policies required by this paragraph and in the event of loss or damage to the buildings on the leased 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.

1.13 INDEMNIFY, DEFEND AND HOLD HARMLESS.

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

1.14 EMINENT DOMAIN.

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

1.15 DEFAULT.

A. 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 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 as authorized by applicable law:

- (1) Collect, by suit or otherwise, all monies as they become due hereunder; or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease; or
- (2) Re-enter the premises if the Lessee

has abandoned the premises or has failed to conduct business for a period of time with out notice 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

- (3) Take any other action deemed necessary to protect any interest of Lessor.

- B. No waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant of this Lease.
- C. Exercise of any of the remedies outlined in this Section shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor or the Secretary or any other rights or remedies now held or which may be held by Lessor in the future.
- D. 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 statutes and regulations that Lessee would be entitled to pursue. Further, Lessor shall not terminate the Lease if an encumbrancer has commenced and is diligently pursuing a foreclosure action to terminate Lessee's interest in said Lease and has cured or is taking action to cure the breach that is the cause of the termination.

1.16 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.

1.17 NO PARTNERSHIP.

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

1.18 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.

1.19 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.

1.20 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, without merger of the Lease and sublease or subtenancy, of any and all such subleases and/or subtenancies.

1.21 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 for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the premises, the protection of the leased premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Lessee shall pay the costs of such testing. Nothing in this paragraph shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.

1.22 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 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 the Lessee vacates the premises.

1.23 LEASE REQUIREMENTS NOT EXCLUSIVE.

Nothing in this Lease shall be construed to relieve Lessee of

any obligations pursuant to any Federal or Navajo Nation law for the protection of the environment or the public health, safety, or general welfare which is currently enacted or which may be enacted at a later date.

1.24 DELIVERY OF PREMISES.

A. 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.

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

1.25 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 N.N.C. §§ 601 et seq. ("NPEA"), and the Navajo Nation Business Preference Law, 5 N.N.C. §§ 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.

1.26 MINERALS.

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

1.27 SUCCESSORS AND ASSIGNS.

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

1.28 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.

1.29 USE OF NAVAJO PRODUCED GOODS AND SERVICES.

Lessee agrees to make all purchases of materials, equipment, goods, services and transportation from Navajo-owned businesses, whenever such purchase is economically feasible, as required by Navajo law.

1.30 AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS.

The Lessee and the Lessee's employees, agents, and sublessees and their employees and agents agree to abide by all laws, regulations, and ordinances of the Navajo



Nation, and all applicable laws, regulations and ordinances of the United States, now in force and effect or as may be hereafter in force and effect.

1.31 GOVERNING LAW AND CHOICE OF FORUM.

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

1.32 CONSENT TO JURISDICTION.

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

1.33 COVENANT NOT TO CONTEST JURISDICTION.

Lessee hereby covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to similar challenges to the jurisdiction of a state government. Nothing in this Section shall be construed to negate or impair federal responsibilities with respect to the Leased Premises or to the Navajo Nation.

1.34 NO WAIVER OF SOVEREIGN IMMUNITY.

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

1.35 SAVINGS CLAUSE.

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

1.36 QUALIFICATIONS OF BUSINESS.

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

1.37 COMPLIANCE WITH 25 CFR 141.

Lessee, its sublessees and assignees and other successors in interest shall be subject to compliance with the provisions of the Code of Federal Regulations, Title 25, Part 141, which prescribe rules for the regulation of reservation business for the protection of Indian consumers on the Navajo Reservation as required by 25 U.S.C. §§ 261-264.

1.38 NO ORAL AGREEMENTS.

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

1.39 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.

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

2.1 DEFINITIONS.

A. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq.

B. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

C. "Regulated Substance" is as defined at 42 U.S.C. 6991(2), which is any substance defined in section 101(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (42 U.S.C. 9601(14)) (but not including any substances regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. 6921 et seq.) and petroleum).

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

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

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

2.2 HAZARDOUS AND REGULATED SUBSTANCES.

A. Lessee shall not cause or permit any hazardous substance

(as defined by RCRA, 42 U.S.C. §§ 6901 et seq., CERCLA, 42 U.S.C. §§ 9601 et seq. or other federal laws and regulations) to be used, stored, generated or disposed of on or in the premises without first obtaining written consent of the Navajo Nation Environmental Protection Agency. If hazardous or regulated substances (as defined above) are used, stored, generated or disposed of on or in the premises, or if the premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor and the United States from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal 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 or regulated substance on the premises and such results in any contamination of the leased premises including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the premises to the condition existing prior to the contamination presence by any such hazardous or regulated substance on the premises. Lessee shall first obtain Lessor's approval for any such remedial action.

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

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

and,

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

or their respective institutional successors.

2.3

#### FINANCIAL RESPONSIBILITY FOR STORAGE TANKS.

If Lessee or Sublessee installs or operates storage tanks on the leased property, the Lessee or Sublessee shall post a bond, obtain insurance or provide such other evidence of financial responsibility that meets all the requirements of 40 C.F.R. Part 280, Subpart H regardless of whether the storage tank in question is an aboveground or underground storage tank. Lessee shall provide proof of this bond, insurance, or other qualifying financial responsibility mechanism to the Risk Management Department of the Navajo Nation contemporaneous with Lessee's submission of proof of other bonds or insurance to the Bureau of Indian Affairs. This bond or insurance shall remain in effect for the

term of the base lease or sublease, and any renewals thereof, and shall not be released or terminated until such time as the Risk Management Department of the Navajo Nation certifies that the facility is in compliance with all applicable law and regulations, or that the tanks have been removed and the site has been remediated, or that the base lease or sublease has been transferred and the new operator has provided proof of an adequate bond, insurance or otherwise satisfied the 40 C.F.R. Part 280, Subpart H financial responsibility requirements. It shall be the responsibility of the Lessee and the Sublessee to provide the Risk Management Department of the Navajo Nation with all proof required for release of bond or termination of insurance coverage.

2.4

#### ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS.

- A. Entry Audit: If storage tanks are located at the Lease site, the Lessee will supply the Navajo Nation Environmental Protection Agency, the Division of Economic Development and the Risk Management Department of the Navajo Nation with a complete copy of the report and underlying data generated in preparation of a Phase Two environmental audit before Lessee places any regulated substance in the storage tanks or releases any regulated substances from the storage tanks but no later than ninety (90) days after the Lease is approved by the Secretary. Lessee shall notify the Navajo Nation Environmental Protection Agency and Risk Management Department at the addresses provided in Section 20 and shall notify the Division of Economic Development at the Regional Business Development Office responsible for supervision of the leased premises.

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

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

This sum is in addition to any other rental obligations of Lessee. This sum shall be used to pay for a Phase Two environmental audit to be performed during the last year of the Lease and any other environmental audit(s) during the term of the Lease which Lessor determines, based on probable cause, to be reasonably necessary to



ascertain whether environmental contamination by regulated substances has occurred. The Risk Management Department of the Navajo Nation shall determine whether an audit shall be performed.

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

prior to the audit and to reimburse the Navajo Nation for any amount the Navajo Nation spent on the environmental audit in excess of the \$15,000 deposit.

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

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

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

#### 3.1 FIXTURES AND PERSONAL PROPERTY.

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

All improvements to the premises by Lessee including, but not limited to, light fixtures, floor coverings, and partitions, but excluding trade fixtures and signs, shall be considered as improvements and shall become the property of Lessor upon expiration or earlier termination of this Lease, unless Lessor by written notice given prior to the date of expiration or upon the date of earlier termination of this Lease shall require Lessee to remove such improvements in which case Lessee shall repair any damage caused to the premises by such removal so as to return the premises to its original condition, ordinary wear and tear excepted.

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

assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessments. Lessor shall determine the basis of prorating of any such assessments and such determination shall be binding upon both Lessor and Lessee.

#### 3.2 REPAIRS AND MAINTENANCE.

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

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

A. Lessor shall keep and maintain in good and leasable condition the roof, exterior walls, structural parts of the premises, the fire protection system, structural floor, and pipes and conduits outside the premises for the furnishings to the premises of various utilities (except to the extent that the same are the obligations of the appropriate public utility company); provided, however, that Lessor shall not be required to make repairs necessitated by reason of the negligence of Lessee or anyone claiming under Lessee, or by reason of the failure of Lessee to

perform or observe any conditions or agreements in this Lease contained, or caused by alterations, additions, or improvements made by Lessee or anyone claiming under Lessee. Anything to the contrary notwithstanding contained in this Lease, Lessor shall not in any way be liable to Lessee for failure to make repairs as herein specifically required unless the Lessee has previously notified Lessor in writing of the need of such repairs and Lessor has failed to commence and complete said repairs within a reasonable period of time following receipt of the Lessee's written notification.

As used in this Section, the expression "exterior walls" shall not be deemed to include store fronts, plate glass, window cases, or window frames, door or door frames security grills, or similar enclosures. It is understood and agreed that Lessor shall be under no obligation to make any repairs, alterations, renewals, replacements, or improvements to and upon the premises of property installed or kept thereon by Lessee.

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

### 3.3 LESSEE'S RIGHT TO MAKE ALTERATIONS.

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

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

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

### 3.4 POSSESSION AND USE.

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

Lessee may not display or sell merchandise or allow carts, portable signs, devices or any other object to be stored or to remain outside the defined exterior walls or roof, permanent doorways of the premises, or in hallways. No aerial or antenna shall be erected on the roof or exterior walls of the premises without first obtaining, in each instance, the written



consent of Lessor. Any aerial or antenna so installed without such written consent shall be subject to removal without notice at any time. In addition, Lessee will not solicit in any manner in any of the automobile parking lots and common areas of the enclosed mall of the Shopping Center without having first obtained the written approval of Lessor.

Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the premises, and Lessee agrees to abide by such further regulations of Lessor.

### 3.5 LESSEE'S CONDUCT OF BUSINESS.

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

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

Lessee will not allow the premises to be used for any organized political or religious meetings or activity. Lessee shall, at all times during the term hereof, comply with all laws and regulations of the United States and the Navajo Nation applicable to Lessee's conduct of business on the premises.

Lessee shall employ its best efforts to operate the business conducted on the premises in a manner that will produce the maximum volume of gross sales. Lessee shall use only such space in the premises for office, clerical and other non-selling purposes as is reasonably required for Lessee's business on the premises.

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

### 3.6 ADVERTISING MEDIA.

Lessee shall not affix or maintain upon the glass panes and supports of the show windows (and within 24 inches of any window), doors and the exterior walls of the premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items unless Lessee shall have first received the written approval of Lessor as to size, type, color, location, copy, nature and display qualities. Anything to the contrary of this Lease notwithstanding, Lessee shall not affix any sign to the roof of the premises.

In addition, no advertising medium shall be utilized by

Lessee which can be heard or experienced outside Lessee's premises, including without limiting the generality of the foregoing: flash lights, searchlights, loudspeakers, phonographs, radios or televisions; nor shall Lessee display, paint or place or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center, whether belonging to Lessee, or to Lessee's agent or to any other person; nor shall Lessee distribute, or cause to be distributed, in the Shopping Center, any handbills or other advertising devices without having first obtained the written approval of Lessor.

### 3.7 COMMON AREAS.

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

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

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

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

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

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

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

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

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

It is understood that the employees of Lessee and the other Lessees of Lessor within the Shopping Center and the employees of other businesses within the Shopping Center shall not be permitted to park their automobile in the automobile parking areas of the common areas which may be designated for patrons of the Shopping Center. Lessor agrees to furnish and/or cause to be furnished either within the Shopping Center parking area, or reasonably close thereto, space for employee parking. Lessor at all times shall have the right to designate the particular parking area to be used by any or all of such employees and any such designation may be changed. Lessee and its employees shall park their cars only in those portions of the common areas, if any, designated by Lessor.

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

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

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

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

3.8 SPECIAL INSURANCE REQUIREMENT FOR SHOPPING CENTERS.

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

3.9 SPECIAL RECONSTRUCTION PROVISION FOR SHOPPING CENTERS.

In the event the premises be damaged by fire or other perils, covered by Lessor fire and extended coverage insurance, Lessor shall:

- A. Within a period of one hundred and eighty (180) days thereafter, commence repairs, reconstruction and restoration of said premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect; or



- B. In the event of a partial or total destruction of the premises, only during the last three (3) years of the term hereof, Lessor and Lessee shall each have the option to terminate this Lease upon giving written notice to the other of exercise thereof within thirty (30) days after such destruction. For the purposes of this paragraph, "partial destruction" shall be a destruction of an extent of at least thirty-three and one-third percent (33 1/3%) of the then full replacement cost of the premises as of the date of destruction.

All insurance proceeds, in the case of reconstruction shall be held in trust and applied to the payment of such reconstruction, as such reconstruction progresses.

- C. In the event the premises shall be damaged as a result of any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Lessor's Fire and Extended Coverage Insurance, to any extent whatsoever, the Lessor may, within one hundred and eighty (180) days following the date of such damage, commence repair, reconstruction or restoration of said premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect, or within said period elect not to so repair, reconstruct or restore said premises in which event this Lease shall cease and terminate. In either such event, Lessor shall give the Lessee written notice of its intention within said period.

- D. In the event of any reconstruction of the premises under this Article said reconstruction shall be in strict conformity with the provisions of this Lease set forth as "Description of Lessor's Work" and "Description of Lessee's Work." Notwithstanding that all reconstruction work shall be performed by Lessor's contractor, unless Lessor shall otherwise agree in writing, Lessor's obligation to reconstruct the premises shall be only to the extent of the work as described in "Description of Lessor's Work"; Lessee, at its sole cost and expense, shall be responsible for the repairs and restorations of all items set forth in "Description of Lessee's Work" and the replacement of its stock in trade, trade fixtures, furniture, furnishings and equipment. Lessee shall commence such installation of fixtures, equipment and merchandise promptly, upon delivery to it of possession of the premises and shall diligently prosecute such installation to completion.

- E. Upon any termination of this Lease under any of the provisions of this Article, the parties shall be released thereby without further obligations to the other party coincident with the surrender of possession of the premises to the Lessor, except for items which have theretofore accrued

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

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

### 3.10 SIGNS.

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

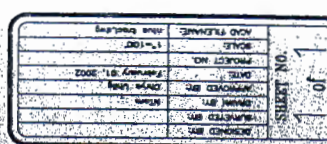
### 3.11 ADDITIONAL NOTICE REQUIREMENT FOR SHOPPING CENTERS.

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

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

### 3.12 LESSOR'S RESERVATIONS AND RIGHTS

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



779 67-275 1908 (Green Cap)  
Underberg Engineering & Aerial Services, Inc.  
Part Submarine Incorporated Control System  
Advanced Missile Plane Construction, East Zone  
No. 123-880,348 R.



**Modification #1 to BSL# FD-03-219**



Modification Fee \$100.00

Recorded at the  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Land Titles and Records Office  
Document Number: F421000026  
Date: 2014 DEC 18 12:38 PM  
LTRO: Southwest

LEASE MODIFICATION #1  
Lease No FD-03-219

It is hereby agreed by and between the Navajo Nation, Lessor, and Navajo Tribal Utility Authority, that Business Site Lease No FD-03-219, be modified this 26 day of March 2014

WHEREAS Lease No FD-03-219 lease term expires on November 18, 2053 Lease No FD-03-219 was approved on November 18, 2003 for a fifty (50) year lease term

WHEREAS Navajo Tribal Utility Authority requests for a modification of the lease term of Lease No FD-03-219 to a twenty five (25) year lease term with one (1) twenty five (25) year option to renew

NOW THEREFORE

- 1 An amendment which modifies the Lease Term (Article C of Lease) to twenty five (25) years with one (1) twenty five (25) year option to renew
- 2 All other provisions of the Lease No FD-03-219 shall remain unchanged

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

NAVAJO TRIBAL UTILITY  
AUTHORITY, LESSEE

BY Whitney W. Wase

Surety-in-fact \_\_\_\_\_ Date \_\_\_\_\_

Date 3/7/2014

THE NAVAJO NATION, LESSOR

By Bar Shelly  
President

Date MAR 26 2014

Date Approved DEC 12 2014

Acting By BV  
Regional Director, Navajo Region  
BUREAU OF INDIAN AFFAIRS

Approved Pursuant to Secretary Redlegation  
Order 209 DMB Secretary's Order Nos 3150  
and 3177, and 10 BIAM Bulletin 13, as  
amended



**Modification #2 to BSL# FD-03-219**



Recorded at the  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Land Titles and Records Office  
Document Number: Fd21000026  
Date: 2015 JAN 20 01:45 PM  
LTRO: Southwest

Lease Modification #2  
Lease No FD-03-219

THIS LEASE AMENDMENT to Lease No FD-03-219 is made and entered into this 26<sup>th</sup> day of March, 2014, by and between the Navajo Nation, Post Office Box 9000, Window Rock, Navajo Nation (Arizona), 86515, hereafter Lessor, and Navajo Tribal Utility Authority, whose address is Post Office Box 170, Ft Defiance, Arizona 86504 hereafter Lessee

Whereas on or about November 18, 2003, Lessor approved Lease No FD-03-219 to Navajo Tribal Utility Authority whose address was P O Box 170, Ft Defiance, Arizona for a term of fifty (50) years

Whereas Lessee consents and agrees to be governed by the Navajo Business Site Leasing Regulations of 2005 and Lessee desires to amend certain sections to Lease No FD-03-219 and has negotiated said amendments with Lessee

Now Therefore, it is hereby agreed by and between the Lessor and the Lessee that Lease No FD-03-219 be amended and modified as follows

- 1 Part I (1) "Amend 25 U S C , §§ 415 as amended, and as implemented by the regulations contained in 25 CFR Part 162," to read "25 U S C , Section 415(e) as implemented by the Navajo Nation Business Leasing Regulations of 2005 (hereinafter "Tribal Regulations)"
- 2 Section B PURPOSE, UNLAWFUL USES
  - (2) Amend "written consent of Lessor and the Secretary" to read "written consent of Lessor"
  - (2) Amend "sole discretion of Lessor and Secretary" to read "sole discretion of Lessor"
- 3 Section C TERM
  - (1) Amend "by the Secretary" to read "by the Lessor"
- 4 Section D RENTAL
  - (5) Amend "the Secretary may in his discretion" to read "the Lessor may in his discretion"



- (5) Amend "the Secretary or his authorized representative" to read "the Lessor or his authorized representative"

5. Section H. RENTAL AND PERFORMANCE BOND

- (1) Amend "Upon approval of this Lease by the Lessor and the Secretary" to read "Upon approval by the Lessor"
- (1) Amend "security acceptable to Lessor and the Secretary" to read "security acceptable to the Lessor"
- (1) Amend "bond shall be deposited with the Secretary" to read "bond shall be deposited with the Lessor"
- (1) Amend "at the discretion of the Lessor and the Secretary" to read "at the discretion of the Lessor"
- (1) Amend "bond may be increased or decreases by the Lessor and the Secretary" to read "bond may be increased or decreased by the Lessor"
- (1) Amend "at the Lessor's and the Secretary's reasonable discretion" to read "at the Lessor's reasonable discretion"
- (2) Amend "furnished to the Secretary by Lessee" to read "furnished to the Lessor by Lessee"
- (2) Amend "Lessor and the Secretary reserve the right" to read "Lessor reserves the right"

6. Section I. CONSTRUCTION BOND

- (4) Amend "subject to approval of Lessor and the Secretary" to read "subject to the Lessor"

7. Section J. NOTICES AND DEMANDS

- (5) Delete "~~Regional Director, Navajo Regional Office, Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305-1060~~"

8. Part II. Section 1.1. DEFINITIONS

(1) Delete ~~"the Secretary"~~

(4) Delete ~~"Secretary" means the Secretary of the Interior or his authorized representative, delegate, or successor.~~

9. Section 1.3. ACCOUNTING

(1) Amend "submit to the Lessor and the Secretary individually" to read "submit to the Lessor"

(1) Amend "acceptance by the Lessor or the Secretary" to read "acceptance by the Lessor"

(1) Amend "paid to the Lessor or the Secretary" to read "paid to the Lessor"

(1) Amend "but the Lessor or the Secretary" to read "but the Lessor"

(1) Amend "submission to the Lessor or the Secretary" to read "submission to the Lessor"

10. Section 1.4. UTILITY SERVICE LINE AGREEMENTS

(1) Amend "by the Lessor and with the Secretary," to read "by the Lessor,"

11. Section 1.5. SUBLEASE, ASSIGNMENT, TRANSFER

(1) Amend "written approval of Lessor, the Secretary and sureties, if any" to read "written approval of Lessor, and sureties, if any"

(2) Amend "approval of Lessor and the Secretary" to read "approval of Lessor"

12. Section 1.6. ENCUMBRANCE

(1) Amend "approval of the Lessor, the Secretary and sureties" to read "approval of the Lessor and sureties"

(2) Amend "the Lessor and the Secretary may deem" to read "the Lessor may deem"

(3) Amend "shall give to Lessor, the Secretary, and Lessee" to read "shall give to the Lessor and Lessee"

(5) Amend "approved by the Secretary" to read "approved by the Lessor"

(7) Amend "approval by Lessor and the Secretary" to read "approval by the Lessor"



- (8) Amend "shall give to Lessor and the Secretary notice" to read "shall give to the Lessor notice"
- (10) Amend "approved the Secretary" to read "approved by the Lessor"
- (12) Amend "approval by Lessor and the Secretary" to read "approval by the Lessor"
- 13. Section 1.7. LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES
  - (1) Amend "furnish Lessor and the Secretary" to read "furnish the Lessor"
  - (1) Amend "hold harmless Lessor, the Secretary" to read "hold harmless the Lessor"
- 14. Section 1.8. LESSOR'S PAYING CLAIMS
  - (1) Amend "notice from the Lessor or Secretary" to read "notice from the Lessor"
- 15. Section 1.11. LIABILITY INSURANCE
  - (8) Amend "furnished to the Secretary" to read "furnished to the Lessor"
  - (13) Amend "and the Secretary" to read "and the Lessor"
- 16. Section 1.12. FIRE AND CASUALTY INSURANCE
  - (1) Amend "notification to the Lessor and the Secretary" to read "notification to the Lessor"
  - (1) Amend "deposited with Lessor and the Secretary" to read "deposited with the Lessor"
  - (1) Amend "approved by Lessor and the Secretary" to read "approved by the Lessor"
- 17. Section 1.15. DEFAULT
  - (1) Amend "acted upon by the Secretary in accordance with Title 25, Chapter I Part 162 of the Code of Federal Regulations" to read "acted upon by the Lessor in accordance with Tribal Regulations"
  - (1) Amend "Lessor or the Secretary may exercise" to read "Lessor may exercise"
  - (3) Amend "any right of Lessor and the Secretary" to read "any right of Lessor"
  - (3) Amend "Lessor or the Secretary may sue" to read "Lessor may sue"

(6) Amend "which may be exercised by Lessor or the Secretary" to read "which may be exercised by the Lessor"

18. Section 1.16. ATTORNEY'S FEES

(1) Amend "incurred by Lessor or the Secretary" to read "incurred by the Lessor"

19. Section 1.21. INSPECTION

(1) Amend "The Secretary and Lessor and" to read "The Lessor and"

20. Section 1.39. VALIDITY

(1) Amend "by the Secretary." to read "by the Lessor."



All other terms and conditions, not specifically set forth herein for Business Site Lease No. FD-03-219 shall remain in full force and effect.

IN WITNESS THEREOF:

LESSEE:

NAVAJO TRIBAL UTILITY AUTHORITY

Walter W. Hays

LESSEE

Date: 3/2/2014

LESSOR: THE NAVAJO NATION

Barry Shelly

President, Navajo Nation

Date: MAR 26 2014

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

By: \_\_\_\_\_

Regional Director, Navajo Region  
BUREAU OF INDIAN AFFAIRS

Approved: Pursuant to Secretary Redelelegation  
Order 209 DMB Secretary's Order Nos. 3150  
and 3177, and 10 BIAM Bulletin 13, as  
amended.



**Modification #3 to BSL# FD-03-219**



Recorded at the  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Land Titles and Records Office  
Document Number: F421000026  
Date: 2015 AUG 07 03 12 PM  
LTRO: Southwest

Modification Fee \$100.00

**LEASE MODIFICATION #3**

Lease No FD 03 219

It is hereby agreed by and between the Navajo Nation Lessor and Navajo Tribal Utility Authority Lessee and (none) Surety that Business Site Lease No FD-03-219 be modified this 23rd day of March 2015

**WHEREAS** Navajo Tribal Utility Authority requests for modification of the additional acreage to Lease No FD-03 219 in the amount of 37.94 acres more or less and agrees to an increase in rental for Lease No FD-03-219 See Exhibit A

**WHEREAS** Navajo Tribal Utility Authority requests for Modification of the lease Purpose as required by Great Western Bank an Arizona banking corporation to Lease No FD-03 219

**WHEREAS** Navajo Tribal Utility Authority requests for an extension of the lease Term to a second (2<sup>nd</sup>) option to renew for an additional twenty-five (25) year to Lease No FD-03-219

**WHEREAS** Navajo Tribal Utility Authority requests to a Collateral Lease Assignment as required by Great Western Bank an Arizona banking corporation for Lease No FD 03-219 to allow the Lessee to finance for the intended purpose of Lease No FD-03-219 to encompass a 20 year note with Great Western Bank an Arizona banking corporation

**WHEREAS** Navajo Tribal Utility Authority requests for a Construction Mortgage and Fixture Filing Agreement to Lease No FD 03 219

**WHEREAS** Navajo Tribal Utility Authority requests for a Consent Nondisturbance and Attornment Agreement to Lease No FD-03-219

**WHEREAS** Navajo Tribal Utility Authority requests for an Estoppel Certificate and Agreement to Lease No FD 03-219

**WHEREAS** Navajo Tribal Utility Authority requests for a Leasehold Mortgage Assignment of Rents and Security Agreement to Lease No FD-03-219

**WHEREAS** Navajo Tribal Utility Authority requests for approval of a Sublease Agreement between NTUA Headquarters LLC and the Navajo Tribal Utility Authority extension of the lease Term to a second (2<sup>nd</sup>) option to renew for an additional twenty-five (25) year to Lease No FD-03-219

**WHEREAS** Navajo Tribal Utility Authority requests to a Collateral Lease Assignment for Sublease Agreement between NTUA Headquarters, LLC and the Navajo Tribal Utility Authority as required by Great Western Bank, an Arizona banking corporation for Lease No. FD-03-219 to allow the Lessee to finance for the *intended purpose of Lease No. FD-03-219 to encompass a 20 year note with Great Western Bank, an Arizona banking corporation.*

**NOW THEREFORE**

1. An amendment to Section A. **Land Description** to read:

A Tract of Land situated within Section 26, Township 18 North, Range 21 West, New Mexico Principal Meridian and State of New Mexico Within the Vicinity of Fort Defiance, County of McKinley, State of New Mexico. Said Tract is being Designated as a Navajo Tribal Utility Authority's Headquarters Tract and is being more particularly described as follows:

Commencing at U.S. Department of Interior, Bureau of Land Management, Brass Cap, Dated 1990, being the Closing Corner, One-Quarter (1/4) Township 27 North, Range 31 East, Gila & Salt River Meridian, State of Arizona, Thence N01°03'58"E along the Boundary Line Common to Arizona State and New Mexico State a Total Distance of 1,464.79' to a Point and Being the True Point of Beginning of this Herein Described Tract,

Thence Continuing Along said Boundary Line N01°03'58"E, a Distance of 970.00' to a Point, from Whence a U.S. Department of the Interior, Bureau of Land Management, Brass Cap, Dated 1990, Being the Closing Corner, Section Corner Common to Sections 05 and 08, Township 27 North, Range 31 East, Gila & Salt River Meridian. State of Arizona, Bears N01°03'58"E, A distance of 205.12'

Thence along a Southeasterly Curve, Whose Delta Angle=39°06'11", R=2,080.14', a Chord Bearing of S69°30'39"E, a Distance of 1,392.44', an Arc Distance of 1,419.84' to a Point of Tangency,

Thence S49°57'33"E, a Distance of 614.73' to a Point,

Thence S40°02'31"W, along Adjacent Westerly Right-Of-Way of BIA Route N12 a Distance of 970.00';

Thence N49°57'33"W, a Distance of 614.72' to a Point of Curvature;

Thence along a Northwesterly Curve, whose Delta Angle=39°12'55", R=1,110.41', a Chord Bearing of N69°34'01"W, a Distance of 745.26, an Arc Distance of 760.01' to the True Point of Beginning.

The above described tract of land contains 37.96 acres more or less in area and is subject to any and all utility easements aerial and underground located therein.

2. An amendment to Section B. **Purpose, Unlawful Uses** to delete Section B (1) and add the following:

Lessee shall use the leased premises for general commercial office use only, including, office, inventory, warehouse and other similar purposes.



3. An amendment to **Section C. Term** to add the following:

In addition to the 25 year option, which option will automatically commence on the last day of the initial lease term (November 19, 2028), Lessee may extend the Lease term for an additional 25-year term by providing written notice to Lessor prior to the expiration of the current Lease term; provided however, that Lessee must not be in default of this Lease at the time any option is extended.

4. An amendment to **Section D. Rental**

Years 10-14	\$5,500.00 per year
Years 15-20	\$13,250.00 per year
Years 21-25	\$23,000.00 per year

A. Lessee must make annual Rent payments on each anniversary of the Commencement Date during the Lease term. All Rent payments shall be deposited with the the Navajo Nation or at such other place as the Lessor may direct in writing.

B. Should the Lessee not pay Rent within 30 days after the due date, the Lessee shall be subject to a late charge of \$100.00. If the Lessee does not pay the full amount past due within 60 days, Lessor shall send a written notice to Lessee that such amount has not been paid and the Lessee shall be subject to an additional late charge of \$100.00. If the Lessee does not pay the full amount within 90 days, Lessor shall send a written notice to Lessee that such amount has not been paid and the Lessee shall be subject to an additional late charge of \$100.00, and it shall be deemed a default by Lessee under this Lease. Notwithstanding anything above to the contrary, the Rent amount called for hereunder shall be paid without prior notice or demand.

C. Adjustment of Annual Rent

(1) Upon the 25th anniversary of the Commencement Date of this Lease and upon every subsequent 5th anniversary of this Lease as long as the Lease is in effect (including all renewal terms) the Rent shall be adjusted (an "Adjustment") by multiplying the Rent in effect at the time of the Adjustment by a fraction the numerator of which shall be the CPI as hereinafter defined, for the month fifteen months prior to the upcoming Adjustment Date and the denominator of which shall be the CPI for the month fifteen months prior to the upcoming Commencement Date or prior Adjustment Date (which was 5 years prior). In no event shall an adjustment pursuant to this section exceed 12% for any 5 year period.

(2) For the purposes of this Section the "CPI" is the Consumer Price Index - All Consumers national average with 1982-1984=100

(3) In the event that the CPI is discontinued or there is a major change in the manner of computation of such index, the parties shall substitute another index or method of adjustment which shall achieve an equivalent result satisfactory to both parties.

Modification Fee: \$100.00

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

[SIGNATURE PAGE FOLLOWS]



Modification Fee: \$100.00

NAVAJO TRIBAL UTILITY AUTHORITY, LESSEE

By: Matthew W. House  
Date: 5/12/2015

THE NAVAJO NATION, LESSOR

By: Samuel Beyer  
President  
Date: 5/18/2015

Approved by Navajo Nation Department of Justice:

By: 25-3000  
Date: 5-13-15

Fidelity and Deposit Company of Maryland

K Davis 4/27/15  
Surety-in-fact: Date

Kari Davis, Attorney-In-Fact

Bond # 09143030



**Zurich North America Surety**  
Los Angeles Branch  
777 So. Figueroa St, Ste 3900  
Los Angeles, California 90017

### SURETY RIDER

To be attached to and form a part of:

Type of Bond: Performance Bond  
Bond No: 09143030  
Principal: Navajo Tribal Utility Authority  
Executed by: Fidelity and Deposit Company of Maryland  
In Favor of: United States Department of the Interior  
Bureau of Indian Affairs

In consideration of the mutual agreements herein contained the Principal and Surety hereby consent to increasing the bond amount:

From: Five thousand five hundred and 00/100 Dollars (\$5,500.00)

To: Twenty-three thousand and 00/100 Dollars (\$23,000.00)

Nothing herein contained shall vary, alter or extend any provision or condition of this except as herein expressly stated.

Signed, sealed and dated this 27th day of April, 2015.

Navajo Tribal Utility Authority

By: Matthew N. Hume  
Gm 5/11/2015

Fidelity and Deposit Company of Maryland

By: Kari Davis  
Kari Davis, Attorney-In-Fact



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

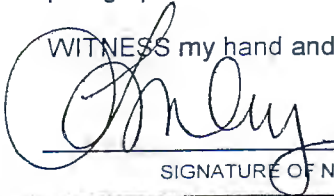
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles

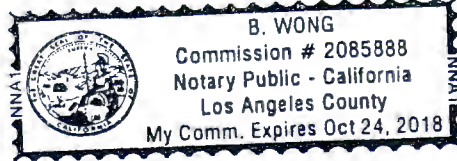
On APR 27 2015 before me, B. Wong, Notary Public  
personally appeared, Kari Davis  
who proved to me on the basis of satisfactory evidence to be the person whose name is  
subscribed to the within instrument and acknowledged to me that she executed the same in  
her authorized capacity, and that by her signature on the instrument the person, or the  
entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.



SIGNATURE OF NOTARY



Notary Public Seal

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

DESCRIPTION OF ATTACHED DOCUMENT:

TITLE OR TYPE OF DOCUMENT: \_\_\_\_\_

NUMBER OF PAGES: \_\_\_\_\_ DOCUMENT DATE: \_\_\_\_\_

CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name: \_\_\_\_\_

☐ INDIVIDUAL

☐ CORPORATE OFFICER  
Title(s) \_\_\_\_\_

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL

☒ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER: \_\_\_\_\_

Signer is representing:

NAME OF PERSON(S) OR ENTITY(IES)

Signer's Name \_\_\_\_\_

☐ INDIVIDUAL

☐ CORPORATE OFFICER  
Title(s) \_\_\_\_\_

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER: \_\_\_\_\_

Signer is representing:

NAME OF PERSON(S) OR ENTITY(IES)

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **THOMAS O. MCCLELLAN, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Patricia TALAVERA and Kari DAVIS, both of Los Angeles, California, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York, the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 1st day of November, A.D. 2013.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND



By: *Gerald F. Haley*  
Assistant Secretary  
Gerald F. Haley

*Thomas O. McClellan*  
Vice President  
Thomas O. McClellan

State of Maryland  
City of Baltimore

On this 1st day of November, A.D. 2013, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **THOMAS O. MCCLELLAN, Vice President, and GERALD F. HALEY, Assistant Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

*Constance A. Dunn*

Constance A. Dunn, Notary Public  
My Commission Expires: July 14, 2015





1 of 1	SHEET NO.	DRAWN BY:	J.S.
		SURVEYED BY:	J.S.
		DATE:	02/02/2011
		PROJECT NO.	9
		SCALE:	1" = 200'
		ACAD. FILENAME:	dwg

**Exhibit B**

**Collateral Assignment of Lease  
with Addendum**



When Recorded Return To:  
Snell & Wilmer LLP  
One Arizona Center  
Phoenix, AZ 85004  
Attn: Mark Ohre

### COLLATERAL ASSIGNMENT OF LEASE

This Collateral Assignment of Lease is made this 23rd day of March, 2015, between GREAT WESTERN BANK, a bank chartered under the laws of South Dakota, whose address is 1721 North Arizona Avenue, Suite 1, Chandler, Arizona, 85225, hereinafter called Assignee, and NAVAJO TRIBAL UTILITY AUTHORITY, a wholly owned enterprise of the Navajo Nation, whose address is PO Box 170, Fort Defiance, Arizona, 86504, hereinafter called Assignor. The Business Site Lease has been previously approved by the Navajo Nation as Lease No. FD-03-219 (the "Lease").

### WITNESS

#### SECTION I. RECITALS

- A. The Assignor, also the Lessee, under a certain the Lease, a copy of which is attached as Exhibit "A", has been approved by the Navajo Nation and has been issued for a period of twenty-five (25) years commencing on the date the Lease was approved by the Navajo Nation. The Lessor under this Lease was the Navajo Nation ("Lessor") and the Lease was approved on November 18, 2003.
- B. Assignee has agreed to make a loan in the amount sufficient to finance all or a portion of the costs for developing and constructing the NTUA Office Headquarters located on the leased premises. The loan will be made pursuant to one or more loan agreements (collectively, the "Loan Agreement") and promissory notes (collectively, the "Note") between Assignor and Assignee as evidence of its repayment obligation.
- C. The Assignor has agreed to make a Collateral Assignment of the Lease ("Assignment") to secure the Note under the terms of the Loan Agreement as originally made and as it may be amended.

#### SECTION II. ASSIGNMENT.

- A. As security for the payment of the Note, the Assignor hereby assigns its interest in, rights, and right to continued possession under, the Lease, subject to the terms and conditions herein, to Assignee.

#### SECTION III. WARRANTIES AND COVENANTS.

- A. Assignor shall pay all applicable rents and other charges as they fall due under the terms of the Lease.
- B. Assignor shall not surrender its Lease and interest in the Lease, nor terminate or cancel the Lease. The Assignor shall not modify, change, supplement, alter or amend the Lease, either

orally or in writing, without the express written consent of the Assignee. Any such termination, cancellation, modification, change, supplement, alteration, or amendment, of the Lease without the prior written consent of Assignee shall be null and void and have no force and/or effect. However, Assignee shall not unreasonably withhold approval of any requested changes or amendments to the Lease which do not impair its security interest.

#### **SECTION IV. PERFORMANCE OF LEASE OBLIGATIONS AND RIGHT TO CURE.**

A. The Assignor shall at all times fully perform and comply with all covenants, terms and conditions imposed on or assumed under the Lease.

B. If Assignor fails to fully perform and comply with the Lease and the Lessor notifies the Assignee in writing of the default under the terms provided for in the Lease Assignee shall not take action against the Navajo Nation in the event of such a default, but shall have the option, in its sole discretion, but not the obligation, to take any actions it deems necessary or desirable to cure the default by the Assignor. On receipt by Assignee of any written notice of default of the Lease by the Lessor, Assignee may rely on the notice and take any reasonable action to cure the default even though the existence of such a default, or the nature thereof, is questioned or denied by the Assignor, or by any party on behalf of the Assignor, including taking possession of the leased premises. If Assignee takes possession of the premises it shall have the right to enforce the Lease to the same extent as if it were the original Lessee under the Lease.

C. The Assignor hereby expressly grants to Assignee, and agrees that Assignee shall have the absolute and immediate right to enter in and on the leased premises, or any part thereof, in the event that Assignee deems it necessary or desirable to prevent or cure any default on the Lease by the Assignor.

D. Assignee may pay and expend reasonable sums of money that are necessary to prevent or cure any default on the Lease by the Assignor and the Assignor in turn, agrees to pay to Assignee, immediately and without demand, all sums paid and expended by Assignee in preventing or curing a default of the Lease by the Assignor together with interest thereon from the date of each such payment by Assignee at the rate of the Wall Street Journal Prime Rate plus two percent adjusted daily from the date of Assignee payment. All sums so paid and expended by Assignee and the interest thereon shall be secured by this assignment.

#### **SECTION V. RELEASE OR FORBEARANCE.**

No release or forbearance by Assignee of any of the Assignor obligations under the Loan Agreement or Note shall release the Assignor from any of its obligations under the Lease, including the Assignor obligation to perform all of the terms, covenants and conditions contained in the Lease.

#### **SECTION VI. ACCELERATION AND RIGHT OF POSSESSION OR SALE.**

Upon the event of default, as defined in the Loan Agreement and Note, and upon the Assignor's failure to cure within the period provided in the Loan Agreement and Note, Assignee shall be entitled to immediate possession of the leased premises subject to the terms and conditions of the Lease, to which Assignee expressly agrees. Assignee further expressly agrees to furnish, as requested, any financial statements or analysis pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of this Assignment.

#### **SECTION VIII. DEFAULT AND SALE.**

A. In the event of default under the Loan Agreement and Note, and if the Assignor fails to cure the default, Assignee may exercise the rights provided for in the Loan Agreement, Note, and this Assignment. However, before any subsequent assignment, transfer, or sale, of the Lease, whether under power of sale or foreclosure, Assignee shall give written notice of the event of default and the Assignor's failure to cure the default to the Lessor. Before any notice of sale, subsequent assignment, transfer or any other form of alienation, the Lessor with first priority shall be given the right to pay Assignee the full unpaid principal, accrued interest due under the Loan Agreement and Note, plus reasonable sale and enforcement costs incurred by Assignee through



the day of such payment by the Lessor. This right may be exercised at any time before the completion of the sale proceedings.

B. If the Lessor exercise its right to pay Assignee the full unpaid amount and interest due under the Loan Agreement and Note, plus reasonable sale and enforcement costs incurred through the date of payment, this Assignment shall automatically terminate on the date such right is exercise, and shall have no further force or effect. However, the termination of this Assignment shall not relieve Assignee from any obligation or liability which has accrued before the date of termination. Assignee shall file the appropriate termination statement and/or release with the Lessor.

C. In the event that the Lessor, avail itself of the rights set forth above, Assignee shall have the right to either 1) remain in possession of the Lease, assume the position of the Lessee and perform the terms and conditions of the Lease so long as Assignee retains title thereto, or 2) sell its interest in the Lease by either public or private sale on terms that are commercially reasonable. If a sale occurs resulting in a purchase by a party other than Assignee, the purchaser shall be bound by all of the terms and conditions of the Lease and shall expressly assume those terms and conditions as a condition of the sale. Any purported sale where the purchaser does not expressly assume the terms and conditions of the Lease shall be null and void and without effect.

#### **SECTION IX. TERMINATION UPON PAYMENT IN FULL.**

In the event that the Assignor pays the amount specified in the Loan Agreement and Note in full plus interest thereon, this Assignment shall cease to have effect and Assignor shall file such termination statement and/or releases as reasonably necessary within ten (10) days after the Assignor pays the full amount of the Loan Agreement and Note and interest thereon, or at such time as the Assignor requests that such termination statements and/or releases be filed.

#### **SECTION X. CHOICE OF LAW.**

The laws of the Navajo Nation shall govern this Assignment. Assignor and Assignee agree that all controversies and claims between the parties of any nature ("dispute" or "disputes") arising directly or indirectly out of or in connection with this Assignment or any related agreements shall at the written request of any party be resolved through binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, enforced by any court of competent jurisdiction, including the courts of the Navajo Nation. Nothing in this Collateral Assignment of Lease shall be construed as a waiver, either express or implied, of the Sovereign Immunity of the Navajo Nation.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Collateral Assignment on the day and year first above written.

FOR THE ASSIGNEE:

GREAT WESTERN BANK, a bank chartered  
under the laws of South Dakota

By: *Lyle D. Frederickson*  
Name: Lyle D. Frederickson  
Title: Vice President

STATE OF ARIZONA            )  
  )    ss  
County of MARICOPA        )

The foregoing instrument was acknowledged before me this 17 day of APRIL,  
2015, by LYLE D. FREDERICKSON, as OFFICER  
of Great Western Bank, a bank chartered under the laws of South Dakota, on behalf thereof.

*Kathie Petty*  
Notary Public





FOR THE ASSIGNOR

NAVAJO TRIBAL UTILITY AUTHORITY, a  
wholly-owned enterprise of the Navajo Nation

By: Walter W. Haase  
Name: Walter W. Haase, P.E.  
Title: General Manager 4/5/2015

STATE OF ARIZONA                    )  
  )  
County of Apache                    )       ss

The foregoing instrument was acknowledged before me this 5 day of April,  
2015, by Walter W. Haase, P.E., as General Manager of the Navajo Tribal Utility Authority, a  
wholly-owned enterprise of the Navajo Nation, on behalf thereof.

Theresa M. Talker  
Notary Public



THE LESSOR, THE NAVAJO NATION:

By: [Signature]  
Navajo Nation President or Vice President

Date: 05/18/2015

STATE OF ARIZONA                    )  
  )  
County of Apache                    )       SS

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of May, 2015, by Jonathan Nez, Vice President as the President of the Navajo Nation, on behalf thereof.

Coreta Keeto  
Notary Public



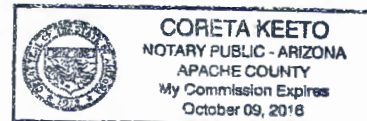
Approved by Navajo Nation Department of Justice:

By: [Signature]  
Date: 5-13-15

STATE OF ARIZONA  
County of Apache

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of May, 2015, by Ledgerick T. Besay, Asst Atty Gen. of the Navajo Nation, a federally recognized Indian Nation.

Coreta Keeto  
Notary Public





Addendum

Return recording information was added at the top of page 1 of this Assignment.

The date and the name and address information for the relevant parties was completed in paragraph 1 of this Assignment.

The reference to "Lease Number \_\_\_\_\_" should be revised throughout this Assignment to read "the Lease" as such term is defined in the first paragraph of this Assignment.

Section I.A. of the Recitals should be revised to read as follows:

A. Assignor, also the Lessee, under a the Lease, a copy of which is attached as Exhibit A, has been approved by the Navajo Nation and has been issued for a period of 50 years commencing on November 18, 2003. The Lessor under this Lease was the Navajo Nation ("Lessor") and the Lease was approved on November 18, 2003.

Section I.B. of the Recitals should be revised to read as follows:

B. Assignee has agreed to make a loan in the amount sufficient to finance all or a portion of the costs for developing and constructing the NTUA Office Headquarters located on the leased premises. The loan will be made pursuant to that certain Loan Agreement dated December 31, 2014 (the "Loan Agreement") between Assignor and Assignee.

Section I.C. of the Recitals should be revised to read as follows:

C. Assignor has agreed to make a Collateral Assignment of the Lease ("Assignment") to secure the repayment of the Loan under the terms of the Loan Agreement as originally made and as it may be amended.

Section II.A. of the Assignment should be revised to read as follows:

As security for repayment of the Loan, Assignor hereby assigns its interest in, rights, and right to continued possession, under the Lease, subject to the terms and conditions herein, to Assignee.

Section IV.D. of the Assignment should be revised to read as follows:

D. Assignee may pay and expend reasonable sums of money that are necessary to prevent or cure any default on the Lease by Assignor and Assignor in turn, agrees to pay to Assignee, immediately and without demand, all sums paid and expended by Assignee in preventing or curing a default of the Lease by Assignor together with interest thereon from the date of each such payment by Assignee at the rate of the Applicable Interest Rate (as defined in the Loan Agreement) from the date of Assignee payment. All sums so paid and expended by Assignee and the interest thereon shall be secured by this assignment.

Section V. of the Assignment should be revised to delete references to "the Note."

Section VI. of the Assignment should be revised to delete references to "the Note."

Section VIII.A. of the Assignment should be revised to read as follows:

A. In the event of default under the Loan Agreement, and if Assignor fails to cure the default, Assignee may exercise the rights provided for in the Loan Agreement and this Assignment. However, before any subsequent assignment, transfer, or sale, of the Lease,

whether under power of sale or foreclosure, Assignee shall give 30 days written notice of the event of default and Assignor's failure to cure the default to the Lessor. Before any notice of sale, subsequent assignment, transfer or any other form of alienation, the Lessor shall be given an additional 30-day right ("Lessor Cure Period") to pay Assignee the full unpaid principal, accrued interest due under the Loan Agreement, plus reasonable sale and enforcement costs incurred by Assignee through the day of such payment by the Lessor. This right may be exercised within the early of (i) 60 days from when Lessor received the original notice of uncured default from Assignee or (ii) at any time before the completion of the sale proceedings.

Section VIII.B. of the Assignment should be revised to delete references to "the Note."

Section VIII.D. of the Assignment should be revised to read as follows:

C. In the event that the Lessor does not pay Assignee the full unpaid amount and interest due under the Loan Agreement, plus reasonable sale and enforcement costs incurred through the date of payment, within the Lessor Cure Period, then Assignee may either 1) remain in possession of the Lease, assume the position of the Lessee and perform the terms and conditions of the Lease so long as Assignee retains title thereto, or 2) sell its interest in the Lease by either public or private sale on terms that are commercially reasonable, without the consent of Lessor, and other enterprise or department of the Navajo Nation, Assignor, Secretary of the Interior or the Navajo Nation's court. If a sale occurs resulting in a purchase by Assignee, Assignee's designee, or a party other than Assignee, the purchaser shall be bound by all of the terms and conditions of the Lease and shall expressly assume those terms and conditions as a condition of the sale. Any purported sale where the purchaser does not expressly assume the terms and conditions of the Lease shall be null and void and without effect.

Section IX. of the Assignment should be revised to read as follows:

In the event that Assignor pays the amount specified in the Loan Agreement in full plus interest thereon, this Assignment shall cease to have effect and Assignor shall file such termination statement and/or releases as reasonably necessary within 10 days after Assignor pays the full amount of the Loan Agreement and interest thereon, or at such time as Assignor requests that such termination statements and/or releases be filed.

Section X. of the Assignment should be deleted in its entirety and replaced with the following:

## **SECTION X. DISPUTE RESOLUTION AND CHOICE OF LAW.**

### **1.1 Waiver of Sovereign Immunity.**

(a) Limited Waiver of Sovereign Immunity. In accordance with the authority granted to Assignor and the Navajo Nation under the laws of the Navajo Nation, the Assignor and the Navajo Nation hereby expressly and irrevocably waives Assignor's and the Navajo Nation's sovereign immunity with respect to the enforcement of this Agreement, including the enforcement of the agreement to arbitrate, enforcement of an arbitration decision or award rendered in conformance with this Agreement, the assignment of rents, subject to and conditioned upon the following limitations:

(i) This limited waiver of sovereign immunity extends only to Lender and its successors and assigns, and shall not extend to or be used by, for or to the benefit of any other person or entity.

(ii) This limited waiver of sovereign immunity extends only to enforcement of the provisions of this Agreement and the other agreement and to any dispute that may arise between Assignor, the Navajo Nation and Lender, and their successors and assigns under this Agreement.

(iii) No waiver may be enforced to the extent the subject matter of the dispute shall be assets of the Navajo Nation. Assignor acknowledges that the interest of Assignor in the Collateral will be property and an asset of Assignor and shall in no event be considered property or assets of the Navajo Nation. The Assignor and Navajo Nation acknowledge that Assignee's interest is a first priority lien interest in the Lease and the leased premises only and not any other real property of the Assignor or the Navajo Nation.

(iv) Nothing in this Agreement shall be considered a waiver, express or implied, of the sovereign immunity of Assignor or the Navajo Nation except to the extent provided for in the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §§ 551 et seq. and Assignor's Plan of Operation, as amended.

(b) Consent to Financing Statement. Assignor further agrees to file, at its own expense, financing statements perfecting Lender's interest under this Agreement, pursuant to which Assignor will be named as "debtor."

## **1.2 Dispute Resolution.**

(a) Federal Arbitration Act and Jurisdiction.

(i) Applicability. The parties acknowledge that this Agreement and the parties' obligations and responsibilities arising from this Agreement involve interstate commerce, subjecting the agreement to arbitrate herein to the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, et seq., to the extent not inconsistent with the Navajo Arbitration Act. The parties further agree that this Section 1.2 shall be interpreted and enforced in accordance with the provisions of the Navajo Arbitration Act, 7 N.N.C. § 1101, et seq., and the Federal Arbitration Act, to the extent that the Federal Arbitration Act is applicable and not inconsistent with the Navajo Arbitration Act. In particular, and without limiting the foregoing, the parties agree that the Court (as defined below) considering the confirmation of an arbitration award under 7 N.N.C. § 1114 shall vacate, remand, modify or correct an award only on the grounds set forth in 7 N.N.C. §§ 1115 and 1116.

(ii) Consent to Jurisdiction. For purposes of enforcing this Agreement pursuant to binding arbitration proceedings, the parties consent to the jurisdiction of the courts of the Navajo Nation and to the jurisdiction



of any court to which the decisions of the courts of the Navajo Nation can be appealed (each a "Court" and, collectively, the "Courts").

(iii) Arbitration. Any dispute arising out of or relating to this Agreement shall be resolved by arbitration as contemplated by the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 554(J) and (K), and the Navajo Nation Arbitration Act, 7 N.N.C. §§ 1101 et seq. The arbitration shall be conducted in accordance with the American Arbitration Association Commercial Arbitration Rules except to the extent that said rules are modified by the following:

(1) Unless otherwise agreed to by the parties, the arbitration shall be held in Phoenix, Arizona;

(2) The arbitration panel shall consist of a single arbitrator unless one of the parties' claims exceeds \$1,000,000.00, exclusive of interest, costs, and fees, then the arbitration panel shall consist of three (3) arbitrators. On all arbitration panels, there shall be at least one arbitrator with at least 10 years of experience in federal Indian law;

(3) Notice of intent to invoke arbitration against Assignor and the Navajo Nation shall be filed in compliance with the notice requirements of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 555;

(4) An arbitration award against Assignor and the Navajo Nation shall conform to the provisions of 1 N.N.C. § 554(K);

(5) Except as otherwise set forth in Section 1.3 hereof, the laws of the Navajo Nation shall govern the application and interpretation of this Agreement; and

(6) The Courts shall have exclusive jurisdiction to enforce, modify, and vacate an arbitration award.

Any disputes, claims or controversies concerning the lawfulness or reasonableness of an act, or exercise of any right or remedy concerning this Agreement, including any claim to rescind, reform, or otherwise modify this Agreement, shall also be arbitrated; provided, however, that no arbitrator shall have the right or the power to enjoin or restrain any act of either party. The statute of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of any action for these purposes.

(b) Ancillary Remedies. No act to take possession of or dispose of any or all of the Equipment shall constitute a waiver of arbitration or be prohibited by this arbitration provision. The arbitration provision set forth herein shall not limit the right of either party during any dispute, claim or controversy to seek, use, and employ ancillary, or preliminary rights and/or remedies, judicial or otherwise, for

the purposes of realizing upon, preserving, protecting, foreclosing upon or proceeding under forcible entry and detainer or through self-help for possession of, any real or personal property, and any such action shall not be deemed an election of remedies (collectively, the "Ancillary Remedies"). Such Ancillary Remedies include, without limitation, any action that may be required pursuant to 7 N.N.C. § 621 or any similar or successor statute to permit removal of personal property, obtaining injunctive relief or a temporary restraining order, obtaining a writ of attachment or imposition of a receivership, or exercising any rights relating to personal property, including exercising the right of setoff or taking or disposing of such property, with or without judicial process pursuant to the applicable provisions of the Uniform Commercial Code.

(c) Service of Process. Service of process may be made by any means authorized by applicable law and arbitration rules. Assignor and the Navajo Nation acknowledges that the President and Attorney General of the Navajo Nation must receive service of process pursuant to the laws of the Navajo Nation and that the Assignor's Chief Executive Officer is the authorized official of Assignor to receive service of process on behalf of Assignor.

(d) Compulsion of Arbitration.

(i) Navajo Nation Court. Judgment shall be entered on any award made by the arbitrator(s) by the Courts. Review of the award shall be as provided in the Navajo Nation Arbitration Act. Without limiting the generality of the foregoing, Assignor and the Navajo Nation expressly authorizes any Governmental Authority who has the right and duty under applicable law to take any and all action awarded in any arbitration proceeding or by any Court, including, without limitation, entry upon the land and any premises owned or controlled by Assignor or the Navajo Nation to give effect to any arbitration award. Assignor and the Navajo Nation also acknowledge that once entered in any Court, judgments may also be transferred to and enforced through other courts as necessary to enforce the judgment creditor's rights against the judgment debtor's properties and assets.

(ii) Waiver of Defenses. The parties waive, and agree not to assert by way of motion, defense, or otherwise in any action to compel arbitration, any claim that the Courts set forth in Section 1.2(a)(ii) above are inconvenient forums or that venues in such Courts are improper.

**1.3 Governing Law.** Except as specifically set forth in this Agreement, shall be governed by, and construed in accordance with the laws of the Navajo Nation (without giving effect to conflict of laws principles) and applicable Federal law, including the constitutional law of the United States prohibiting impairment of contracts and to the extent not in conflict with the laws of the Navajo Nation, then with the laws of the State of Arizona.

**WAIVER OF JURY TRIAL.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTY HERETO OR ANY OF THEM

WITH RESPECT TO THIS, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE..

The signature and notary blocks on the signature pages were completed with the relevant information for each party.

A signature and notary block was added for the Navajo Nation, as Lessor.



## **Exhibit C**

### **Construction Mortgage and Fixture Filing**

When Recorded Return To:  
Snell & Wilmer L.L.P.  
One Arizona Center  
Phoenix, Arizona 85004-2202  
Attn: Mark Ohre

Recorder's Use

**CONSTRUCTION MORTGAGE AND FIXTURE FILING**  
**(With Assignment of Rents and Security Agreement)**  
**VARIABLE RATE**

THIS CONSTRUCTION MORTGAGE SECURES A VARIABLE RATE PROMISSORY NOTE WHICH VARIES ACCORDING TO CHANGES SET FORTH THEREIN.

THIS DOCUMENT SERVES AS A FIXTURE FILING UNDER THE UNIFORM COMMERCIAL CODE OF NEW MEXICO.

MORTGAGOR'S ORGANIZATIONAL IDENTIFICATION NUMBER IS:  
L19739375.

THIS CONSTRUCTION MORTGAGE AND FIXTURE FILING (With Assignment of Rents and Security Agreement) (as it may be amended and modified from time to time, the "Mortgage") is made as of March 23, 2015, by and between NTUA HEADQUARTERS, LLC., an Arizona limited liability company ("Mortgagor"), whose mailing address is PO Box 170, Fort Defiance, Arizona, 86504, and GREAT WESTERN BANK, a bank chartered under the laws of South Dakota ("Mortgagee"), whose mailing address is 1721 North Arizona Avenue, Suite 1, Chandler, Arizona, 85225

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Mortgagor hereby irrevocably grants, transfers, conveys and assigns to Mortgagee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Mortgagee, under and subject to the terms and conditions hereinafter set forth, (i) all right, title, interest and claims of Mortgagor in, to and under the leasehold estate created by that certain United States Department of Interior Bureau of Indian Affairs ("BIA") Lease Tribal, between the Navajo Nation (the "Tribe"), and Navajo Tribal Utility Authority, a wholly owned enterprise of the Navajo Nation ("NTUA") (the "Master Lease") and (ii) Mortgagor's subleasehold estate and all other right, title, interest and

claims of Mortgagor under that certain Sublease Agreement dated December 31, 2014, wherein NTUA is the current lessor (sometimes referred to as ("Lessor") or ("Ground Lessor") and Mortgagor is the current lessee as described by memorandum recorded in the Official Records of Navajo County, Arizona (the "Ground Lease"), relating to that certain real property located in the Navajo Nation, County of McKinley, State of New Mexico, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Premises") together with all of the right, title and estate of Mortgagor in and to the property subject to the Ground Lease, all options and rights now existing hereafter or arising thereunder, all of Mortgagor's right to waive, excuse, release or consent to any waiver, excuse or release of any provision of the Ground Lease or to consent to subordination of the Ground Lease to any mortgage or estate superior to the Ground Lease to any other estate and all deposits made by Mortgagor pursuant to the Ground Lease;

TOGETHER WITH any and all buildings and other improvements now or hereafter erected on the Premises including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (the "Improvements"), all of which shall be deemed and construed to be a part of the real property;

TOGETHER WITH all rents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Premises and the Improvements (collectively the "Rents"), subject to the terms and provisions of Article II of this Mortgage with respect to all leases and subleases of the Premises or Improvements now or hereafter existing or entered into, or portions thereof, granted by Mortgagor, and further subject to the right, power and authority hereinafter given to Mortgagor to collect and apply such Rents;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Premises or the Improvements;

TOGETHER WITH all easements, rights-of-way and other rights now owned or hereafter acquired by Mortgagor used in connection with the Premises or the Improvements or as a means of access thereto (including, without limitation, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto) and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all leasehold estate, right, title and interest of Mortgagor in and to all leases or subleases covering the Premises or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Mortgagor thereunder including, without limitation, all rights of Mortgagor against guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the "Leases");

TOGETHER WITH all right, title and interest now owned or hereafter acquired by Mortgagor in and to any greater estate in the Premises or the Improvements;



TOGETHER WITH all right, title, and interest of Mortgagor (but none of the obligations) in the following property, but only to the extent it arises from or relates to the ownership, use and operation of the Premises and Improvements (i) the property and interests in property described on Exhibit B attached hereto and incorporated herein by reference, (ii) all other personal property now or hereafter owned by Mortgagor that is now or hereafter located on or used in connection with the Premises or the Improvements, (iii) all other rights and interests of Mortgagor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Premises or the Improvements, (iv) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Mortgagor, and (v) all proceeds thereof (such personal property and proceeds are referred to herein collectively as the "Personal Property").

TOGETHER WITH all right, title and interest of Mortgagor now owned or hereafter acquired in all Personal Property described on Exhibit B attached hereto and all property of similar type or kind hereafter acquired by Mortgagor and all insurance proceeds from any policy of insurance covering any of the aforesaid Personal Property now or hereafter acquired by Mortgagor;

TOGETHER WITH all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

TOGETHER WITH all the estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Mortgagor now has or may hereafter acquire in the Premises, the Improvements, the Personal Property, or any other part of the Mortgaged Property (as defined below), and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Mortgaged Property (including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages);

TOGETHER WITH all proceeds of the foregoing.

The entire estate, property, right, title and interest hereby conveyed to Mortgagee may hereafter be collectively referred to as the "Mortgaged Property."

FOR THE PURPOSE OF SECURING (in such order of priority as Mortgagee may elect) the following (the "Obligations"):

(a) payment of indebtedness in the total principal amount of up to \$15,000,000.00 ("Loan"), with interest thereon, evidenced by certain Promissory Note as of December 31, 2014 (as it may be amended, modified, extended, and renewed from time to time (the "Note") executed by NTUA pursuant to that certain Loan Agreement between NTUA and Mortgagee dated as of December 31, 2014 (as it may be amended, modified, extended, and renewed from time to time, the "Loan Agreement"). The Loan Agreement contains a provision providing for a variable rate of interest under the Note;

(b) payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon equal to the Applicable Interest Rate (as defined in the Loan Agreement), which rate of interest is hereinafter referred to as the "Agreed Rate";

(c) payment of all other sums, with interest thereon, that may hereafter be loaned to Mortgagor, or its successors or assigns, by Mortgagee, or its successors or assigns when evidenced by a promissory note or notes reciting that they are secured by this Mortgage;

(d) performance of every obligation of Mortgagor contained in the Loan Documents (as defined below);

(e) performance of every obligation of Mortgagor contained in any agreement, document, or instrument now or hereafter executed by Mortgagor reciting that the obligations thereunder are secured by this Mortgage, including, without limitation, all other obligations, agreements or indebtedness of Mortgagor under any Rate Management Transaction (as defined in the Loan Agreement); and

(f) for the benefit of Mortgagee, compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Mortgaged Property is bound or may be affected.

This Mortgage, the Note, the Loan Agreement, and any other mortgages, deeds of trust, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any or all of the Obligations, as the foregoing may be amended, modified, extended, or renewed from time to time may hereinafter be collectively referred to as the "Loan Documents." Any term used or defined in the Uniform Commercial Code of New Mexico, as in effect from time to time ("Uniform Commercial Code of New Mexico"), and not defined in this Mortgage, has the meaning given to the term in the Uniform Commercial Code of New Mexico, when used in this Mortgage.

## MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

### ARTICLE I COVENANTS AND AGREEMENTS OF MORTGAGOR

1.01 Payment and Performance of Secured Obligations. Mortgagor shall pay when due and/or timely perform each of the Obligations.

1.02 Maintenance, Repair, Alterations. Mortgagor shall keep the Mortgaged Property in good condition and repair. Mortgagor shall not remove, demolish, or substantially alter any of the Improvements, except with the prior written consent of Mortgagee. Mortgagor shall complete promptly and in a good and workmanlike manner any Improvement that may be now or hereafter constructed on the Premises and promptly restore in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Mortgagor shall comply with all



Requirements (as defined below) and shall not suffer to occur or exist any violation of any Requirement. Mortgagor shall not commit or permit any waste or deterioration of the Mortgaged Property, and, to the extent allowed by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair. Mortgagor shall perform its obligations under each Lease. "Requirement" and "Requirements" mean, respectively, each and all obligations and requirements now or hereafter in effect by which Mortgagor or the Mortgaged Property are bound or which are otherwise applicable to the Mortgaged Property, construction of any Improvements on the Mortgaged Property, or operation, occupancy or use of the Mortgaged Property (including, without limitation (i) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local), and (ii) such obligations and requirements of, in, or in respect of (A) any consent, authorization, license, permit, or approval relating to the Mortgaged Property, (B) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Mortgaged Property, (C) any Lien or Encumbrance, (D) any other agreement, document, or instrument to which Mortgagor is a party or by which Mortgagor or the Mortgaged Property is bound or affected, and (E) any order, writ, judgment, injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Mortgagor is a party or by which Mortgagor or the Mortgaged Property is bound or affected).

1.03 Required Insurance. Mortgagor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force with respect to the Mortgaged Property, at no expense to Mortgagee, policies of insurance in forms and amounts and issued by companies reasonably satisfactory to Mortgagee covering such casualties, risks, perils, liabilities and other hazards as is required under the Loan Agreement. All such policies of insurance required by the terms of this Mortgage or the Loan Agreement shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor or any party holding under Mortgagor that might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Mortgagor.

1.04 Delivery of Policies, Payment of Premiums.

(a) At Mortgagee's option all policies of insurance shall either have attached thereto a lender's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee or shall name Mortgagee as an additional insured. Mortgagor shall furnish Mortgagee with certificates of insurance for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage. If Mortgagee consents, Mortgagor may provide any of the required insurance through blanket policies carried by Mortgagor and covering more than one location, or by policies procured by a tenant or other party holding under Mortgagor; provided, however, all such policies shall meet the requirements referred to in Section 1.03. At least 10 days prior to the expiration of each required policy, Mortgagor shall deliver to Mortgagee evidence reasonably satisfactory to Mortgagee of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Mortgage. All such policies shall contain a provision that, notwithstanding any contrary agreement between Mortgagor and insurance company,



such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least 40 days prior written notice to Mortgagee.

(b) In the event Mortgagor fails to obtain, maintain, or deliver to Mortgagee the policies of insurance with respect to the Mortgaged Property required by this Mortgage, Mortgagee may, at Mortgagee's election, but without any obligation so to do, procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor, the amount of all such premiums shall bear interest at the Agreed Rate. Upon the occurrence and during the continuation of an Event of Default and request by Mortgagee, Mortgagor shall deposit with Mortgagee in monthly installments, an amount equal to 1/12 of the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage (funds deposited for this purpose are referred to as "Insurance Impounds"). In such event Mortgagor further agrees to cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements, or other documents evidencing that a premium for a required policy is then payable, and provided there are sufficient Insurance Impounds, Mortgagee shall timely pay such amounts as may be due thereunder out of the Insurance Impounds. If at any time and for any reason the Insurance Impounds are or will be insufficient to pay such amounts as may be then or subsequently due, Mortgagee shall notify Mortgagor and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of Insurance Impounds or to be obligated to pay any amounts in excess of the amount of the Insurance Impounds, nor shall anything contained herein modify the obligation of Mortgagor set forth in Section 1.03 to obtain and maintain insurance. Mortgagee may commingle Insurance Impounds with its own funds, and Mortgagor shall not be entitled to interest thereon. Mortgagee may reserve for future payments of premiums such portion of Insurance Impounds as Mortgagee in its absolute and sole discretion deems proper. If Mortgagor fails to deposit with Mortgagee sums sufficient to pay fully such premiums at least 30 days before delinquency thereof, Mortgagee may, at Mortgagee's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Mortgagee upon demand with interest from the date advanced at the Agreed Rate, or at the option of Mortgagee the latter may, without making any advance whatever, apply any Insurance Impounds to payment of the Obligations in such order as Mortgagee may determine, notwithstanding that such Obligations may not yet be due. Upon the occurrence and during the continuation of an Event of Default, Mortgagee may, at any time, at Mortgagee's option, apply any Insurance Impounds or Impositions Impounds under this Section 1.04, any funds paid as Rents, and any other funds of Mortgagor held by Mortgagee to payment of any of the Obligations, in such manner and order as Mortgagee may elect, notwithstanding that such Obligations may not yet be due.

1.05 Casualties; Insurance Proceeds.

(a) Mortgagor shall give prompt written notice thereof to Mortgagee after the happening of any casualty to or in connection with the Mortgaged Property or any part thereof, whether or not covered by insurance. In the event of such casualty, all proceeds of insurance shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee. If Mortgagor receives any proceeds of insurance resulting from such casualty Mortgagor shall promptly pay over such proceeds to Mortgagee.

(b) Mortgagor shall diligently and in good faith settle, adjust or compromise any and all claims for loss, damage or destruction under any policy or policies of insurance; *provided, however*, in the event Mortgagor fails to diligently and in good faith settle, adjust or compromise any and all such claims within 45 days after the occurrence of the loss, damage or destruction that gave rise to such claims, Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any and all such claims.

(c) In the event of any loss, damage or destruction of the Premises or the Improvements or any portion thereof, Mortgagee shall apply all loss proceeds remaining after deductions of all expenses of collection and settlement thereof, including reasonable attorneys' and adjustors' fees and expenses, to the restoration and, to the extent available under policies of business interruption or lost rent, to the operation and maintenance of the Improvements, *provided that* (i) no Event of Default (or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) is then in existence (except any event resulting from the casualty), (ii) in the event the loss, damage or destruction is greater than \$1,000,000.00, the loss, damage or destruction will not materially and adversely affect Mortgagor's ability to pay and perform the Obligations, as determined by Mortgagee in Mortgagee's reasonable discretion, or, in the alternative, Mortgagor has provided evidence satisfactory to Mortgagee (in Mortgagee's sole discretion) of Mortgagor's ability to fully and completely perform the Obligations during the restoration of the Improvements, and (iii) Mortgagor delivers to Mortgagee written notice within 60 days after the occurrence of the loss, damage or destruction that Mortgagor intends to repair or restore the premises. If all of the above conditions are met (as applicable), then Mortgagee shall disburse the loss proceeds in accordance with Mortgagee's customary construction loan practices and only as repairs or replacements are effected and continuing expenses (including operating and maintenance expenses) become due and payable. If any one or more of the above conditions are not met, Mortgagee may, in Mortgagee's sole discretion, apply all of the loss proceeds, after deductions as herein provided, to the repayment of the Obligations, in such manner and order as Mortgagee may elect, notwithstanding that the payment or performance of such Obligations may not be due and payable, and, in such event, if the loss proceeds are not sufficient to fully satisfy the Obligations, Mortgagor shall immediately pay to Mortgagee any deficiency with respect thereto, with any excess proceeds released to the party legally entitled thereto. Nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Property as provided in Section 1.02 hereof or restoring all damage or destruction to the Mortgaged Property, regardless of whether or



not there are insurance proceeds available to Mortgagor or whether any such proceeds are sufficient in amount, and the application or release by Mortgagee of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

1.06 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Mortgage, or any other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Mortgagor in and to all policies of insurance required by Section 1.03 shall inure to the benefit of and pass to the successor in interest to Mortgagor or the purchaser or grantee of the Mortgaged Property, to the extent such policies are assignable pursuant to the terms thereof.

1.07 Indemnification; Subrogation; Waiver of Offset.

(a) IF MORTGAGEE IS MADE A PARTY TO ANY LITIGATION CONCERNING THE NOTE, THIS MORTGAGE, ANY OF THE LOAN DOCUMENTS, THE MORTGAGED PROPERTY OR ANY PART THEREOF OR INTEREST THEREIN, OR THE OCCUPANCY OF THE MORTGAGED PROPERTY BY MORTGAGOR FOR ANY REASON OTHER THAN MORTGAGEE'S NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT, THEN MORTGAGOR SHALL INDEMNIFY, DEFEND AND HOLD MORTGAGEE HARMLESS FOR, FROM AND AGAINST ALL LIABILITY BY REASON OF SAID LITIGATION, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED BY MORTGAGEE AS A RESULT OF ANY SUCH LITIGATION, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO JUDGMENT. UNLESS SUCH LITIGATION IS FULLY INSURED AND THE INSURER THEREOF HAS ACCEPTED FULL DEFENSE OF SUCH MATTER AND HAS EMPLOYED ATTORNEYS REASONABLY SATISFACTORY TO MORTGAGEE, MORTGAGEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT ITS RIGHTS HEREUNDER, AND IN THE EVENT OF SUCH EMPLOYMENT FOLLOWING ANY EVENT OF DEFAULT, MORTGAGOR SHALL PAY MORTGAGEE REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED BY MORTGAGEE, WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED AGAINST MORTGAGOR BY REASON OF ITS BREACH.

(b) MORTGAGOR WAIVES ANY AND ALL RIGHT TO CLAIM OR RECOVER AGAINST MORTGAGEE, ITS SUCCESSORS AND ASSIGNS, THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES, FOR LOSS OF OR DAMAGE TO MORTGAGOR, THE MORTGAGED PROPERTY, MORTGAGOR'S PROPERTY OR THE PROPERTY OF OTHERS UNDER MORTGAGOR'S CONTROL FROM ANY CAUSE INSURED AGAINST OR REQUIRED TO BE INSURED AGAINST BY THIS MORTGAGE.



(c) All sums payable by Mortgagor pursuant to this Mortgage shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (ii) any restriction or prevention of or interference by any Person (as defined below) with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any receiver of Mortgagee, or by any court, in any such proceeding; (v) any claim that Mortgagor has or might have against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms of the Loan Documents or of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor. "Person" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign). Notwithstanding the foregoing, nothing contained herein shall act as a waiver of any claim Mortgagor may have against Mortgagee.

#### 1.08 Impositions.

(a) Mortgagor shall pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, (including, without limitation, non-governmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Property) that are assessed or imposed upon the Mortgaged Property or become due and payable and that create a lien upon the Mortgaged Property (the above are sometimes referred to herein individually as an "Imposition" and collectively as "Impositions"), provided, however, that if by law any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Mortgagor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same becomes due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed a fee, tax, or assessment on Mortgagee and measured by or based in whole or in part upon this Mortgage or the outstanding amount of the Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in

Section 1.08(a) and Mortgagor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Mortgagor fails to pay such Impositions prior to delinquency, Mortgagee may, at its option, declare all or part of the Obligations, immediately due and payable. If Mortgagor is prohibited by law from paying such Impositions, Mortgagee may, at its option, declare all or part of the Obligations due and payable on a date which is not less than six months from the date such prohibition is imposed on Mortgagor.

(c) Subject to the provisions of Section 1.08(d) and upon request by Mortgagee, Mortgagor shall deliver to Mortgagee within 40 days after the date upon which any Imposition is due and payable by Mortgagor official receipts of the appropriate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payment thereof.

(d) Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Mortgagor's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.08, unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object to an Imposition, and unless, in Mortgagee's absolute and sole discretion, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that the proceedings to be initiated by Mortgagor shall conclusively operate to prevent the sale of the Mortgaged Property or any part thereof or interest therein to satisfy such Imposition prior to final determination of such proceedings, (ii) Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Mortgagee, or (iii) Mortgagor shall demonstrate to Mortgagee's satisfaction that Mortgagor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

(e) Upon the occurrence and during the continuation of an Event of Default and upon request by Mortgagee, Mortgagor shall pay to Mortgagee an initial cash deposit in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Mortgagee, in monthly installments, an amount equal to 1/12 of the sum of the annual Impositions reasonably estimated by Mortgagee, for the purpose of paying the installment of Impositions next due (funds deposited for this purpose are referred to as "Impositions Impounds"). In such event, Mortgagor further agrees to cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements, or other documents, and providing there are sufficient Impositions Impounds, Mortgagee shall timely pay such amounts as may be due thereunder out of the Impositions Impounds. If at any time and for any reason the Impositions Impounds are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee may notify Mortgagor and upon such notice Mortgagor shall deposit immediately an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of Impositions Impounds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 1.08(e). Mortgagee may commingle Impositions Impounds with its own



funds and shall not be obligated to pay any interest on any Impositions Impounds. Mortgagee may reserve for future payment of Impositions such portion of Impositions Impounds as Mortgagee may in its absolute and sole discretion deem proper. If Mortgagor fails to deposit with Mortgagee sums sufficient to fully pay such Impositions at least 40 days before delinquency thereof, Mortgagee may, at Mortgagee's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Mortgagee upon demand together with interest thereon at the Agreed Rate from the date of such advance, or at the option of Mortgagee the latter may, without making any advance whatever, apply any Impositions Impounds held by it upon any of the Obligations in such order as Mortgagee may determine, notwithstanding that such Obligations may not yet be due.

(f) Mortgagor shall not initiate or suffer to occur or exist the joint assessment of any real and personal property included in the Mortgaged Property or any other procedure whereby the lien of real property taxes and the lien of personal property taxes shall be assessed, levied, or charged to the Mortgaged Property as a single lien.

1.09 Utilities. Mortgagor shall pay when due all charges that are incurred by Mortgagor for the benefit of the Mortgaged Property or that may become a charge or lien against the Mortgaged Property for gas, electricity, water, sewer, or other services furnished to the Mortgaged Property.

1.10 Actions Affecting Mortgaged Property. Mortgagor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; and shall pay all costs and expenses (including, without limitation, costs of evidence of title, litigation, and attorneys' fees) in any such action or proceeding in which Mortgagee may appear.

1.11 Actions By Mortgagee. If Mortgagor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Mortgagee, in its absolute and sole discretion, without obligation so to do, without releasing Mortgagor from any obligation, and with only such notice to or demand upon Mortgagor as may be reasonable under the then existing circumstances, but in no event exceeding 10 days prior written notice, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Mortgagee shall have and is hereby given the right, but not the obligation, (a) to enter upon and take possession of the Mortgaged Property; (b) to make additions, alterations, repairs and improvements to the Mortgaged Property that Mortgagee may consider necessary or appropriate to keep the Mortgaged Property in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee; (d) to pay, purchase, contest or compromise any Lien or Encumbrance (as defined below) or alleged Lien or Encumbrance whether superior or junior to this Mortgage; and (e) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Mortgagor shall, immediately upon demand therefor by Mortgagee, pay to Mortgagee an amount equal to all respective costs and expenses incurred by Mortgagee in



connection with the exercise by Mortgagee of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's and attorneys' fees) together with interest thereon from the date of such expenditures at the Agreed Rate.

1.12 Transfer of Mortgaged Property by Mortgagor. In order to induce Mortgagee to make the Loan, Mortgagor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Mortgagee, Mortgagee shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Mortgagee may grant or deny such consent in its sole discretion and, if consent should be given, any such Transfer shall be subject to this Mortgage, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Mortgagor or any maker or guarantor (if any) of the Note from any liability thereunder without the prior written consent of Mortgagee. As used herein, "Transfer" shall mean:

(a) any sale, transfer, conveyance, hypothecation, encumbrance, lease or vesting of the Mortgaged Property or any part thereof or interest therein to or in any Person, whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions (as such term is defined in Exhibit C attached hereto and incorporated herein by reference);

(b) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any general partnership interest in Mortgagor or any partner, member or shareholder in Mortgagor to or in any Person (if Mortgagor or any partner, member or shareholder in Mortgagor is a partnership) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions;

(c) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any member interest in Mortgagor or any partner, member or shareholder in Mortgagor to or in any Person (if Mortgagor or any partner, member or shareholder in Mortgagor is a limited liability company) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions;

(d) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any shares of stock in Mortgagor or any partner, member or shareholder in Mortgagor to or in any Person or any consolidation or merger of Mortgagor or any partner, member or shareholder in Mortgagor into or with any Person (if Mortgagor or any partner, member or shareholder in Mortgagor is a corporation) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions;

(e) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any other legal or beneficial interest in Mortgagor or any partner, member, or shareholder in Mortgagor whether voluntary, involuntary, by operation of law or otherwise, except the Permitted Exceptions; or

(f) the execution of any agreements to do any of the foregoing, except the Permitted Exceptions or as permitted pursuant to the Loan Agreement.

1.13 Eminent Domain. In the event that any proceeding or action be commenced for the taking of the Mortgaged Property, or any portion thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation or otherwise, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Mortgagor receive any notice or other information regarding such proceeding, action, taking or damage, Mortgagor shall give prompt written notice thereof to Mortgagee. Mortgagee shall be entitled at its option, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name any such action or proceeding. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, damages, rights of action and proceeds awarded to Mortgagor by reason of any such taking or damage (the "Condemnation Proceeds") are hereby assigned to Mortgagee, and Mortgagor agrees to execute such further assignments of the Condemnation Proceeds as Mortgagee may require. After deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees, incurred by it in connection with any such action or proceeding, Mortgagee shall apply all such Condemnation Proceeds to the restoration of the Improvements, if necessary, provided that (i) no Event of Default (or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) is then in existence (excluding any events resulting from the condemnation itself), (ii) the taking or damage will not materially or adversely affect Mortgagor's ability to pay and perform the Obligations, as determined by Mortgagee in Mortgagee's reasonable discretion, and (iii) Mortgagor delivers to Mortgagee within 60 days after the occurrence of the taking or damage written notice that Mortgagor intends to repair or restore the Improvements, if necessary. If all of the above conditions are met, Mortgagee shall disburse the Condemnation Proceeds in accordance with Mortgagee's customary construction loan practices and only as repairs or replacements are effected and continuing expenses become due and payable. If any one or more of the above conditions are not met, Mortgagee shall apply all of the Condemnation Proceeds, after deductions as herein provided, to the repayment of the Obligations, in such manner and order as Mortgagee may elect, notwithstanding that the payment of such Obligations may not be due and payable. If the condemnation would materially and adversely affect the use of the Premises or the Improvements and the Condemnation Proceeds are not sufficient to fully satisfy the Obligations, Mortgagor shall immediately pay to Mortgagee any deficiency with respect thereto. Application or release of the Condemnation Proceeds as provided herein shall not cure or waive any default or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to any such notice, except that no Event of Default shall be deemed to have occurred on account of a condemnation where the Premises and the Improvements are fully restored as permitted herein. Nothing herein contained shall be deemed to excuse Mortgagor from repairing or restoring all damage or destruction to the Mortgaged Property (if such damage or destruction would materially and adversely affect the use of the Premises or the Improvements), regardless of whether or not there are Condemnation Proceeds available to Mortgagor or whether any such Condemnation Proceeds are sufficient in amount

1.14 Additional Security. No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Mortgage.



All security for the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Mortgage and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations. In the event Mortgagee at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

1.15 Intentionally Omitted.

1.16 Inspections. Mortgagee, and its agents, representatives, officers, and employees, are authorized to enter at any reasonable time during normal business hours upon or in any part of the Mortgaged Property for the purpose of inspecting the same and for the purpose of performing any of the acts Mortgagee is authorized to perform hereunder or under the terms of any of the Loan Documents.

1.17 Ownership and Liens and Encumbrances. Mortgagor is, and as to any portion of the Mortgaged Property acquired hereafter will upon such acquisitions be, and shall remain the owner of the Mortgaged Property free and clear of any Liens and Encumbrances. Mortgagor shall not grant, shall not suffer to exist, and shall pay and promptly discharge, at Mortgagor's cost and expense, all Liens and Encumbrances and any claims thereof upon the Mortgaged Property, or any part thereof or interest therein. Mortgagor shall notify Mortgagee immediately in writing of any Lien or Encumbrance or claim thereof. Mortgagor shall have the right to contest in good faith the validity of any involuntary Lien or Encumbrance, provided Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amount as Mortgagee shall reasonably require, but not more than 150% of the amount of the claim, and provided further that if Mortgagor loses such contest, Mortgagor shall thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged. If Mortgagor shall fail to remove and discharge any Lien or Encumbrance or claim thereof, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, after only such notice to Mortgagor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Mortgagor shall, immediately upon demand therefor by Mortgagee, pay to Mortgagee an amount equal to all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing right to discharge any Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Agreed Rate. Such costs and expenses shall be secured by this Mortgage. "Lien or Encumbrance" and "Liens and Encumbrances" mean, respectively, each and all of the following in respect of the Mortgaged Property: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Mortgagee in this Mortgage, excluding from the foregoing the Permitted Exceptions.



1.18 Intentionally Omitted.

1.19 Mortgagee's Powers. Without affecting the liability of any Person liable for the payment of the Obligations herein mentioned, and without affecting the lien or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the Obligations, Mortgagee may, from time to time and without notice (a) release any person so liable, (b) extend the Obligations, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed, at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (e) take or release any other or additional security or any guaranty for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

1.20 Financial Statements. Mortgagor shall deliver to Mortgagee such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in such detail and at the times required by the Loan Agreement. All such statements shall be prepared in accordance with the requirements of the Loan Agreement. Mortgagee shall have the right to audit, inspect and copy all of Mortgagor's books and records, relating thereto.

1.21 Trade Names. At the request of Mortgagee from time to time, Mortgagor shall execute a certificate in form satisfactory to Mortgagee listing the trade names or fictitious business names under which Mortgagor intends to operate the Mortgaged Property or any business located thereon and representing and warranting that Mortgagor does business under no other trade names or fictitious business names with respect to the Mortgaged Property. Mortgagor shall immediately notify Mortgagee in writing of any change in said trade names or fictitious business names, and will, upon request of Mortgagee, authorize any additional financing statements and execute any other certificates necessary to reflect the change in trade names or fictitious business names.

1.22 Leasehold. If a leasehold estate constitutes a portion of the Mortgaged Property, Mortgagor agrees not to amend, modify, extend, renew or terminate such leasehold estate, any interest therein, or the lease granting such leasehold estate without the prior written consent of Mortgagee, which consent may be withheld by Mortgagee in its absolute and sole discretion. Consent to one amendment, modification, extension or renewal shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, modifications, extensions or renewals. Mortgagor agrees to perform all obligations and agreements under said leasehold and shall not take any action or omit to take any action which would effect or permit the termination of said leasehold. Mortgagor agrees to promptly notify Mortgagee in writing with respect to any default or alleged default by any party thereto and to deliver to Mortgagee copies of all notices, demands, complaints or other communications received or given by Mortgagor with respect to any such default or alleged default. Mortgagee shall have the option to cure any such default and to perform any or all of Mortgagor's obligations thereunder. All sums expended by Mortgagee in curing any such default shall be secured hereby and shall be immediately due and payable without demand or notice and shall bear interest from date of expenditure at the Agreed Rate.

## ARTICLE II ASSIGNMENT OF RENTS

2.01 Assignment of Rents. Mortgagor hereby absolutely and irrevocably grants, assigns and transfers to Mortgagee all the Rents of the Mortgaged Property, and hereby gives to and confers upon Mortgagee the right, power and authority to collect the Rents. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all Rents and apply the same to the payment of the Obligations in such order as Mortgagee shall determine. Mortgagor hereby authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor; provided, however, that Mortgagor shall have the right to collect such Rents (but not more than one month in advance unless the written approval of Mortgagee is first obtained), and to retain and enjoy same, so long as an Event of Default shall not have occurred and be continuing hereunder or under the other Loan Documents. The assignment of the Rents of the Mortgaged Property in this Article II is intended to be an absolute and unconditional present assignment from Mortgagor to Mortgagee and not merely the passing of a security interest. Mortgagee's rights to the Rents are not contingent upon and may be exercised without possession of the Mortgaged Property.

2.02 Collection Upon an Event of Default. Upon the occurrence and during the continuation of an Event of Default, Mortgagee may, subject to applicable law, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Mortgaged Property, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents (including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon payment of the Obligations in such order as Mortgagee may determine. The collection of such Rents, or the entering upon and taking possession of the Mortgaged Property, or the application of the Rents as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Mortgagor also hereby authorizes Mortgagee upon such entry, at its option, to take over and assume the management, operation and maintenance of the Mortgaged Property and to perform all acts Mortgagee in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Mortgagor theretofore could do (including, without limitation, the right to enter into new leases, to cancel, surrender, alter or amend the terms of, and/or renew existing leases collectively, the "Leases", and/or to make concessions to tenants). Mortgagor hereby releases all claims of any kind or nature against Mortgagee arising out of such management, operation and maintenance, excepting the liability of Mortgagee to account as hereinafter set forth.

2.03 Application of Rents. Upon such entry, Mortgagee shall, after payment of all property charges and expenses (including, without limitation, reasonable compensation to such managing agent as it may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it to the Obligations, but the



manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Mortgagee. Mortgagee shall not be accountable for more monies than it actually receives from the Mortgaged Property; nor shall it be liable for failure to collect Rents. Mortgagee shall make reasonable efforts to collect Rents, reserving, however, within its own absolute and sole discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and Mortgagee's judgment shall be deemed conclusive and reasonable.

2.04 Mortgagee in Possession. It is not the intention of the parties hereto that an entry by Mortgagee upon the Premises under the terms of this instrument shall make Mortgagee a party in possession in contemplation of the law, except at the option of Mortgagee.

2.05 Indemnity. MORTGAGOR HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS MORTGAGEE FOR, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, OBLIGATIONS, CLAIMS, DEMANDS, DAMAGES, PENALTIES, JUDGMENTS, COSTS, AND EXPENSES, INCLUDING LEGAL FEES AND EXPENSES, HOWSOEVER AND BY WHOMSOEVER ASSERTED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS ASSIGNMENT FOR ANY REASON OTHER THAN MORTGAGEE'S NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT AND ARISING FROM EVENTS OCCURRING BEFORE MORTGAGEE ACQUIRES POSSESSION OF OR TITLE TO THE PREMISES; AND ALL SUCH LOSSES, LIABILITIES, OBLIGATIONS, CLAIMS, DEMANDS, DAMAGES, PENALTIES, JUDGMENTS, COSTS AND EXPENSES SHALL BE DEEMED ADDED TO THE INDEBTEDNESS SECURED HEREBY AND SHALL BE SECURED BY ANY AND ALL OTHER INSTRUMENTS SECURING SAID INDEBTEDNESS. THE FOREGOING INDEMNITY SHALL NOT TERMINATE UPON THE FORECLOSURE, RELEASE, OR OTHER TERMINATION OF THIS MORTGAGE, BUT WILL SURVIVE FORECLOSURE OR CONVEYANCE IN LIEU OF FORECLOSURE AND THE REPAYMENT OF THE OBLIGATIONS AND THE DISCHARGE AND RELEASE OF THIS MORTGAGE AND THE LOAN DOCUMENTS.

2.06 No Obligation to Perform. Nothing contained herein shall operate or be construed to obligate Mortgagee to perform any obligations of Mortgagor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Premises by Mortgagee, this assignment shall not be deemed to constitute Mortgagee a "mortgagee in possession" and shall not operate to place upon Mortgagee any responsibility for the operation, control, care, management or repair of the Mortgaged Property or any portion thereof, and the execution of this assignment by Mortgagor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Mortgagor, prior to any such actual entry and taking of possession.

2.07 Right to Rely. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee without further consent of Mortgagor, and the tenant may rely upon any written statement delivered by Mortgagee to the



tenants. Any such payment to Mortgagee shall constitute payment to Mortgagor under the Leases. The provisions of this paragraph are intended solely for the benefit of Mortgagor or any person claiming through or under Mortgagor other than a tenant who has not received such notice. The assignment of Rents set forth in Section 2.01 is not contingent upon any notice or demand by Mortgagee to the tenants.

### ARTICLE III SECURITY AGREEMENT

3.01 Creation of Security Interest. Mortgagor hereby grants to Mortgagee, a security interest in and to all the Personal Property and all other portions of the Mortgaged Property to the extent constituting personal property under applicable law.

3.02. Representations, Warranties and Covenants of Mortgagor. Mortgagor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Mortgagor to Mortgagee and any extension of credit thereunder) as follows:

(a) The Personal Property is not used or bought for personal, family or household purposes.

(b) The tangible portion of the Personal Property will be kept on or at the Premises or Improvements and Mortgagor will not, without the prior written consent of Mortgagee, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor with similar items of similar quality.

(c) At the request of Mortgagee, Mortgagor will authorize Mortgagee to file one or more financing statements and fixture filings pursuant to the Uniform Commercial Code of New Mexico, in form satisfactory to Mortgagee and will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Mortgagee to be necessary or desirable.

(d) Mortgagor does not do business under any trade name except as previously disclosed in writing to Mortgagee. Mortgagor will immediately notify Mortgagee in writing of the adoption or change in its organizational name, trade name or fictitious business name, and will upon request of Mortgagee, authorize any additional financing statements or execute any other certificates necessary to reflect the adoption or change in trade name or fictitious business name. Mortgagor will also promptly notify Mortgagee (i) of any change of Mortgagor's organizational identification number or (ii) if Mortgagor does not now have an organizational identification number and later obtains one, of such organizational identification number.

(e) Mortgagor shall immediately notify Mortgagee of any claim against the Personal Property adverse to the interest of Mortgagee therein.

3.03 Use of Personal Property by Mortgagor. Unless an Event of Default hereunder or under any other Loan Document shall have occurred and shall be continuing, Mortgagor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Mortgage and not inconsistent with any policy of insurance thereon.

3.04 Remedies Upon an Event of Default.

(a) In addition to the remedies provided in Section 4.02 hereof, upon the occurrence and during the continuation of an Event of Default hereunder, Mortgagee may, at its option, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Mortgagor and all others claiming under Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Mortgagor with respect to the Personal Property or any part thereof. In the event Mortgagee demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Mortgage, Mortgagor agrees to promptly turn over and deliver possession thereof to Mortgagee;

(ii) Without notice to or demand upon Mortgagor, make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorney's fees) incurred in connection therewith;

(iii) Require Mortgagor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by Mortgagee and reasonably convenient to both parties, and deliver promptly such Personal Property to Mortgagee, or an agent or representative designated by Mortgagee. Mortgagee, and its agents and representatives, shall have the right to enter upon any or all of Mortgagor's premises and property to exercise Mortgagee's rights hereunder;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Mortgagee by this Mortgage, any other Loan Document, or by law, either concurrently or in such order as Mortgagee may determine;

(v) Sell or cause to be sold in such order as Mortgagee may determine, as a whole or in such parcels as Mortgagee may determine, the Personal Property and the remainder of the Mortgaged Property;



(vi) Sell, lease, or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Mortgagee may determine. Mortgagee may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code of New Mexico or any other applicable law.

(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give Mortgagor at least five days prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be mailed to Mortgagor at the address set forth in Section 5.05. If Mortgagee fails to comply with this Section 3.04(b) in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Uniform Commercial Code of New Mexico (or under the Uniform Commercial Code, enforced from time to time, in any other state to the extent the same is the applicable law).

(c) The proceeds of any sale under Section 3.04(a) shall be applied as follows:

(i) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including, without limitation, costs of litigation and attorneys' fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(ii) To the payment of the Obligations in such order as Mortgagee shall determine; and

(iii) The surplus, if any, shall be paid to the Mortgagor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Mortgagee shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Mortgagee from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Mortgagor until full payment of any deficiency has been made in cash.

(d) Mortgagee shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Mortgagee from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Mortgagor until full payment of any deficiency has been made in cash.

(e) Mortgagee may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Personal Property and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Personal Property.

(f) Mortgagee may sell the Personal Property without giving any warranties as to such property, and may specifically disclaim any warranties of title, merchantability, fitness for a particular purpose or the like, and this procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Personal Property. Mortgagor acknowledges that a private sale of the Personal Property may result in less proceeds than a public sale.

(g) Mortgagor acknowledges that the Personal Property may be sold at a loss to Mortgagor and that, in such event, Mortgagee shall have no liability or responsibility to Mortgagor for such loss.

3.05 Security Agreement. This Mortgage constitutes and shall be deemed to be a "security agreement" for all purposes of the Uniform Commercial Code of New Mexico and Mortgagee shall be entitled to all the rights and remedies of a "secured party" under such Uniform Commercial Code of New Mexico.

3.06 Fixture Filing. Upon its recording in the real property records, this Mortgage shall be effective as a financing statement filed as a fixture filing. This Mortgage shall also be effective as a financing statement covering as extracted collateral (including oil and gas), accounts and general intangibles under the Uniform Commercial Code of New Mexico and the Uniform Commercial Code as in effect from time to time in any other state where the Property is situated. In addition, a carbon, photographic or other reproduced copy of this Mortgage and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. In connection therewith, the addresses of the Mortgagor, as debtor, and Mortgagee, as secured party, are as set forth in the introductory paragraph hereof. The foregoing address of Mortgagee, as the secured party, is also the address from which information concerning the security interest may be obtained by any interested party.

3.07 Authorization to File Financing Statements; Power of Attorney. Mortgagor hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto, and continuation statements with or without signature of Mortgagor as authorized by applicable law, as applicable to the Mortgaged Property. For purposes of such filing, Mortgagor agrees to furnish any information requested by Mortgagee promptly upon request by Mortgagee. Mortgagor also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto, or continuation statements if filed prior to the date of this Mortgage. Mortgagor hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's own name to execute in Mortgagor's name any such documents and to otherwise carry out the purposes of this Section 3.07, to the extent that Mortgagor's authorization above is



not sufficient. To the extent permitted by law, Mortgagor hereby ratifies and affirms all acts said attorneys-in-fact shall lawfully do, have done in the past, or caused to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

#### ARTICLE IV REMEDIES UPON DEFAULT

4.01 Events of Default. The occurrence and continuation (after any applicable cure periods) of any Event of Default, as set forth and defined in the Loan Agreement, shall be an Event of Default under this Mortgage.

4.02 Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Mortgagee may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind. Mortgagee may, in addition to the exercise of any or all of the remedies specified in Section 3.04:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon the Obligations, all in such order as Mortgagee may determine. The entering upon and taking possession of the Mortgaged Property, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Mortgaged Property or the collection, receipt and application of Rents, Mortgagee shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default;

(b) Commence an action to foreclose the lien of this Mortgage as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) [Intentionally omitted]; or

(d) Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing or guarantying all or any portion of the Obligations, or by law.

4.03 Intentionally Omitted.



4.04 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9 of the Uniform Commercial Code of New Mexico, Mortgagee, upon an Event of Default, may proceed under such Uniform Commercial Code of New Mexico or may proceed as to both real and personal property interests in accordance with the provisions of this Mortgage and its rights and remedies in respect to real property, and treat both real and personal property interests as one parcel or package of security.

4.05 Appointment of Receiver. Upon the occurrence of an Event of Default, Mortgagee, as a matter of right and without notice to Mortgagor or any one claiming under Mortgagor, and without regard to the then value of the Mortgaged Property or the interest of Mortgagor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided herein and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Mortgaged Property or the date of expiration of any redemption period unless such receivership is sooner terminated.

4.06 Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Loan Documents and under the law now or hereafter in effect, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to other rights herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security or guaranty now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security or any guaranty now or hereafter held by Mortgagee in such order and manner as Mortgagee may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing under the law. Every power or remedy given by any of the Loan Documents or by law to Mortgagee may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee and, to the extent permitted by law, Mortgagee may pursue inconsistent remedies. This Mortgage may be judicially foreclosed in the manner provided by law for the foreclosure of mortgages on real property

4.07 Request for Notice. Mortgagor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in Section 5.05.

4.08 REDEMPTION PERIOD. IF THE MORTGAGED PROPERTY IS SOLD AT FORECLOSURE SALE FOLLOWING A COURT ORDERED JUDICIAL FORECLOSURE, THE REDEMPTION PERIOD AFTER FORECLOSURE SALE WILL BE ONE MONTH INSTEAD OF NINE MONTHS AS PROVIDED IN N.M. STAT. ANN. SECTION 39-5-19, AS AMENDED FROM TIME TO TIME.

4.09 Acceptance of Sums After Default. The acceptance by Mortgagee of any sum in payment, or part payment, of the Obligations, after the same is due or after the giving of any notice of default, or the giving or recording of any notice of breach, or after giving of any notice of sale, shall not constitute a waiver of the right to require prompt payment, when due, of all other sums so secured, nor shall such acceptance cure or waive any remaining Event of Default or invalidate any sale held pursuant to such notice for any such remaining Event of Default, or prejudice any of the rights of Mortgagee under this Mortgage. Notwithstanding anything to the contrary contained in this Mortgage or in any other agreement securing the Note and without limiting the generality of this Section 4.09, in the case of any Event of Default, Mortgagee may accept payments or performance of any obligations due hereunder without thereby waiving the existence of such Event of Default if the payment or performance is not sufficient to completely cure such Event of Default.

## ARTICLE V MISCELLANEOUS

5.01 Change, Discharge, Termination, or Waiver. No provision of this Mortgage may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Mortgagee to exercise and no delay by Mortgagee in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

5.02 Mortgagor Waiver of Rights. Mortgagor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Mortgaged Property, and (b) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the Obligations and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies that Mortgagor may have or be able to assert pertaining to the rights and remedies of sureties.

5.03 Statements by Mortgagor. Mortgagor shall, within 10 days after written notice thereof from Mortgagee, deliver to Mortgagee a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Mortgage and stating whether any offset or defense exists against such principal and interest or such other amounts.

5.04 Release by Mortgagor. Upon the indefeasible repayment in full of the Obligations and the release of the Mortgaged Property from the lien of this Mortgage in accordance with the Loan Agreement, this Mortgage shall automatically terminate and be of no further force and effect, and upon request by Mortgagor, Mortgagee shall execute and deliver to Mortgagor such documents and instruments as are necessary to release and terminate this Mortgage.

5.05 Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, through the United States Postal Service to the addresses shown below or such other address which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if sent by mail, shall be deemed given two days after



deposit in the United States mail, and if delivered by hand, shall be deemed given when delivered.

To Mortgagee: 1721 North Arizona Avenue, Suite 1  
Chandler, Arizona 85225  
Attention: Lyle Frederickson

To Mortgagor: PO Box 170  
Fort Defiance, Arizona 86504  
Attention: Walter Haase

5.06 Intentionally Omitted.

5.07 Captions and References. The headings at the beginning of each section of this Mortgage are solely for convenience and are not part of this Mortgage. Unless otherwise indicated, each reference in this Mortgage to a section or an exhibit is a reference to the respective section herein or exhibit hereto.

5.08 Invalidity of Certain Provisions. If any provision of this Mortgage is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Mortgage is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage.

5.09 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Property, such proceeds have been or will be advanced by Mortgagee at Mortgagor's request and Mortgagee shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

5.10 Attorneys' Fees. If any or all of the Obligations are not paid when due or if an Event of Default occurs, Mortgagor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorneys' fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)), together with interest therein from the date of demand at the Agreed Rate.

5.11 Governing Law. THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES, EXCEPT WITH RESPECT TO ARTICLES III AND IV HEREOF AND OTHERWISE WHERE THE LAWS

OF THE STATE OF NEW MEXICO ARE REQUIRED TO GOVERN THE CREATION, ATTACHMENT, AND ENFORCEMENT OF THE SECURITY OF THE OBLIGATIONS SECURED HEREBY. The parties hereto acknowledge, stipulate and agree that (1) the transaction evidenced, governed and/or secured hereby bears a reasonable relationship to the State of Arizona in that, among other things, Mortgagor maintains its principle place of business in Arizona, Mortgagee has conducted a substantial part of the negotiations for the transaction in the State of Arizona, the Loan has been originated and will be funded from the State of Arizona, Mortgagee will perform a substantial part of its obligations for this transaction in the State of Arizona (including the servicing of the transaction), and the officers responsible for servicing the transaction are residents of, and office in, the State of Arizona; and (2) Mortgagee would not have entered into this transaction but for the foregoing stipulation and agreement as to the choice of Arizona law to govern the transaction.

5.12 Joint and Several Obligations. If this Mortgage is signed by more than one party as Mortgagor, all obligations of Mortgagor herein shall be the joint and several obligations of each party executing this Mortgage as Mortgagor.

5.13 Number and Gender. In this Mortgage the singular shall include the plural and the masculine shall include the feminine and neuter gender and vice versa, if the context so requires.

5.14 Loan Statement Fees. Mortgagor shall pay the amount demanded by Mortgagee or its authorized loan servicing agent for any statement regarding the Obligations, provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

5.15 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

5.16 No Merger of Lease. If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Mortgaged Property shall at any time become vested in one owner, this Mortgage and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Mortgagee so elects as evidenced by recording a written declaration executed by Mortgagee so stating, and, unless and until Mortgagee so elects, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee as to the separate estates. In addition, upon the foreclosure of the lien created by this Mortgage on the Mortgaged Property pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Mortgaged Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Mortgagee or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any lease or sublease unless Mortgagee or such purchaser shall give written notice thereof to such tenant or subtenant.



5.17 Construction. Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine, feminine and neuter genders shall each be deemed to include the others. Except as otherwise indicated herein, all section and exhibit references in this Mortgage shall be deemed to refer to the sections and exhibits of and to this Mortgage, and the terms "herein", "hereof", "hereto", "hereunder" and similar terms refer to this Mortgage generally rather than to the particular provision in which such term is used. Whenever the words "including", "include" or "includes" are used in this Mortgage, they shall be interpreted in a non-exclusive manner as though the words "but is not limited to" immediately followed the same.

5.18 Representations and Warranties. Mortgagor represents and warrants to Mortgagee that:

(a) it is the lawful owner of the Mortgaged Property free and clear of all Liens and Encumbrances and holds a fee simple estate in the Premises and Improvements, subject only to the Permitted Exceptions and that Mortgagor has full right, power and authority to convey and mortgage the same and to execute this Mortgage;

(b) Mortgagor's exact legal name is correctly set forth in the introductory paragraph of this Mortgage;

(c) if Mortgagor is not an individual, Mortgagor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Mortgage;

(d) if Mortgagor is an unregistered entity (including, without limitation, a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Mortgage; and

(e) Mortgagor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Mortgage.

5.19 Integration. The Loan Documents contain the complete understanding and agreement of Mortgagor and Mortgagee and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

5.20 Binding Effect. The Loan Documents will be binding upon, and inure to the benefit of, Mortgagor and Mortgagee and their respective successors and assigns. Mortgagor may not delegate its obligations under the Loan Documents.

5.21 Time of the Essence. Time is of the essence with regard to the each provision of the Loan Documents as to which time is a factor.

5.22 Survival. The representations, warranties, and covenants of the Mortgagor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

5.23 **RESERVED.**

5.24 **WAIVER OF DEFENSES AND RELEASE OF CLAIMS.** The undersigned hereby (i) represents that as of the date hereof the undersigned has no defense to or setoff against any indebtedness or other obligations owing in connection with the Loan by the undersigned to Mortgagee or Mortgagee's affiliates in connection with the Loan (the "Obligations"), and (ii) releases Mortgagee and Mortgagee's affiliates, officers, directors, employees and agents from all claims, causes of action, and costs, in law or equity, known or unknown, whether or not matured or contingent, existing as of the date hereof that the undersigned has or may have by reason of any matter of any conceivable kind or character whatsoever related to the Obligations, including the subject matter of this Mortgage. The foregoing release does not apply, however, to claims for future performance of express contractual obligations that mature after the date hereof that are owing to the undersigned by Mortgagee or Mortgagee's affiliates. The undersigned acknowledges that Mortgagee has been induced to enter into or continue the Obligations by, among other things, the waivers and releases in this paragraph. The foregoing representations, waivers and releases are made as of the date hereof and in no event shall be remade or deemed remade except pursuant to a separate agreement executed and delivered by the undersigned.

5.25 Intentionally Omitted.

5.26 Intentionally Omitted.

5.27 Request for Notice of Default. Mortgagor hereby requests that a copy of any notice of default required by applicable New Mexico law, and any notice of sale required by New Mexico law, with respect to the Mortgaged Property be mailed to Mortgagor at the address set forth herein.

5.28 Limitation on Indemnity Agreements. To the extent, if at all, N.M. Stat. Ann. Section 56-7-1 is applicable to any agreement to indemnify herein, including, but not by way of limitation, those agreements to indemnify set forth herein at Sections 1.07 and 2.05, such agreement to indemnify shall not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the Mortgagee or any other indemnitee, or the agents or employees of the Mortgagee or any other indemnitee; or (b) the giving of or the failure to give directions or instructions by Mortgagee or any other indemnitee or the agents or employees of the Mortgagee or any other indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.



5.29 Mortgagor's Acknowledgment of Awareness of N.M. Stat. Ann. Section 58-6-5. Mortgagor affirms and acknowledges that it is aware of the following provisions of N.M. Stat. Ann. Section 58-06-5:

A contract, a promise or commitment to loan money or to grant, extend or renew credit or any modification thereof, in an amount greater than twenty-five thousand dollars (\$25,000), not primarily for personal, family or household purposes, made by a financial institution shall not be enforceable unless in writing and signed by the party to be charged or that party's authorized representative.

5.30 Future Advances Secured. This Mortgage shall secure not only the existing Obligations, but also future advances, whether such advances are obligatory or to be made at the option of Mortgagee. All future advances with interest thereon shall be secured by this Mortgage to the same extent as if such future advances were made on the date of the execution of this Mortgage unless the parties shall agree otherwise in writing, but the total secured indebtedness shall not exceed at any one time a maximum principal amount equal to \$45,000,000.00 plus interest, and costs of collection, including court costs and reasonable attorney's fees.

**NOTICE TO MORTGAGOR:** The Note contains a variable interest rate.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year first above written.

NTUA HEADQUARTERS, LLC, an Arizona  
limited liability company

By; Navajo Tribal Utility Authority, a wholly-  
owned enterprise of the Navajo Nation, as  
sole member and manager

By: Walter W. Haase  
Name: Walter W. Haase, P.E.  
Title: General Manager

4/5/2015

STATE OF ARIZONA                    )  
  )  
County of Apache                    )       ss

The foregoing instrument was acknowledged before me this 5 day of April, 2015, by Walter W. Haase, P.E., as General Manager of the Navajo Tribal Utility Authority, a wholly-owned enterprise of the Navajo Nation, sole member and manager of NTUA Headquarters, LLC, as Arizona limited liability company, on behalf thereof.

Theresa M Talker  
Notary Public





CONSENT AND APPROVAL OF THE MORTGAGE BY THE NAVAJO NATION:

NAVAJO NATION, a federally recognized Indian Nation

By: Russell Begaye

Name: Russell Begaye

Title: President

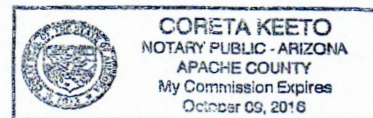
STATE OF ARIZONA

County of Apache

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of May, 2015, by Russell Begaye, President of the Navajo Nation, a federally recognized Indian Nation.

Coreta Keeto

Notary Public



## EXHIBIT A

### LEGAL DESCRIPTION

A certain tract of land located within Section 26, T. 18 N., R. 21 W., NMPM, Navajo Nation, McKinley County, New Mexico, being more particularly described as follows:

Commencing for a tie at the Real Point of Beginning from whence a US Department of Interior Brass Cap, 86 M.C. bears  $S00^{\circ}22'00''W$  along the State Line between the States of New Mexico and Arizona a distance of 565.63 feet to the East  $\frac{1}{4}$  Corner of Section 8, T. 27 N., R. 31 E., G&SRM within the State of Arizona, and continuing  $S00^{\circ}22'00''W$  along the State Line a distance of 191.45 feet to that Brass Cap. Thence Due East a distance of 2.32 feet to a Point of Curvature.

Thence along a Curve to the Right whose  $\Delta = 39^{\circ}19'50''$ ,  $R = 210.435$  feet,  $Lc = S70^{\circ}20'05''E$  141.63 feet, a distance of 144.45 feet to a Point of Tangency;

Thence  $S50^{\circ}40'10''E$  a distance of 615.57 feet to a Point on the West Right of Way line of BIA Route N12;

Thence along the West Right of Way line a distance of 900.00 feet to the North East corner;

Thence  $N50^{\circ}40'10''W$  a distance of 615.57 feet to a Point of Curvature;

Thence along a Curve to the Left whose  $\Delta = 39^{\circ}09'12''$ ,  $R = 1,110.435$  feet,  $Lc = N70^{\circ}14'45''W$  744.14 feet, a distance of 758.811 feet to a point on the State Line between the States of New Mexico and Arizona;

Thence along said State line  $S00^{\circ}22'00''W$  a distance of 900.01 feet to the Real Point of Beginning.

Said Tract contains 22.074 acres more or less, which includes a 100 feet wide proposed access road along the south boundary.

Basis of Bearing:  $N00^{\circ}22'00''E$  along State line from survey by George Perce W/O #00-06-274.

## EXHIBIT B

### DESCRIPTION OF PERSONAL PROPERTY

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, and construction materials and software embedded in any of the foregoing) in which Mortgagor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Premises or the Improvements or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Mortgagor in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Premises, Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Obligations remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Premises, the Improvements or any other part of the Mortgaged Property, or which may be received or receivable by Mortgagor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Mortgagor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants of the Premises or Improvements, accounts and other accounts receivable, deposit accounts maintained with Mortgagee and its affiliates, chattel paper (whether tangible or electronic), notes, drafts, contract rights, instruments, general intangibles, all as defined in the Uniform Commercial Code of New Mexico, as presently or hereafter in effect, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property (and related software) and rights relating to the Premises, the Improvements, the personal property described in Paragraph (a) above or the operation, occupancy, or use thereof, including, without limitation, all governmental and non-governmental permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Premises or Improvements, all names under or by which the Premises or Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Premises or the Improvements, and all good will and software in any way relating to the Premises or the Improvements;

(e) All as-extracted collateral produced from or allocated to the Premises, including, without limitation, oil, gas, and other hydrocarbons and other minerals;

(f) Mortgagor's rights under all insurance policies covering the Premises, the Improvements, the Personal Property, and the other parts of the Mortgaged Property and any and all proceeds, loss payments, and premium refunds payable regarding the same;



(g) All reserves, deferred payments, deposits, refunds, and payments of any kind relating to the construction of any Improvements on the Premises;

(h) All water stock relating to the Premises;

(i) All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Premises, the Improvements, the Personal Property, or any other part of the Mortgaged Property, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Premises, the Improvements, the Personal Property, or any other part of the Mortgaged Property, or for any loss or diminution in value of the Premises, the Improvements, the Personal Property, or any other part of the Mortgaged Property;

(j) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements or extraction of minerals or gravel from the Premises and all studies, data, and drawings related thereto; and also all contracts and agreements of the Mortgagor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on or extraction of minerals or gravel from the Premises;

(k) All commercial tort claims Mortgagor now has or hereafter acquires relating to the properties, rights, titles, and interests referred to in this Exhibit B or elsewhere in the Mortgage;

(l) All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter requires relating to the properties, rights, titles and interest referred to in this Mortgage;

(m) All proceeds from sale or disposition of any of the aforesaid collateral and all supporting obligations ancillary thereto or arising in any way in connection therewith; and

(n) All Mortgagor's rights in proceeds of the loan evidenced by the Note.

As used in this Exhibit B the terms "Obligations," "Note," "Mortgaged Property," "Premises," "Improvements," and "Personal Property" shall have the meanings set forth in the Mortgage to which this Exhibit B is attached.

## EXHIBIT C

"Permitted Exceptions" means the following:

1. Sale, transfer, or other disposition of any Personal Property in the ordinary course of Mortgagor's business or that is consumed or worn out in ordinary usage and that is promptly replaced with similar items of similar quality.
2. Liens and Encumbrances being contested in accordance with Section 1.17 of this Mortgage.
3. Impositions being contested in accordance with Section 1.08(d) of this Mortgage.
4. This Mortgage.
5. Items approved by Mortgagee as listed on Schedule B to the commitment to issue a mortgagee's policy to Mortgagee, issued by the Title Company (as defined in the Loan Agreement).
6. Normal and customary easements and other similar rights necessary for the normal and ordinary course of developing and operating the Mortgaged Property, including, but not limited to, normal and customary easements, rights of way, dedications, conveyances and other similar rights necessary for the ordinary and normal course of operating and developing the Mortgaged Property.

## **Exhibit D**

### **Consent, Nondisturbance and Attornment Agreement**



## CONSENT, NONDISTURBANCE AND ATTORNMENT AGREEMENT

NTUA hereby consents to the foregoing Construction Mortgage and Fixture Filing (With Assignment of Rents and Security Agreement) (the "Mortgage") and hereby agrees, warrants, represents and certifies to Mortgagee as follows (the "Consent") (all capitalized terms used in this Consent and not otherwise defined shall have the meanings given to such terms in the Mortgage):

1. The execution, delivery and performance by Mortgagor of the Mortgage is hereby consented to by NTUA and shall not and does not constitute any breach, violation or default under the terms and conditions of the Master Lease or the Ground Lease.

2. NTUA hereby agrees to provide (a) a copy of any notice of default given to Mortgagor by NTUA with respect to the Ground Lease to Mortgagee at the address set forth in the Mortgage and (b) a copy of any notice of default received by NTUA with respect to the Master Lease to Mortgagee at the address set forth in the Mortgage.

3. NTUA agrees that, except as modified by this consent, the Mortgagor's and Mortgagee's, rights and obligations shall be exclusively controlled by the terms and conditions of the Ground Lease and the Mortgage. In the event Mortgagee exercises any of its rights or remedies as provided herein, NTUA hereby agrees to recognize and attorn to Mortgagee in the event Mortgagee takes title to the leasehold estate as defined in the Ground Lease and covenants not to disturb or dispossess Mortgagee so long as Mortgagee complies with the terms and conditions of the Ground Lease in all material respects and within the time periods provided in the Ground Lease.

4. As of the date hereof, there is no default, breach or other nonperformance by Mortgagor under the terms and conditions of the Master Lease or the Ground Lease.

5. Upon the occurrence of a default under or violation of the Ground Lease, NTUA shall take no action to effect a termination of such lease or to otherwise exercise rights and remedies with respect thereto unless and until NTUA has given written notice to Mortgagee describing the nature of the default or violation and the actions that need to be taken to cure the default or violation. Thereafter, Mortgagee shall have a period of 40 days in which to cure any such default or violation that arises from the nonpayment of rent under the Ground Lease. With respect to other defaults under or violations of the Ground Lease, Mortgagee shall have a reasonable period of time in which to either obtain possession of the Premises (including possession by a receiver) or to institute, prosecute and complete foreclosure proceedings or otherwise acquire Mortgagor's interest in the Trust Estate. Such period of time shall continue so long as Mortgagee is pursuing such course of action or otherwise exercising its rights and remedies under the Mortgage and shall also continue during any period in which Mortgagee is stayed or is otherwise unable to proceed with the exercise of such rights and remedies by reason of bankruptcy, legal proceedings or other delays. Upon obtaining such possession or completion of such foreclosure, Mortgagee or the purchase of the Property upon foreclosure shall have an additional period of time within which to complete the cure of such defaults or violation so long

as Mortgagee or such purchaser, as applicable, is at all times diligently attempting to complete such cure.

6. So long as any of the Obligations remain unpaid, (a) NTUA shall not enter into any agreement with Mortgagor to modify the Ground Lease or any attachment thereto without the prior written consent of Mortgagee, which consent may be granted or withheld in the sole and absolute discretion of Mortgagee, and (b) NTUA shall not enter into any agreement to modify the Master Lease or any attachment thereto without the prior written consent of Mortgagee, which consent may be granted or withheld in the sole and absolute discretion of Mortgagee.

7. NTUA warrants that this Consent has been duly authorized, and is legal and binding upon NTUA and is enforceable in accordance with its terms against NTUA.

8. NTUA further consents and approves, by signing and approving this Consent, the execution and delivery of financing statements perfecting Mortgagee's lien in certain personal property pursuant to which the Mortgagor will be named as "debtor."

9. NTUA agrees that the lien of Mortgagee on the Personal Property is superior to any landlord's lien or other lien that may run in favor of NTUA, and NTUA hereby subordinates to Mortgagee any landlord's lien or other lien it may possess on the Personal Property. Mortgagee shall have the right, upon prior written notice to NTUA, to take all actions necessary, convenient or appropriate to carry out, enforce or to provide full and effective remedies under the Agreements (as defined below), including without limitation, entering the Navajo Nation and the Premises, to remove the Personal Property or to take other appropriate action(s), provided, however, Mortgagee shall cause any damage to the Premises occasioned by such removal to be repaired at no expense to NTUA.

10. NTUA hereby agrees and acknowledges that this Consent shall be governed by, and construed in accordance with, Article 18 of the Loan Agreement. Said Article 18 of the Loan Agreement is hereby incorporated into this Consent in full by this reference.

11. NTUA agrees that the interpretation and enforcement of the Agreements shall be governed by and construed in accordance with the laws of Arizona (without giving effect to conflict of laws principles), the constitutional law of the United States prohibiting impairment of contracts by a governmental body and the parties hereby adopt such laws. Particularly, but without limitation, the parties choose and adopt the Uniform Commercial Code in effect in Arizona as to personal property interests and security, the laws of Arizona as they pertain to filing and recording in order to perfect and give constructive notice of security interests and encumbrances upon real and personal property, the laws of Arizona as to the enforcement of encumbrances and security interests and the laws of Arizona relating to deeds of trust, mortgages and the enforcement of rights and remedies thereunder.

12. Except as specifically and expressly set forth in this Consent, the Ground Lease and the Master Lease shall remain in full force and effect in accordance with all of their terms, covenants and conditions. In the event of a conflict between the provisions of this Consent and the Leases, the provisions of this Consent shall control. This Consent shall be binding upon and

inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns.

13. If any provision of this Consent is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If any action is brought by either party in respect to its rights under this Consent, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court or arbitrator.

[SIGNATURE PAGES FOLLOW]



DATED: \_\_\_\_\_, 2014.

NAVAJO TRIBAL UTILITY AUTHORITY, a  
wholly-owned enterprise of the Navajo Nation

By: Walter W. Haase  
Name: Walter W. Haase, P.E.  
Title: General Manager 4/5/2015

STATE OF ARIZONA       )  
                                  ) ss.  
County of Navajo        )

The foregoing instrument was acknowledged before me this 5 day of  
April, 2015, by Walter W. Haase, P.E., as general manager of Navajo Tribal Utility  
Authority, a wholly-owned enterprise of the Navajo Nation, LLC, on behalf of the enterprise.

Theresa M Talker  
Notary Public



CONSENT AND APPROVAL OF NAVAJO NATION:

NAVAJO NATION, a federally recognized Indian Nation

By: *Russell Begay*  
Name: Russell Begaye  
Title: President

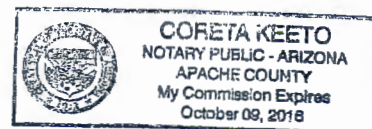
STATE OF ARIZONA

County of Apache

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of May, 2015,  
by Russell Begaye, President of the Navajo Nation, a federally recognized  
Indian Nation.

*Coreta Keeto*

Notary Public



## **Exhibit E**

### **Estoppel Certificate and Agreement**



**ESTOPPEL CERTIFICATE AND AGREEMENT**  
**BY**  
**THE NAVAJO NATION AND**  
**BORROWER**

DATE: March 23, 2015

PARTIES:

**THE NATION:**

Navajo Nation (the "Nation"), a federally  
recognized Indian Nation  
Address: \_\_\_\_\_  
\_\_\_\_\_

**BORROWER:**

Navajo Tribal Utility Authority, a wholly-  
owned enterprise of the Navajo Nation  
(the "Borrower"),

Address: PO Box 170  
Fort Defiance, AZ 86504

**GROUND LEASES:** The Ground Lease between the Nation and Borrower as described in the attached Exhibit A (the "Ground Lease") upon which the Borrower will construction one or more buildings (the "Facility"). In addition, the Borrower has Subleased the Facility to NTUA Headquarters, LLC, an Arizona limited liability company as described in the Attached Exhibit A (the "Sublease"). The Ground Lease and Sublease are collectively referred to as the "Ground Leases."

A. Borrower and Great Western Bank, a South Dakota banking corporation ("Bank"), have entered into that certain Loan Agreement dated December 31, 2014 (the "Loan Agreement") pursuant to which Bank will make a Loan in the original principal amount of up to \$15,000,000 (the "Loan") to Borrower. The Loan is secured in part by a Security Agreement dated December 31, 2014 (the "Security Agreement"), by Borrower, as debtor, in favor of Bank, as secured party, that encumbers the personal property of Borrower described therein and a Collateral Assignment of Lease Agreement (the "Collateral Assignment") by Borrower, as grantor and Bank, as trustee, that encumbers the leasehold property (the "Real Property") of

Borrower described therein (collectively, the "Collateral"). The Loan Agreement, Security Agreement, Collateral Assignment and all other documents, instruments, and agreements, evidencing, securing and otherwise related to the Loan, as modified from time to time, are collectively referred to as the "Loan Documents". All capitalized terms used herein, but not defined, shall have the meanings given to such terms in the Loan Agreement.

B. Bank is willing to make the Loan upon the condition that the Nation and Borrower make certain agreements, affirmations, certifications, representations and warranties under this Estoppel Certificate and Agreement ("Estoppel Agreement") to Bank.

1. CERTIFICATIONS.

The Nation, as lessor, and Borrower, as lessee, each acknowledge the accuracy of the Recitals and certify as follows:

1.1 That true, correct and complete copies of the Ground Leases, together with all signatures, approvals, and amendments thereto, are attached hereto as Exhibit A.

1.2 That the Ground Leases have not been altered, modified, supplemented or amended in any way except as set forth in the attached as Exhibit A.

1.3 That there are no subleases or assignments existing that affect the Real Property and the interest of Borrower in the Ground Leases has not been assigned or encumbered.

1.4 That the Ground Leases represent the entire agreement between the Nation and Borrower as to said leasing, and that there are no other agreements between the Nation and Borrower, written or oral, which affect the occupancy of the Real Property by Borrower.

1.5 That the attached Summary of Leases (Exhibit A) designates whether the Nation, as lessor, has been paid in full, or whether any amounts under the Ground Leases are owed to the Nation (and, if so, how much is owed). Other than the rent that may be owed to the Nation by Borrower (as indicated on the attached Summary of Leases), there are no current defaults under the Ground Leases. The Nation is the beneficial owner of the Real Property that Borrower leases under the Ground Leases. Borrower's possession of the Real Property commenced on or about the dates stated in Exhibit A and the current term of the Ground Leases will terminate on the dates stated on Exhibit A.

1.6 The amount of rent payable under the Ground Leases set forth on the attached Summary of Leases (Exhibit A) is true and correct.

1.7 That all insurance required of Borrower under the Ground Leases has been provided by Borrower.

1.8 That the Ground Leases are for the terms, and the commencement dates of the terms of the Ground Lease are, as more particularly described in the Summary of Leases in Exhibit A.

1.9 That all rents payable under the Ground Leases have been paid through December 31, 2014.

1.10 That Borrower has accepted the Real Property under the Ground Leases, subject to no conditions other than those set forth in the Ground Leases.

1.11 That Borrower has made no agreement with the Nation, or any agent, representative or employee of the Nation, concerning free rent, partial rent, rebate of rental payments or any other similar rent concession.

1.12 That Borrower has all governmental permits, licenses and consents required for the activities and operations being conducted by Borrower in or around the Real Property.

1.13 That as of this date there are no actions, whether voluntary or otherwise, pending against Borrower or any guarantor of the Ground Leases under the bankruptcy or insolvency laws of the United States or any state thereof.

1.14 That all conditions of the Ground Leases to be performed by the Nation and necessary to the enforceability of the Ground Leases have been satisfied. On this date, there are no existing defenses, offsets, claims or credits which Borrower has against the enforcement of the Ground Leases.

1.15 That neither the Nation nor Borrower are in default under the Ground Leases; no other default exists under the Ground Leases, nor has any event occurred which, with the passage of time or upon the giving of notice to Borrower, or upon any action by a third party, would result in a default thereunder, nor has any notice of default been given by or on behalf of the Nation, as lessor.

1.16 That only the Nation is entitled to receive all or any part of the rents or other sums or charges due or to become due under the Ground Leases. There is no rent or other charge or sum due or to become due to the Nation under the Ground Leases except as expressly set forth in the Ground Leases.

1.17 That the Nation has not received notice of any title defect.

1.18 That to the best of the Nation's knowledge, there are no delinquent, unpaid liens, taxes, assessments or utility charges under or arising out of the Ground Leases that are payable by Borrower.

1.19 That excluding the Loan, the Nation has neither received notice of nor approved any lender, loan, mortgage or deed of trust under the Ground Lease and the Nation, as lessor, has not received any application for approval of any of the foregoing.

1.20 That Borrower has performed all of its obligations under the Ground Leases that were due to be performed on or before the date hereof.



1.21 That the Nation is the beneficial owner of title, which is held in fee by the United States of America, in trust for the Nation, to the Real Property, which is located within tribal land.

1.22 That the Ground Leases have been approved by each governmental authority, including, without limitation is so required under federal or Navajo laws, the Office of the Secretary of the Interior, United States Department of the Interior, through his or her authorized representative, the Bureau of Indian Affairs (the "Secretary") and the Nation and no other approvals are required.

## 2. APPROVAL OF LOAN DOCUMENTS.

As the beneficial owner of the Real Property, the Nation hereby approves the Loan and the Loan Documents. The parties intend that the lien of Bank on the Collateral be and remain superior to any and all lien rights the Nation may hold in connection with the Real Property, as the beneficial owner of the Real Property.

## 3. ACKNOWLEDGMENTS AND AFFIRMATIONS.

The Nation and Borrower hereby acknowledge and affirm the following:

3.1 The Nation and Borrower each hereby agree that the Ground Leases shall not be modified, terminated (except pursuant to the terms of the Ground Lease following an Event of Default), amended, altered or canceled, nor shall a surrender of the Real Property be accepted by the Nation, without the prior written consent of Bank, and that any such action taken without Bank's consent shall not be binding on Borrower or Bank.

3.2 Borrower shall have the right to use all buildings and improvements that are and/or may be placed upon, installed in or attached to the Real Property during the terms of the Ground Leases. Borrower has all the rights, appurtenances and easements provided under the Ground Leases to and for the Improvements and access to, use and enjoyment of the Improvements.

3.3 Banks' security interest in the Collateral shall not extend to or affect the reversionary interest and estate of the Nation under the Ground Leases, or in any way attach to or affect the Real Property.

3.4 For so long as the Loan or any part thereof shall remain unpaid and outstanding: (i) the Nation and Borrower shall not mutually agree to cancel, surrender, modify or amend the Ground Leases without the prior written consent of Bank (except as provided in Paragraph 3.1 above); and (ii) in the event Borrower shall default under any of the provisions of the Ground Leases, Bank shall have the right to make good such default whether the same consists of the failure to pay rent or the failure to perform any other matter or thing which Borrower thereunder is required to do or perform, and the Nation shall accept such performance made by Bank as though the same had been done or performed by Borrower.

3.5 The Nation agrees that the name of Bank may be added as a named insured or to the "loss payable endorsement" of any and all insurance policies required to be carried by

Borrower under the Ground Leases on the condition that the insurance proceeds are to be applied in the manner specified in the Loan Documents. The proceeds of any insurance policies arising from a condemnation are to be held by Bank and distributed pursuant to the provisions of the Ground Leases, but Bank may reserve its right to apply to the Obligations all, or any part, of Borrower's share of such proceeds pursuant to the Loan Documents.

3.6 The execution and delivery of the Loan Documents and instruments contemplated therein do not constitute a prohibited assignment or other transfer of the Ground Lease or an assignment or other transfer requiring the Nation's consent.

4. LENDER'S RIGHT TO NOTICE OF DEFAULT.

Notwithstanding anything to the contrary in the Ground Leases or in this Estoppel Agreement, before exercising any right or claim of right to terminate or cancel the Ground Leases or any claim or counterclaim under the Ground Leases, Borrower or the Nation (as applicable) shall provide Bank with notice of the asserted breach or default giving rise to same. The Nation agrees to promptly, and in no event later than three days after having given a notice to Borrower, give and deliver to Bank true, complete and correct copies of all notices given or sent to Borrower under the Ground Leases. Said notices shall be sent via reputable national overnight delivery service, or by registered or certified mail, to Bank at the following address:

Great Western Bank  
1721 North Arizona Avenue, Suite 1  
Chandler, AZ 85255

5. REPRESENTATIONS, WARRANTIES AND COVENANTS.

5.1 Representations and Warranties. The Nation represents and warrants to and covenants with Bank that:

5.1.1 Existence and Authorization. The Nation is a federally recognized Indian Nation organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 476), which exercises sovereignty over both its members and its lands. By a Resolution adopted by the Division of Economic Development on March 23, 2015, the Nation has approved the execution, delivery and performance of this Estoppel Agreement. No further approval, consent, notice or filing is required as a matter of Federal law or of the Nation's law for the execution, delivery, and performance of this Estoppel Agreement. Attached hereto as Exhibit B is a true and correct copy of Resolution No. DEDF-91-2015, pursuant to which the Nation has approved this Estoppel Agreement and a limited waiver of sovereign immunity.

5.1.2 No Approvals. No approval, authorization, bond, consent, certificate, franchise, license, permit, registration, qualification, or other action or grant by or filing with any Person is required in connection with the execution, delivery, or performance by the Nation of this Estoppel Agreement.



5.1.3 No Conflicts. The execution, delivery, and performance by the Nation of this Estoppel Agreement will not conflict with, or result in a violation of or a default under: any applicable law, ordinance, regulation, or rule (federal, state, local, or tribal); any judgment, order, or decree of any arbitrator, other private adjudicator, or Governmental Authority to which the Nation is a party or by which the Nation or any of the assets or property of the Nation is bound.

5.1.4 Execution and Delivery and Binding Nature of this Estoppel Agreement. This Estoppel Agreement has been duly executed and delivered. This Estoppel Agreement is a legal, valid, and binding obligation of the Nation, enforceable in accordance with its terms against the Nation, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization, or similar laws and by equitable principles of general application.

5.1.5 Legal Proceedings; Hearings, Inquiries, and Investigations. Except as disclosed to Bank in writing prior to the date of this Estoppel Agreement, (i) no legal proceeding is pending or, to the best knowledge of the Nation, threatened before any arbitrator, other private adjudicator, or Governmental Authority to which Borrower is a party or by which Borrower or any assets or property of Borrower may be bound or affected that if resolved adversely to Borrower could result in a material adverse change in the business, operations or financial affairs of Borrower, and, to the best knowledge of the Nation, there exist no facts that would form any basis for any of the foregoing, and (ii) no hearing, inquiry, or investigation relating to Borrower or any assets or property of Borrower is pending or, to the best knowledge of the Nation, threatened by any Governmental Authority.

5.1.6 Licenses and Permits. Borrower has all requisite power and authority and now holds all necessary licenses, authorizations, approvals, permits, franchises, consents, privileges, waivers and certificates to own and operate the Facility ("Licenses"). Each of the Licenses that is necessary for the operation of the Facility is validly issued and in full force and effect, and the Licenses constitute, in all material respects, all of the authorizations necessary for the operation of the Facility, in the same manner as they presently are conducted and contemplated to be conducted. Borrower has fulfilled and performed all of its obligations with respect thereto. No event has occurred which: (1) results in, or after notice or lapse of time or both would result in, suspension, surrender, failure to renew, revocation or termination of any material License; or (2) materially and adversely affects or in the future may (so far as Borrower can now reasonably foresee) materially adversely affects any of the rights of Borrower thereunder.

5.1.7 No Laws, Ordinances, Rules, Regulations or Resolutions. No provision of the Nation's Constitution or laws and no customs: (i) impairs the Loan Documents, (ii) impairs the Borrower's ability to perform under the Loan Documents

5.1.8 Compliance With Law. Borrower is in compliance, in all material respects, with the terms of the with all laws and other legal requirements applicable to its existence and business (including, without limitation, all applicable permits, laws, statutes, ordinances, orders, rules, codes, regulations, licenses, authorizations and requirements of all Government Authorities with jurisdiction over the Nation, Borrower, the conduct of Borrower's businesses, the Premises and/or the facilities), has obtained all authorizations, consents, approvals, orders, licenses and permits from, and has accomplished all filings, registrations and



qualifications with, or obtained exemptions from any of the foregoing from, any Governmental Agency that are necessary for the transaction of its business.

5.1.9 Legal Owner of Business Assets. Borrower is the sole legal owner of the Real Property (it being understood that title to the Real Property is held in trust by the United States of America for the benefit of the Nation and leased to Borrower pursuant to the Ground Lease). Subject to the Ground Lease, Borrower is the sole Tenant under the Ground Lease and the Collateral Assignment is the only lien on the Leased Premises.

## 6. RENT PAYMENT AND SUBORDINATION OF LIEN.

6.1 Subordination. The Nation, as lessor, and Borrower agree that Bank's lien on the Collateral shall be superior to any and all lien rights now or hereafter held in the Collateral by the Nation. The Nation subordinates to Bank's security interests in the Collateral all the Nation's claims and demands of every kind against the Collateral and all priority rights accruing to the Nation by virtue of any liens of the Nation on the Real Property and agrees that the rights of Bank in the Collateral shall be as though Bank's security interests attached and were perfected prior to the execution, attaching, perfection or recording of the liens and priority rights of the Nation.

6.2 Extension. Bank may extend and modify the time of payment of indebtedness of Borrower to Bank, or the performance of any of the terms and conditions related thereto, without the consent of or notice to the Nation and this Agreement shall remain in full force and effect so long as such indebtedness remains owing by Borrower to Bank.

## 7. DISPUTE RESOLUTION.

### 7.1 Waiver of Sovereign Immunity.

(a) Limited Waiver of Sovereign Immunity. In accordance with the authority granted to Assignor and the Navajo Nation under the laws of the Navajo Nation, the Assignor and the Navajo Nation hereby expressly and irrevocably waives Assignor's and the Navajo Nation's sovereign immunity with respect to the enforcement of this Agreement, including the enforcement of the agreement to arbitrate, enforcement of an arbitration decision or award rendered in conformance with this Agreement, the assignment of rents, subject to and conditioned upon the following limitations:

(i) This limited waiver of sovereign immunity extends only to Lender and its successors and assigns, and shall not extend to or be used by, for or to the benefit of any other person or entity.

(ii) This limited waiver of sovereign immunity extends only to enforcement of the provisions of this Agreement and the other agreement and to any dispute that may arise between Assignor, the Navajo Nation and Lender, and their successors and assigns under this Agreement.

(iii) No waiver may be enforced to the extent the subject matter of the dispute shall be assets of the Navajo Nation. Assignor acknowledges that the

interest of Assignor in the Collateral will be property and an asset of Assignor and shall in no event be considered property or assets of the Navajo Nation. The Assignor and Navajo Nation acknowledge that Assignee's interest is a first priority lien interest in the Lease and the leased premises only and not any other real property of the Assignor or the Navajo Nation.

(iv) Nothing in this Agreement shall be considered a waiver, express or implied, of the sovereign immunity of Assignor or the Navajo Nation except to the extent provided for in the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §§ 551 et seq. and Assignor's Plan of Operation, as amended.

(b) Consent to Financing Statement. Assignor further agrees to file, at its own expense, financing statements perfecting Lender's interest under this Agreement, pursuant to which Assignor will be named as "debtor."

## 7.2 Dispute Resolution.

### (a) Federal Arbitration Act and Jurisdiction.

(i) Applicability. The parties acknowledge that this Agreement and the parties' obligations and responsibilities arising from this Agreement involve interstate commerce, subjecting the agreement to arbitrate herein to the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, et seq., to the extent not inconsistent with the Navajo Arbitration Act. The parties further agree that this Section 7.2 shall be interpreted and enforced in accordance with the provisions of the Navajo Arbitration Act, 7 N.N.C. § 1101, et seq., and the Federal Arbitration Act, to the extent that the Federal Arbitration Act is applicable and not inconsistent with the Navajo Arbitration Act. In particular, and without limiting the foregoing, the parties agree that the Court (as defined below) considering the confirmation of an arbitration award under 7 N.N.C. § 1114 shall vacate, remand, modify or correct an award only on the grounds set forth in 7 N.N.C. §§ 1115 and 1116.

(ii) Consent to Jurisdiction. For purposes of enforcing this Agreement pursuant to binding arbitration proceedings, the parties consent to the jurisdiction of the courts of the Navajo Nation and to the jurisdiction of any court to which the decisions of the courts of the Navajo Nation can be appealed (each a "Court" and, collectively, the "Courts").

(iii) Arbitration. Any dispute arising out of or relating to this Agreement shall be resolved by arbitration as contemplated by the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 554(J) and (K), and the Navajo Nation Arbitration Act, 7 N.N.C. §§ 1101 et seq. The arbitration shall be conducted in accordance with the American Arbitration Association Commercial Arbitration Rules except to the extent that said rules are modified by the following:

(1) Unless otherwise agreed to by the parties, the arbitration shall be held in Phoenix, Arizona;

(2) The arbitration panel shall consist of a single arbitrator unless one of the parties' claims exceeds \$1,000,000.00, exclusive of interest, costs, and fees, then the arbitration panel shall consist of three (3) arbitrators. On all arbitration panels, there shall be at least one arbitrator with at least 10 years of experience in federal Indian law;

(3) Notice of intent to invoke arbitration against Assignor and the Navajo Nation shall be filed in compliance with the notice requirements of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 555;

(4) An arbitration award against Assignor and the Navajo Nation shall conform to the provisions of 1 N.N.C. § 554(K);

(5) Except as otherwise set forth in Section 7.3 hereof, the laws of the Navajo Nation shall govern the application and interpretation of this Agreement; and

(6) The Courts shall have exclusive jurisdiction to enforce, modify, and vacate an arbitration award.

Any disputes, claims or controversies concerning the lawfulness or reasonableness of an act, or exercise of any right or remedy concerning this Agreement, including any claim to rescind, reform, or otherwise modify this Agreement, shall also be arbitrated; provided, however, that no arbitrator shall have the right or the power to enjoin or restrain any act of either party. The statute of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of any action for these purposes.

(b) Ancillary Remedies. No act to take possession of or dispose of any or all of the Equipment shall constitute a waiver of arbitration or be prohibited by this arbitration provision. The arbitration provision set forth herein shall not limit the right of either party during any dispute, claim or controversy to seek, use, and employ ancillary, or preliminary rights and/or remedies, judicial or otherwise, for the purposes of realizing upon, preserving, protecting, foreclosing upon or proceeding under forcible entry and detainer or through self-help for possession of, any real or personal property, and any such action shall not be deemed an election of remedies (collectively, the "Ancillary Remedies"). Such Ancillary Remedies include, without limitation, any action that may be required pursuant to 7 N.N.C. § 621 or any similar or successor statute to permit removal of personal property, obtaining injunctive relief or a temporary restraining order, obtaining a writ of attachment or imposition of a receivership, or exercising any rights relating to personal property, including exercising the right of setoff or taking or disposing of such property, with or without judicial process pursuant to the applicable provisions of the Uniform Commercial Code.



(c) Service of Process. Service of process may be made by any means authorized by applicable law and arbitration rules. Assignor and the Navajo Nation acknowledges that the President and Attorney General of the Navajo Nation must receive service of process pursuant to the laws of the Navajo Nation and that the Assignor's Chief Executive Officer is the authorized official of Assignor to receive service of process on behalf of Assignor.

(d) Compulsion of Arbitration.

(i) Navajo Nation Court. Judgment shall be entered on any award made by the arbitrator(s) by the Courts. Review of the award shall be as provided in the Navajo Nation Arbitration Act. Without limiting the generality of the foregoing, Assignor and the Navajo Nation expressly authorizes any Governmental Authority who has the right and duty under applicable law to take any and all action awarded in any arbitration proceeding or by any Court, including, without limitation, entry upon the land and any premises owned or controlled by Assignor or the Navajo Nation to give effect to any arbitration award. Assignor and the Navajo Nation also acknowledge that once entered in any Court, judgments may also be transferred to and enforced through other courts as necessary to enforce the judgment creditor's rights against the judgment debtor's properties and assets.

(ii) Waiver of Defenses. The parties waive, and agree not to assert by way of motion, defense, or otherwise in any action to compel arbitration, any claim that the Courts set forth in Section 7.2(a)(ii) above are inconvenient forums or that venues in such Courts are improper.

7.3 Governing Law. Except as specifically set forth in this Agreement, shall be governed by, and construed in accordance with the laws of the Navajo Nation (without giving effect to conflict of laws principles) and applicable Federal law, including the constitutional law of the United States prohibiting impairment of contracts and to the extent not in conflict with the laws of the Navajo Nation, then with the laws of the State of Arizona.

7.4 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTY HERETO OR ANY OF THEM WITH RESPECT TO THIS, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE..BINDING EFFECT.

This Agreement shall be binding upon, and inure to the benefit of, the Nation, Borrower, Bank and their respective successors and assigns.

9. COUNTERPART EXECUTION.

This Estoppel Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Estoppel Agreement shall become effective when it shall have been executed by Bank and when Bank shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Estoppel Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Estoppel Agreement.

10. MISCELLANEOUS.

10.1 Notices. All notices or other communications required or permitted under this Estoppel Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered to the following addresses:

10.1.1 if to the Borrower, to Navajo Tribal Utility Authority, Attention: Walter W. Haase, P.E., General Manager, PO Box 170, Fort Defiance, Arizona, 86504 (Fax No. \_\_\_\_\_);

10.1.2 if to Bank, to Great Western Bank, Attention: Lyle Frederickson, 1721 North Arizona Avenue, Suite 1, Chandler, Arizona, 85255 (Fax No. 480.422.2947);

10.1.3 if to the Nation, to the Navajo Nation, Attention: Chairman/Chairwoman, \_\_\_\_\_ (Fax No. \_\_\_\_\_), with a required copy to \_\_\_\_\_ (Fax No. \_\_\_\_\_).

Each party's address is subject to change by written notice under this section. Notices shall be effective the next business day after being sent by overnight courier service, and five business days after being sent by certified mail (return receipt requested).

10.2 Change Address. Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Consent Agreement shall be deemed to have been given on the date of receipt.

10.3 Entire Agreement. This Estoppel Agreement constitutes the entire agreement between Bank, the Nation and Borrower regarding the subordination of the Ground Leases to the Loan Documents and the rights and obligations of Borrower and Bank as to the subject matter of this Estoppel Agreement.

10.4 Interaction with the Ground Lease and with the Loan Documents. If this Estoppel Agreement conflicts with the Ground Leases, then this Estoppel Agreement shall govern as between the parties and any successor landlord or tenant.

10.5 Bank's Rights and Obligations. Bank shall have no obligation to Borrower with respect to the Ground Leases.

10.6 Electronic Communications. Notices and other communications to Bank hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by Bank. Bank, the Nation and Borrower may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by them; provided that approval of such procedures may be limited to particular notices or communications.

10.7 Waivers. No failure or delay by Bank or Issuing Bank in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of Bank and Issuing Bank are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Estoppel Agreement or consent to any departure by the Nation therefrom shall in any event be effective unless the same shall be permitted in this Estoppel Agreement, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether Bank or Issuing Bank may have had notice or knowledge of such Default at the time.

10.8 Agreement in Writing. Neither this Estoppel Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the parties.

10.9 Bank's Assignment. Subject to the conditions set forth in the Loan Agreement, Bank may assign to one or more assignees all or a portion of its rights and obligations under the Loan Documents, including this Estoppel Agreement, without the consent of the Nation or Borrower. If Bank assigns its rights and obligations under the Loan Documents, then upon delivery to Borrower of written notice thereof accompanied by the assignee's written assumption of all Bank's obligations under this Estoppel Agreement, all liability of the assignor hereunder shall terminate.

10.10 Survival. All covenants, agreements, representations and warranties made by Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Estoppel Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Estoppel Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Bank or Issuing Bank may have had notice or knowledge of any default or incorrect representation or warranty at the time.



10.11 Severability. Any provision of this Estoppel Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

10.12 Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Estoppel Agreement, and shall not affect the construction of, or be taken into consideration in interpreting, this Estoppel Agreement.

10.13 Reliance. The Nation and Borrower make this Estoppel Agreement with the understanding that Bank may rely and have relied on this Estoppel Agreement in making the Loan to Borrower.

10.14 Binding. This Estoppel Agreement is binding upon the Nation and Borrower, their respective successors and assigns and shall inure to the benefit of Bank and its respective successors and assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Estoppel Agreement has been duly executed by the Nation and Borrower as of \_\_\_\_\_, 2015.

NAVAJO NATION, a federally recognized Indian Nation

By: Russell Begaye

Name: Russell Begaye

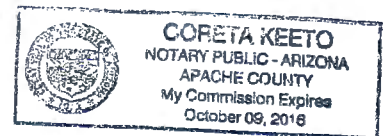
Title: President

STATE OF ARIZONA

County of Apache

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of May, 2015, by Russell Begaye, President of the Navajo Nation, a federally recognized Indian Nation.

Coreta Keeto  
Notary Public



Approved by Navajo Nation Department of Justice:

By: R. T. B. B.

Date: 5-13-15

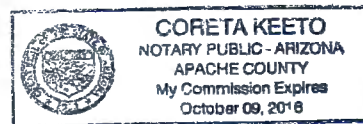
STATE OF ARIZONA

County of Apache

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of May, 2015, by Dodgich T. Begay, Asst Atty Gen. of the Navajo Nation, a federally recognized Indian Nation.

Coreta Keeto

Notary Public





NAVAJO TRIBAL UTILITY AUTHORITY, a  
wholly-owned enterprise of the Navajo Nation

By: *Walter W. Haase*  
Name: Walter W. Haase, P.E.  
Title: General Manager

*4/5/2015*

STATE OF ARIZONA

County of Apache

The foregoing instrument was acknowledged before me this 5 day of April,  
2015, by Walter W. Haase, P.E., the General Manager of the Navajo Tribal Utility Authority, a  
wholly-owned enterprise of the Navajo Nation a federally recognized Indian Nation.

*Theresa M. Talker*  
Notary Public



GREAT WESTERN BANK, a South Dakota  
banking corporation

By: *Lyle D. Frederickson*  
Name: Lyle D. Frederickson  
Title: Vice President

STATE OF ARIZONA

County of Maricopa

The foregoing instrument was acknowledged before me this 17 day of  
APRIL, 2015, by LYLE D. FREDERICKSON, the OFFICER of  
Great Western Bank, a South Dakota banking corporation, on behalf of the corporation.

*Kathie Petty*  
Notary Public



EXHIBIT A

FULLY-EXECUTED LEASES WITH ALL AMENDMENTS



Recorded at the  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Land Titles and Records Office  
Document Number: Fd21000026  
Date: 2015 JAN 20 01:45 PM  
LTRO: Southwest

Lease Modification #2  
Lease No FD-03-219

THIS LEASE AMENDMENT to Lease No FD-03-219 is made and entered into this 26<sup>th</sup> day of March, 2014, by and between the Navajo Nation, Post Office Box 9000, Window Rock, Navajo Nation (Arizona), 86515, hereafter Lessor, and Navajo Tribal Utility Authority, whose address is Post Office Box 170, Ft Defiance, Arizona 86504 hereafter Lessee

Whereas on or about November 18, 2003, Lessor approved Lease No FD-03-219 to Navajo Tribal Utility Authority whose address was P O Box 170, Ft Defiance, Arizona for a term of fifty (50) years

Whereas Lessee consents and agrees to be governed by the Navajo Business Site Leasing Regulations of 2005 and Lessee desires to amend certain sections to Lease No FD-03-219 and has negotiated said amendments with Lessee

Now Therefore, it is hereby agreed by and between the Lessor and the Lessee that Lease No FD-03-219 be amended and modified as follows

- 1 Part I (1) "Amend 25 U S C , §§ 415 as amended, and as implemented by the regulations contained in 25 CFR Part 162," to read "25 U S C , Section 415(e) as implemented by the Navajo Nation Business Leasing Regulations of 2005 (hereinafter "Tribal Regulations)"
- 2 Section B PURPOSE, UNLAWFUL USES
  - (2) Amend "written consent of Lessor and the Secretary" to read "written consent of Lessor"
  - (2) Amend "sole discretion of Lessor and Secretary" to read "sole discretion of Lessor"
- 3 Section C TERM
  - (1) Amend "by the Secretary" to read "by the Lessor"
- 4 Section D RENTAL
  - (5) Amend "the Secretary may in his discretion" to read "the Lessor may in his discretion"

- (5) Amend "the Secretary or his authorized representative" to read "the Lessor or his authorized representative"

5. Section H. RENTAL AND PERFORMANCE BOND

- (1) Amend "Upon approval of this Lease by the Lessor and the Secretary" to read "Upon approval by the Lessor"
- (1) Amend "security acceptable to Lessor and the Secretary" to read "security acceptable to the Lessor"
- (1) Amend "bond shall be deposited with the Secretary" to read "bond shall be deposited with the Lessor"
- (1) Amend "at the discretion of the Lessor and the Secretary" to read "at the discretion of the Lessor"
- (1) Amend "bond may be increased or decreases by the Lessor and the Secretary" to read "bond may be increased or decreased by the Lessor"
- (1) Amend "at the Lessor's and the Secretary's reasonable discretion" to read "at the Lessor's reasonable discretion"
- (2) Amend "furnished to the Secretary by Lessee" to read "furnished to the Lessor by Lessee"
- (2) Amend "Lessor and the Secretary reserve the right" to read "Lessor reserves the right"

6. Section I. CONSTRUCTION BOND

- (4) Amend "subject to approval of Lessor and the Secretary" to read "subject to the Lessor"

7. Section J. NOTICES AND DEMANDS

- (5) Delete "~~Regional Director, Navajo Regional Office, Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305-1060~~"

8. Part II. Section 1.1. DEFINITIONS

(1) Delete ~~"the Secretary"~~

(4) Delete ~~"Secretary" means the Secretary of the Interior or his authorized representative, delegate, or successor.~~

9. Section 1.3. ACCOUNTING

(1) Amend "submit to the Lessor and the Secretary individually" to read "submit to the Lessor"

(1) Amend "acceptance by the Lessor or the Secretary" to read "acceptance by the Lessor"

(1) Amend "paid to the Lessor or the Secretary" to read "paid to the Lessor"

(1) Amend "but the Lessor or the Secretary" to read "but the Lessor"

(1) Amend "submission to the Lessor or the Secretary" to read "submission to the Lessor"

10. Section 1.4. UTILITY SERVICE LINE AGREEMENTS

(1) Amend "by the Lessor and with the Secretary," to read "by the Lessor,"

11. Section 1.5. SUBLEASE, ASSIGNMENT, TRANSFER

(1) Amend "written approval of Lessor, the Secretary and sureties, if any" to read "written approval of Lessor, and sureties, if any"

(2) Amend "approval of Lessor and the Secretary" to read "approval of Lessor"

12. Section 1.6. ENCUMBRANCE

(1) Amend "approval of the Lessor, the Secretary and sureties" to read "approval of the Lessor and sureties"

(2) Amend "the Lessor and the Secretary may deem" to read "the Lessor may deem"

(3) Amend "shall give to Lessor, the Secretary, and Lessee" to read "shall give to the Lessor and Lessee"

(5) Amend "approved by the Secretary" to read "approved by the Lessor"

(7) Amend "approval by Lessor and the Secretary" to read "approval by the Lessor"



- (8) Amend "shall give to Lessor and the Secretary notice" to read "shall give to the Lessor notice"
- (10) Amend "approved the Secretary" to read "approved by the Lessor"
- (12) Amend "approval by Lessor and the Secretary" to read "approval by the Lessor"
- 13. Section 1.7. LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES
  - (1) Amend "furnish Lessor and the Secretary" to read "furnish the Lessor"
  - (1) Amend "hold harmless Lessor, the Secretary" to read "hold harmless the Lessor"
- 14. Section 1.8. LESSOR'S PAYING CLAIMS
  - (1) Amend "notice from the Lessor or Secretary" to read "notice from the Lessor"
- 15. Section 1.11. LIABILITY INSURANCE
  - (8) Amend "furnished to the Secretary" to read "furnished to the Lessor"
  - (13) Amend "and the Secretary" to read "and the Lessor"
- 16. Section 1.12. FIRE AND CASUALTY INSURANCE
  - (1) Amend "notification to the Lessor and the Secretary" to read "notification to the Lessor"
  - (1) Amend "deposited with Lessor and the Secretary" to read "deposited with the Lessor"
  - (1) Amend "approved by Lessor and the Secretary" to read "approved by the Lessor"
- 17. Section 1.15. DEFAULT
  - (1) Amend "acted upon by the Secretary in accordance with Title 25, Chapter I Part 162 of the Code of Federal Regulations" to read "acted upon by the Lessor in accordance with Tribal Regulations"
  - (1) Amend "Lessor or the Secretary may exercise" to read "Lessor may exercise"
  - (3) Amend "any right of Lessor and the Secretary" to read "any right of Lessor"
  - (3) Amend "Lessor or the Secretary may sue" to read "Lessor may sue"

(6) Amend "which may be exercised by Lessor or the Secretary" to read "which may be exercised by the Lessor"

18. Section 1.16. ATTORNEY'S FEES

(1) Amend "incurred by Lessor or the Secretary" to read "incurred by the Lessor"

19. Section 1.21. INSPECTION

(1) Amend "The Secretary and Lessor and" to read "The Lessor and"

20. Section 1.39. VALIDITY

(1) Amend "by the Secretary." to read "by the Lessor."

All other terms and conditions, not specifically set forth herein for Business Site Lease No. FD-03-219 shall remain in full force and effect.

IN WITNESS THEREOF:

LESSEE:

NAVAJO TRIBAL UTILITY AUTHORITY

Walter W. Hager

LESSEE

Date: 3/2/2014

LESSOR: THE NAVAJO NATION

Ben Shelly

President, Navajo Nation

Date: MAR 26 2014

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

By: \_\_\_\_\_

Regional Director, Navajo Region  
BUREAU OF INDIAN AFFAIRS

Approved: Pursuant to Secretary Redlegation  
Order 209 DMB Secretary's Order Nos. 3150  
and 3177, and 10 BIAM Bulletin 13, as  
amended.



All other terms and conditions, not specifically set forth herein for Business Site Lease No. FD-03-219 shall remain in full force and effect.

IN WITNESS THEREOF:

LESSEE:

NAVAJO TRIBAL UTILITY AUTHORITY

Matthew W. Harper

LESSEE

Date: 3/7/2014

LESSOR: THE NAVAJO NATION

Bruce Shelly

President, Navajo Nation

Date: MAR 26 2014

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

By: \_\_\_\_\_

Regional Director, Navajo Region  
BUREAU OF INDIAN AFFAIRS

Approved: Pursuant to Secretary Redelelegation  
Order 209 DMB Secretary's Order Nos. 3150  
and 3177, and 10 BIAM Bulletin 13, as  
amended.

Modification Fee \$100.00

Recorded at the  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Land Titles and Records Office  
Document Number: F421000026  
Date: 2014 DEC 18 12:39 PM  
LTRO: Southwest

LEASE MODIFICATION #1  
Lease No FD-03-219

It is hereby agreed by and between the Navajo Nation, Lessor, and Navajo Tribal Utility Authority, that Business Site Lease No FD-03-219, be modified this 26 day of March 2014

WHEREAS Lease No FD-03-219 lease term expires on November 18, 2053 Lease No FD-03-219 was approved on November 18, 2003 for a fifty (50) year lease term

WHEREAS Navajo Tribal Utility Authority requests for a modification of the lease term of Lease No FD-03-219 to a twenty five (25) year lease term with one (1) twenty five (25) year option to renew

NOW THEREFORE

- 1 An amendment which modifies the Lease Term (Article C of Lease) to twenty five (25) years with one (1) twenty five (25) year option to renew
- 2 All other provisions of the Lease No FD-03-219 shall remain unchanged

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

Surety-in-fact \_\_\_\_\_ Date \_\_\_\_\_

NAVAJO TRIBAL UTILITY  
AUTHORITY, LESSEE

BY Phyllis W. Hase

Date 3/7/2014

THE NAVAJO NATION, LESSOR

By Bar Shelly  
President

Date MAR 26 2014

Date Approved DEC 12 2014

By [Signature]  
Acting Regional Director, Navajo Region  
BUREAU OF INDIAN AFFAIRS

Approved Pursuant to Secretary Redlegation  
Order 209 DMB Secretary's Order Nos 3150  
and 3177, and 10 BIAM Bulletin 13, as  
amended

LEASE NO. FD-03-219Filing Fee: \$165.00

**PART I**  
**NAVAJO NATION ECONOMIC DEVELOPMENT LEASE**  
**(Navajo Nation Trust Land)**

☒ Standard Business Site Lease

☐ Shopping Center Lease

(From) NOV 18, 2003 (Until) NOV 17, 2053

THIS LEASES, in sextuplicate, is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2003, by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is Post Office Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and NAVAJO TRIBAL UTILITY AUTHORITY, hereinafter called the Lessee, whose address is Post Office Box 170, Ft. Defiance, Arizona 86504, in accordance with the provisions of 25 U.S.C. §§ 415 as amended, and as implemented by the regulations contained in 25 C.F.R. Part 162; and any amendments thereto relative to business leases on restricted lands which by this reference are made a part hereto.

**A. LAND DESCRIPTION.**

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

A certain tract of land located within Section 26, T. 18 N., R. 21 W., NMPM, Navajo Nation, McKinley County, New Mexico, being more particularly described as follows:

Commencing for a tie at the Real Point of Beginning from whence a US Department of Interior Brass Cap, 86 M.C. bears S00°22'00"W along the State Line between the States of New Mexico and Arizona a distance of 565.63 feet to the East ¼ Corner of Section 8, T.27N., R. 31 E., G&SRM within the State of Arizona, and continuing S00°22'00"W along the State Line a distance of 191.45 feet to that Brass Cap. Thence Due East a distance of 2.32 feet to a Point of Curvature.

Thence along a Curve to the Right whose  $\Delta = 39^\circ 19' 50''$ ,  $R = 210.435$  feet,  $Lc = S70^\circ 20' 05'' E$  141.63 feet, a distance of 144.45 feet to a Point of Tangency;

Thence S50° 40' 10"E a distance of 615.57 feet to a Point on the West Right of Way line of BIA Route N12;

Thence N39° 19' 50"E along the West Right of Way line a distance of 900.00 feet to the North East corner;

Thence N50° 40' 10"W a distance of 615.57 feet to a Point of Curvature;

REC-  
2004 HY 18 P.  
L-10: FILED & REC-  
BUR INDIAN AFFAIRS  
ALBUQUERQUE, N.M.

791-284-04



Thence along a Curve to the Left whose  $\Delta = 39^\circ 09' 12''$ ,  $R = 1,110.435$  feet,  $Lc = N70^\circ 14' 45''W 744.14$  feet, a distance of 758.811 feet to a point on the State Line between the States of New Mexico and Arizona.

Thence along said State Line  $S00^\circ 22' 00''W$  a distance of 900.01 feet to the Real Point of Beginning

Said Tract contains 22.074 acres more or less, which includes a 100 feet wide proposed access road along the south boundary.

Basis of Bearing:  $N00^\circ 22' 00''E$  along State Line from survey by George Perce W/O# 00-06-274.

Said property is shown on the attached survey plat marked as Exhibit "A", which by reference is made a part hereof.

2. All of the above land is located in Ft. Defiance Chapter of the Navajo Nation, County of Apache, State of Arizona, subject to any prior, valid, existing rights-of-way and easements. There is hereby reserved and excepted from the leased premises rights-of-way for utilities constructed by or on authority of the Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the leased premises.

**B. PURPOSE, UNLAWFUL USES.**

1. Lessee shall develop, use and operate the leased premises for the following purposes only:  
Navajo Tribal Utility Authority headquarters and affiliated enterprise operations in accordance with the Plan of Operation.
2. 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. Consent may be withheld, granted, or granted upon conditions, in the sole discretion of Lessor and the Secretary.
3. Lessee agrees that it will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

**C. TERM.**

The term of this Lease shall be fifty (50) years, beginning on the date this Lease is approved by the Secretary.

**D. RENTAL.**

1. The Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America the fair market value based on an appraisal of the business site lease, in its current state, annually for each five years of the lease. This rental payment shall be made in twelve (12) monthly installments, payable on the first day of the month for which the rent is due and owing or the payment may be made annually in one installment. The first five years annual rental rate shall be based on the Bureau of Indian Affairs Appraisal Report dated June 27, 2002 in the amount of \$5,500.00.
2. At the end of each five year period of the Lease, the property will be reappraised and the annual rental will be recomputed in compliance with the provisions of 25 CFR 162.8, which

791-284-04

requires that the fair market value of any leasehold interest that is not based on a percentage of income be recomputed every five years. At the time of reappraisal, the appraised value shall be based on value of the land in its unimproved condition, less any improvements made to the land by the Lessee. The Lessor will obtain and pay for the appraisal and provide the rental value of its appraisal to the Lessee, if the Lessee objects to the rental value proposed under Lessors appraisal, it may obtain its own appraiser and prepare its own appraisal. If the Lessor and Lessee are unable to reach a compromise between the conflicting appraisals, the two appraisers shall appoint a third professional certified appraiser and the determination of that appraiser as to the fair market value shall be used for the five year interval until the next appraisal.

3. 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 rental is due. All rental shall be deposited with the Controller of the Navajo Nation. When the annual accounting required by Section 1.3, Part II, of this Lease is completed, the Lessee shall pay any balance due on any percentage rental, or if there is an overpayment, the overpayment shall be credited toward future rents.
4. 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.
5. 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.
6. 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 are made to the leased premises, the rent and other terms of this Lease shall be subject to renegotiation.

#### E. IMPROVEMENTS.

1. The Lessee, in consideration for the granting of this Lease, covenants and agrees that Lessee will construct new facilities for the headquarters operation at a cost of and having a reasonable value of \$8,000,000 or more.
2. Except as otherwise provided in this Lease, 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. Lessor may require Lessee, at Lessee's expense, to remove improvements and restore the premises to the 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.



F. COMPLETION OF DEVELOPMENT.

1. 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 E above, within 60 months from the date which the Navajo Nation approves the plans and designs described in that Section. If Lessee fails to complete full development within such period, such failure shall constitute a breach of the terms of this Lease and may be cause for cancellation.
2. 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.

G. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION.

All improvements placed on the leased premises shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. All parts of building 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 \$2,000,000 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 herein above provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

H. RENTAL AND PERFORMANCE BOND.

1. Upon approval of this Lease by the Lessor and the Secretary, Lessee agrees to post a corporate surety bond or other security acceptable to Lessor and the Secretary in a penal sum of \$5,500.00, 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. From time to time the amount of such bond may be increased or decreases by the Lessor and the Secretary, at the Lessor's and the Secretary's reasonable discretion, to more accurately reflect the actual damage which would be suffered by the Lessor in the event of a default in any performance required of the Lessee.
2. 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, a copy of which certificate shall be furnished to 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.



I. CONSTRUCTION BOND.

1. 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 Lessor and to remain in effect until the improvement is satisfactorily completed. Said bond shall be conditioned upon faithful performance by Lessee or his construction contractor and shall give all claimants a right 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 Lessor or an institution acceptable to the Lessor, negotiable United States Treasury Bonds, or cash, or furnishing a non-revocable letter of credit satisfactory to Lessor in an amount sufficient to pay the entire cost of construction of each building or other improvement then to be erected on the premises. If United States Treasury Bonds are provided, Lessee or his construction contractor shall make up any deficiency of the value deposited that might occur due to a decrease in the value of said bonds. Interest on said bonds shall be paid to Lessee or his construction contractor. The funds so deposited may then be used, at the option of Lessor, to discharge any valid mechanic's or materialmen's liens; if no such liens exist, the withheld funds shall be disbursed to Lessee or his construction contractor.
2. If Lessee enters into a construction loan agreement with a financial institution, said loan agreement shall be subject to the approval of Lessor and the Secretary. 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, or otherwise secure by means of a performance bond, the difference between the amount of the loan and the total cost of improvement.

J. NOTICES AND DEMANDS.

1. All notices, demands, requests or other communications to or upon either party provided for in this Lease, or given or made in connection with this Lease, shall be in writing and shall be addressed as follows:

To or upon Lessor:      President  
                                 The Navajo Nation  
                                 Post Office Box 9000  
                                 Window Rock, Navajo Nation (Arizona) 86515  
  
                                 Telefax: 1-520-871-4025

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To or upon Lessee: General Manager  
Navajo Tribal Utility Authority  
Post Office Box 170  
Ft. Defiance, Arizona 86504

Telefax: 1-928-729-2135

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

Regional Director  
Navajo Regional Office  
Bureau of Indian Affairs  
Post Office Box 1060  
Gallup, New Mexico 87305-1060

2. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid or by facsimile transmission, followed by surface mail. Notices shall be effective and shall be deemed delivered when dispatched and may be delivered by personal delivery, registered or certified mail, or by facsimile transmission, followed by surface mail.
3. Lessor and Lessee may at any time change its address for purposes of this Section by notice.

K. APPLICABLE TERMS AND CONDITIONS

The Standard Terms and Conditions for Economic Development Leases on Navajo Nation Trust Land in Part II of this Lease apply to this Lease and are incorporated herein in their entirety (NOTE: The Terms and Conditions for a Standard Business Site Lease apply to all Leases. The Terms and Conditions for Business Site Leases with Underground Storage Tanks apply where they are appropriate. If Underground Storage Tanks are on the premises when the Lessee signs the Lease, or are installed after the Lessee signed the Lease, these Terms and Conditions will apply to the Lease as a matter of law. Special Terms and Conditions for Navajo Nation Business Site Leases Within Navajo Nation Shopping Centers apply only to Leases in Navajo Nation Shopping Centers).

The specific Version of Standard Terms and Conditions for Navajo Nation Economic Development Leases (Trust Land) is Version 1.4 dated 8/24/01.

- L. EXCEPTIONS TO STANDARD TERMS AND CONDITIONS (Insert and justify any deviations from the Standard Terms and Conditions in Part II of this Lease).

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

RECEIVED

2004/11/18 PM 2:35

RECORDS & RECORDS  
BUREAU OF INDIAN AFFAIRS  
ALBUQUERQUE, N.M.

NAVAJO TRIBAL UTILITY AUTHORITY, LESSEE

By: [Signature]

General Manager

Date: 8-27-03

THE NAVAJO NATION, LESSOR

By: [Signature]

President

Date: SEP 05 2003

APPROVED:

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

By: [Signature]

ACTING Regional Director, Navajo  
BUREAU OF INDIAN AFFAIRS

Date: November 18, 2003

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## PART II

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

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

### 1.1 DEFINITIONS.

- A. "Approved Encumbrance" means an encumbrance approved in writing by the Lessor, the Secretary and sureties, if any, in accordance with the terms and conditions of this Lease.
- B. "Encumbrance" means the owner and holder of an Approved Encumbrance, including all successors and assigns.
- C. "Gross Receipts" means all income, including money and other things of value, received by or paid to Lessee or its affiliates, whether individuals, corporations, partnerships, or other legal entity, or received by or paid to others for Lessee's or its affiliates' use and benefit, derived from business done, sales made, or services rendered directly or indirectly on the leased premises or any portion thereof. All income accruing from credit transactions will be treated as "gross receipts" as of the date credit is extended. Gross Receipts will not include amounts collected and paid out for a sales and excise tax imposed by any duly constituted governmental authority where such tax is billed to the purchaser as a separate item. Any taxes paid by the Lessee as a part of the cost of merchandise purchased by the Lessee are not to be excluded or deducted. It shall not include credits for the exchange of goods or merchandise between stores, if any, of Lessee or its affiliates where such exchange is made solely for the convenient operation of business and not for the purpose of consummating a sale previously made directly from or on the leased premises. It shall not include the amount of any refund where the merchandise sold, or some part thereof is returned by the purchaser and accepted by Lessee or its affiliates. It shall not include income from the sale of fixtures, or good will, or the sale of improvements, including, but not limited to, corals, buildings, livestock scales, and holding pens.
- D. "Secretary" means the Secretary of the Interior or his authorized representative, delegate, or successor.

### 1.2 CONDITION OF LEASED PREMISES.

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

### 1.3 ACCOUNTING.

When an accounting of Gross Receipts is required under the Lease in order to determine a percentage rent, 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 D 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 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 the same and shall have the right to examine and/or audit as hereinbefore described. Therefore, Lessee shall for said period of four (4) years after submission to the Lessor 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.

### 1.4 UTILITY SERVICE LINE AGREEMENTS.

- A. Lessee specifically is authorized to enter into appropriate service line agreements with utility companies for the provision of utility services to the leased premises, including gas, water, sewer, electricity, telephone, television and other utilities, without further consent by Lessor and with the Secretary, on the condition that:

- (1) such agreements are for the sole purpose of supplying utility services to the leased premises; and
- (2) such agreements authorize utility service lines only within the leased premises; and
- (3) such agreements do not extend beyond the term of this Lease, including any extensions thereof, and



(4) executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Lessor within thirty (30) days of their execution; and

(5) such agreements are otherwise in accordance with the provisions of 25 C.F.R. § 169.22, including any amendments or successors thereto.

B. Nothing contained herein shall be construed to limit the right of Lessor to enter into service line agreements with utility companies for service lines across the leased premises, provided that such service lines do not unreasonably interfere with Lessee's use of the leased premises, nor otherwise to affect the rights-of-way reserved to Lessor in Section 2 of this Lease.

1.5 SUBLEASE, ASSIGNMENT, MANAGEMENT, AGREEMENT, TRANSFER.

A. 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 this Lease or any of the improvements on the leased premises, or sell, assign or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee without the written approval of Lessor, 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(s), shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make any such sublease, assignment, sale, amendment, or transfer, except as aforesaid, such action shall be deemed a breach of this Lease, excepting that an encumbrancer, as herein set forth, may enforce his rights in the manner hereinafter provided. Approval of one sublease, assignment, sale, amendment or transfer shall not validate a subsequent sublease, assignment, sale, amendment or transfer, and the restrictions of this Section shall apply to each successive sublease, assignment, sale, amendment or transfer hereunder and shall be severally binding upon each and every Sublessee, Assignee, Transferee and other successor in interest of the Lessee, excepting an encumbrancer.

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

C. 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 Lessor. Lessor reserves the right to adjust the rental provisions of this Lease upon any sublease, assignment or transfer.

1.6 ENCUMBRANCE.

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

B. An encumbrance must be confined to the leasehold interest of the Lessee or the subleasehold interest of a Sublessee and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish as requested any financial statements or analysis pertinent to the encumbrance that the Lessor and the Secretary may deem necessary to justify the amount, purpose and terms of said encumbrance.

C. An encumbrancer of any Sublease, in the event of default by Sublessee of the terms of an approved encumbrance, may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor, 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.

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

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



D. If Lessee or Lessor exercises either of the above rights, all of the right, title, and interest of the Sublessee in the Sublease shall automatically terminate on the same date the right is exercised and the Lessor or Lessee 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.

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

F. 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 default of any of them upon which notice of sale is based shall then continue, Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:

- (1) To pay to the encumbrancer the full unpaid principal amount of the approved encumbrance plus unpaid interest accrued to the date of such payment, plus sale costs incurred to the date of such payment.
- (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the 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 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.

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

H. 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.

#### 1.7 LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.

Lessee shall not permit to be enforced against the leased premises or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by Lessee. Lessee shall discharge all such liens before any action is brought to enforce same; further, Lessee shall pay before becoming delinquent, all taxes, assessments, licenses, fees, and other like charges levied during the term of this Lease upon or against the leased land and all interests therein and property thereon, for which either Lessee or Lessor may become liable. Upon request Lessee shall furnish Lessor 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, 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.

1.8 LESSOR'S PAYING CLAIMS.

Lessor shall have the option to pay any lien or charge payable by Lessee under this Lease, or settle any action therefor, if the Lessee after written notice from the Lessor 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.

1.9 SANITATION.

- A. Lessee hereby agrees to comply with all applicable sanitation codes, requirements, or laws which may be related to the purpose of this document as set forth in Section B(1). Such compliance shall specifically include, but not be limited to, the sanitary regulations of the U.S. Public Health Service. Lessee further agrees to at all times maintain the entire premises in a safe, sanitary condition, presenting a good appearance both inside and out in all buildings operated on the leased premises.
- B. Lessee further agrees to comply with applicable, state, Navajo Nation or local laws, statutes, ordinances or regulations, court or administrative orders or decrees pertaining to all environmental matters including but not limited to the storage and disposal of regulated substances. Lessee further agrees that all solid waste generated by the Lessee or by any Sublessee shall be disposed of only at a state or tribally certified public or private landfill, and shall maintain records to demonstrate compliance with this requirement.
- C. Lessee agrees to maintain all records required by applicable law and regulations and to make such records available to appropriate officials of the Navajo Nation or federal government.

1.10 HAZARDOUS AND REGULATED SUBSTANCES.

Lessee shall not cause or permit any hazardous substance (as defined by RCRA, 42 U.S.C. §§ 9601 *et seq.*, CERCLA, 42 U.S.C. §§ 9601 *et seq.*, or other federal laws and regulations) to be used, stored, generated or disposed of on or in the premises without first obtaining written consent of the Navajo Nation Environmental Protection Agency. If hazardous or regulated substances (as defined above) are used, stored, generated or disposed of on or in the premises, or if the premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor and the United States from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal 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 or regulated substance on the premises and such results in any contamination of the leased premises including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the

premises to the condition existing prior to the contamination presence by any such hazardous or regulated substance on the premises. Lessees will first obtain Lessor's approval for any such remedial action.

1.11 LIABILITY INSURANCE

Policies required under Subparagraph B of this Lease shall also name the United States of America as an additional named insured. Without limiting any liabilities or any other obligations of Lessee, Lessee will provide and maintain the minimum insurance coverages listed below. Coverage will be provided with forms and insurers acceptable to the Navajo Nation until all obligations under this Lease are satisfied. All insurers must be duly licensed and have a current AM Best rating of at least A-VII and if unlicensed, be an admitted surplus lines insurer. All policies required under this Lease shall name the Navajo Nation as an additional named insured.

- A. Workers' compensation insurance to cover obligations imposed by federal and state statutes of the entity having jurisdiction over the Lessee's employees working on the lease hold, and Employers' Liability insurance with a minimum of ONE MILLION DOLLARS (\$1,000,000.00). In case of any contracted work on the lease hold, the Lessee will require the Contractor, and all subcontractors, to provide comparable coverage.
- B. Commercial General Liability Insurance with an unimpaired minimum combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000.00) Each Occurrence with a TWO MILLION DOLLARS (\$2,000,000.00) General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, blanket contract, independent contractor, product, and completed operations coverage. The policy shall contain a severability of interests provision.
- C. Commercial and/or Business Automobile liability insurance with a combined single limit for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence with respect to Lessee's owned, hired and non-owned vehicles assigned to or used in Lessee's business.
- D. If the Lessee is engaged in a profession, the Lessee shall carry Professional Liability insurance in an amount satisfactory to the Risk Management Department of the Navajo Nation. In the event that the insurance coverage is written on a "claims made" basis, the Risk Management Department of the Navajo Nation may, at its discretion, require "tail coverage" beyond the term of the Lease.
- E. Lessee, at its cost, shall maintain insurance coverage for full replacement cost on all of Lessee's personal property, Lessee's alterations, Lessee's utility installations, and Lessee's trade fixtures in, or about the Premises. The proceeds from any such insurance shall be used by Lessee for the replacement of Lessee's personal property, alterations, utility installations, or trade fixtures only if Lessor repairs or rebuilds the Premises.
- F. The policies required by Sections B and C shall be endorsed to include the Navajo Nation, its agents, representatives, officers, directors, officials and employees as additional insureds



and shall require that the insurance provided by Lessee shall be primary insurance and that any insurance carried by the Navajo Nation its agents, officials or employees shall be excess and not contributory insurance to that provided by Lessee.

- G. An acceptable certificate of insurance shall be issued to the Navajo Nation by the Lessee prior to commencement of the Lease as evidence that policies providing the required coverages, conditions and limits are in full force and effect. A copy of such certificate shall be furnished to the Secretary. Such certificate shall indemnify this Lease and contain provisions that coverage afforded under the policies will not be canceled, terminated or materially altered until at least thirty (30) days prior written notice has been given to the Lessor.

Certificates of insurance shall be addressed as follows: Navajo Nation Department of Risk Management, P.O. Box 1690, Window Rock, Arizona 86515

- H. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the Lessor.

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

- J. The Navajo Nation reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.

- K. Lessee and its insurers providing the required coverages shall waive all rights of recovery against the Navajo Nation and its agents, officials and employees, and the Secretary. The insurance limits required under this Lease shall not limit the liability of the Lessee, nor relieve the Lessee of any obligation under this lease.

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

#### 1.12 FIRE AND CASUALTY INSURANCE.

- A. 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 of 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.

- B. In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all improvements on the leased premises during the 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 1.21. In the event Lessee does not reconstruct, all insurance proceeds shall be paid to Lessor.

- C. Any encumbrancer shall be named as a beneficiary under all insurance policies required by this paragraph and in the event of loss or damage to the buildings on the leased 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.

1.13 INDEMNIFY, DEFEND AND HOLD HARMLESS.

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

1.14 EMINENT DOMAIN.

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

1.15 DEFAULT.

A. 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 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 as authorized by applicable law:

- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease; or
- (2) Re-enter the premises if the Lessee

has abandoned the premises or has failed to conduct business for a period of time without notice and remove all persons and property therefrom, excluding the property belonging to authorized Sublessees, and re-let the 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

- (3) Take any other action deemed necessary to protect any interest of Lessor.

- B. No waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant of this Lease.
- C. Exercise of any of the remedies outlined in this Section shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor or the Secretary or any other rights or remedies now held or which may be held by Lessor in the future.
- D. 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 statutes and regulations that Lessee would be entitled to pursue. Further, Lessor shall not terminate the Lease if an encumbrancer has commenced and is diligently pursuing a foreclosure action to terminate Lessee's interest in said Lease and has cured or is taking action to cure the breach that is the cause of the termination.

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1.16 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.

1.17 NO PARTNERSHIP.

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

1.18 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.

1.19 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.

1.20 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, without merger of the Lease and sublease or subtenancy, of any and all such subleases and/or subtenancies.

1.21 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 for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the premises, the protection of the leased premises, any improvements thereon or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Lessee shall pay the costs of such testing. Nothing in this paragraph shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.

1.22 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 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 the Lessee vacates the premises.

1.23 LEASE REQUIREMENTS NOT EXCLUSIVE.

Nothing in this Lease shall be construed to relieve Lessee of

any obligations pursuant to any Federal or Navajo Nation law for the protection of the environment or the public health, safety, or general welfare which is currently enacted or which may be enacted at a later date.

1.24 DELIVERY OF PREMISES.

A. 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.

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

1.25 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 N.N.C. §§ 601 et seq. ("NPEA"), and the Navajo Nation Business Preference Law, 5 N.N.C. §§ 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.

1.26 MINERALS.

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

1.27 SUCCESSORS AND ASSIGNS.

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

1.28 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.

1.29 USE OF NAVAJO PRODUCED GOODS AND SERVICES.

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

1.30 AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS.

The Lessee and the Lessee's employees, agents, and sublessees and their employees and agents agree to abide by all laws, regulations, and ordinances of the Navajo



Nation, and all applicable laws, regulations and ordinances of the United States, now in force and effect or as may be hereafter in force and effect.

1.31 GOVERNING LAW AND CHOICE OF FORUM.

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

1.32 CONSENT TO JURISDICTION.

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

1.33 COVENANT NOT TO CONTEST JURISDICTION.

Lessee hereby covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to similar challenges to the jurisdiction of a state government. Nothing in this Section shall be construed to negate or impair federal responsibilities with respect to the Leased Premises or to the Navajo Nation.

1.34 NO WAIVER OF SOVEREIGN IMMUNITY.

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

1.35 SAVINGS CLAUSE.

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

1.36 QUALIFICATIONS OF BUSINESS.

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

1.37 COMPLIANCE WITH 25 CFR 141.

Lessee, its sublessees and assignees and other successors in interest shall be subject to compliance with the provisions of the Code of Federal Regulations, Title 25, Part 141, which prescribe rules for the regulation of reservation business for the protection of Indian consumers on the Navajo Reservation as required by 25 U.S.C. §§ 281-284.

1.38 NO ORAL AGREEMENTS.

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

1.39 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.

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

2.1 DEFINITIONS.

A. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq.

B. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

C. "Regulated Substance" is as defined at 42 U.S.C. 6991(2), which is any substance defined in section 101(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (42 U.S.C. 9601(14)) (but not including any substances regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. 6921 et seq.) and petroleum).

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

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

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

2.2 HAZARDOUS AND REGULATED SUBSTANCES.

A. Lessee shall not cause or permit any hazardous substance



(as defined by RCRA, 42 U.S.C. §§ 6901 et seq., CERCLA, 42 U.S.C. §§ 9601 et seq., or other federal laws and regulations) to be used, stored, generated or disposed of on or in the premises without first obtaining written consent of the Navajo Nation Environmental Protection Agency. If hazardous or regulated substances (as defined above) are used, stored, generated or disposed of on or in the premises, or if the premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor and the United States from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal 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 or regulated substance on the premises and such results in any contamination of the leased premises including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the premises to the condition existing prior to the contamination presence by any such hazardous or regulated substance on the premises. Lessee shall first obtain Lessor's approval for any such remedial action.

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

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

and,

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

or their respective institutional successors.

## 2.3 FINANCIAL RESPONSIBILITY FOR STORAGE TANKS.

If Lessee or Sublessee installs or operates storage tanks on the leased property, the Lessee or Sublessee shall post a bond, obtain insurance or provide such other evidence of financial responsibility that meets all the requirements of 40 C.F.R. Part 280, Subpart H regardless of whether the storage tank in question is an aboveground or underground storage tank. Lessee shall provide proof of this bond, insurance, or other qualifying financial responsibility mechanism to the Risk Management Department of the Navajo Nation contemporaneous with Lessee's submission of proof of other bonds or insurance to the Bureau of Indian Affairs. This bond or insurance shall remain in effect for the

term of the base lease or sublease, and any renewals thereof, and shall not be released or terminated until such time as the Risk Management Department of the Navajo Nation certifies that the facility is in compliance with all applicable law and regulations, or that the tanks have been removed and the site has been remediated, or that the base lease or sublease has been transferred and the new operator has provided proof of an adequate bond, insurance or otherwise satisfied the 40 C.F.R. Part 280, Subpart H financial responsibility requirements. It shall be the responsibility of the Lessee and the Sublessee to provide the Risk Management Department of the Navajo Nation with all proof required for release of bond or termination of insurance coverage.

## 2.4 ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS.

- A. Entry Audit: If storage tanks are located at the Lease site, the Lessee will supply the Navajo Nation Environmental Protection Agency, the Division of Economic Development and the Risk Management Department of the Navajo Nation with a complete copy of the report and underlying data generated in preparation of a Phase Two environmental audit before Lessee places any regulated substance in the storage tanks or releases any regulated substances from the storage tanks but no later than ninety (90) days after the Lease is approved by the Secretary. Lessee shall notify the Navajo Nation Environmental Protection Agency and Risk Management Department at the addresses provided in Section 2.0 and shall notify the Division of Economic Development at the Regional Business Development Office responsible for supervision of the leased premises.

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

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

This sum is in addition to any other rental obligations of Lessee. This sum shall be used to pay for a Phase Two environmental audit to be performed during the last year of the Lease and any other environmental audit(s) during the term of the Lease which Lessor determines, based on probable cause, to be reasonably necessary to

ascertain whether environmental contamination by regulated substances has occurred. The Risk Management Department of the Navajo Nation shall determine whether an audit shall be performed.

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

prior to the audit and to reimburse the Navajo Nation for any amount the Navajo Nation spent on the environmental audit in excess of the \$15,000 deposit.

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

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

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

#### 3.1 FIXTURES AND PERSONAL PROPERTY.

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

All improvements to the premises by Lessee including, but not limited to, light fixtures, floor coverings, and partitions, but excluding trade fixtures and signs, shall be considered as improvements and shall become the property of Lessor upon expiration or earlier termination of this Lease, unless Lessor by written notice given prior to the date of expiration or upon the date of earlier termination of this Lease shall require Lessee to remove such improvements in which case Lessee shall repair any damage caused to the premises by such removal so as to return the premises to its original condition, ordinary wear and tear excepted.

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

assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessments. Lessor shall determine the basis of prorating of any such assessments and such determination shall be binding upon both Lessor and Lessee.

#### 3.2 REPAIRS AND MAINTENANCE.

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

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

A. Lessor shall keep and maintain in good and leasable condition the roof, exterior walls, structural parts of the premises, the fire protection system, structural floor, and pipes and conduits outside the premises for the furnishings to the premises of various utilities (except to the extent that the same are the obligations of the appropriate public utility company); provided, however, that Lessor shall not be required to make repairs necessitated by reason of the negligence of Lessee or anyone claiming under Lessee, or by reason of the failure of Lessee to



perform or observe any conditions or agreements in this Lease contained, or caused by alterations, additions, or improvements made by Lessee or anyone claiming under Lessee. Anything to the contrary notwithstanding contained in this Lease, Lessor shall not in any way be liable to Lessee for failure to make repairs as herein specifically required unless the Lessee has previously notified Lessor in writing of the need of such repairs and Lessor has failed to commence and complete said repairs within a reasonable period of time following receipt of the Lessee's written notification.

As used in this Section, the expression "exterior walls" shall not be deemed to include store fronts, plate glass, window cases, or window frames, door or door frames security grills, or similar enclosures. It is understood and agreed that Lessor shall be under no obligation to make any repairs, alterations, renewals, replacements, or improvements to and upon the premises of property installed or kept thereon by Lessee.

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

### 3.3 LESSEE'S RIGHT TO MAKE ALTERATIONS.

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

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

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

### 3.4

#### POSSESSION AND USE.

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

Lessee may not display or sell merchandise or allow carts, portable signs, devices or any other object to be stored or to remain outside the defined exterior walls or roof, permanent doorways of the premises, or in hallways. No aerial or antenna shall be erected on the roof or exterior walls of the premises without first obtaining, in each instance, the written



consent of Lessor. Any aerial or antenna so installed without such written consent shall be subject to removal without notice at any time. In addition, Lessee will not solicit in any manner in any of the automobile parking lots and common areas of the enclosed mall of the Shopping Center without having first obtained the written approval of Lessor.

Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the premises, and Lessee agrees to abide by such further regulations of Lessor.

### 3.5 LESSEE'S CONDUCT OF BUSINESS.

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

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

Lessee will not allow the premises to be used for any organized political or religious meetings or activity. Lessee shall, at all times during the term hereof, comply with all laws and regulations of the United States and the Navajo Nation applicable to Lessee's conduct of business on the premises.

Lessee shall employ its best efforts to operate the business conducted on the premises in a manner that will produce the maximum volume of gross sales. Lessee shall use only such space in the premises for office, clerical and other non-selling purposes as is reasonably required for Lessee's business on the premises.

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

### 3.8 ADVERTISING MEDIA.

Lessee shall not affix or maintain upon the glass panes and supports of the show windows (and within 24 inches of any window), doors and the exterior walls of the premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items unless Lessee shall have first received the written approval of Lessor as to size, type, color, location, copy, nature and display qualities. Anything to the contrary of this Lease notwithstanding, Lessee shall not affix any sign to the roof of the premises.

In addition, no advertising medium shall be utilized by

Lessee which can be heard or experienced outside Lessee's premises, including without limiting the generality of the foregoing: flash lights, searchlights, loudspeakers, phonographs, radios or televisions; nor shall Lessee display, paint or place or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center, whether belonging to Lessee, or to Lessee's agent or to any other person; nor shall Lessee distribute, or cause to be distributed, in the Shopping Center, any handbills or other advertising devices without having first obtained the written approval of Lessor.

### 3.7 COMMON AREAS.

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

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

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

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

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

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

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

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

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

It is understood that the employees of Lessee and the other Lessees of Lessor within the Shopping Center and the employees of other businesses within the Shopping Center shall not be permitted to park their automobile in the automobile parking areas of the common areas which may be designated for patrons of the Shopping Center. Lessor agrees to furnish and/or cause to be furnished either within the Shopping Center parking area, or reasonably close thereto, space for employee parking. Lessor at all times shall have the right to designate the particular parking area to be used by any or all of such employees and any such designation may be changed. Lessee and its employees shall park their cars only in those portions of the common areas, if any, designated by Lessor.

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

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

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

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

### 3.8 SPECIAL INSURANCE REQUIREMENT FOR SHOPPING CENTERS.

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

### 3.9 SPECIAL RECONSTRUCTION PROVISION FOR SHOPPING CENTERS.

In the event the premises be damaged by fire or other perils, covered by Lessor's fire and extended coverage insurance, Lessor shall:

- A. Within a period of one hundred and eighty (180) days thereafter, commence repairs, reconstruction and restoration of said premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect; or



- B. In the event of a partial or total destruction of the premises, only during the last three (3) years of the term hereof, Lessor and Lessee shall each have the option to terminate this Lease upon giving written notice to the other of exercise thereof within thirty (30) days after such destruction. For the purposes of this paragraph, "partial destruction" shall be a destruction of an extent of at least thirty-three and one-third percent (33 1/3%) of the then full replacement cost of the premises as of the date of destruction.

All insurance proceeds, in the case of reconstruction shall be held in trust and applied to the payment of such reconstruction, as such reconstruction progresses.

- C. In the event the premises shall be damaged as a result of any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Lessor's Fire and Extended Coverage Insurance, to any extent whatsoever, the Lessor may, within one hundred and eighty (180) days following the date of such damage, commence repair, reconstruction or restoration of said premises and prosecute the same diligently to completion. In which event this Lease shall continue in full force and effect, or within said period elect not to so repair, reconstruct or restore said premises in which event this Lease shall cease and terminate. In either such event, Lessor shall give the Lessee written notice of its intention within said period.

- D. In the event of any reconstruction of the premises under this Article said reconstruction shall be in strict conformity with the provisions of this Lease set forth as "Description of Lessor's Work" and "Description of Lessee's Work." Notwithstanding that all reconstruction work shall be performed by Lessor's contractor, unless Lessor shall otherwise agree in writing, Lessor's obligation to reconstruct the premises shall be only to the extent of the work as described in "Description of Lessor's Work"; Lessee, at its sole cost and expense, shall be responsible for the repairs and restorations of all items set forth in "Description of Lessee's Work" and the replacement of its stock in trade, trade fixtures, furniture, furnishings and equipment. Lessee shall commence such installation of fixtures, equipment and merchandise promptly, upon delivery to it of possession of the premises and shall diligently prosecute such installation to completion.

- E. Upon any termination of this Lease under any of the provisions of this Article, the parties shall be released thereby without further obligations to the other party coincident with the surrender of possession of the premises to the Lessor, except for items which have theretofore accrued

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

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

### 3.10 SIGNS.

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

### 3.11 ADDITIONAL NOTICE REQUIREMENT FOR SHOPPING CENTERS.

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

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

### 3.12 LESSOR'S RESERVATIONS AND RIGHTS

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



EXHIBIT B  
RESOLUTION  
OF THE NAVAJO TRIBAL COUNCIL,  
THE GOVERNING BODY OF THE NAVAJO NATION

RESOLUTION OF THE  
DIVISION OF ECONOMIC DEVELOPMENT

AN ACTION

An Action Relating to Economic Development: Approving Lease Modification #3 between the Navajo Nation and Navajo Tribal Utility Authority, Lessee for Business Site Lease No. FD-03-219; Collateral Lease Assignment between Lessee and Great Western Bank, an Arizona banking corporation; Construction Mortgage and Fixture Filing Agreement; Consent, Nondisturbance and Attornment Agreement; Estoppel Certificate and Agreement; Sublease Agreement between NTUA Headquarters, LLC and the Navajo Tribal Utility Authority; and Collateral Lease Assignment for Sublease Agreement between NTUA Headquarters, LLC, the Navajo Tribal Authority and Great Western Bank, an Arizona banking corporation

BE IT ENACTED:

1. The Division of Economic Development Approving Committee finds that pursuant to the Navajo Nation Business Leasing Regulations ("Tribal Regulations"), Economic Development Committee Business Leasing Regulations, Navajo Nation Business Site Leasing Management Plan, 2 N.N.C. §500; and the Master Plan of Operation for the Division of Economic Development, the Division of Economic Development is authorized to approve leasing transactions, as defined in the Tribal Regulations for the Navajo Nation.
2. The Division of Economic Development hereby approves Modification #3 for Business Site Lease FD-03-219 by and between the Navajo Nation and Navajo Tribal Utility Authority. (see Exhibit "A").
3. Approval of a Collateral Lease Assignment as required by Great Western Bank, an Arizona banking corporation, for Lease No. FD-03-219 encompass a 20 year note with Great Western Bank, a Arizona banking corporation. (see Exhibit "B").
4. Approval of construction Mortgage and Fixture Filing Agreement to Lease No. FD-03-219. (see Exhibit "C").
5. Approval of Consent, Nondisturbance and Attornment Agreement to Lease No. FD-03-219. (see Exhibit "D").
6. Approval of an Estoppel Certificate and Agreement to Lease No. FD-03-219. (see Exhibit "E").
7. Approval of Sublease Agreement between NTUA Headquarters, LLC and the Navajo Tribal Utility Authority to Lease No. FD-03-219. (see Exhibit "F").
8. Approval of a Collateral Lease Assignment for Sublease Agreement between NTUA Headquarters, LLC and the Navajo Tribal Utility Authority as required by Great Western Bank, an Arizona banking corporation for Lease No. FD-03-219, to allow the Lessee to finance for the intended purpose of Lease No. FD-03-219 to encompass a 20 year note with Great Western Bank, an Arizona banking Corporation. (see Exhibit "G").

9. The President of the Navajo Nation is hereby authorized to execute the leasing transactions for the Navajo Tribal Utility Authority and all other documents necessary to implement the intent of this action.

#### CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Business Site Lease Approving Committee of the Division of Economic Development at a duly called meeting held in Saint Michaels, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 3 in favor, 0 opposed, this 23 day of March, 2015.



Wava White, Interim-Chairperson  
Business Site Lease Approving Committee

MOTION: Genevieve Keesto-Bighorse  
SECOND: Randolph L. Sells



**Exhibit F**

**Sublease between  
NTUA and NTUA Headquarters, LLC**

Lease Fee: \_\_\_\_\_  
NO: \_\_\_\_\_

## SUBLEASE

This Sublease made and entered into this 31st day of December, 2014, by and between NAVAJO TRIBAL UTILITY AUTHORITY, a wholly owned enterprise of the Navajo Nation, hereinafter called "Sublessor" and NTUA HEADQUARTERS, LLC, an Arizona limited liability company, hereinafter called "Sublessee".

### 1. PROPERTY SUBLEASED

For and in consideration of rents and covenants hereinafter specified to be paid or performed by the Sublessee, the Sublessor hereby subleases and lets to the Sublessee its interests in that certain tract of land, 22.74 acres, within the Navajo Nation, and appurtenances thereto, as more particularly described on Exhibit A, attached hereto (the "leased premises"):

### 2. AUTHORIZED PURPOSES

During the term of this Sublease, the Sublessee may provide the following facilities and services and engage in those enterprises which are specified in that certain Navajo Nation Economic Development Lease (Navajo Nation Trust Land) Lease Number FD-03-219 (the "Base Lease") from the Navajo Nation to Sublessor and all other commercial office, inventory, industrial and retail uses that comply with applicable law.

### 3. TERM

This Sublease term shall be for the initial term of Base Lease and each extension of the Base Lease. The sublease term shall not exceed the Base Lease term.

### 4. RENTAL

The Sublessee shall pay the following gross monthly rent to the Sublessor:

Years 0-2	\$500.00 per month
Years 3-8	\$1,200.00 per month
Years 9-14	\$2,000.00 per month
Years 15-20	\$2,500.00 per month
Years 21-30	\$3,500.00 per month
Years 31-40	\$4,500.00 per month
Years 41-50	\$5,500.00 per month
Years 51-63	\$6,500.00 per month

The Sublessee shall pay \$150.00 annual rent to the Navajo Nation. The rent shall be due on the first day of the month and if rental is not received on the tenth day of the month a late charge of 10% of the rental shall be applied. If rental is not received on the 30<sup>th</sup> day after the day rent is charged, the Sublease shall be subject to termination. This is a gross lease and no additional taxes, fees or expenses are required to be paid by Sublessee. Sublessor will pay all rent under the Base Lease and all other taxes, fees, and other expenses.

### 5. SECURITY

Lessee agrees to post a cash deposit in the amount of one months rent, which shall remain in full force for the term of this Sublease. This security shall be posted 6 months from execution of this Sublease.

### 6. ASSIGNMENT

The Sublessee may assign or transfer the sublease during the term of this Sublease, without approval of the Sublessor, the Navajo Nation or the Secretary of the Interior; provided, however, that Sublessee must provide written notice to the Navajo Nation within 10 days of such assignment or

transfer. In addition, the notice to the Navajo Nation must include a description of the assignee, contact information for the assignee and a copy of the assignment or transfer document.

**7. IMPROVEMENTS, REPAIRS, ALTERATIONS, CONSTRUCTION**

Improvements as used herein shall be deemed to mean buildings, structures, fixtures, equipment and other improvements affixed to or resting upon the lands leased hereunder in such a manner as to be a part of the realty. It shall include all present improvements, and all improvements hereafter constructed upon or affixed to the land by Sublessee as approved in compliance accordance with the Base Lease and applicable Navajo law. Sublessee is authorized to make any renovations, repairs or alterations; provided that Sublessee complies with applicable Navajo law. Any demolition or removal of the improvements exceeding a value of \$1,000,000, shall require written approval from the Sublessor or the Navajo Nation. Sublessee and the Sublessor shall indemnify and hold harmless the Navajo Nation and the United States against liability for all claims arising from Lessee's failure to maintain said premises and the improvements thereon as herein above provided, or from Lessee's non-observance of any law, ordinance or regulations applicable thereto.

**8. TERMINATION**

This Sublease and all rights hereunder may be terminated in one of the following ways:

- (a) Upon the expiration of the original term of the Base Lease.
- (b) Expiration of Sublease term or any renewal or extension thereof.
- (c) For cause: This Sublease may be terminated for default or breach of any of its terms. In the event of default or breach of any of the terms hereof by the Sublessee, the Sublessor shall give written notice of such default to Sublessee and each approved encumbrancer. Within 90 days after receipt of such notice, the Sublessee shall correct the default. Failure to correct the default shall terminate the Sublease.
- (d) Mutual termination.

**9. INSURANCE**

The Sublessee shall, during the full term of this Sublease, and at its expense, keep the fixtures, equipment and buildings of the Sublessor and/or those constructed by Sublessee, adequately insured against loss or damage by fire. The Sublessee shall, during the full term of this Sublease, and at their own cost and expense, carry appropriate general liability insurance. Said policy to be written jointly to protect the Navajo Nation, Sublessor, Sublessee and the United States. A copy of said policies shall be provided to Lessor or his authorized representative. Any changes or termination to the policy shall be communicated to the Sublessor, before any actions are taken.

**10. SOVEREIGN IMMUNITY**

Nothing herein shall be deemed a waiver of sovereign immunity, expressed or implied, of the Navajo Nation.

**11. INCORPORATION OF BASE LEASE SECTIONS**

Sublessee shall comply with all of the terms, conditions, covenants and restrictions imposed upon Sublessor, as the lessee, under the following provisions of the Base Lease: Sections A, B, C of the Part I and Sections 1.6 (excluding 1.6(E)(2), 1.7, 1.9, and 1.10 of Part II, as may be amended from time to time; provided that such amendments are approved in writing by any approved encumbrancer and Navajo Nation.

**12. NOTICES AND DEMANDS**

- A. All notices, demands, requests or other communications to or upon either party provided for in this Lease, or given or made in connection with this Lease, shall be in writing and shall be addressed as follows:

To or upon Sublessee:

Attn: Walter W. Haase, P.E.  
PO Box 170  
Fort Defiance, AZ 86504



To or upon Sublessor:

Attn: Walter W. Haase, P.E.  
PO Box 170  
Fort Defiance, AZ 86504

To or upon the Navajo Nation (Lessor):

President  
The Navajo Nation  
Post Office Box 9000  
Window Rock, Navajo Nation (Arizona) 86515

Telefax: 1-928-971-7381

- B. All notices shall be given by personal delivery, registered or certified mail, postage, prepaid or by facsimile transmission, followed by surface mail. Sublessee, Sublessor or the Lessor may at any time change its address for purposes of this Section by written notice.

**13. QUIET ENJOYMENT.**

Sublessor warrants to Sublessee as follows:

- A. That the Navajo Nation, as master lessor is the owner of equitable title to the leased premises, with fee title held in trust by the United States;
- B. That Sublessor is the owner of the interest of Sublessee under the Base Lease and has not assigned or encumbered such interest, other than to Great Western Bank;
- C. That Sublessor will timely extend the Base Lease prior to the expiration the existing Base Lease term, so that the Sublessee will have a sublease term that exceeds 49 continuous years.
- D. Sublessee shall have and enjoy, during the lease term, the quiet and undisturbed use, possession and enjoyment of the leased premises, together with all appurtenances thereto.

**14. DISPUTE RESOLUTION AND CHOICE OF LAW.**

A. Limited Waiver of Sovereign Immunity. Sublessor hereby irrevocably waives its sovereign immunity on a limited basis and consents to be sued should an action be commenced to determine and enforce the obligations of the parties (including any permitted successors of the parties) under this Sublease, any other related transaction, instrument or contract (collectively, the "Transaction Documents") pursuant to and in accordance with that Resolution No. CAP-18-10 adopted by the Navajo Nation Council on July 21, 2010, and by Resolution No. NTUA-38-14 of the Management Board of Sublessor dated December 11, 2014; and provided further that such limited waiver shall be limited to the assets (including, without limitation, the Property and Collateral), revenues and income of Sublessor. With respect to the foregoing limited waiver, Sublessor represents and warrants that all notices, approvals, consents and other actions required to authorize such waiver have been given and done, and the waiver is enforceable by Lender without further qualification and collection.

B. Jurisdiction and Enforcement. The parties hereto acknowledge and agree that the Transaction Documents and the duties and obligations of the parties thereunder, including any entry of judgment upon any arbitral award and the collection of all amounts awarded any party, shall be subject to the original jurisdiction of and enforceable against Sublessor and Sublessee in any of the following forums: (i) the United States District Court for the District of Arizona ("District Court"), (ii) the Superior Court for Apache County, Arizona ("Superior Court"), or, only if elected or consented to in writing by Lender in its sole discretion, (iii) the courts of the Navajo Nation ("Permitted Courts"). Sublessor and Sublessee waive any requirement to use or exhaust Navajo Nation court remedies or other aspects of Navajo tribal law (including any administrative remedies) prior to bringing any claim, suit or proceeding in any of the Permitted Courts.

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

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

(ii) Sublessor, Sublessee and Lender hereby submit to the jurisdiction of the Permitted Courts, waives its rights to bring any action or proceeding against the other in any court except the Permitted Courts, waives any objections, including, without limitation, any objections to the laying of venue on the grounds of forum non conveniens, personal jurisdiction or tribal exhaustion, which either may have or hereafter have to the bringing of any action or proceeding in any court except the Permitted Courts, and agrees that all claims in respect of the Transaction Documents may only be heard and determined in the Permitted Courts; and

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

D. Arbitration. If Lender determines that neither District Court nor Superior Court have jurisdiction, then any controversy, dispute or claim between or among the parties arising out of the Transaction Documents may, at the option of Lender, be determined by arbitration pursuant to and in accordance with arbitration procedures referenced in the Navajo Nation Sovereign Immunity Act, as amended, at 1 N.N.C. § 554 J and § 554 K, and as set forth in the Navajo Arbitration Act, as amended, at 7 N.N.C. §§ 1101 et seq. ("Arbitration"). Disputes include matters (i) relating to an applicable deposit account, application for or denial of credit, enforcement of any of the obligations that parties have to each other, compliance with applicable laws and/or regulations, performance or services provided under any Transaction Document by any party, (ii) based on or arising from an alleged tort related to the foregoing, or (iii) involving Lender's employees, agents, affiliates, or assigns of a party related to the foregoing. If Lender seeks enforcement of any duty or obligation or resolution of any dispute hereunder by Arbitration, the Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

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

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

(iii) The arbitration panel (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment, (ii) will render a decision and any award applying applicable law, (iii) will give effect to any limitations period in determining any dispute or defense, (iv) shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable, (v) with regard to motions and the arbitration hearing, shall apply rules of evidence governing civil cases, and (F) will have the power to (y) obtain provisional or ancillary remedies including, without limitation, awards for injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, or (z) avail itself of any self-help remedies such as setoff and repossession.

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

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

(vi) notwithstanding the provisions of Section 14.G hereof, the laws of the Nation shall exclusively govern the arbitration provisions set forth herein and the arbitration procedures conducted pursuant thereto (but actions to enforce this Agreement pursuant to a waiver of sovereign immunity described in Section 14.B and to actions to compel arbitration and enforce awards resulting from arbitration as provided in Section 14.D shall be subject to Section 14.G hereof); and

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

E. Collection Costs. The prevailing party in any action or proceeding shall be entitled to recover its costs of collection including reasonable attorney fees. Amounts unpaid after entry of any judgment, arbitration award or order shall bear interest at the Applicable Interest Rate.

F. Survival. The provisions of this Section shall, with respect to such any dispute or controversy arising out of this Sublease, survive the termination or expiration of this Sublease.

G. Governing Law and Construction. Except as may be otherwise expressly provided herein, this Sublease shall be construed in accordance with and governed by the laws of the State of Arizona (excluding conflicts of law provisions) and applicable federal law. Whenever possible, each provision of the Transaction Documents and any other statement, instrument or transaction contemplated hereby or relating hereto shall be interpreted in such manner as to be effective and valid under such applicable law, but, if any provision of the Transaction Documents or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Transaction Documents or any other statement, instrument or transaction contemplated hereby or thereby or relating hereto. The parties shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with a valid provision the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

[SIGNATURE PAGES FOLLOW]



IN WITNESS WHEREOF the parties have set their hands and seals this 23<sup>rd</sup> day of MARCH, 2015.

THE SUBLESSEE:

NTUA HEADQUARTERS, LLC, an Arizona limited liability company

By: Navajo Tribal Utility Authority, a wholly-owned enterprise of the Navajo Nation, as sole member and manager

By: Walter W. Haase  
Name: Walter W. Haase, P.E.  
Title: General Manager

4/5/2015

STATE OF ARIZONA )  
County of Apache )

ss

The foregoing instrument was acknowledged before me this 5 day of April, 2015, by Walter W. Haase, P.E., as General Manager of the Navajo Tribal Utility Authority, a wholly-owned enterprise of the Navajo Nation, as sole member and manager of NTUA Headquarters, LLC, as Arizona limited liability company, on behalf thereof.

Theresa M. Talker  
Notary Public



THE SUBLESSOR:

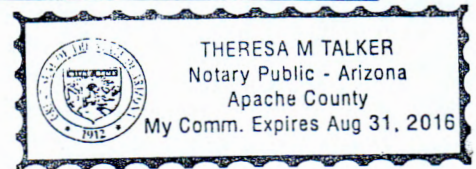
NAVAJO TRIBAL UTILITY AUTHORITY, a  
wholly-owned enterprise of the Navajo Nation

By: Walter W. Haase  
Name: Walter W. Haase, P.E.  
Title: Co-Manager

STATE OF ARIZONA                    )  
  )  
County of Apache                    )       ss

The foregoing instrument was acknowledged before me this 5 day of April, 2015, by  
Walter W. Haase, P.E., as General Manager of the Navajo Tribal Utility Authority, a wholly-owned  
enterprise of the Navajo Nation, on behalf thereof.

Theresa M Talker  
Notary Public



THIS SUBLEASE IS APPROVED BY THE NAVAJO NATION:

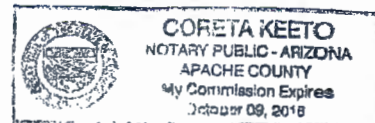
By: [Signature]  
Navajo Nation President or Vice President

Date: 05/18/2015

STATE OF ARIZONA                    )  
  )  
County of Apache                    )                    ss

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of May, 2015, by Jonathan Nez, Vice President, as President of the Navajo Nation, on behalf thereof.

Coreta Keeto  
Notary Public



Approved by Navajo Nation Department of Justice:

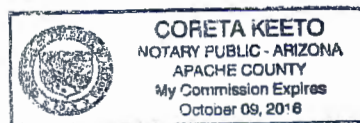
By: [Signature]

Date: 5-13-15

STATE OF ARIZONA  
County of Apache

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of May, 2015, by Rodgerich T. Begay Asst Atty Gen. of the Navajo Nation, a federally recognized Indian Nation.

Coreta Keeto  
Notary Public





## Exhibit A

### **Legal Description of Leased Premises**

A certain tract of land located within Section 26, T. 18 N., R. 21 W., NMPM, Navajo Nation, McKinley County, New Mexico, being more particularly described as follows:

Commencing for a tie at the Real Point of Beginning from whence a US Department of Interior Brass Cap, 86 M.C. bears S00°22'00"W along the State Line between the States of New Mexico and Arizona a distance of 565.63 feet to the East ¼ Corner of Section 8, T. 27 N., R. 31 E., G&SRM within the State of Arizona, and continuing S00°22'00"W along the State Line a distance of 191.45 feet to that Brass Cap. Thence Due East a distance of 2.32 feet to a Point of Curvature.

Thence along a Curve to the Right whose  $\Delta = 39^{\circ}19'50''$ ,  $R = 210.435$  feet,  $Lc = S70^{\circ}20'05''E$  141.63 feet, a distance of 144.45 feet to a Point of Tangency;

Thence S50°40'10"E a distance of 615.57 feet to a Point on the West Right of Way line of BIA Route N12;

Thence along the West Right of Way line a distance of 900.00 feet to the North East corner;

Thence N50°40'10"W a distance of 615.57 feet to a Point of Curvature;

Thence along a Curve to the Left whose  $\Delta = 39^{\circ}09'12''$ ,  $R = 1,110.435$  feet,  $Lc = N70^{\circ}14'45''W$  744.14 feet, a distance of 758.811 feet to a point on the State Line between the States of New Mexico and Arizona;

Thence along said State line S00°22'00"W a distance of 900.01 feet to the Real Point of Beginning.

Said Tract contains 22.074 acres more or less, which includes a 100 feet wide proposed access road along the south boundary.

Basis of Bearing: N00°22'00"E along State line from survey by George Perce W/O #00-06-274.

**Exhibit G**

**Collateral Assignment of Lease  
(Sublease)**

When Recorded Return To:  
Snell & Wilmer LLP  
One Arizona Center  
Phoenix, AZ 85004  
Attn: Mark Ohre

## COLLATERAL ASSIGNMENT OF LEASE

This Collateral Assignment of Lease is made this 23rd day of March, 2015, between GREAT WESTERN BANK, a bank chartered under the laws of South Dakota, whose address is 1721 North Arizona Avenue, Suite 1, Chandler, Arizona, 85225, hereinafter called Assignee, and NTUA HEADQUARTERS, LLC, an Arizona limited liability company (hereinafter called "Assignor," which is 100% owned at this time by the NAVAJO TRIBAL UTILITY AUTHORITY, a wholly owned enterprise of the Navajo Nation, whose address is PO Box 170, Fort Defiance, Arizona, 86504.

### WITNESS

#### SECTION I. RECITALS

A. Assignor, also the Lessee, under the Navajo Nation Economic Development Lease (Navajo Nation Trust Land) Lease Number FD-03-219 from the Nation to the Borrower relating to the leased premises ("Master Lease"), a copy of which is attached as Exhibit A, has been approved by the Navajo Nation and has been issued for a period of fifty (50) years commencing on November 18, 2003. The Master Lease was amended by that certain lease Modification #1 dated March 26, 2014, that certain Lease Modification #2 dated March 26, 2014, and that certain Lease Modification #3 dated March 23, 2015 ("Amended Master Lease"). The Lessor under the Amended Master Lease was the Navajo Nation ("Nation") and approved on 2015. The Assignor, as Lessee under the Amended Master Lease, has subleased the leased premises to NTUA Headquarters, LLC, an Arizona limited liability company, which is wholly owned by the Assignor, pursuant to that certain Sublease dated December 31, 2014 (the "Lease").

B. Assignee has agreed to make a loan in the amount sufficient to finance or refinance all or a portion of the costs for developing and construction the NTUA Office Headquarters located on the leased premises. The loan will be made pursuant to that certain Loan Agreement dated December 31, 2014 (the "Loan Agreement") between Assignor and Assignee.

C. The Assignor has agreed to make a Collateral Assignment of the Lease ("Assignment") to secure the repayment of the Loan under the terms of the Loan Agreement as originally made and as it may be amended.

#### SECTION II. ASSIGNMENT.

A. As security for the payment of the Loan, the Assignor hereby assigns its interest in, rights, and right to continued possession under, the Lease, subject to the terms and conditions herein, to Assignee.



### **SECTION III. WARRANTIES AND COVENANTS.**

A. Assignor shall pay all applicable rents and other charges as they fall due under the terms of the Lease.

B. Assignor shall not surrender its Lease and interest in the Lease, nor terminate or cancel the Lease. The Assignor shall not modify, change, supplement, alter or amend the Lease, either orally or in writing, without the express written consent of the Assignee. Any such termination, cancellation, modification, change, supplement, alteration, or amendment, of the Lease without the prior written consent of Assignee shall be null and void and have no force and/or effect. However, Assignee shall not unreasonably withhold approval of any requested changes or amendments to the Lease which do not impair its security interest.

### **SECTION IV. PERFORMANCE OF LEASE OBLIGATIONS AND RIGHT TO CURE.**

A. The Assignor shall at all times fully perform and comply with all covenants, terms and conditions imposed on or assumed under the Lease.

B. If Assignor fails to fully perform and comply with the Lease and the Lessor notifies the Assignee in writing of the default under the terms provided for in the Lease, Assignee shall not take action against the Navajo Nation in the event of such a default, but shall have the option, in its sole discretion, but not the obligation, to take any actions it deems necessary or desirable to cure the default by the Assignor. On receipt by Assignee of any written notice of default of the Lease by the Lessor, Assignee may rely on the notice and take any reasonable action to cure the default even though the existence of such a default, or the nature thereof, is questioned or denied by the Assignor, or by any party on behalf of the Assignor, including taking possession of the leased premises. If Assignee takes possession of the premises it shall have the right to enforce the Lease to the same extent as if it were the original Lessee under the Lease.

C. The Assignor hereby expressly grants to Assignee, and agrees that Assignee shall have the absolute and immediate right to enter in and on the leased premises, or any part thereof, in the event that Assignee deems it necessary or desirable to prevent or cure any default on the Lease by the Assignor.

D. Assignee may pay and expend reasonable sums of money that are necessary to prevent or cure any default on the Lease by the Assignor and the Assignor in turn, agrees to pay to Assignee, immediately and without demand, all sums paid and expended by Assignee in preventing or curing a default of the Lease by the Assignor together with interest thereon from the date of each such payment by Assignee at the rate of the Wall Street Journal Prime Rate plus two percent adjusted daily from the date of Assignee payment. All sums so paid and expended by Assignee and the interest thereon shall be secured by this assignment.

### **SECTION V. RELEASE OR FORBEARANCE.**

No release or forbearance by Assignee of any of the Assignor obligations under the Loan Agreement or Note shall release the Assignor from any of its obligations under the Lease, including the Assignor obligation to perform all of the terms, covenants and conditions contained in the Lease.

### **SECTION VI. ACCELERATION AND RIGHT OF POSSESSION OR SALE.**

Upon the event of default, as defined in the Loan Agreement and Note, and upon the Assignor's failure to cure within the period provided in the Loan Agreement and Note, Assignee shall be entitled to immediate possession of the leased premises subject to the terms and conditions of the Lease, to which Assignee expressly agrees. Assignee further expressly agrees to furnish, as requested, any financial statements or analysis pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of this Assignment.

### **SECTION VIII. DEFAULT AND SALE.**

A. In the event of default under the Loan Agreement and Note, and if the Assignor fails to cure the default, Assignee may exercise the rights provided for in the Loan Agreement, Note, and

this Assignment. However, before any subsequent assignment, transfer, or sale, of the Lease, whether under power of sale or foreclosure, Assignee shall give written notice of the event of default and the Assignor's failure to cure the default to the Lessor. Before any notice of sale, subsequent assignment, transfer or any other form of alienation, the Lessor with first priority shall be given the right to pay Assignee the full unpaid principal, accrued interest due under the Loan Agreement and Note, plus reasonable sale and enforcement costs incurred by Assignee through the day of such payment by the Lessor. This right may be exercised at any time before the completion of the sale proceedings.

B. If the Lessor exercise its right to pay Assignee the full unpaid amount and interest due under the Loan Agreement and Note, plus reasonable sale and enforcement costs incurred through the date of payment, this Assignment shall automatically terminate on the date such right is exercise, and shall have no further force or effect. However, the termination of this Assignment shall not relieve Assignee from any obligation or liability which has accrued before the date of termination. Assignee shall file the appropriate termination statement and/or release with the Lessor.

C. In the event that the Lessor, avail itself of the rights set forth above, Assignee shall have the right to either 1) remain in possession of the Lease, assume the position of the Lessee and perform the terms and conditions of the Lease so long as Assignee retains title thereto, or 2) sell its interest in the Lease by either public or private sale on terms that are commercially reasonable. If a sale occurs resulting in a purchase by a party other than Assignee, the purchaser shall be bound by all of the terms and conditions of the Lease and shall expressly assume those terms and conditions as a condition of the sale. Any purported sale where the purchaser does not expressly assume the terms and conditions of the Lease shall be null and void and without effect.

#### **SECTION IX. TERMINATION UPON PAYMENT IN FULL.**

In the event that the Assignor pays the amount specified in the Loan Agreement and Note in full plus interest thereon, this Assignment shall cease to have effect and Assignor shall file such termination statement and/or releases as reasonably necessary within ten (10) days after the Assignor pays the full amount of the Loan Agreement and Note and interest thereon, or at such time as the Assignor requests that such termination statements and/or releases be filed.

#### **SECTION X. CHOICE OF LAW.**


The laws of the Navajo Nation shall govern this Assignment. Assignor and Assignee agree that all controversies and claims between the parties of any nature ("dispute" or "disputes") arising directly or indirectly out of or in connection with this Assignment or any related agreements shall at the written request of any party be resolved through binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, enforced by any court of competent jurisdiction, including the courts of the Navajo Nation. Nothing in this Collateral Assignment of Lease shall be construed as a waiver, either express or implied, of the Sovereign Immunity of the Navajo Nation.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Collateral Assignment on the day and year first above written.

FOR THE ASSIGNEE:

GREAT WESTERN BANK, a bank chartered  
under the laws of South Dakota

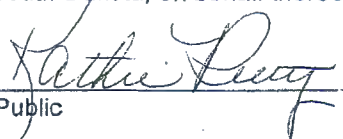
By:   
Name: Lyle D. Frederickson  
Title: Vice President

STATE OF ARIZONA )

County of MARICOPA )

ss

The foregoing instrument was acknowledged before me this 17 day of APRIL,  
2015, by LYLE D. FREDERICKSON, as OFFICER  
of Great Western Bank, a bank chartered under the laws of South Dakota, on behalf thereof.

  
Notary Public





FOR THE ASSIGNOR

NTUA HEADQUARTERS, LLC, an Arizona  
limited liability company

By; Navajo Tribal Utility Authority, a wholly-  
owned enterprise of the Navajo Nation, as  
sole member and manager

By: Walter W. Haase  
Name: Walter W. Haase, P.E.  
Title: General Manager 4/5/2015

STATE OF ARIZONA                    )  
  )  
County of Apache                    )      ss

The foregoing instrument was acknowledged before me this 5 day of April,  
2015, by Walter W. Haase, P.E., as General Manager of the Navajo Tribal Utility Authority, a  
wholly-owned enterprise of the Navajo Nation, sole member and manager of NTUA  
Headquarters, LLC, as Arizona limited liability company, on behalf thereof.

Theresa M Talker  
Notary Public



**APPROVED BY THE NTUA:**

NAVAJO TRIBAL UTILITY  
AUTHORITY, a wholly-owned enterprise  
of the Navajo Nation

By: Walter W. Haase  
Name: Walter W. Haase, P.E.  
Title: General Manager 4/5/2015

STATE OF ARIZONA )  
 ) SS  
County of Apache )

The foregoing instrument was acknowledged before me this 5 day of April, 2015, by Walter W. Haase, P.E., as General Manager of the Navajo Tribal Utility Authority, a wholly-owned enterprise of the Navajo Nation, on behalf thereof.

Shirley A. Or  
Notary Public



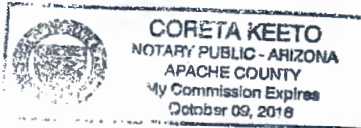
THE LESSOR, THE NAVAJO NATION:

By: [Signature]  
Navajo Nation President or Vice President

Date: 05/18/15

STATE OF ARIZONA                    )  
  )  
County of Apache                    )       SS

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of May, 2015, by Jonathan Nez, Vice President, as the President of the Navajo Nation, on behalf thereof.



Coreta Keeto  
Notary Public

Approved by Navajo Nation Department of Justice:

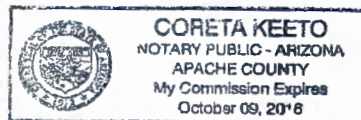
By: [Signature]

Date: 5-13-15

STATE OF ARIZONA  
County of Apache

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of May, 2015, by Dodgerick T. Begay, Asst Attorney of the Navajo Nation, a federally recognized Indian Nation.

Coreta Keeto  
Notary Public





Addendum

Return recording information was added at the top of page 1 of this Assignment.

The date and the name and address information for the relevant parties was completed in paragraph 1 of this Assignment. The last sentence of paragraph 1 was deleted.

The reference to "Lease Number \_\_\_\_\_" should be revised throughout this Assignment to read "the Lease" as such term is defined in Section I.A. of this Assignment.

Section I.A. of the Recitals should be revised to read as follows:

A. Assignor, also the Lessee, under the Navajo Nation Economic Development Lease (Navajo Nation Trust Land) Lease Number FD-03-219 from the Nation to the Borrower relating to the leased premises ("Master Lease"), a copy of which is attached as Exhibit A, has been approved by the Navajo Nation and has been issued for a period of fifty (50) years commencing on November 18, 2003. The Master Lease was amended by that certain lease Modification #1 dated March 26, 2014, that certain Lease Modification #2 dated March 26, 2014, and that certain Lease Modification #3 dated March 23, 2015 ("Amended Master Lease"). The Lessor under the Amended Master Lease was the Navajo Nation ("Nation") and approved on \_\_\_\_\_ 2015. The Assignor, as Lessee under the Amended Master Lease, has subleased the leased premises to NTUA Headquarters, LLC, an Arizona limited liability company, which is wholly owned by the Assignor, pursuant to that certain Sublease dated December 31, 2014 (the "Lease").

Section I.B. of the Recitals should be revised to read as follows:

B. Assignee has agreed to make a loan in the amount sufficient to finance all or a portion of the costs for developing and constructing the NTUA Office Headquarters located on the leased premises. The loan will be made pursuant to that certain Loan Agreement dated December 31, 2014 (the "Loan Agreement") between Assignor and Assignee.

Section I.C. of the Recitals should be revised to read as follows:

C. Assignor has agreed to make a Collateral Assignment of the Lease ("Assignment") to secure the repayment of the Loan under the terms of the Loan Agreement as originally made and as it may be amended.

Section II.A. of the Assignment should be revised to read as follows:

As security for repayment of the Loan, Assignor hereby assigns its interest in, rights, and right to continued possession, under the Lease, subject to the terms and conditions herein, to Assignee.

Section IV.D. of the Assignment should be revised to read as follows:

D. Assignee may pay and expend reasonable sums of money that are necessary to prevent or cure any default on the Lease by Assignor and Assignor in turn, agrees to pay to Assignee, immediately and without demand, all sums paid and expended by Assignee in preventing or curing a default of the Lease by Assignor together with interest thereon from the date of each such payment by Assignee at the rate of the Applicable Interest Rate (as defined in the Loan Agreement) from the date of Assignee payment. All sums so paid and expended by Assignee and the interest thereon shall be secured by this assignment.

Section V. of the Assignment should be revised to delete references to "the Note."

Section VI. of the Assignment should be revised to delete references to "the Note."

Section VIII.A. of the Assignment should be revised to read as follows:

A. In the event of default under the Loan Agreement, and if Assignor fails to cure the default, Assignee may exercise the rights provided for in the Loan Agreement and this Assignment. However, before any subsequent assignment, transfer, or sale, of the Lease, whether under power of sale or foreclosure, Assignee shall give 30 days written notice of the event of default and Assignor's failure to cure the default to the Lessor. Before any notice of sale, subsequent assignment, transfer or any other form of alienation, the Lessor shall be given an additional 30-day right ("Lessor Cure Period") to pay Assignee the full unpaid principal, accrued interest due under the Loan Agreement, plus reasonable sale and enforcement costs incurred by Assignee through the day of such payment by the Lessor. This right may be exercised within the early of (i) 60 days from when Lessor received the original notice of uncured default from Assignee or (ii) at any time before the completion of the sale proceedings.

Section VIII.B. of the Assignment should be revised to delete references to "the Note."

Section VIII.C. of the Assignment should be revised to read as follows:

C. In the event that the Lessor does not pay Assignee the full unpaid amount and interest due under the Loan Agreement, plus reasonable sale and enforcement costs incurred through the date of payment, within the Lessor Cure Period, then Assignee may either 1) remain in possession of the Lease, assume the position of the Lessee and perform the terms and conditions of the Lease so long as Assignee retains title thereto, or 2) sell its interest in the Lease by either public or private sale on terms that are commercially reasonable, without the consent of the Nation, other enterprises or departments of the Nation Lessor, Assignor, Secretary of the Interior or the Navajo Nation's court. If a sale occurs resulting in a purchase by Assignee, Assignee's designee, or a party other than Assignee, the purchaser shall be bound by all of the terms and conditions of the Lease and shall expressly assume those terms and conditions as a condition of the sale. Any purported sale where the purchaser does not expressly assume the terms and conditions of the Lease shall be null and void and without effect.

Section IX. of the Assignment should be revised to delete references to "the Note."

Section X. of the Assignment should be deleted in its entirety and replaced with the following:

#### **SECTION X. DISPUTE RESOLUTION AND CHOICE OF LAW.**

A. Limited Waiver of Sovereign Immunity. Borrower hereby irrevocably waives its sovereign immunity on a limited basis and consents to be sued should an action be commenced to determine and enforce the obligations of the parties (including any permitted successors of the parties) under this Agreement, any other related transaction, instrument or contract (collectively, the "Transaction Documents") pursuant to and in accordance with that Resolution No. CAP-18-10 adopted by the Navajo Nation Council on July 21, 2010, and by Resolution No. CAP-38-14 of the Management Board of Borrower dated December 11, 2014; and provided further that such limited waiver shall be limited to the assets (including, without limitation, the Property and Collateral), revenues and income of Borrower. With respect to the foregoing limited waiver, Borrower represents and



warrants that all notices, approvals, consents and other actions required to authorize such waiver have been given and done, and the waiver is enforceable by Lender without further qualification and collection.

B. Jurisdiction and Enforcement. The parties hereto acknowledge and agree that the Transaction Documents and the duties and obligations of the parties thereunder, including any entry of judgment upon any arbitral award and the collection of all amounts awarded any party, shall be subject to the original jurisdiction of and enforceable against Borrower in any of the following forums: (i) the United States District Court for the District of Arizona ("District Court"), (ii) the Superior Court for Apache County, Arizona ("Superior Court"), or, only if elected or consented to in writing by Lender in its sole discretion, (iii) the courts of the Navajo Nation ("Permitted Courts"). Borrower waives any requirement to use or exhaust Navajo Nation court remedies or other aspects of Navajo tribal law (including any administrative remedies) prior to bringing any claim, suit or proceeding in any of the Permitted Courts.

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

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

(b) Borrower and Lender hereby submit to the jurisdiction of the Permitted Courts, waives its rights to bring any action or proceeding against the other in any court except the Permitted Courts, waives any objections, including, without limitation, any objections to the laying of venue on the grounds of forum non conveniens, personal jurisdiction or tribal exhaustion, which either may have or hereafter have to the bringing of any action or proceeding in any court except the Permitted Courts, and agrees that all claims in respect of the Transaction Documents may only be heard and determined in the Permitted Courts; and

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

D. Arbitration. If Lender determines that neither District Court nor Superior Court have jurisdiction, then any controversy, dispute or claim between or among the parties arising out of the Transaction Documents may, at the option of Lender, be determined by arbitration pursuant to and in accordance with arbitration procedures referenced in the Navajo Nation Sovereign Immunity Act, as amended, at 1 N.N.C. § 554 J and § 554 K, and as set forth in the Navajo Arbitration Act, as amended, at 7 N.N.C. §§ 1101 et seq. ("Arbitration"). Disputes include matters (i) relating to an applicable deposit account, application for or denial of credit, enforcement of any of the obligations that parties have to each other, compliance with applicable laws and/or regulations, performance or services provided under any Transaction Document by any party, (ii) based on or arising from an alleged tort related to the foregoing, or (iii) involving Lender's employees, agents, affiliates,



or assigns of a party related to the foregoing. If Lender seeks enforcement of any duty or obligation or resolution of any dispute hereunder by Arbitration, the Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

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

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

(c) The arbitration panel (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment, (ii) will render a decision and any award applying applicable law, (iii) will give effect to any limitations period in determining any dispute or defense, (iv) shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable, (v) with regard to motions and the arbitration hearing, shall apply rules of evidence governing civil cases, and (F) will have the power to (y) obtain provisional or ancillary remedies including, without limitation, awards for injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, or (z) avail itself of any self-help remedies such as setoff and repossession.

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

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

(f) notwithstanding the provisions of Section 10.G0 hereof, the laws of the Nation shall exclusively govern the arbitration provisions set forth herein and the arbitration procedures conducted pursuant thereto (but actions to enforce this Agreement pursuant to a waiver of sovereign immunity described in Section 10.B and to actions to compel arbitration and enforce awards resulting from arbitration as provided in Section 10.D shall be subject to Section 10.G hereof); and

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

E. Collection Costs. The prevailing party in any action or proceeding shall be entitled to recover its costs of collection including reasonable attorney fees. Amounts unpaid after entry of any judgment, arbitration award or order shall bear interest at the Applicable Interest Rate.

F. Survival. The provisions of this Section X shall, with respect to such any dispute or controversy arising out of this Agreement, survive the termination or expiration of this Agreement.

G. Governing Law and Construction. Except as may be otherwise expressly provided herein, this Agreement shall be construed in accordance with and governed by the laws of the State of Arizona (excluding conflicts of law provisions) and applicable federal law. Whenever possible, each provision of the Transaction Documents and any other statement, instrument or transaction contemplated hereby or relating hereto shall be interpreted in such manner as to be effective and valid under such applicable law, but, if any provision of the Transaction Documents or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Transaction Documents or any other statement, instrument or transaction contemplated hereby or thereby or relating hereto. The parties shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with a valid provision the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

The signature and notary blocks on the signature pages were completed with the relevant information for each party.

A signature and notary block was added for the Navajo Tribal Utility Authority.

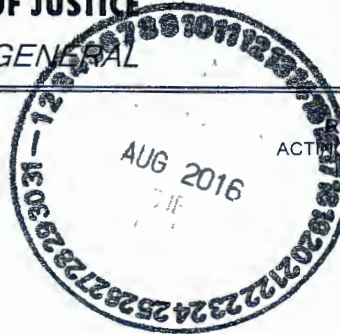
A signature and notary block was added for the Navajo Nation.



**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**


ETHEL B. BRANCH  
ATTORNEY GENERAL

RODGERICK T. BEGAY  
ACTING DEPUTY ATTORNEY GENERAL



M E M O R A N D U M

TO: Sharlene Begay-Platero, Ind'l Development Specialist  
Project Development Department  
Division of Economic Development

FROM:   
LaTonia B. Johnson, Acting Asst. Attorney General  
Economic/Community Development Unit, Dept. of Justice

DATE: August 10, 2016

SUBJECT: Document No. 16-1642: Review Modifications 4 and 5 of  
the Lease between the Navajo Nation and Navajo Tribal  
Utility Authority

The Navajo Nation Department of Justice has reviewed the above-mentioned document and finds the proposed amendments insufficient. Please review the face of the document for changes.

Modification 4: The following needs to be addressed:

1. Please delete the term "without limitation" in Section B(1). The purpose has to be specific and there cannot be a catch-all phrase. In addition, considering that the purpose of the lease is substantially changing from a general commercial purpose to also including a hotel, I am inquiring as to whether you have obtained an updated Environmental Review as required by 3.2(b) and (c) of the Management Plan. If not, it is recommended that this is conducted as there may be additional conditions that may be noted in the updated Compliance Determinations from the Navajo Environmental Protection Agency, Fish and Wildlife Department and Historic Preservation Department.



Memorandum to: Sharlene Begay-Platero  
RE: Document No. 16-1642: Review Modifications 4 and 5 of the Lease  
between the Navajo Nation and Navajo Tribal Utility Authority  
August 10, 2016  
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2. It is noted that Navajo Tribal Utility Authority (NTUA) requested for a nominal rent. As you know, nominal rent may be granted if it meets one of the requirements as provided in Section 4.2(6)(e) of the Administrative Plan. In reviewing the aforementioned section, it appears that the only area in which NTUA may fall under is the exigent circumstances criteria. While this is an administrative issue for your office to consider, it is recommended that the letter from NTUA is included in the packet.
3. Also, please include an end date on the amendment to Section D. Rental.
4. Add the following language to the proposed amendment of Section F, Completion of Development: "delete Section F(1) and amend section numbers accordingly."

Modification 5:

1. Section 1.5 as noted by yellow highlight 1 requires clarification. Is this provision only applicable to just the sublease? Please clarify.
2. Section 1.5 as noted by yellow highlight 2 provides "arm of the Navajo Nation" yet at the beginning of this sentence it is noted that "approval of the Lessor." Generally, all encumbrances are approved by the Lessor acting through the Resources and Development Committee (considering this is an amendment to Part II of the Lease). Please clarify what is the intention of "arm of the Navajo Nation."
3. Section 1.5 as noted by yellow highlight 3 provides that the Navajo Nation would not be required to approve encumbrances yet it does not consider the requirements of Section 1.6 and even the proposed amendments to 1.6 do not take into account the proposed amendments as noted in Section 1.5. Please ensure that the amendments made to Sections 1.5 and 1.6 are in harmony otherwise there will be conflicting language.
4. Section 1.6 as noted by yellow highlight 4 is the same comment as highlight 3. It is recommended that there are additional proposed amendments to accommodate this initial request.

Memorandum to: Sharlene Begay-Platero

RE: Document No. 16-1642: Review Modifications 4 and 5 of the Lease  
between the Navajo Nation and Navajo Tribal Utility Authority

August 10, 2016

Page 3

5. Section 1.6 as noted by yellow highlight 5 requires clarification. Is this only applicable to the sublease? I am inquiring because Section 1.6 entails that all of the lease premise yet it is written as though it is only applicable to the sublease.
6. Section 1.6 as noted by yellow highlight 6 also requires clarification. There are different terms and verbs that are not consistent. There is a reference to a sublease yet the verb is an "assign" and "assignee." As you know, subleasing and assignment are different transactions. Please amend accordingly and clarify.
7. Section 1.6 as noted by yellow highlight 7 requires clarification. Is this provision only applicable to the sublease?
8. Section 1.6 as noted by yellow highlight 8 references subsection (J) yet there is no (J) in Part II or no additions as provided by Modifications 1-3. Please clarify. Until there is a clarification, I reserve my comments and review of this proposed amendment.
9. Section 1.6 as noted by yellow highlight 9 references subsection (D) yet there is no (D) of Section 1.12 in Part II or no additions as provided by Modifications 1-3. Please clarify. Until there is a clarification, I reserve my comments and review of this proposed amendment.
10. Section 1.6 as noted by yellow highlight 10 deletes the Qualification of Business. Is this the correct area in which needs to be deleted? Also, the proposed amendment is too general. The limited waiver is only applicable to using arbitration as a form of dispute resolution. If there is additional limited waiver in which is being referenced that needs to be clarified. Otherwise, it is recommended that the proposed amendment reflect that arbitration as a form of dispute resolution would serve as a limited waiver of sovereignty immunity and that the arbitration provision would have to be in compliance with the Sovereign Immunity Act and Arbitration Act.

Memorandum to: Sharlene Begay-Platero

RE: Document No. 16-1642: Review Modifications 4 and 5 of the Lease  
between the Navajo Nation and Navajo Tribal Utility Authority

August 10, 2016

Page 4

Until the above-mentioned is clarified, this document is deemed insufficient. If you have any questions regarding this memorandum, please contact me at 928-871-6933. Thank you.

LBJ/ah/139



**Proposed  
Modifications #4 and #5  
to  
BSL# FD-03-219**

**LEASE MODIFICATION #4**

Lease No.: FD-03-219

It is hereby agreed by and between the Navajo Nation, Lessor, and Navajo Tribal Utility Authority, Lessee, and (none), Surety, that Business Site Lease No.: FD-03-219, be modified this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**WHEREAS** Navajo Tribal Utility Authority requests for modification of lease to reduce rent.

**NOW THEREFORE,**

1. An amendment to Section B. Purpose, Unlawful Uses to delete Section B(1) and add the following:

Lessee shall use the leased premises for general commercial purposes only, including, ~~without limitation, an~~ office, inventory, warehouse, hotel, and commercial retail purposes.

*was there an updated Eniv Renew Conducted?*

2. [NTUA WAS GOING TO REQUEST THAT RENT BE A NOMINAL AMOUNT EACH YEAR] An amendment to **Section D. Rental** to delete said Section in its entirety and replace it with the following:

Years 11-20	\$0.00 per year
Years 21-___	\$___.00 per year

Rental unpaid 10 days after the due date shall bear interest at 18% per annum from the date it becomes due until paid, but this provision shall not be construed to relieve 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.

3. An amendment to **Section F. Completion of Development** to delete Section F(1). *and amend section numbers accordingly.*

[SIGNATURE PAGE FOLLOWS]

NAVAJO TRIBAL UTILITY AUTHORITY, LESSEE

By: \_\_\_\_\_

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

THE NAVAJO NATION, LESSOR

By: \_\_\_\_\_  
President

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

Approved by Navajo Nation Department of Justice:

By: \_\_\_\_\_

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



**LEASE MODIFICATION #5**  
Lease No.: FD-03-219

It is hereby agreed by and between the Navajo Nation, Lessor, and Navajo Tribal Utility Authority, Lessee, and (none), Surety, that Business Site Lease No.: FD-03-219, be modified this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

WHEREAS, Great Western Bank, N.A., which has provided financing to the Navajo Tribal Utility Authority, requests for modification of the lease to Part II of the lease between the Navajo Nation and the Navajo Tribal Utility Authority as set forth herein, and the Navajo Tribal Utility Authority has agreed pursuant to the \_\_\_\_\_ to exercise best efforts to pursue the amendments herein.

**NOW THEREFORE,**

Amendments to **Section L. Exceptions To Standard Terms and Conditions** as follows:

Section 1.5 of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases -Navajo Nation Land Trust) is hereby amended to add the following:

~~Lessee~~                      ~~Lessee~~

Lessee and its subtenant, NTUA Headquarters, LLC ("~~Subtenant~~"), and their successor and assigns, may sublease, in whole or in part, any facilities, building or other improvements built by Lessee or Subtenant on the leased premises without the approval of Lessor, Lessee or any other governmental agency, department or arm of the Navajo Nation. In addition, Lessee may pledge, transfer or assign ownership and control of Subtenant to an Approved Encumbrancer without Lessor or Navajo Nation consent; provided that the security agreement or assignment document is approved by Lessor as part of the approved encumbrance documents and the Approved Encumbrancer provides Lessor written notice within 30 days of when ownership or control is transferred or assigned from Lessee to the Approved Encumbrancer or to its designated entity or third party.

Section 1.6(G) of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases -Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:

(In the event Lessor or Lessee does not avail itself of the above rights and a sale occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title and interest of the Sublessee in the subleasehold covered by said encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may assign the subleasehold without any further approval; provided that the assignee shall agree in writing to be bound by all the terms and conditions of the Sublease. If the encumbrancer is the

③ Lessor is the same. All encumbrances are required to be approved by the NV

① please clarify is this provision applicable to sublessee  
② Arm of the Navajo Nation this would only be RDC. please clarify  
⑤ This amendment only applicable to the sublease?

④ there needs to be cross reference  
⑥ Sublessee or assignee?

The language does not account for the fact that RDC would be taken out. would need to cross ref lang.

purchaser, it shall be required to perform the Sublease only so long as it retains title thereto. If a sale of the subleasehold interest under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by Lessor is also not 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.

⑦ Is this only applicable to the Sublessee?

Section 1.6(J) of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:

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

⑧ Where is J?  
I need to renew J before I renew the proposed clause.  
1.6 only goes to H.

Section 1.12(D) of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby amended to add "or apply the insurance proceeds to payment of the Loan in accordance with the loan documents" after the end of the first sentence in Section 1.12(D).

⑨ There is no 1.12(D)?

Section 1.36 of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation; provided, however, Lessor may provide, in a separate written agreement, a limited waiver of sovereign immunity in accordance with the Navajo Nation's Sovereign Immunity Act to allow an Approved Encumbrancer or its assignee to enforce this Lease in Navajo Court against Lessor.

⑩ your proposed amendments basically require the NW to not obtain approval

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

[SIGNATURE PAGE FOLLOWS]

NAVAJO TRIBAL UTILITY AUTHORITY, LESSEE

By: \_\_\_\_\_

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

THE NAVAJO NATION, LESSOR

By: \_\_\_\_\_  
President

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

Approved by Navajo Nation Department of Justice:

By: \_\_\_\_\_

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





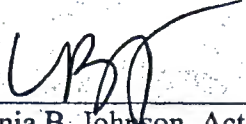
**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

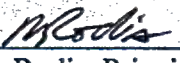
ETHEL B. BRANCH  
ATTORNEY GENERAL

RODGERICK T. BEGAY  
ACTING DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Sharlene Begay-Platero, Industrial Development Specialist  
Project Development, Division of Economic Development

THROUGH:   
LaTonia B. Johnson, Acting Assistant Attorney General  
Economic and Community Development Unit, Dept. of Justice

FROM:   
Mel M. Rodis, Principal Attorney  
Economic and Community Development Unit, Dept. of Justice

DATE: December 9, 2016

SUBJECT: Executive Official Review No. 007076: Lease Modification 4, for NTUA

I have marked the proposed lease modification number 4 insufficient and offer the following two comments.

1. Proposed amendment to Section L, Exceptions to Standard Terms and Conditions, Part II, section 1.5(D) conflicts with 1.5(A) and violates the Business Site Leasing Administrative Plan. In your proposed amendment to the NTUA lease, the Lessee and subtenant may sublease "any facilities, building or other improvements built by the Lessee or Subtenant on the leased premises without the approval of Lessor, Lessee or any other legislative branch of the Navajo Nation[.]" This conflicts with the provision in Part II, section 1.5(A) which requires the Lessor's written approval for subleases. It states in relevant part, "Lessee shall not sublease, assign, place under a management agreement, or in any manner whatsoever transfer this Lease or any improvements on the lease premises, ...without the written approval of the Lessor, the Secretary and sureties, if any, and no such sublease, assignment, sale, amendment or transfer shall be valid, or binding without such approval[.]"

Furthermore, according to the Administrative Plan, section 7.0(1), subleases must be approved by the Nation, with five exceptions.

"1. Subleases must be approved by the Nation, except for the following:

Memorandum to: Sharlene Begay-Platero

RE: Executive Official Review No. 007076, Lease Modification 4, for NTUA

December 9, 2016

Page 2

- a. Permanent office building tenants;
- b. Shopping center tenants;
- c. Retail mini mall tenants;
- d. Other business where the nature of the business is subleasing/tenant agreements; or
- e. For the purposes of merger, acquisition, or transfer of stock or any publicly traded companies."

The only possible exception would be if NTUA Headquarters, LLC is a permanent office building tenant. To the best of my belief and understanding, NTUA does not meet any other of these exceptions. If NTUA Headquarters, LLC is a permanent office building tenant, then the exception would apply and the lender would not need to seek DED's approval to sublease to NTUA Headquarters, LLC. But in order for the lender to sublease to other businesses without the Nation's approval, those businesses must qualify under one of the five exceptions to the rule which requires the Nation's approval of subleases.

I propose the following language for your amendment to 1.5(D):

- a. "The Parties recognize that pursuant to DED's Administrative Plan, section 7.0(1), subleases must be approved by the Nation, with five exceptions. Lessee and its subtenant, NTUA Headquarters, LLC ("Subtenant"), and their successor and assigns, may sublease, in whole or in part, any facilities, building or other improvements built by Lessee or Subtenant on the leased premises without the approval of Lessor, Lessee or any other legislative branch of the Navajo Nation (i.e. the Division of Economic Development or the Resources and Development Committee of the Navajo Nation, provided that one of the five exceptions applies to the intended sublessee. The exceptions include: permanent office building tenants; shopping center tenants; retail mini mall tenants; other business where the nature of the business is subleasing/tenant agreements; or for the purposes of merger, acquisition, or transfer of stock or any publicly traded companies"

In our phone conversation on December 2, 2016, you explained that the lender requested this amendment to 1.5(D) so that in the event that NTUA might default on the loan, the lender would have the opportunity to generate revenue and cover some of its losses by subleasing to other businesses. Unfortunately, the lender will not be able to achieve this purpose through subleasing to other businesses because according to the Division of Economic Development Administrative Plan, section 7.0(4)(b), rent from the subleases could not be paid directly to the lender. Rent from subleases would have to be paid to the Nation instead. Section 7.0(4)(b) states that subleases shall "[r]equire the Sublessee to agree to be bound to all terms and conditions of the Lease, including, all rental payments, shall be paid to the 'Navajo Nation' and submitted to the DOF[.]"



Memorandum to: Sharlene Begay-Platero

RE: Executive Official Review No. 007076, Lease Modification 4, for NTUA

December 9, 2016

Page 3

If, however, your intention was merely to allow the lender to sublet office space within the buildings to generate revenue in the event of default, this would be acceptable and would not require DED's approval. That is different than allowing a sublease of the business site leasehold estate without DED's approval when none of the five exceptions apply. If the intention of the amendment is the former, additional clarifying language would be required. Please clarify to allow DOJ to provide proposed language.

2. Proposed amendment to Part II, section 1.12(D) may conflict in part with 1.12(C). An approved encumbrancer may receive insurance proceeds on the condition that it complies with the reconstruction obligations. Section 1.12(C) states in relevant part,

"[a]n 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."

Your proposed amendment to 1.12(D) would be acceptable if you would include language such as "not exceeding the remaining balance of the approved encumbrance" and "provided the Approved Encumbrancer complies with the reconstruction obligations." I suggest the new amendment should read,

"The Approved Encumbrancer may apply insurance proceeds, not exceeding the remaining balance of the approved encumbrance, to repayment of the Loan in accordance with the terms of the Approved Encumbrance and other loan documents, provided the Approved Encumbrancer complies with the reconstruction obligations."

If you have any questions or concerns regarding this memo please feel free to contact me at (928) 871-6933. Thank you.

MMR/ah/240

Attachment



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## **7.0 Sublease**

Lessee who intends to sublease shall contact the appropriate DED department. General information and technical assistance in processing the Sublease transaction will be provided.

1. Subleases must be approved by the Nation, except for the following:
  - a. Permanent office building tenants;
  - b. Shopping center tenants;
  - c. Retail mini mall tenants;
  - d. Other business where the nature of the business is subleasing/tenant agreements; or
  - e. For the purposes of merger, acquisition, or transfer of stock or any publicly traded companies.
2. If an exception, the Subleases shall be pre-authorized in the Lease;
3. If a Sublease must be approved by the Nation, then the Sublease must:
  - a. Not be for the entire leasehold premises;
  - b. Lessee must conduct a separate operating business on the premises.
4. Subleases shall:
  - a. Not exceed the term of the Lease;
  - b. Require the Sublessee to agree to be bound to all terms and conditions of the Lease, including, all rental payments, shall be paid to the "Navajo Nation" and submitted to the DOF at the following address:

Cashier's Section  
P.O. Box 3150  
Window Rock, AZ 86515

5. Landlord/Tenant Agreements can be used for: 1) Permanent office building tenants; 2) Shopping center tenants; 3) Retail mini mall tenants; or 4) businesses where the nature of the business is subleasing/tenant agreements.

**The responsibilities of the Lessee/Sublessee/Applicant shall be completed in three (3) months. At the end of three (3) months, if any of the above documents are not completed the Application is void, unless the Lessee/Sublessee/Applicant has made significant effort in completing the application process. If the Application is void the application and all the documents shall be returned to the Lessee/Sublessee/Applicant. However, appropriate DED departments may retain a copy of the Application and the documents at its discretion.**

### **7.1 Subleases that Require Approval from the Nation Responsibilities**

1. Sublessor and Sublessee:
  - a. Shall provide a Letter of intent to Sublease the leasehold interest of the Lessee to the DED.
  - b. Must be in compliance with the existing Lease terms and conditions, including applicable Navajo Nation laws and regulations.



2. Sublessee:
  - a. If Applicant is a LRE:
    - 1) LRE must register with the BRD and comply with the requirements of the Navajo Corporation Code;
    - 2) LRE must submit a Certificate of Good Standing to the appropriate DED Department. The Certificate of Good Standing shall be dated within 12 months from the initiation of the Review Process.
  - b. Must be in compliance with Navajo laws and regulations
  - c. The package will be considered void if not completed within three (3) months unless the Applicant makes a significant effort to complete the transaction. The voided package shall be returned to the Applicant.
3. Division of Economic Development:
  - a. Upon receipt of all required documents for the Sublease, review for accuracy, completeness, and compliance with all applicable laws and regulations;
  - b. Obtain a written document from the respective tribal departments to verify Applicant's compliance with Navajo Business Procurement Act;
  - c. Obtain updated land survey and ER, if applicable;
  - d. Negotiate Sublease terms and conditions, only if the Sublessee proposes changes or modifications from the Lease:
    - 1) Complete at Appraisal Report or MDR;
    - 2) Refer to 4.2(6) of this Admin Plan.
  - e. Begin Review, Approval and Execution Process, refer to 4.0 of this Plan.
4. Lease Recording and Distribution:
  - a. Refer to 4.7 of this Admin Plan
5. Sublessee(s) Upon Approval:
  - a. Comply with all the terms and conditions of the Sublease and the Lease;
  - b. Maintain liaison with the appropriate DED department.

## **7.2 Sublease that do not Require Approval from the Nation**

1. Sublessor
  - a. Shall provide a copy of the Sublease, to the appropriate DED department
2. Sublessee
  - a. Must agree to be bound to all terms and conditions of the Lease
3. Division of Economic Development
  - a. Shall distribute for recording;
  - b. Refer to 4.7 of this Plan.
4. Sublessee(s) Upon Approval
  - a. Comply with all the terms and conditions of the Sublease and the Lease.
  - b. Maintain liaison with the appropriate DED department.



☒ RESUBMITTAL

## NAVAJO NATION DEPARTMENT OF JUSTICE

### DOCUMENT REVIEW REQUEST FORM

DOJ

DATE / TIME

☐ 7 Day Deadline

DOC #: \_\_\_\_\_

SAS #: \_\_\_\_\_

UNIT: \_\_\_\_\_

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

#### CLIENT TO COMPLETE

DATE OF REQUEST: 12/15/2016 DIVISION: Economic Development  
CONTACT NAME: Sharlene Begay-Platero DEPARTMENT: Proj. Dev. Dept.  
PHONE NUMBER: 505-905-6414 E-MAIL: srbp@navajoadvantage.com

TITLE OF DOCUMENT: Review and Surname for 164 Doc# 7076; Modification #4 to NTUA BSL# FD-03-219

#### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: REVIEWING ATTORNEY/ADVOCATE:

DATE TIME OUT OF UNIT:

#### DOJ ATTORNEY / ADVOCATE COMMENTS

REVIEWED BY: (Print) Date / Time SURNAMED BY: (Print) Date / Time

DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: (Print) DATE / TIME:



# THE NAVAJO NATION

RUSSELL BEGAYE  
JONATHAN NEZ ID

December 15, 2016

## MEMORANDUM

TO : LaTonia B. Johnson, Assist. Attorney General  
Economic/Community Development Unit, DOJ

FROM : Sharlene Begay-Platero  
Sharlene Begay-Platero, IDS  
Project Development Department/DED

SUBJECT : **Response to Email Inquiry for Document No. 7076:  
Another Revised Modification #4 to Business Site Lease#  
FD-03-219**

Please see attached revised Modification #4 to Business Site Lease # FD-03-219.

My client agrees to include a dollar amount as inquired. This is based on the premise that each subtenant (or sub-subtenant) would pay \$150.00 per month to the Navajo Nation.

As you know, the rent between NTUA and NTUA Headquarters, LLC, is already identified in the Sublease. Any rent between NTUA Headquarters, LLC, and any further subtenants would be subject to negotiation.

We appreciate your assistance for a surname on this Document #7076.

Thank you.

**Enclosures:**



**LEASE MODIFICATION #4**

Lease No.: FD-03-219

It is hereby agreed by and between the Navajo Nation, Lessor, and Navajo Tribal Utility Authority, Lessee, and (none), Surety, that Business Site Lease No.: FD-03-219, be modified this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

WHEREAS, Great Western Bank, N.A., which has provided financing to the Navajo Tribal Utility Authority, requests for modification of the lease to Part II of the lease between the Navajo Nation and the Navajo Tribal Utility Authority as set forth herein, and the Navajo Tribal Utility Authority has agreed pursuant to the \_\_\_\_\_ to exercise best efforts to pursue the amendments herein.

**NOW THEREFORE,**

Amendments to **Section L. Exceptions To Standard Terms and Conditions** as follows:

*Section 1.5 of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby amended to add the following new Section 1.5(D):*

D. The Parties recognize that pursuant to DED's Administrative Plan, section 7.0(1), subleases must be approved by the Nation, with five exceptions. Lessee and its subtenant, NTUA Headquarters, LLC ("Subtenant"), and their successor and assigns, may sublease, in whole or in part, any facilities, building or other improvements built by Lessee or Subtenant on the leased premises without the approval of Lessor, Lessee or any other legislative branch of the Navajo Nation (i.e. the Division of Economic Development or the Resources and Development Committee of the Navajo Nation); provided that one of the five exceptions applies to the intended sublessee. The exceptions include: permanent office building tenants, shopping center tenants, retail mini mall tenants, other business where the nature of the business is subleasing/tenant agreements, or for the purposes of merger, acquisition or transfer of stock or any publicly traded companies. In addition, each sublease shall require that (1) Sublessees pay rent in an amount to be negotiated between Subtenant and Sublessees and (2) Subtenant shall pay an additional \$150.00 each month to the Navajo Nation for each sublease entered into pursuant to this provision.

*Section 1.6(E) of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:*

In the event Lessor or Lessee does not avail itself of the above rights and a sale occurs, whether by power of sale or foreclosure, the purchaser at

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

*Section 1.6(H) of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:*

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

*Section 1.12 of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby amended to add the following new Section 1.12(D):*

D. The Approved Encumbrancer may apply insurance proceeds, not exceeding the remaining balance of the approved encumbrance, to repayment of the Loan in accordance with the terms of the Approved Encumbrance and other loan documents; provided the Approved Encumbrancer complies with the reconstruction obligations.

*Section 1.34 of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:*

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation; provided, however, Lessor may provide, in a separate written agreement, a limited waiver of sovereign immunity in accordance with the Navajo

Modification Fee: \$100.00

Nation's Sovereign Immunity Act to allow an Approved Encumbrancer or its assignee to enforce this Lease in Navajo Court against Lessor.

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

[SIGNATURE PAGE FOLLOWS]



Modification Fee: \$100.00

NAVAJO TRIBAL UTILITY AUTHORITY, LESSEE

By: \_\_\_\_\_

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

THE NAVAJO NATION, LESSOR

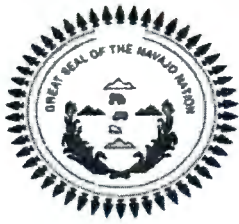
By: \_\_\_\_\_  
President

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

Approved by Navajo Nation Department of Justice:

By: \_\_\_\_\_

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



# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM

☒ RESUBMITTAL

DOJ

DATE / TIME

☐ 7 Day Deadline

DOC #: \_\_\_\_\_

SAS #: \_\_\_\_\_

UNIT: \_\_\_\_\_

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

### CLIENT TO COMPLETE

DATE OF REQUEST: 12/16/2016 DIVISION: Economic Development  
CONTACT NAME: Sharlene Begay-Platero DEPARTMENT: Proj. Dev. Dept.  
PHONE NUMBER: 505-905-6414 E-MAIL: srbp@navajoadvantage.com

TITLE OF DOCUMENT: Review and Surname for 164 Doc# 7076; Modification #4 to NTUA BSL# FD-03-219

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: REVIEWING ATTORNEY/ADVOCATE:

DATE TIME OUT OF UNIT:

### DOJ ATTORNEY / ADVOCATE COMMENTS

REVIEWED BY: (Print) Date / Time SURNAMED BY: (Print) Date / Time

DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: (Print) DATE / TIME:

NNDOJ/DRRF-July 2013



# THE NAVAJO NATION

RUSSELL BEGAYE  
JONATHAN NEZ

December 16, 2016

## **MEMORANDUM**

TO : LaTonia B. Johnson, Assist. Attorney General  
Economic/Community Development Unit, DOJ

FROM : Sharlene Begay-Platero  
Sharlene Begay-Platero, JDS  
Project Development Department/DED

SUBJECT : **Response to 2<sup>nd</sup> Email Inquiry for Document No. 7076:  
Another Revised Modification #4 to Business Site Lease#  
FD-03-219**

Please see attached revised Modification #4 to Business Site Lease # FD-03-219 based on joint discussion with NTUA representative Heather Clah.

We appreciate your assistance for a surname on this Document #7076.

Thank you.

***Enclosures:***

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DIVISION OF ECONOMIC DEVELOPMENT – PROJECT DEVELOPMENT DEPARTMENT

Post Office Box 663 Window Rock, Arizona 86515 Telephone (928) 871-6504 Telefax (982) 871-6507

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**LEASE MODIFICATION #4**

Lease No.: FD-03-219

It is hereby agreed by and between the Navajo Nation, Lessor, and Navajo Tribal Utility Authority, Lessee, and (none), Surety, that Business Site Lease No.: FD-03-219, be modified this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

WHEREAS, Great Western Bank, N.A., which has provided financing to the Navajo Tribal Utility Authority, requests for modification of the lease to Part II of the lease between the Navajo Nation and the Navajo Tribal Utility Authority as set forth herein, and the Navajo Tribal Utility Authority has agreed pursuant to the \_\_\_\_\_ to exercise best efforts to pursue the amendments herein.

**NOW THEREFORE,**

Amendments to **Section L. Exceptions To Standard Terms and Conditions** as follows:

*Section 1.5 of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby amended to add the following new Section 1.5(D):*

D. The Parties recognize that pursuant to DED's Administrative Plan, section 7.0(1), subleases must be approved by the Nation, with five exceptions. Lessee and its subtenant, NTUA Headquarters, LLC ("Subtenant"), and their successor and assigns, may sublease, in whole or in part, any facilities, building or other improvements built by Lessee or Subtenant on the leased premises without the approval of Lessor, Lessee or any other legislative branch of the Navajo Nation (i.e. the Division of Economic Development or the Resources and Development Committee of the Navajo Nation); provided that one of the five exceptions applies to the intended sublessee. The exceptions include: permanent office building tenants, shopping center tenants, retail mini mall tenants, other business where the nature of the business is subleasing/tenant agreements, or for the purposes of merger, acquisition or transfer of stock or any publicly traded companies. Each sublease shall require that (1) Sublessee pay rent to Subtenant in an amount to be negotiated between Sublessee and Subtenant, and (2) Subtenant shall pay \$150.00 each month to the Navajo Nation.

*Section 1.6(E) of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:*

In the event Lessor or Lessee does not avail itself of the above rights and a sale occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title and interest of the Sublessee in the subleasehold covered by said encumbrance. It is further

agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may assign the subleasehold without any further approval; provided that the assignee shall agree in writing to be bound by all the terms and conditions of the Sublease. If the encumbrancer is the purchaser, it shall be required to perform the Sublease only so long as it retains title thereto. If a sale under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by Lessor is also not 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.

*Section 1.6(H) of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:*

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

*Section 1.12 of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby amended to add the following new Section 1.12(D):*

D. The Approved Encumbrancer may apply insurance proceeds, not exceeding the remaining balance of the approved encumbrance, to repayment of the Loan in accordance with the terms of the Approved Encumbrance and other loan documents; provided the Approved Encumbrancer complies with the reconstruction obligations.

*Section 1.34 of Part II (Standard Terms and Conditions for Navajo Nation Economic Development Leases –Navajo Nation Land Trust) is hereby deleted in its entirety and restated as follows:*

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation; provided, however, Lessor may provide, in a separate written agreement, a limited wavier of sovereign immunity in accordance with the Navajo Nation's Sovereign Immunity Act to allow an Approved Encumbrancer or its assignee to enforce this Lease in Navajo Court against Lessor.

Modification Fee: \$100.00

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

[SIGNATURE PAGE FOLLOWS]



Modification Fee: \$100.00

NAVAJO TRIBAL UTILITY AUTHORITY, LESSEE

By: \_\_\_\_\_

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

THE NAVAJO NATION, LESSOR

By: \_\_\_\_\_  
President

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

Approved by Navajo Nation Department of Justice:

By: \_\_\_\_\_

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



## Navajo Nation DED INTEROFFICE ROUTING SLIP

December 16, 2016

**TO :** Alton Shepherd, Navajo Nation Council Delegate  
Navajo Nation Council

: Heather Clah, Legal Counsel, NTUA

**FROM:** Sharlene Begay-Platero, Project Development Department/DED

A handwritten signature in dark ink, appearing to be "SBP", is written over the "FROM:" line.

**SUBJECT:** Copy of 164 Doc #7076, Mod #4 BSL# FD-03-219  
(NTUA Headquarters Lease)

**COMMENTS:** Your copy. This is at President's office for surname.....SBP

Document No. 007076Date Issued: 11/22/2016**EXECUTIVE OFFICIAL REVIEW**Title of Document: Modification #4 for BSL#FD-03-219 Contact Name: BEGAY-PLATERO, SHARLENE R.Program/Division: DIV. OF ECONOMIC DEVELOPMENTEmail: srp@navajoadvantage.comPhone Number: (505) 905-6414☒ **Business Site Lease**1. Division: DBM Date: 11-22-162. Office of the Controller: N/A Date: 

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

3. Office of the Attorney General: LR Date: 12/9/164. OPVP Date mr 12-16-16Sufficient ☒ Insufficient ☐☐ **Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions**1. Division:  Date: 2. Office of the Attorney General:  Date: ☐ **Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications**1. Office of Management and Budget:  Date: 2. Office of the Controller:  Date: 3. Office of the Attorney General:  Date: ☐ **Navajo Housing Authority Request for Release of Funds**1. NNEPA:  Date: 2. Office of the Attorney General:  Date: ☐ **Lease Purchase Agreements**1. Office of the Controller:  Date: 

(recommendation only)

2. Office of the Attorney General:  Date: ☐ **Grant Applications**1. Office of Management and Budget:  Date: 2. Office of the Controller:  Date: 3. Office of the Attorney General:  Date: ☐ **Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval**1. Division:  Date: 2. Office of the Attorney General:  Date: ☐ **Relinquishment of Navajo Membership**1. Land Department:  Date: 2. Elections:  Date: 3. Office of the Attorney General:  Date: