

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

**AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE  
COLLATERAL ASSIGNMENT OF BUSINESS SITE LEASE TC-95-145 LESSEE MJ  
MIKE ENTERPRISE, INC.**

**BE IT ENACTED:**

**Section One. Authority**

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.

**Section Two. Findings**

A. The Western Regional Business Development Office through memorandum dated March 4, 2016 attached as Exhibit A requests legislation for approval of collateral assignment of the MJ Mike Enterprise, Inc., Lease No. TC-95-145.

B. MJ Mike Enterprise, Inc., Lease No. Tc-95-145 original Business Site Lease is attached as Exhibit C.

C. The MJ Mike Enterprise, Collateral Assignment of Lease is attached as Exhibit B.

D. The Navajo Business and Procurement Act clearance check from the Accounts Receivable Section, Office of the Controller, is attached as Exhibit D. The Credit Services Department, Office of the Controller, Procurement Clearance is attached as Exhibit E. The Business Regular Department Certificate of Good Standing is attached as Exhibit F.

**Section Three. Approval.**

The Navajo Nation hereby approves the collateral assignment of MJ Mike Enterprise, Inc., Lease No. TC-95-145 attached hereto as Exhibit B.

**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 - Nataanii Conference Room, (Navajo Nation) Tse Bonito, New Mexico, at which quorum was present and the same was passed by a vote of 4 in favor, 0 opposed, 1 abstained this 7<sup>th</sup> day of June, 2016.



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

**Main Motion:     Honorable Davis Filfred  
Second:           Honorable Leonard Pete  
Vote:               4-0-1 (CNV)**

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0135-16

**DATE:** April 22, 2016

**TITLE OF RESOLUTION:** PROPOSED STANDING COMMITTEE RESOLUTION;  
AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE  
COLLATERAL ASSIGNMENT OF BUSINESS SITE LEASE TC-95-145 LESSEE MJ  
MIKE ENTERPRISE, INC.

**PURPOSE:** The purpose of the resolution is to approve the collateral assignment of Business  
Site Lease TC-95-145 Lessee MJ Mike Enterprise, Inc.

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

5-DAY BILL HOLD PERIOD: Katrina Bull  
Website Posting Time/Date: 8:30 am 4/26/16  
Posting End Date: 5-1-16  
Eligible for Action: 5-2-16

PROPOSED STANDING COMMITTEE RESOLUTION  
23<sup>rd</sup> NAVAJO NATION COUNCIL -- Second Year, 2016

INTRODUCED BY

  
(Prime Sponsor)

TRACKING NO. 0135-14

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE  
COLLATERAL ASSIGNMENT OF BUSINESS SITE LEASE TC-95-145 LESSEE  
MJ MIKE ENTERPRISE, INC.

BE IT ENACTED:

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- 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.

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- A. The Western Regional Business Development Office through memorandum dated March 4, 2016 attached as Exhibit A requests legislation for approval of collateral assignment of the MJ Mike Enterprise, Inc., Lease No. TC-95-145.
- B. MJ Mike Enterprise, Inc., Lease No. TC-95-145 original Business Site Lease is attached as Exhibit C.
- C. The MJ Mike Enterprise, Collateral Assignment of Lease is attached as Exhibit B.
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1 Exhibit E. The Business Regulatory Department Certificate of Good Standing is  
2 attached as Exhibit E.

3 **Section Two. Approval**

4 The Navajo Nation hereby approves the collateral assignment of MJ Mike  
5 Enterprise, Inc., Lease No. TC-95-145 attached hereto as Exhibit B.  
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# THE NAVAJO NATION

RUSSELL BEGAYE  
JONATHAN NEZ

PRESIDENT



## MEMORANDUM

TO: EXECUTIVE REVIEWERS  
FROM: *Genevieve Keers-Bighorse*  
Genevieve Keers-Bighorse, EDS  
Western Regional Business Development Office  
Division of Economic Development

DATE: March 4, 2016

SUBJECT: Collateral Assignment of Lease for MJ Mike Enterprise, Inc., Lease No. TC-95-145

This memorandum is a summary on the above subject. Lessee, MJ Mike Enterprise, Inc., is requesting to process a Collateral Assignment of Lease. The Collateral Assignment of Lease pertains to the Kayenta Hampton Inn.

Lease No. TC-95-145 is not novated to a Navajo Nation Lease, therefore will need approval from the Resource and Development Committee and the Bureau of Indian Affairs.

The procurement clearances from Account Receivable and Credit Services are enclosed. Also, enclosed is the Certificate of Good Standing. Your favorable consideration and surname on the enclosed Collateral Assignment of Lease for MJ Mike Enterprise, Inc., will be appreciated. If you have any questions, call me at (928) 283-3013.





## **COLLATERAL ASSIGNMENT OF LEASE**

This Collateral Assignment of Lease is made this \_\_\_\_\_ day of February, 2016, between the between GREAT WESTERN BANK, whose address is 1721 N. Arizona Avenue #1, Chandler, Arizona 85225, hereinafter called Assignee, and MJ MIKE ENTERPRISE, INC., an Arizona corporation, whose address is P.O. Box 1219, Kayenta, Arizona 86033, hereinafter called Assignor. The Lease has been previously approved by the Navajo Nation as Lease No. TC-95-145, as modified by Lease Modification, approved by the President of the Navajo Nation on November 30, 1995, and by Lease Modification No. 2, approved by the President of the Navajo Nation on April 14, 1997.

### **WITNESS**

#### **SECTION I. RECITALS.**

A. The Assignor, also the Lessee, under a certain Lease Number No. TC-95-145, a copy of which and all amendments thereto is attached as Exhibit "A", has been approved by the Navajo Nation and has been issued for a period of 30 years commencing on January 12, 1995 with one option to renew for another 20 years. The Lessor under this Lease was the Navajo Nation ("Lessor") and the Lease was approved on November 2, 1994.

B. Assignee has agreed to make one or more commercial loans in the approximate amount of \$4,200,000 to finance or refinance the development, construction and operation of a hotel and restaurant and is an amount sufficient to assure completion of the project. The loans will be made pursuant to a Loan Agreement, dated on or about the date hereof, and one or more Promissory Notes (together, the "Note") as evidence of its repayment obligation in connection with the Loan Agreement.

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, extended, increased, or replaced from time to time.

#### **SECTION II. ASSIGNMENT.**

As security for the payment of the Note, the Assignor hereby assigns its interest in, rights, and right to continued possession, under, Lease Number No. TC-95-145, 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 Lease Number No. TC-95-145, 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 VII.        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, does not 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, approval by Lessor and the Secretary of any assignment will be required and such 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 VIII.       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 IX. CHOICE OF LAW.**

The laws of the Navajo Nation shall govern this Assignment. Assignor and Assignee agree that all controversies and claims between Assignor and Assignee 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 Assignor or Assignee 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.

**SECTION X. NO WAIVER OF SOVEREIGN IMMUNITY.**

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.

[Signature pages follow.]

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

FOR THE ASSIGNEE:

\_\_\_\_\_  
Lyle D. Frederickson, Vice President  
GREAT WESTERN BANK

DATE: \_\_\_\_\_

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

On this \_\_\_\_ day of February, 2016, before me, the undersigned officer, personally appeared Lyle D. Frederickson, Vice President of GREAT WESTERN BANK, a bank chartered under the laws of South Dakota, and acknowledged that he, being authorized so to do, executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

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

**FOR THE ASSIGNOR**



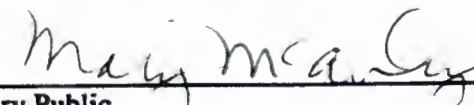
Richard P. Mike, President  
**MJ MIKE ENTERPRISE, INC.**

DATE: 02 23 - 16

STATE OF AZ )  
 ) ss.  
County of Coconino )

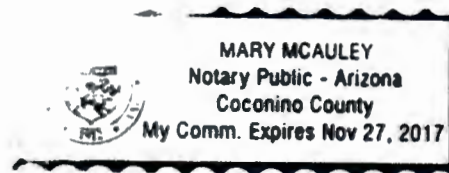
On this 23<sup>rd</sup> day of February, 2016, before me, the undersigned officer, personally appeared Richard P. Mike, President of MJ MIKE ENTERPRISE, INC., an Arizona corporation, and acknowledged that he, being authorized so to do, executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public

My Commission Expires:

11/27/2017



**APPROVED:**

**The Navajo Nation**

By: \_\_\_\_\_  
President or Designee

Name: \_\_\_\_\_

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



**Approved:** \_\_\_\_\_  
Pursuant to Secretarial Redelelegation Order  
209 DM 8, 230 DM 1 and 3 IAM 4

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

## L E A S E



THIS LEASE, in sextuplicate, is made and entered into this 14th day of September, 1994, by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is Post Office Box 308, Window Rock, Navajo Nation (Arizona) 86515, and MJ MIKE ENTERPRISE, INC., an Arizona Corporation, (Richard Paul Mike, C# 4701-60% and Nina Marie Heflin-40%) hereinafter called the Lessee, whose address is Post Office Box 1217, Kayenta, Arizona 86033, 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 hereto.

## 1. DEFINITIONS

- A. "Secretary" means the Secretary of the Interior or his authorized representative, delegate, or successor.
- B. "Gross Receipts" means all income, including money and any other thing 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 pins.

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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:

Commencing at a Limbaugh Engineering and Aerial Survey, Inc. Kayenta Horizontal Control System, brass cap, "KAY-27" having Arizona State Plane Coordinates, East Zone, X-472,885.08 feet and Y- 2,076,596.41 feet,

Thence on a Geodetic bearing of North  $80^{\circ} 22' 25''$  East a calculated distance of 1,732.14 feet to the Northwest Corner and the True Point of Beginning of the aforementioned Tract,

Thence North  $79^{\circ} 08' 57''$  East a distance of 295.16 feet to the Northeast Corner,

Thence South  $10^{\circ} 51' 03''$  East a distance of 295.16 feet to the Southeast Corner,

Thence South  $79^{\circ} 08' 57''$  West along the northerly right-of-way line of U.S. Highway No. 160 a distance of 295.16 feet to the Southwest corner,

Thence North  $10^{\circ} 51' 03''$  West a distance of 295.16 feet to the Northwest Corner and the True Point of Beginning.

The above described tract of land contains 2.00 acres more or less in area and being subject to any and all existing easements for underground utilities therein.

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

3. PURPOSE, UNLAWFUL USES

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

The sale of gasoline and general merchandise.

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

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

4. TERM

The term of this Lease shall be 30 years, beginning on the date this Lease is approved by the Secretary.

5. CONDITION OF LEASED PREMISES

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

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.

Business Years	1-5	6-15	16-30
Gasoline(cents/gal)	1.5 c/gal	1.5 c/gal	2 c/gal
General Merchandise	2.0%	2.5%	3.0%

- (b) The sum of \$25,000.00 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 ten percent (10%) per annum from the date it becomes due until paid, but this provision shall not be construed to relieve the Lessee from any default in making any rental payment at that time and in the manner herein specified. The rents called for hereunder shall be paid without prior notice or demand.

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

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

#### 7. ACCOUNTING

The Lessee shall, not later than April 15, of each successive calendar year or fraction thereof following the date the term of this Lease begins, submit to Lessor and the Secretary individually, certified statements of gross receipts. Failure to submit aforementioned statements on a timely basis shall be considered a breach of the Lease and the Lease may be subject to cancellation. With said statements, Lessee shall tender payment of any balance due for the preceding calendar year under the percentage rental fee as set forth in Section 6 above. Said statement shall be prepared by a Certified Public Accountant, licensed in the State of Arizona, New Mexico, or Utah, in conformity with standard accounting procedures. Any duly authorized representative of the United States Government, or any qualified accounting agent or agents appointed by the Lessor, shall have access to and the right to examine and audit any pertinent books, documents, papers, and records of the Lessee and the Lessee's tenants, if any, relating to this Lease during the normal business hours of any

working day. Lessee shall insert a similar provision in all subleases and shall make available to said representative, agent, or agents, all books and records of Lessee's tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises. The acceptance by the Lessor or the Secretary of any monies paid to Lessor or the Secretary by Lessee as percentage rental for the leased premises as shown by any statement furnished by Lessee shall not be an admission of the accuracy of said statement, or of the sufficiency of the amount of said percentage rental payment, but the Lessor or the Secretary shall be entitled at any time within four (4) years after receipt of any such percentage rental payment to question the sufficiency of the amount thereof and/or the accuracy of the statements furnished by Lessee to justify same and shall have the right to examine and/or audit as hereinbefore described. Therefore, Lessee shall for said period of four (4) years after submission to 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

The Lessee, in consideration for the granting of this Lease, covenants and agrees that Lessee will construct permanent improvements at a cost of and having a reasonable value of \$720,000.00 or more. All buildings and improvements, excluding removable personal property and trade fixtures, on the leased property shall remain on said property after termination of this Lease and shall thereupon become the property of Lessor, who may require Lessee, at Lessee's expense, to remove improvements and restore the premises to its original state upon termination of this Lease. The term "removable personal property" as used in this Section shall not include property which normally would be attached or affixed to the buildings, improvements or land in such a way that it would become a part of the realty, regardless of whether such property is in fact so placed in or on or affixed to the buildings, improvements or land in such a way as to legally retain the characteristics of personal property. Lessee shall remove all removable personal property and trade fixtures prior to termination of this Lease. Should Lessee fail to remove said personal property and trade fixtures prior to termination of this Lease, said property shall thereupon become property of Lessor, and may be disposed of in any manner by Lessor.



9. PLANS AND DESIGNS

Within one hundred eighty (180) days from the date this Lease is approved by the Secretary, Lessee shall submit to Lessor for approval, a general plan and architect's design for the complete development of the entire leased premises, together with a phased program, by specific areas, of the developments included as a part of the general plan. Approval or disapproval of the general plan, architect's design or phased development programs shall be within the sole discretion of Lessor. Lessor's review of all plans or specifications pursuant to this Section is solely to protect the interests of the Lessor in the leased premises and the Lessor shall not be the guarantor of, nor be responsible for, the accuracy or correctness of any such plans. No change will be made in the general plan, architect's design, plots, surveys, or specifications without the consent of Lessor. Approval of the general plan, architect's design, and/or a phased program of development shall in no way be deemed a waiver of the requirements of applicable Tribal law and Lessee shall comply with all applicable Tribal laws and regulations. Upon completion of the proposed improvements the Lessee shall provide the Lessor "as built" drawings depicting the improvements as a completed structure.

10. COMPLETION OF DEVELOPMENT

The Lessee shall complete the full improvement and development of the leased premises in accordance with the general plan and architect's design, submitted in accordance with Section 9 above, within 15 months from the beginning date of the term of this Lease. If Lessee fails to complete full development within such period, such failure shall constitute a breach of the terms of this Lease and shall be cause for cancellation.

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

11. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION

All improvements placed on the leased premises shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings visible to the public or from adjacent properties shall present a pleasant appearance as determined by Lessor and all service areas shall be

screened from public view to the satisfaction of Lessor. Lessee shall, at all times during the term of this Lease and at Lessee's sole cost and expense, maintain the premises and all improvements thereon and any alterations, additions, or appurtenances thereto, in good order and repair and in a safe, sanitary, neat and attractive condition, and shall otherwise comply with all laws, ordinances and regulations applicable to said premises. Lessee shall have the right during the term of this Lease to make limited alterations, additions or repairs to improvements on the premises in an amount not to exceed \$ 15,000.00 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 \$25,000.00, 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



14. SUBLEASE, ASSIGNMENT, MANAGEMENT AGREEMENT, TRANSFER

Notwithstanding the provisions of 5 N.T.C. Section 2313(c), Lessee shall not sublease, assign, place under a management agreement, or in any manner whatsoever transfer this Lease or any right to or interest in 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 Sublessor, 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 Sublessor, assignee, transferee and other successor in interest of the Lessee, excepting an encumbrancer.

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

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

15. ENCUMBRANCE

This Lease, or any right to or interest in this Lease or any of the improvements on the leased premises, may not



be encumbered without the written approval of the Lessor, the Secretary and sureties and no such encumbrance shall be valid without said approval.

An encumbrance must be confined to the leasehold interest of the Lessee or the subleasehold interest of a Sublessee, and shall not jeopardize in any way 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 Sublessee, 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 Sublessor 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

39. 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.


40. SOVEREIGN IMMUNITY

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

41. UNCONDITIONAL LEASE GUARANTY


In order to induce the Lessor to execute and deliver the above Lease to the Lessee the undersigned hereby unconditionally and irrevocably guaranties to the Lessor and the Secretary the performance by the Lessee of all the obligations of the Lessee under the above Lease, including but not limited to the obligation to pay rent, and will pay all the Lessor's expenses, including attorney's fees, incurred in enforcing said obligations, or incurred in enforcing this guaranty.

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


  
Richard P. Mike (C#4701) - Guarantor DATE 10-27-94

  
Nina M. Heflin - Guarantor DATE 10-27-94

NAVAJO NATION, LESSOR

BY:   
FOR President, Navajo Nation  
DATE APPROVED: -2 NOV 1994

APPROVED  
pursuant to Secretarial Redelelegation  
Order 209 DM8 and 230 DM3 and Navajo  
Area Addendum to 10 BIAM 3.3E

  
ACT: Superintendent, \_\_\_\_\_ Agency  
Bureau of Indian Affairs



# THE NAVAJO NATION

RUSSELL BUCKLEY

JONATHAN NEZ

E-MAILED  
3/7/2016



March 7, 2016

## MEMORANDUM

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

FROM: *For Jonathan III: Clean, Jr.*  
Lena D. Arviso, Accounting Manager  
Accounts Receivable Section, OOC

SUBJECT: "Navajo Business and Procurement Act clearance check"

Pursuant to your memorandum dated March 1<sup>st</sup>, 2016 (*Received in Account Receivable on 03/02/16 @ 1:15 p.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
RH Mike Enterprise dba: RMH Enterprise, Inc. dba: AR Mike Enterprise, Inc. dba: ON Mike Enterprises, Inc. dba: D.P. Mike Enterprise dba: MJ Mike Enterprises  Address: Post office Box 1219 Kayenta, AZ 86033  Richard P. Mike, President and Nina Heflin, Vice President	BSL# FD01-204 AB# 224990 Store: Burger King/ Chevron Location: Burnside, AZ	\$ 0.00	Procurement cleared. Though the account has a balance due of \$1,000.00 at 03/07/2106 the account is not in delinquent status. The P & L statements are current through CY2014.
	BSL# SR96-141 AB# 189603 Store: Burger King Location: Shiprock, NM	\$ 0.00	Procurement cleared. Though the account has a credit balance of (\$1,758.59) at 03/07/2016 the account is not in delinquent status. The P & L statements are current to CY2014.
	BSL# CH90-86 AB# 224605 Store: Burger King Location: Chinle, AZ	\$ 0.00	Procurement cleared. Though the account has a balance due of \$1,000.00 at 03/07/2016 the account is not in delinquent status. The P & L statements are current to CY2014.
	BSL# NNTC11-0044 AB# 276020 Store: Burger King Location: Cameron, AZ	\$ 0.00	Procurement cleared. Though the account has a balance due of \$1,416.67 at 03/07/2016 the account is not in delinquent status.
	BSL# TC95-145 AB# None Store: Hampton Inn Location: Kayenta, AZ	\$ 0.00	Procurement cleared. Though the account has a balance due of \$1,041.59 at 03/07/2016 the account is not in delinquent status. The P & L statements are current to CY2014.



Page 2: Memorandum dated 03/07/2016

Procurement Clearance – Tuba City Regional Business Development Office

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

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

*mj*

CC: *Accounts Receivable*



# THE NAVAJO NATION



RUSSELL BEGAYE  
JONATHAN NEZ


Louise Johnson, Credit Manager



VIA: FACSIMILE

## MEMORANDUM

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

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

DATE: March 1, 2016

SUBJECT: **PROCUREMENT CLEARANCE**

To be in compliance with the Navajo Nation Business Procurement Act, you have requested procurement clearance by Memo dated March 01, 2016 for the following individuals/business. The following is our response:

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

Business Name: MJ Enterprise, Inc.  
Address: POB 1219  
Kayenta, Az 86033

1	Richard Nike	XXX-XX-0690	Procurement Cleared

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

xc: File/Chrono: lrh

EXHIBIT

F



## NAVAJO NATION CORPORATION CODE

### CERTIFICATE OF GOOD STANDING

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

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

\*\*\*MJ MIKE ENTERPRISE, INC.\*\*\*  
File Number: 100231

a Corporation organized under the laws of the Navajo Nation Corporation Act,  
did incorporate on January 19, 1995

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



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

  
Clarence Chee  
Director, Business Regulatory  
Division of Economic Development

**EXECUTIVE OFFICIAL REVIEW**

Title of Document: Collateral Assignment of Lease BSL TC  
#95-145 for MJ Mike Enterprise, Inc., Kayenta, Arizona  
 Program/Division: Western RBDO/DED

Contact Name: Genevieve K. Bighorse

Email/Phone Number:

gkeetsobighorse@navajobusiness.com (928) 283-3013**Business Site Lease**

Sufficient    Insufficient

- ☒ 1. Division: Economic Development Date: 3-15-16 ☒ ☐
- ☐ 2. Office of the Controller: 3/22/16 Dena D. Arnesen Date: 3.22.16 ☒ ☐  
 (only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review)
- ☐ 3. Office of the Attorney General: UPJ Date: 3/25/16 ☒ ☐

**Business and Industrial Development Financing, Veteran Loans, Credit Services 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: \_\_\_\_\_ ☐ ☐
- ☐ 1. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
- ☐ 2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

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

- ☐ 1. NNEPA: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
- ☐ 2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

**Lease Purchase Agreements**

- ☐ 1. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 (recommendation only)
- ☐ 2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

**Grant Applications**

- ☐ 1. Office of Management and Budget: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
- ☐ 2. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
- ☐ 3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

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

- ☐ 1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
- ☐ 2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

**Relinquishment of Navajo Membership**

- ☐ 1. Land Department: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
- ☐ 2. Elections: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ 3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

#### Land Withdrawal or Relinquishment for Commercial Purposes

			Sufficient	Insufficient
<input type="checkbox"/> 1. Division:	_____	Date: _____	<input type="checkbox"/>	<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

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

#### Rights of Way

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

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

#### Assignment of Mineral Lease

<input type="checkbox"/> 1. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> 2. DNR	_____	Date: _____	<input type="checkbox"/>	<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)

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





# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



DOJ  
03/24/16 @ 1122  
DATE / TIME  
☐ 7 Day Deadline  
DOC #: 005649  
SAS #:  
UNIT: ECDW

☐ RESUBMITTAL

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

### CLIENT TO COMPLETE

DATE OF REQUEST: 3/4/2016 DIVISION: Economic Development  
CONTACT NAME: Genevieve Keetso-Bighorse DEPARTMENT: Western RBDO  
PHONE NUMBER: (928) 283-3013 E-MAIL: gkeetsobighorse@navajobusiness.com

TITLE OF DOCUMENT: Memorandum dated March 4, 2016 RE: MJ Mike Enterprise, Inc., Lease No. TC-95-145

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 3/24/16 @ 345pm REVIEWING ATTORNEY/ADVOCATE: Latoria

DATE TIME OUT OF UNIT:

### DOJ ATTORNEY / ADVOCATE COMMENTS

subsequent

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
LBT	3/25/16 1245pm	LBT	3/25/16 1245pm

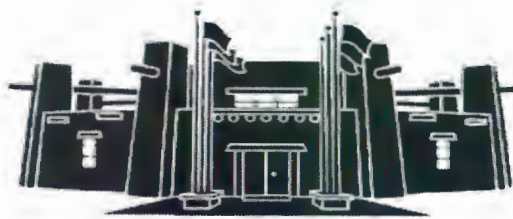
DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: (Print) DATE / TIME:

NNDOJ/DRRF-July 2013







## MEMORANDUM

TO: Honorable Tuchoney Slim Jr.  
Coppermine, K'ai'biit'i, LeChee, Tonalea/Red Lake, Bodaway/Gap Chapters

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

DATE: April 22, 2016

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION  
RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE  
COLLATERAL ASSIGNMENT OF BUSINESS SITE LEASE TC-95-145  
LESSEE MJ MIKE ENTERPRISE, INC.

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

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

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

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0135-16\_\_

SPONSOR: Tuchoney Slim, Jr.

TITLE: An Action Relating To Resources And Development; Approving The Collateral Assignment Of Business Site Lease TC-95-145 Lessee MJ Mike Enterprise, Inc.

*Date posted:* April 26, 2016 at 8:30 AM

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

Written comments may be mailed to:

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7586

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

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

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

**LEGISLATION NO.: 0135-16**

**SPONSOR: Honorable Tuchoney Slim Jr.**

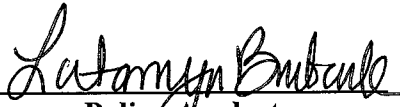
**TITLE: An Action Relating To Resources And Development; Approving The Collateral Assignment Of Business Site Lease TC-95-145 Lessee MJ Mike Enterprise, Inc.**

**Posted: April 26, 2016 at 8:30 AM**

**5 DAY Comment Period Ended: May 1, 2016**

**Digital Comments received:**

<b>Comments Supporting</b>	<i>None</i>
<b>Comments Opposing</b>	<i>None</i>
<b>Inclusive Comments</b>	<i>None</i>

  
\_\_\_\_\_  
Policy Analyst  
Office of Legislative Services

5/2/16 8:22am  
\_\_\_\_\_  
Date/Time

**RESOURCES AND DEVELOPMENT COMMITTEE  
23rd NAVAJO NATION COUNCIL**

**SECOND YEAR 2016**

**COMMITTEE REPORT**

Mr. Speaker,

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

**Legislation # # 0135-16:** An Action Relating to Resources and Development;  
Approving the Collateral Assignment of Business Site Lease TC-95-145 Lessee  
MJ Mike Enterprises, Inc. *Sponsor: Honorable Tuchoney Slim, Jr*

Has had it under consideration and report the same that the matter was **TABLED** for 30 days with directive to have NNDOJ and BIA-Regional Office to provide some technical support to the agent on the Business Site Lease provisions and processes.

Respectfully submitted,



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

Date: May 24, 2016

Motion to Table: Leonard Tsosie  
Second: Davis Filfred  
Vote: 3-0-1 (CNV)

MAIN MOTION: Davis Filfred  
Second: Leonard Peted

**RESOURCES AND DEVELOPMENT COMMITTEE  
23rd NAVAJO NATION COUNCIL**

**SECOND YEAR 2016**

**COMMITTEE REPORT**

Mr. Speaker,

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

**LEGISLATION # 0135-16:** AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE COLLATERAL ASSIGNMENT OF BUSINESS SITE LEASE TC-95-145 LESSEE MJ MIKE ENTERPRISE, INC. *Sponsor: Honorable Tuchoney Slim, Jr.*

Has had it under consideration and report the same with a recommendation of a DO PASS with one amendment as follow:

Incorporate in the legislation packet Genevieve Keetso-Bighorse, EDS, of Western Regional Business Development Office memorandum dated June 2, 2016 as justification document relative to the Collateral Assignment of Business Site Lease TC-95-145 Lessee MJ Mike Enterprises, Inc.

And thereafter approved the legislation.

Respectfully submitted,

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

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

**Date: June 7, 2016**  
**Motion:** Honorable Walter Phelps  
**Second:** Honorable Leonard Pete  
**Vote:** 3-0-1 (CNV)



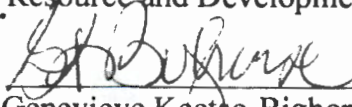


# THE NAVAJO NATION

RUSSELL BEGAYE  
JONATHAN NEZ

## MEMORANDUM

TO: Resource and Development Committee

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

DATE: June 2, 2016

SUBJECT: Legislation 0135-16: Collateral Assignment of Business Site Lease TC-95-145 Lessee MJ Mike Enterprises, Inc.

On May 24, 2016, Resource and Development Committee (RDC) considered Legislation 0135-16. The purpose of Legislation 0135-16 is to approve a Collateral Assignment of Lease to secure a loan and use the loan proceeds to make improvements at the Kayenta Hampton Inn. Because Lease No. TC-95-145 is a Bureau of Indian Affairs (BIA) lease, it requires approval by the Resource and Development Committee. The Legislation was tabled due to lack of information regarding lease modification 2 for Lease TC-95-145. During the RDC meeting, the following issues were raised: (1) Whether the surety should have been a party to the previous Modifications; and (2) Whether the Navajo Nation should approve a collateral assignment of lease. To address the above-mentioned issues, the Division of Economic Development provides the following clarification:

*Whether the surety should have been a party to the previous Modifications?*

Lease Modification 2 was processed thru the Navajo Nation 164 Review (SAS No. 1320 attached) and approved by the former Economic Development Committee on February 12, 1997 (). Thereafter, Lease Modification 2 was submitted to the BIA for approval. Lastly, Lease Modification 2 was signed by the BIA Area Director on May 16, 1997.

The original Lease provides that the purpose is for "the sale of gasoline and general merchandise." EDC approved Lease Modification No. 2 amended the purpose of the Lease and now reflects the following: "development and operation of a Hotel and restaurant." Modification No. 2 was signed by the Lessee, Surety (Phoenix Indemnity

Insurance), and Lessor. The Surety is the entity that holds the performance bond (surety bond) for the lease and it is deposited with the Secretary. See Section 12 of the Lease. The performance or surety bond will guarantee performance of the contractual obligation under the Lease. For BIA leases, the BIA requires that the Surety signs off on all Modifications to ensure that the Surety is aware of the lease modification. This is reflected on the Lease form (Attachment 1). Because BIA requires that the lease include the Surety, the Modifications reflected the signature of the Surety. The Navajo Nation properly processed the lease and Modification in compliance with the BIA requirements and was also executed by the Navajo Nation and the BIA.

*Whether the Navajo Nation should approve a collateral assignment of lease?*

The Lease, Clause 15, allows for encumbrances of the lease subject to the approval of the Navajo Nation. As mentioned above, this is a BIA Lease and requires RDC's approval before execution. An encumbrance, such as a collateral assignment of lease, is applicable to the leasehold improvements of the Lessee and/or Sublessee. In other words, the collateral assignment of lease creates a lien on the leasehold improvement and the leasehold improvements serves as a security for the financing. The lien is not applicable to the land itself.

In the event there is a default by the Sublessee, there will be notice provided to the Navajo Nation, BIA and Sublessee. The Bank may exercise its rights to proceed as noted in the collateral assignment of lease, which may include, but not limited to the power of sale or foreclose of the leasehold improvements. Upon notice of the above, the Navajo Nation and Lessee may pay the default amount, which includes unpaid principal amount, unpaid accrued interest and incurred foreclosure/sale cost. If this is conducted, it would be formalized in a promissory note and a new encumbrance. If the Navajo Nation and Lessee choose not to pay the default amount, the Bank may hold a sale or foreclose the property. The purchaser will take over all rights, title and interest. If the purchaser is the Bank, the lease may be assigned without approval of the Navajo Nation and BIA. If the purchaser is not the Bank, the assignment shall be approved by the Navajo Nation and BIA.

In this case, the leasehold improvements are valued in the amount of \$720,000.00 or more. It should be noted that the encumbrance does not jeopardize the land, but to the leasehold improvements, which include the hotel and restaurant. While this approval rest with RDC, the lease does allow for encumbrances. The encumbrance gives Lessees the opportunity to finance and improve the lease while creating economic development.

Your favorable understanding and approving the Collateral Assignment of Lease is greatly appreciated. If you have any questions, call me at (928) 283-3013.

LEASE MODIFICATION No. 2

It is hereby agreed by and between the NAVAJO NATION, Lessor, and MJ Mike Enterprise, Inc., Richard P. Mike C#4701) and Nina M. Heflin, Lessee, and Phoenix Indemnity Insurance Co., surety, that the Lease covering the Business Site Lease, TC-95-145 be modified this 12th day of February, 1997 to provide:

Article 2. LAND DESCRIPTION: To increase the acreage from two (2) acres to five and one-half (5 1/2) acres; replace paragraphs 2-8 of Article 2. LAND DESCRIPTION with the following site description:

A tract of land situated within unsurveyed Lands of the Navajo Indian Reservation, protracted Township 38 North, Range 19 East, G.&S.R.M., within Land Management District No. 8, in the vicinity of Kayenta, Navajo County, Arizona, and being more particularly described as follows: Commencing at a Limbaugh Engineering and Aerial Survey, Inc., Kayenta Horizontal Control System, brass cap, "Kay-27" having Arizona State Plane Coordinates, East Zone, X=472,885.08 feet and Y=2,076,596.41 feet; Thence North 88° 27' 23" East a calculated distance of 2,053.94 feet to the Southeast Corner and the True Point of Beginning of the aforementioned Tract; Thence South 79° 08' 57" West along the Northerly Right-of-Way line of U.S. Highway No. 160 a distance of 614.31 feet to the Southwest Corner; Thence North 10° 51' 03" West a distance of 390.00 feet to the Northwest Corner; Thence North 79° 08' 57" East a distance of 614.31 feet to the Northeast Corner; Thence South 10° 51' 03" East a distance of 94.84 feet to a point, said point being the Northwest Corner of Richard Mike's BURGER KING Tract; Thence continuing South 10° 51' 03" East along the Westerly Property Line of Richard Mike's BURGER KING Tract a distance of 295.16 feet to the Southeast Corner and the True Point of Beginning. The above described Tract of Land contains 5.50 acres, more or less, in area and being subject to any and all existing easements for underground utilities therein. All Corners are marked with 5/8" rebars and Plastic Surveyor's Caps marked AZ 17428.

ARTICLE 3. PURPOSE: Paragraph 2 of Article 3, "The sale of gasoline and general merchandise," shall be replaced by "The development and operation of a Hotel and restaurant."

ARTICLE 4. TERM: The new language replaces Article 4 in its entirety. Thirty (30) years, commencing on January 12, 1995 with one option to renew for another twenty (20) years on renegotiated terms and conditions, provided that Lessee's percentage rent for the renewal shall not exceed five percent (5%) of the Lessee's gross receipt.



ARTICLE 6. RENTAL: The new language replaces subparagraphs (a) and (b) in their entirety.

(a) Percentage Rental - Gross sales for Hotel and restaurant

Years

1 - 4	Development Period
5 - 10	2.5%
11 - 15	3.0%
16 - 20	3.5%
21 - 30	4.0%

Development Period - The first four years shall be a development period.

(b) Guaranteed Minimum Annual Rental (GMAR) - There will be no GMAR for years 1-4 but thereafter GMAR will be \$12,500.

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

Phoenix Indemnity Insurance Company

M.J. Mike Enterprise, Inc.

*Mester Sanderson*  
Surety  
Attorney-in-fact

*[Signature]* 3-4-97  
PRESIDENT DATE  
*[Signature]* 3/4/97  
SECRETARY DATE

NAVAJO NATION LESSOR

BY: *[Signature]*  
VICE President, Navajo Nation

DATE: APR 14 1997

APPROVED: MAY 16 1997  
Pursuant to Secretarial Redelelegation  
Order 209 DM 8, Secretary's Order Nos.  
3150 and 3177, and 10 BIAM Bulletin 13,  
as amended.

BY: *[Signature]*  
ACTING Area Director, Navajo Area  
BUREAU OF INDIAN AFFAIRS



RESOLUTION OF THE  
ECONOMIC DEVELOPMENT COMMITTEE  
OF THE NAVAJO NATION COUNCIL

Approving the Modification Of Business Site Lease  
No. TC-95-145, MJ Mike Enterprise, Inc., dba: Mobil Mart  
On Lands Located At Kayenta, Navajo Nation (Arizona)

WHEREAS:

1. Pursuant to 2 N.N.C. §724(B)(2), the Economic Development Committee of the Navajo Nation Council has the authority to approve non-mineral business leases, subleases, and assignments, encumbrances, amendments, modifications, and terminations in accordance with all applicable laws; and

2. Pursuant to Economic Development Committee Resolution EDCO-118-94 (Exhibit "H"), the Economic Development Committee of the Navajo Nation Council approved the Business Site Lease No. TC-95-145 for MJ Mike Enterprise, Inc., dba: Mobil Mart on 2.00 acre tract of land located in Kayenta, Arizona; said Lease was approved by BIA Agency Superintendent on January 12, 1995 (Exhibit "G") for a term of thirty (30) years and the purpose of the Lease was for the sale of gasoline and general merchandise; and

3. On October 10, 1995, the Economic Development Committee of the Navajo Nation Council pursuant to Resolution EDCO-102-95 (Exhibit "F") approved a Modification of Business Site Lease No. TC-95-145 for MJ Mike Enterprise, Inc., dba: Mobil Mart by incorporating a two (2) year development period; said Lease Modification (Exhibit "E") was approved by BIA Agency Superintendent on December 13, 1995; and

4. Pursuant to the Navajo Nation Business Preference Law, 5 N.N.C. §201 et seq., MJ Mike Enterprise, Inc. placed the Mobil Mart project out for bid twice (Exhibit "D"); bid evaluations determined that all bids were unreasonably high; and

5. After reevaluation of the Mobil Mart project, which is still undeveloped, prospective bidders, and personal resources, MJ Mike Enterprise, Inc. decided that the location was better suited for a hotel and restaurant; and

6. On September 11, 1995, the Kayenta Chapter by resolution (Exhibit "B") increased the original two (2) acres of the Mobil Mart lease by three and one-half (3.5) acres for a total of five and one-half (5.5) acres for a hotel and restaurant to Richard P. Mike, C#4701 and Nina Heflin; and

7. Because of the substantial cost increases from a Mobil gas station to a hotel and the additional compliances and clearances that must be obtained aside from a new Market Feasibility Study and an analysis of selected hotel franchises, MJ Mike Enterprise, Inc. is requesting Modification (Exhibit "C") Number Two (2) of its Business Site Lease No. TC-95-145; and

8. The Tuba City Regional Business Development Office has reviewed MJ Mike Enterprise, Inc.'s request, negotiated the proposed Lease Modification Number Two (2) of Business Site Lease No. TC-95-145, and recommends its approval by the Economic Development Committee of the Navajo Nation Council.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Economic Development Committee of the Navajo Nation Council hereby approves Lease Modification 2 (Exhibit "A") of Business Site Lease No. TC-95-145, MJ Mike Enterprise, Inc., Richard P. Mike (C#4701) and Nina M. Heflin (Non-Navajo), on lands located at Kayenta, Navajo Nation (Arizona) as follows:

**ARTICLE 2. LAND DESCRIPTION**

To increase the acreage from two (2) acres to five and one-half (5 1/2) acres.

**ARTICLE 3. PURPOSE-**

To add hotel and restaurant and delete sale of gasoline and general merchandise.

**ARTICLE 4. TERM**

Thirty (30) years, commencing on January 12, 1995 with one option to renew for another twenty (20) years on renegotiated terms and conditions; provided that the renegotiated rental amount for the renewed term shall not exceed five percent (5%) of the lessee's gross receipts.

**ARTICLE 6. RENTAL**

**(a) Percentage Rental**

Years 1-4	Development Period
Years 5-10	2.5% of gross sales for hotel and restaurant
Years 11-15	3.0% of gross sales for hotel and restaurant
Years 16-20	3.5% of gross sales for hotel and restaurant
Years 21-30	4.0% of gross sales for hotel and restaurant

Development Period - The first for years shall be a development period.

**(b) Guaranteed Minimum Annual Rental (GMAR)**

There will be no GMAR for years 1-4 but thereafter GMAR will be \$12, 500.00.

2. The Economic Development Committee of the Navajo Nation Council further directs and authorizes the President of the Navajo Nation to execute said Lease Modification, and to do any and all things necessary, advisable or incidental to carry out the purpose of this resolution consistent with Navajo Nation and Federal laws.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Economic Development Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor, 0 opposed and 0 abstained, this 12th day of February 1997.



David L. John, Chairperson  
Economic Development Committee

Motion: Walter Atene  
Second: Wilfred Yabeny



OFFICE OF THE PRESIDENT

The Navajo Nation  
Window Rock, Arizona 86515

SASN<sup>o</sup> 1320

SIGNATURE APPROVAL SHEET

11-18-96  
FROM: WESTERN REG'L BUS. DEVE. OFF (Name) TINCER T. NEZ, SR. (Phone No.) 520/283-3011

DOCUMENT: PROPOSED EDC RSLTN: Appv'g the Modification of BSL No. TC-95-145, MJ Mike Enterprise, Inc., dba: Mobil Mart on Lands Located at Kayenta, Navajo Nation (Arizona).

1. DIVISION OF ECONOMIC DEVELOPMENT

DATE: 11/14/96

2. DIVISION OF FINANCE

DATE: 11/20/96

3. DEPARTMENT OF JUSTICE

DATE: 12/5/96

4. OFC. OF PRESIDENT/VICE-PRESIDENT

DATE: 1/2/97

5. LEGISLATIVE COUNSEL

DATE: 1/2/97

6. ECON. DEVE. COMMITTEE

DATE: \_\_\_\_\_

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

NO. of Signature(s): \_\_\_\_\_

Initial: \_\_\_\_\_

Office

BLUE—OCG

YELLOW—Financial Services

PINK—Division

