

**RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
Of the 23rd Navajo Nation Council---First Year 2015**

**AN ACTION
RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE ASSIGNMENT
OF BUSINESS SITE LEASE FD-99-192 FROM RICHARD BOWMAN TO RICHARD
BOWMAN AND VIRGINIA BOWMAN IN TENANCY BY ENTIRETY**

BE IT ENACTED:

Section One. Findings

A. Pursuant to 2 N.N.C. §§ 500, the Resources and Development Committee is hereby established as a standing committee of the Navajo Nation Council.

B. Pursuant to 2 N.N.C. §501 (B)(2)(a), the Resources and Development Committee grants final approval for all non-mineral leases including modifications and assignments.

C. By letter dated January 23, 2015, Richard Bowman lessee of Business Site Lease FD-99-192 requests that Virginia Bowman's name be added as lessee to his business site lease. Mr. Bowman's letter is attached as Exhibit C and Ms. Sally A. Yabeny, Regional Business Development Office letter is attached as Exhibit D.

D. Richard Bowman's original Business Site Lease is attached as Exhibit A.

Section Two. Approval

The Navajo Nation hereby approves the assignment of FD-99-192 from Richard Bowman to Richard Bowman and Virginia Bowman in Tenancy by Entirety as attached hereto as Exhibit B.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at Navajo Nation Council Chambers, Window Rock, (Navajo Nation) Arizona, at which quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, 0 abstained this 13th day of October, 2015.



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

Motion: Honorable Leonard Pete
Second: Honorable Davis Filfred



LEASE NUMBER: FD-99-192
LEASE FEE: \$55.00

LEASE

THIS LEASE, in sextuplicate, is made and entered into this 4th day of May, 1998, by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is Post Office Box 308, Window Rock, Navajo Nation (Arizona) 86515, and RICHARD BOWMAN, hereinafter called the Lessee, whose address is P.O. Box Mexican Springs, NM 87320, in accordance with the provisions of 25 U.S.C. Sections 415 and 635, as implemented by the regulations contained in 25 CFR Part 162, and any amendments thereto relative to business leases on restricted lands which by this reference are made a part hereof.

1. DEFINITIONS

- A. ~~"Secretary" means the Secretary of the Interior or his authorized representative, delegate, or successor."~~
- B. "Gross Receipts" means all income, including money and any other thing 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 from or on the leased premises or any portion thereof. All income accruing from credit transactions shall be treated as "gross receipts" as of the date credit is extended. Gross Receipts shall not include amounts collected and paid out for a sales or excise tax imposed by any duly constituted governmental authority where such tax is billed to the purchaser as a separate item. Any taxes paid by the Lessee as part of the cost of merchandise purchased by the Lessee are not to be excluded or deducted. It shall not include credits for the exchange of goods or merchandise between stores, if any, of Lessee or its affiliates where such exchange is made solely for the convenient operation of 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.
- C. "Regulated Substance" is as defined at 42 U.S.C. 6991(2), which is any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1990 (42 U.S.C. 9601(14)) (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. 6921 et seq.) and, petroleum.
- 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.

E. Federal Laws:

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

2. LAND DESCRIPTION

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

A tract of land within the Navajo Reservation in the State of New Mexico, and appurtenances thereto, and more particularly described as follows:

A parcel of land situated in Land Management District No. 14 of the Navajo Indian Reservation at Tohatchi, McKinley County, New Mexico, being more particularly described as follows:

Commence at Navajo Control System Brass Cap H V-1; Thence run South 84° 45' 10" West, 1,195.02 feet to the Westerly line of U.S. Highway 666 and the point of beginning of the herein described parcel of land; Thence on last said line, South 12° 05' 00" West, 200.00 feet; Thence North 77° 55' 00" West, 100.00 feet; Thence North 12° 05' 00" East, 200.00 feet; Thence South 77° 55' 00" East, 100.00 feet to the point of beginning; being 0.46 acres, more or less, in area.

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

3. PURPOSE, UNLAWFUL USES

Lessee shall develop, use and operate the leased premises for the following purposes only: Sale of General Merchandise, Fast food Items, Gasoline and Operation of a Convenience Store. The leased premise shall not be used by Lessee, Sublessee(s) or Assignee(s) for any purpose or purposes other than those set out above, except with the prior ~~written consent of Lessor and the Secretary~~ which consent may be withheld, granted, or granted upon conditions, in the ~~sole discretion of Lessor and the Secretary~~

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

4. TERM

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

5. CONDITION OF LEASED PREMISES

Lessee has performed an independent investigation of the leased premises and knows the leased premises and improvements thereon and accepts the same as-is. No representations as to the condition of the leased premises have been made by Lessor, any agent of Lessor or the United States prior to or at the time of execution of this Lease and Lessee warrants that it has not relied on any warranty or representation made by or for Lessor or the United States, but solely upon Lessee's independent investigation.

The independent investigation shall include an environmental site assessment which provides the Lessee with knowledge of the environmental status of the leased premises, including the status of the storage tanks and/or other regulated substances.

6. RENTAL

The Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America to the Controller of the Navajo Nation, for the use and benefit of the Lessor, the greater of the following amounts as annual rental hereunder:

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

The rental rates, which Lessee shall pay to Lessor, will be adjusted to reflect the Percentage of Navajo Ownership at the site, according to the following formula:

Rentals at this site, if operated by a non-Navajo-owner will be structured as follows:

Three and one-quarter percent (3 1/4%) of gross receipts on grocery and non-gasoline convenience store items sold from the lease site, and the greater of the following measures, per gallon, for all gallons of gasoline sold: ten percent (10%) of the Average Monthly Gross Margin, which is defined for this purpose as being the Total Gasoline Margin (being the gross retail sales income from the sale of gasoline, less the sum of the cost of the gasoline sold, plus freight costs, and any applicable taxes) divided by the Number of Gallons of Gasoline sold; or two (2) cents per gallon (both to be adjusted annually (up or down) by a percentage equal to one-half (1/2) of the annual change in the published Consumer Price Index or its then existing equivalent if such Consumer Price Index is no longer published.)

If the business operated at the site is sold to or operated by a Navajo owner or an entity in which Navajo Indians have ownership, the rental rates set forth above will be adjusted based on the Percentage of Navajo Ownership. The otherwise applicable rent for both the gasoline and the grocery/non-gasoline convenience store items will be adjusted to reflect the Percentage of Navajo Ownership at the site, according to the following formula:

- (1) If the Percentage of Navajo Ownership reaches 10%, then the otherwise applicable rent (calculated without any adjustment) shall be reduced in total by 7.7%;
- (2) If the Percentage of Navajo Ownership reaches 20%, then the otherwise applicable rent (calculated without any adjustment) shall be reduced in total by 15.4%;
- (3) If the Percentage of Navajo Ownership reaches 30%, then the otherwise applicable rent (calculated without any adjustment) shall be reduced in total by 23.1%;
- (4) If the Percentage of Navajo Ownership reaches 40%, then the otherwise applicable rent (calculated without any adjustment) shall be reduced in total by 30.8%;
- (5) If the Percentage of Navajo Ownership reaches 51%, then the otherwise applicable rent (calculated without any adjustment) shall be reduced in total by the maximum reduction of 46.2%.

Any rent adjustment pursuant to these provisions shall be effective the month following satisfactory ~~demonstration to The Navajo Nation and The Secretary of the Interior~~ that a qualifying Percentage of Navajo Ownership has been reached.

Any percentage or minimum rental paid to the Navajo Nation by a sublessee shall be credited against the rental obligations of Lessee called for herein.

Notwithstanding the provisions herein contained, the rentals herein set forth shall not be subject to renegotiation because of the sublease entered into contemporaneous with the issuance of this Lease.

(b) The sum of \$2,500.00 as a Guaranteed Minimum Annual Rental (GMAR) hereunder.

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

The Lessee must make monthly rental payments in advance equal to at least one-twelfth of the aforementioned minimum annual rental not later than the tenth (10th) day after the first day of the month for which the rental is due. Lessee may elect to pay monthly rental in an amount based on the percentage rental rate on the month's gross receipts; however, no payment shall be less than one-twelfth of the minimum rental. Monthly payments based on the percentage rental rate on gross receipts shall be paid not later than the tenth (10th) day after the end of the month for which the rental is due. All rental shall be deposited with the Controller of the Navajo Nation. When the annual accounting required by Section 7 of this Lease is completed, the Lessee shall pay any balance due on any percentage rental, or if there is overpayment, the overpayment shall be credited toward future rents.

Rental unpaid ten (10) days after the due date shall bear interest at five percent (5%) per annum, in excess of the prime rate of interest as published by the Wall Street Journal, from the date it becomes due until paid, but this provision shall not be construed to relieve the Lessee from any default in making any rental payment at that time and in the manner herein specified. The rents called for hereunder shall be paid without prior notice or demand.

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

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

7. ACCOUNTING

The Lessee shall, not later than April 15, of each successive calendar year or fraction thereof following the date the term of this Lease begins, ~~submit to Lessor and the Secretary~~ individually, certified statements of gross receipts. Failure to submit aforementioned statements on a timely basis shall be considered a breach of the Lease and the Lease may be subject to cancellation. With said statements, Lessee shall tender payment of any balance due for the preceding calendar year under the percentage rental fee as set forth in Section 6 above. Said statement shall be prepared by a Certified Public Accountant, licensed in the State of Arizona, New Mexico, or Utah, in conformity with standard accounting procedures.

Any duly authorized representative of the United States Government or any qualified accounting agent or agents appointed by the Lessor, shall have access to and the right to examine and audit any pertinent books, documents, papers, and records of the Lessee and the Lessee's tenants, if any, relating to this Lease during the normal business hours of any working day. Lessee shall insert a similar provision in all subleases and shall make available to said representative, agent, or agents, all books and records of Lessee's tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises. ~~Any discrepancy by the Lessor or the Secretary of any monies paid to~~

~~the Lessor or the Secretary by Lessee~~ as percentage rental for the leased premises as shown by any statement furnished by Lessee shall not be an admission of the accuracy of said statement, or of the sufficiency of the amount of said percentage rental payment, but the ~~Lessor or the Secretary shall be entitled~~ at any time within four (4) years after receipt of any such percentage rental payment to question the sufficiency of the amount thereof and/or the accuracy of the statements furnished by Lessee to justify same and shall have the right to examine and/or audit as hereinbefore described. Therefore, Lessee shall for said period of four (4) years after ~~submitting 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.

8. IMPROVEMENTS

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 its original state upon termination of this Lease. The term "removable personal property" as used in this Section shall not include property which normally would be attached or affixed to the buildings, improvements or land in such a way that it would become a part of the realty, regardless of whether such property is in fact so placed in or on or affixed to the buildings, improvements or land in such a way as to legally retain the characteristics of personal property. Lessee shall remove all removable personal property and trade fixtures prior to termination of this Lease. Should Lessee fail to remove said personal property and trade fixtures prior to termination of this Lease, said property shall thereupon become property of Lessor, and may be disposed of in any manner by Lessor.

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

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

Prior to termination of the Lease and prior to vacation of the property the Lessee shall remove any of the improvements subject to removal as described above, and below, assess the site for potential contamination, remediate any contamination discovered, and satisfy or actively and in good faith seek resolution of any third party damages which may have occurred. Should any of the above activities extend past the termination date of the Lease, the Lease shall be extended pursuant to Section 32 and Lessee shall remain financially responsible for completing these activities. The bond or insurance required to be posted under Section 22 of this Lease shall not be released or terminated until these activities are completed.

Separate and apart from the above stated property removal obligations and prerogatives, upon notice from Lessor within a reasonable period after expiration of the Lease, Lessee shall remove all improvements from the leased premises named in Lessor's request or shall restore all or part of the premises to its original condition, as designated in Lessor's notice.

9. [INTENTIONALLY OMITTED]
10. [INTENTIONALLY OMITTED]
11. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION

All improvements placed on the leased premises shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings visible to the public or from adjacent properties shall present a pleasant appearance as determined by Lessor and all service areas shall be screened from public view to the satisfaction of Lessor. Lessee shall, at all times during the term of this Lease and at Lessee's sole cost and expense, maintain the premises and all improvements thereon and any alterations, additions, or appurtenances thereto, in good order and repair and in a safe, sanitary, neat and attractive condition, and shall otherwise comply with all laws, ordinances

and regulations applicable to said premises. Lessee shall have the right during the term of this Lease to make limited alterations, additions or repairs to improvements on the premises in an amount not to exceed \$1,000.00 per year. Alterations, additions or repairs in excess of the above amount or any removal or demolition of an improvement shall not be made without the prior written approval of Lessor. Lessee shall indemnify and hold harmless the Lessor and the United States Government against liability for all claims arising from Lessee's failure to maintain said premises and the improvements thereon as hereinabove provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

12. RENTAL AND PERFORMANCE BOND

Upon approval of this Lease by the Secretary, Lessee agrees to post a corporate surety bond or other security acceptable to Lessor and the Secretary in a penal sum of \$10,000.00, 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.

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

13. CONSTRUCTION BOND

At Lessor's option, prior to the commencement of construction of any improvement on the leasehold premises, the Lessee will cause his construction contractor to post a construction bond in favor of Lessor and Lessee. If the construction contractor cannot post such a bond, the Lessee shall post the construction bond. The purpose of the construction bond is to guarantee the completion of the improvements and payment in full of valid claims of all persons for work performed in or materials furnished for construction of the improvements. The construction contractor or the Lessee may provide security by either:

- A. Posting a corporate surety bond in an amount equal to the cost of each improvement, said bond to be deposited with the Secretary and to remain in effect until the improvement is satisfactorily completed. Said bond shall be conditioned upon faithful performance by Lessee or his construction contractor and shall give all claimants a right of action to recover upon said bond in any suit brought to foreclose on any mechanic's or materialmen's liens against the property. If United States Treasury Bonds are provided, Lessee or his construction contractor agrees to make up any deficiency in the value deposited that might occur due to a decrease in the value of the bonds. Interest on said bonds shall be paid to Lessee.
- B. Depositing in escrow with the Secretary or an institution acceptable to the Secretary and Lessor, negotiable United States Treasury Bonds, or cash, or furnishing a non-revocable letter of credit in favor of Lessor and Secretary in an amount sufficient

to pay the entire cost of construction of each building or other improvement then to be erected on the premises. If United States Treasury Bonds are provided, Lessee or his construction contractor shall make up any deficiency of the value deposited that might occur due to a decrease in the value of said bonds. Interest on said bonds shall be paid to Lessee or his construction contractor. The funds so deposited may then be used, at the option of Lessor and the Secretary, to discharge any valid mechanic's or materialmen's liens; if no such liens exist, the withheld funds shall be disbursed to Lessee or his construction contractor.

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

14. SUBLEASE, ASSIGNMENT, MANAGEMENT AGREEMENT, TRANSFER

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 the Secretary~~ approval of Lessor, the Secretary and the Secretary, if any, and no such sublease, assignment, sale, amendment or transfer shall be valid or binding without such approval, and then only upon the condition that the Sublessee, assignee or other successor in interest, excepting an approved encumbrancer, shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make any such sublease, assignment, sale, amendment, or transfer, except as aforesaid, such action shall be deemed a breach of this Lease, excepting that an encumbrancer, as herein set forth, may enforce his rights in the manner hereinafter provided. Approval of one sublease, assignment, sale, amendment or transfer shall not validate a subsequent sublease, assignment, sale, amendment or transfer, and the restrictions of this Section shall apply to each successive sublease, assignment, sale, amendment or transfer hereunder and shall be severally binding upon each and every Sublessee, assignee, transferee and other successor in interest of the Lessee, excepting an encumbrancer.

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

Approval or disapproval of any sublease, assignment, management agreement, or transfer, for any purpose whatsoever, by the Lessee shall not be unreasonably withheld by Lessor. Lessor shall have forty-five (45) days after receiving all required documentation for any sublease, assignment, management agreement, or transfer in which to approve or disapprove the same. If Lessor fails to approve or disapprove any sublease, assignment, management agreement, or transfer within forty-five (45) days after receiving all required documentation, the same shall be deemed to have been approved by Lessor. Approval of any sublease, assignment, management agreement, or transfer is ~~subject to the approval of the Secretary~~ subject to the approval of the Secretary. Lessor reserves the right to adjust the rental provisions of this Lease upon any sublease,

assignment or transfer.

15. ENCUMBRANCE

This Lease, or any right to or interest in this Lease or any of the improvements on the leased premises, may not be encumbered without the ~~written approval of the Lessor, the Secretary,~~ and sureties and no such encumbrance shall be valid without said approval, except that such encumbrances required to complete construction of the improvements called for pursuant to the terms and conditions of the Settlement Agreement entered into between the Navajo Nation and Thriftway Marketing Corp. on the 21st day of August, 1997 are specifically authorized and approved upon execution of this document, without the ~~written approval of the Lessor and the Secretary.~~

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 analyses pertinent to the ~~encumbrance that the Lessor and the Secretary may deem~~ necessary to justify the amount, purpose and terms of said encumbrance.

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

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

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

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

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

In the event Lessee or Lessor does not avail himself 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, and provided further that the assignee is subject to the normal regulatory approval of the Navajo Nation and the Bureau of Indian Affairs. If the encumbrancer is the purchaser, it shall be required to perform the sublease only so long as it retains title thereto. If a sale under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, ~~approval by Lessor and the Secretary~~ of any assignment will be required and said purchaser, as successor in interest to the Sublessee, shall be bound by all the terms and conditions of the sublease and will assume in writing all the obligations thereunder.

2. In the event of default by the Lessee of the terms of an approved encumbrance, the encumbrancer may exercise any rights provided in such approved encumbrance, provided that before any sale of the leasehold, whether under power of sale or foreclosure, the encumbrancer ~~shall give to Lessor and the Secretary~~ notice of the same character and duration as is required to be given Lessee by such encumbrance and/or by applicable law. If notice of such sale be given, and the defaults of any of them upon which notice of sale is based shall then continue, Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:
 - (a) To pay to the encumbrancer the full unpaid principal amount of the approved encumbrance plus unpaid interest accrued to the date of such payment, plus sale costs incurred to the date of such payment.
 - (b) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be ~~approved by the Secretary~~, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution, plus 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.

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.

P7
In the event Lessor does not avail himself of the rights set forth in this Section and any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Lessee in the leasehold estate covered by said approved encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may sell and assign the leasehold interest without any further consent, provided that the assignee shall agree in writing to be bound by all the terms and conditions of this Lease. If the encumbrancer is the purchaser, it shall be required to perform this Lease only so long as it retains title thereto. If a sale under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, ~~approval by Lessor and the Secretary~~ of any assignment will be required and said purchaser, as successor in interest to the Lessee, shall be bound by all the terms and conditions of this Lease and will assume in writing all the obligations thereunder.

16. LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES

Lessee shall not permit to be enforced against the leased premises or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by Lessee. Lessee shall discharge all such liens before any action is brought to enforce same; further, Lessee shall pay before becoming delinquent, all taxes, assessments, licenses, fees, and other like charges levied during the term of this Lease upon or against the leased land and all interests therein and property thereon, for which either Lessee or Lessor may become liable. Upon request Lessee ~~shall furnish Lessor and the Secretary~~ written evidence duly certified that any and all taxes required to be paid by Lessee have been paid, satisfied, or otherwise discharged. Lessee shall have the right to contest any claim, asserted tax, or assessment against the property, by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and ~~hold harmless Lessor, the Secretary,~~ and the leased premises and all interest therein and improvements thereon from any and all claims, taxes, assessments, and like charges and from any lien therefor, or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessor shall execute and file any appropriate documents with reference to real estate tax exemption of the land when requested by Lessee. In addition to the rents, taxes and other charges herein described, Lessee shall pay charges for water, sewage, gas, electricity, telephone, and other utility services supplied to said premises.

17. LESSOR'S PAYING CLAIMS

Lessor shall have the option to pay any lien or charge payable by Lessee under this Lease, or settle any action therefor, if the Lessee after ~~written notice from the Lessor or Secretary~~ fails to pay or to post bond against enforcement. All costs and other expenses incurred by Lessor in so doing shall be paid to Lessor by Lessee on demand, with interest at the rate of five percent (5%) per annum in excess of the prime rate of interest as published by the Wall Street Journal from the date of Lessor's payment until repayment is made. Failure to make such repayment on demand shall constitute a breach of this Lease.

18. SANITATION

Lessee hereby agrees to comply with all applicable sanitation codes, requirements, or laws

which may be related to the purpose of this document as set forth in Section 3 hereinabove. Such compliance shall specifically include, but not be limited to, the sanitary regulations of the U.S. Public Health Service. Lessee further agrees to at all times maintain the entire premises in a safe, sanitary condition, presenting a good appearance both inside and out in all buildings operated on the leased premises.

Lessee agrees to comply with applicable federal, state, Navajo Nation and local laws, statutes, ordinances and regulations, court and administrative orders and 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.

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.

19. REGULATED SUBSTANCES

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

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
P. O. Box 339
Window Rock, Arizona 86515

and,

Risk Management Department
P.O. Box 1690
Window Rock, Az. 86515

or their respective institutional successors.

20. PUBLIC LIABILITY INSURANCE

At all times during the term of this Lease, Lessee shall carry a public liability insurance policy in the amount of \$1,000,000.00 for personal injury to one person and \$1,000,000.00 per occurrence, and \$1,000,000.00 for property damage. Said policy shall be obtained from a reliable insurance company licensed to do business in the State in which the leased premises are located and shall be written jointly to protect Lessee, Lessor and the United States of America and shall provide for notification to Lessor prior to any cancellation or non-renewal of said policy for any reason including non-payment of premiums. A copy of said policy shall be furnished Lessor and the Secretary. There shall be a periodic review, at not less than five (5) year intervals, of all insurance policies and coverage amounts held under this Lease. The review shall give consideration to the economic conditions at the time and may result in adjustment of the type of insurance coverage or the amounts of any coverage whenever, in the discretion of Lessor, such adjustment is necessary for the protection of Lessor or the United States. Neither Lessor nor the United States Government, nor their officers, agents or employees, shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Lessee or any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure existing or erected thereon, or arising from any accident, fire, or from any other casualty on said premises or from any other cause whatsoever and Lessee, as a material part of the consideration for this Lease, hereby waives on Lessee's behalf all claims against Lessor and the United States Government and agrees to hold Lessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death arising from the condition of the premises or use of the premises by Lessee, together with all costs and expenses in connection therewith.

21. FIRE AND DAMAGE INSURANCE

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

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

In the event of damage to the extent of seventy-five (75%) or more of the total value of all improvements on the leased premises during the last five (5) years of the term of this Lease, Lessee shall have the option to reconstruct said improvements. Lessee shall provide Lessor with a written notice of the exercise of Lessee's reconstruction option within thirty (30) days of the event of damage giving rise to Lessee's reconstruction option. Should Lessee exercise its option to reconstruct, Lessee shall commence reconstruction of the damaged improvements within ninety (90) days of Lessee's exercise of its reconstruction option and shall diligently pursue the reconstruction to completion. Should Lessee not exercise its option to reconstruct, this Lease shall terminate one hundred and twenty (120) days after the event of damage giving rise to Lessee's reconstruction option. The leased premises shall be cleared of debris at Lessee's expense prior to termination of the Lease. Lessee shall not be charged rent during the period of debris removal unless Lessee occupies the leased premises beyond the Lease termination date, after which the Lessee will be charged hold over rental as provided in Section 32. In the event Lessee does not reconstruct, all insurance proceeds shall be paid to Lessor.

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

22. FINANCIAL RESPONSIBILITY FOR STORAGE TANKS

If the 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 above-ground or underground storage tank. Lessee shall provide proof of this bond, insurance or other qualifying financial responsibility mechanism to the Risk Management Department of the Navajo Nation 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 laws and regulations, or that the tanks have been removed and the site has been remediated, or that the base lease or sublease has been transferred and the new operator has provided proof of an adequate bond, insurance, or otherwise satisfied the 40 C.F.R. Part 280 subpart H financial responsibility requirements. It shall be the responsibility of the Lessee 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.

23. EMINENT DOMAIN

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

24. DEFAULT

Time is declared to be of the essence of this Lease. Should Lessee default in any payment of monies when due, fail to post bond or be in violation of any other provision of this Lease, said violation may be acted upon by the Lessor in accordance with Title 25, Chapter 1, Section 15211 of the Code of Regulations or any amendments thereto. In addition to the rights and remedies provided by the aforementioned regulations, the Lessor or the Secretary may exercise the following options upon Lessee's default;

- A. Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease, or
- B. Re-enter the premises and remove all persons and property therefrom, excluding the property belonging to authorized Sublessees, and re-let the premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to terminate the Lease thereafter, and without invalidating any right of Lessor and the Secretary or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor who shall have the right to alter and repair the premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering, and repairing, including attorney's fees and any real estate commission actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor or the Secretary may sue thereafter as each monthly deficiency shall arise; or

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

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

Exercise of any of the remedies outlined in this Section shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor or the Secretary, or any other rights or remedies now held or which may be held by Lessor in the future.

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

25. ATTORNEY'S FEES

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

26. NO PARTNERSHIP

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

27. TERMINATION OF FEDERAL TRUST

Nothing contained in this Lease shall operate to delay or prevent a termination of Federal Trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of this Lease; however, such termination shall not serve to abrogate the Lease. The owners of the land and Lessee and their surety or sureties shall be notified of any such change in the status of the land.

28. OBLIGATIONS OF LESSEE

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

29. STATUS OF SUBLEASES

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

30. PAYMENTS AND NOTICES

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

31. INSPECTION

~~The Secretary and Lessor~~ and their authorized representatives shall have the right, at any reasonable time during the term of this Lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon 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.

32. HOLDING OVER AND LEASE EXTENSION FOR REMEDIATION

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

If at the expiration of the term of the Lease, or the expiration of any extension of the term of the Lease, Lessee has not completed all removal and remediation required by this Lease and applicable law, the term of this Lease shall automatically be extended until the phase two audit required by this Lease to be performed during the last year of the term of this Lease and any required removal and remediation is completed. Extension of the Lease pursuant to this paragraph does not extend Lessee's right to occupy the premises for purposes of conducting the business activities described in the provision entitled "purpose, unlawful uses" of the Lease. Rather, extension of the Lease pursuant to this paragraph gives the Lessee or Lessee's agents the right to occupy the leased premises solely for the purposes of performing any necessary environmental audit(s) and any necessary remediation. During any extension of the Lease term pursuant to this paragraph Lessee shall pay rent at the rate at which rent obligations accrued during the last twelve months of the Lease's term. Lessor may, at its discretion, cancel the Lease extension set forth in this article with or without cause.

33. DELIVERY OF PREMISES

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

34. NAVAJO PREFERENCE

In connection with all employment and contracting opportunities arising out of Lessee's activities under this Lease, Lessee shall give preference in employment and contracting to Navajo individuals and certified contractors in compliance with the Navajo Preference in Employment Act, 15 NTC Section 601 et seq. ("NPEA"), and the Navajo Nation Business Preference Law, 5 NTC Section 201 et seq. ("NNBPL"). The terms and provisions of the NPEA and NNBPL are specifically incorporated in, and become a part of this Lease. Violation of such laws by the Lessee shall constitute a breach of this Lease and provide grounds for suspension or termination of the Lease or any other remedy prescribed by the NPEA and NNBPL.

35. MINERALS

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

36. LEASE BINDING

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

37. INTEREST OF MEMBER OF CONGRESS

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

38. VALIDITY

This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party hereto ~~and approved by the Secretary~~

39. ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS

- A. Entry Audit: Due to the presence of petroleum storage tanks at the Lease site, the Lessee agrees to permit Thriftway Marketing Corp., the prior Lessee or operator of the Lease site, to perform a Phase Two Environmental Audit (hereinafter "EA") at the site pursuant to the terms and conditions of the Settlement Agreement entered into between the Navajo Nation and Thriftway Marketing Corp. on the 21st day of

August, 1997.

- B. Final Audit(s): The Lessee shall perform a final Phase Two Environmental Audit (hereinafter "Final EA") during the last year of the Lease. The Lessee shall notify the Risk Management Department of the Navajo Nation, or any institutional successor, of

the firm chosen to perform the Final EA prior to the performance of such audit. Lessor may accept or decline the choice of environmental auditor within twenty 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.

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.

40. 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.

41. JURISDICTION AND GOVERNING LAW

The laws of the Navajo Nation and applicable laws of the United States shall govern the construction, performance and enforcement of this Lease. Lessee, Lessee's employees, agents and successors in interest hereby consent to the jurisdiction of the courts of the Navajo Nation. Lessee agrees that any action or proceeding brought by Lessee against Lessor in connection with or arising out of the terms and provisions of this Lease shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by Lessee against Lessor in any court of the state in which the leased premises are located. Nothing herein shall prevent the Lessee's employees, agents and successors in interest from enjoying rights and privileges granted them by applicable federal law.

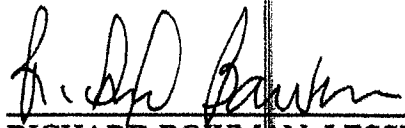
42. SOVEREIGN IMMUNITY

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

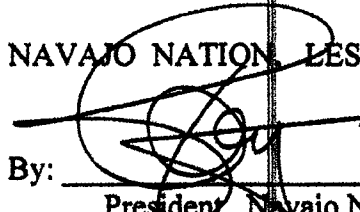
43. LEASE REQUIREMENTS NOT EXCLUSIVE

Nothing in this Lease shall be construed to relieve lessee of any obligation 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.

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


RICHARD BOWMAN, LESSEE
Date: 4/16/98

NAVAJO NATION, LESSOR


By: _____
President, Navajo Nation
Date: MAY - 4 1998

Pursuant to Secretarial Redelelegation Order 209DM8,
Secretary's Order Nos. 3150 and 3177, and
10BIAM Bulletin 13, as amended.

By: GENNI DENETSONE
Navajo Area Director
BUREAU OF INDIAN AFFAIRS

Date: MAR 12 1999

ACTING

Name of Assignor(s):
Richard Bowman
Address of Assignor(s):
Post Office Box
Gallup, New Mexico 87305

Name of Assignee(s):
Virginia Bowman and Richard Bowman as Tenancy by Entirety
Address of Assignee(s):
Post Office Box
Gallup, New Mexico 87305

Date of Lease being Assigned: February 19, 2015

DESCRIPTION OF PREMISES
(Must agree exactly with description appearing in Lease)

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

A tract of land within the Navajo Reservation in the State of New Mexico, and appurtenances thereto, and more particularly described as follows:

A parcel of land situated in Land Management District No. 14 of the Navajo Indian Reservation at Tohatchi, McKinley County, New Mexico, being more particularly described as follows:

Commence at Navajo Control System Brass Cap H V-1; Thence run South 84° 45' 10" West, 1,195.02 feet to the Westerly line of U.S. Highway 666 and the point of beginning of the herein described parcel of land; Thence on last said line, South 12° 05' 00" West, 200.00 feet; Thence North 77° 55' 00" West, 100.00 feet; Thence North 12° 05' 00" East 200.00 feet; Thence South 77° 55' 00" East, 100.00 feet to the point of beginning, being 0.46 acres, more or less, in area.

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

The above assignment and assumption are hereby approved.

NAVAJO NATION, LESSOR

By: President of the Navajo Nation

Date: _____

Date: _____
Approved Pursuant to Secretarial Delegation
Order 209 DM 8, Secretary's Order Nos. 3150
and 3177 and 10 BIAM Bulletin 13, as amended

By: _____
Regional Director, _____ Region
BUREAU OF INDIAN AFFAIRS

ASSIGNMENT OF BUSINESS SITE LEASE
NAVAJO NATION

KNOW ALL MEN BY THESE PRESENT, that we, the Assignors and named below, in consideration of \$1.00 to us in hand paid by the Assignee below, hereby assign to the said Assignee that certain Navajo Nation Business Site Lease describe below TO HAVE AND TO HOLD the same unto the Assignee from and after the date of approval of this Assignment by the President of the Navajo Nation for portion of the term mentioned in said lease, together with all the rights therein granted. It is understood and agreed that this assignment shall be null and void if disapproved by the Navajo Nation.

DATED this 19 day of Feb, 2015.

R. D. Beshen

ASSIGNOR(S)

NOTE: IF ASSIGNOR IS MARRIED, BOTH HUSBAND AND WIFE SHOULD SIGN.

STATE OF New Mexico)
) ss.
COUNTY OF Mekinley)

This instrument was acknowledged before me this 19 day of Feb, 2015,
by Verlyne Herrera.

In witness whereof, I have hereunto set my hand and seal.

Verlyne Herrera
Notary Public

MY COMMISSION EXPIRES:

3/23/2015

ASSUMPTION OF LEASE

I, the Assignee named below, for in consideration of the approval of the above Assignment by the Navajo Nation, Lessor, acting by and through its duly authorized agents, hereby assume and agree to pay and be bound by all the rents, covenants, terms, and conditions of that certain Navajo Nation Business Site Lease described below, to the same extent as if I were the Lessee originally named therein. I understand and agree that this assumption shall be null and void if the above Assignment is disapproved by the President of the Navajo Nation but otherwise shall be of full force and effect irrevocable by me.

DATED this 19 day of Feb, 2015.

Verlyne Herrera
ASSIGNEE(S)

STATE OF New Mexico)
) ss.
COUNTY OF Mekinley)

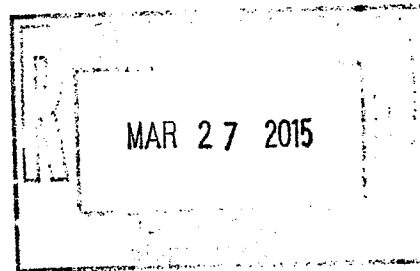
This instrument was acknowledged before me this 19 day of Feb, 2015,
by Verlyne Herrera.

In witness whereof, I have hereunto set my hand and seal.

Verlyne Herrera
Notary Public

MY COMMISSION EXPIRES:

3/23/2015



January 23, 2015

Sally Yabeny

Regional Business Development Office

Shiprock, New Mexico 84720

Dear Sally Yabeny

Please accept this letter a formal request to add the name of Virginia Bowman to my business site lease. This Lease is for the business which is located on the Navajo Reservation in the State of New Mexico in Tohatchi, McKinley County.

Should you have any questions or need additional information you may contact me at (505) 879-2400.

Sincerely,


Richard Bowman



THE NAVAJO NATION

RUSSELL BEGAYE
JONATHAN NEZ

PRE
VIC



August 17, 2015

Mr. Ben Bennett
Council Delegate
Fort Defiance Agency
Fort Defiance, AZ

Dear Honorable Bennett,

Our office is respectfully requesting your assistance in sponsoring the attached Document #004050, BIA Lease No. FD-99-192; Lease Modification for Assignment. By letter Mr. Richard Bowman requested to add Virginia Bowman (wife) to his Lease as Tenancy by the Entirety with the rights of survivorship.

Document #004050 has gone thru the executive review process and deemed sufficient by the reviewers and is ready to be submitted for RDC agenda after it completes the 5-day review process. If you have any questions, feel free to contact our office at (505) 368-1315. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Sally A. Yabeny".

Sally A. Yabeny
Senior EDS

Attachment – Document #004050

xc: Correspondence Log, SR-15-193
File Folder

EXECUTIVE SUMMARY

(BUSINESS SITE LEASE ASSIGNMENT)

This Legislation is to approve the Assignment of Business Site Lease No FD-99-192 (BIA Lease) from Richard Bowman to Richard Bowman and Virginia Bowman as Tenancy by the Entirety with the rights of survivorship. Richard Bowman is in compliance with all necessary clearances and approvals required by the Navajo Nation and the Bureau of Indian Affairs.

Regional Business Development Office is respectfully requesting approval of the Assignment for Business Site Lease No. FD-99-192 by the Resource and Development Committee of the 23rd Navajo Nation Council.

Assignment of
Business Site Lease No. FD-99-192
From: Richard Bowman to Richard Bowman and Virginia Bowman
As Tenancy by the Entirety with the rights of survivorship.

SUPPORTING DOCUMENTS

1. Executive Summary
2. Letter requesting Assignment
(Richard Bowman)
3. Business Site Lease No. FD-99-192
4. Procurement Clearance:
 - a. Navajo Nation Accounts Receivable

Tenancy by the Entirety legal definition of Tenancy by the Entirety

<http://legal-dictionary.thefreedictionary.com/Tenancy+by+the+Entirety>

Tenancy by the Entirety

Also found in: Dictionary/thesaurus, Financial, Acronyms, Encyclopedia, Wikipedia.

Tenancy by the Entirety

A type of concurrent estate in real property held by a Husband and Wife whereby each owns the undivided whole of the property, coupled with the Right of Survivorship, so that upon the death of one, the survivor is entitled to the decedent's share.

A **Tenancy by the Entirety** allows spouses to own property together as a single legal entity. Under a tenancy by the entirety, creditors of an individual spouse may not attach and sell the interest of a debtor spouse: only creditors of the couple may attach and sell the interest in the property owned by tenancy by the entirety.

There are three types of concurrent ownership, or ownership of property by two or more persons: tenancy by the entirety, **Joint Tenancy**, and **Tenancy in Common**. A tenancy by the entirety can be created only by married persons. A married couple may choose to create a joint tenancy or a tenancy in common. In most states a married couple is presumed to take title to property as tenants by the entirety, unless the deed or conveyancing document states otherwise.

The most important difference between a tenancy by the entirety and a joint tenancy or tenancy in common is that a tenant by the entirety may not sell or give away his interest in the property without the consent of the other tenant. Upon the death of one of the spouses, the deceased spouse's interest in the property devolves to the surviving spouse, and not to other heirs of the deceased spouse. This is called the right of survivorship.

Tenants in common do not have a right of survivorship. In a tenancy in common, persons may sell or give away their ownership interest. Joint tenants do have a right of survivorship, but a joint tenant may sell or give away her interest in the property. If a joint tenant sells her interest in a joint tenancy, the tenancy becomes a tenancy in common, and no tenant has a right of survivorship. A tenancy by the entirety cannot be reduced to a joint tenancy or tenancy in common by a conveyance of property. Generally, the couple must **Divorce**, obtain an **Annulment**, or agree to amend the title to the property to extinguish a tenancy by the entirety.

Further readings

Kurtz, Sheldon F., and Herbert Hovenkamp. 2003. *Cases and Materials on American Property Law*. 4th ed. St. Paul, Minn.: West.

West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.

tenancy by the entirety

n. joint ownership of title by husband and wife, in which both have the right to the entire property, and, upon the death of one, the other has title (right of survivorship). Tenancy by the entirety is used in many states and is analogous to "community property" in the seven states which recognize that type of property ownership. (See: **tenancy**, **community property**)

Copyright © 1981-2005 by Gerald N. Hill and Kathleen T. Hill. All Right reserved.

THE NAVAJO NATION



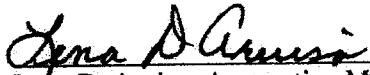
BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

May 4, 2015

MEMORANDUM

TO: Sally A. Yabeny, Senior EDS
Regional Business Development Office
Division of Economic Development

FROM:


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

SUBJECT: "Navajo Business and Procurement Act clearance check"

Pursuant to your memorandum dated April 13, 2015 (*Received in Account Receivable on 04/13/15 @ 3:00 p.m.*) seeking a procurement clearance check on the following individual/ Business is as follows:

Individual/ Business	Business/ Individual	Amount	Action
Richard Bowman Richard Bowman, Lessee	BSL# FD99-192 AB# n/a Post Office Box Gallup, NM 87305	\$ 0.00	Procurement cleared. This business site lease account is the base lease to BSL# FD99-192a.

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

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

mj

CC: Accounts Receivable File



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT

JONATHAN NEZ VICE PRESIDENT

June 16, 2015

MEMORANDUM

TO: Sally Yabeny, Senior EDS
Regional Business Development Office
Division of Economic Development

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

SUBJECT: "Navajo Business and Procurement Act clearance check"

Pursuant to your memorandum dated May 10, 2015 (*Received in Account Receivable on 06/12/15 @ 9:02 a.m.*) seeking a procurement clearance check on the following individual/ Business is as follows:

Name/ Address	BSL No / Store Location	A. R. Debt Due	Action
Virginia Bowman	Post Office Box Gallup, NM 87305	\$ 0.00	Procurement cleared

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

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

mj

CC: Accounts Receivable

Document No. 004050Date Issued: 05/27/2015**EXECUTIVE OFFICIAL REVIEW**Title of Document: Lease Assignment BSL No FD 99 192 Contact Name: YABENY, SALLY AProgram/Division: DIV. OF ECONOMIC DEVELOPMENTEmail: syabeny@frontiernet.net Phone Number: 5053681318☒ **Business Site Lease**

1. Division: _____

Date: 5-29-15Sufficient ☒ Insufficient ☐

2. Office of the Controller: _____

Date: 6-17-15Sufficient ☒ Insufficient ☐

(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: 8-4-15Sufficient ☒ 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: _____

☐ ☐

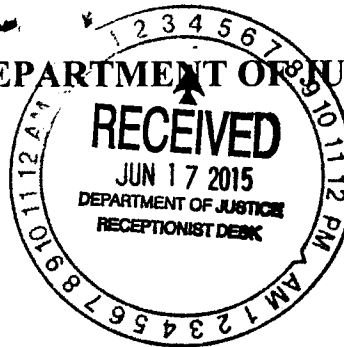
<input type="checkbox"/>	Land Withdrawal or Relinquishment for Commercial Purposes			Sufficient	Insufficient
1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
<input 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"/>	
<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"/>	
<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"/>	
<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"/>	
<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"/>	
<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"/>	



☐ RESUBMITTAL

NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ
06-17-15 334pm
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 004050
SAS #:
UNIT: ECDW

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

CLIENT TO COMPLETE

DATE OF REQUEST:	5/26/2015	DIVISION:	Division of Economic Development
CONTACT NAME:	Sally A. Yabeny	DEPARTMENT:	RBDO - Shiprock, NM
PHONE NUMBER:	505/368-1315	E-MAIL:	syabeny@frontiernet.net

TITLE OF DOCUMENT: *Lease Assignment from Richard Bowman, BSL No. FD-99-192 to Richard Bowman and Virginia Bowman as Tenancy by the Entirety with the rights of survivorship.*

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:	REVIEWING ATTORNEY/ADVOCATE:
6-17-15 4pm	Karis Begaye
DATE TIME OUT OF UNIT:	

DOJ ATTORNEY / ADVOCATE COMMENTS

Josely Sullivan

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
Karis Begaye	8/4/15 3:25pm	Red Ben	8-4-15 4:09p

DOJ Secretary Called: _____ for Document Pick Up on _____ at _____ By _____

PICKED UP BY: (Print)	DATE / TIME:
-----------------------	--------------

NNDJ/DRRF-July 2013

