

LEGISLATIVE SUMMARY SHEET

Tracking No. 0044-20

DATE: February 28, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE OFF-RESERVATION FEE LAND LEASE BETWEEN THE NAVAJO NATION AND CHURCH ROCK DEVELOPMENT, LLC

PURPOSE: This resolution, if approved, will approve the off-reservation business site lease between the Navajo Nation and Church Rock Development, LLC for the use of the manufacturing facility at the Church Rock Industrial Park.

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

5-DAY BILL HOLD PERIOD: 23
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PROPOSED NAVAJO NATION STANDING COMMITTEE RESOLUTION

24th NAVAJO NATION COUNCIL— Second Year, 2020

INTRODUCED BY

Primary Sponsor



TRACKING NO. 0044-20

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE OFF-
RESERVATION FEE LAND LEASE BETWEEN THE NAVAJO NATION AND
CHURCH ROCK DEVELOPMENT, LLC

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Resources and Development Committee is a standing committee of the Navajo Nation Council with oversight authority over economic development and the Division of Economic Development and the Division of Community Development. 2 N.N.C. §§ 500 (C) and 501 (C) (1).

B. The Resources and Development Committee is further empowered to grant final approval for non-mineral leases on Navajo Nation trust and unrestricted (fee) lands. 2 N.N.C. § 501 (B) (2) (a).

SECTION TWO. FINDINGS

A. The Navajo Nation, through its Project Development Department, Division of Economic Development, is desiring to enter an off-reservation business site lease, attached as **Exhibit A**, with Church Rock Development, LLC for the use of the

1 manufacturing facility at the Church Rock Industrial Park located on Navajo Nation
2 owned fee land in Church Rock, New Mexico.

3 B. The Church Rock Chapter passed Resolution No. CRC-19-02-02, attached as **Exhibit**
4 **B**, supporting a business site lease between the Navajo Nation and Church Rock
5 Development, LLC for the use of the manufacturing facility at the Church Rock
6 Industrial Park.

7 C. The proposed Off-Reservation Fee Land Lease between the Navajo Nation and
8 Church Rock Development, LLC, attached as **Exhibit A**, and including the
9 Environmental Summary (ES), has been reviewed by the Navajo Department of
10 Justice and found to be legally sufficient. **Exhibit C**.

11 12 **SECTION THREE. Approval**

13 The Navajo Nation, through the Resources and Development Committee, hereby
14 approves the Off-Reservation Fee Land Lease between the Navajo Nation and Church
15 Rock Development, LLC for the use of the manufacturing facility at the Church Rock
16 Industrial Park, attached as **Exhibit A**.

EXHIBIT

A

OFF-RESERVATION FEE LAND LEASE

Dated _____, 20____

BY AND BETWEEN

THE NAVAJO NATION

AND

CHURCH ROCK DEVELOPMENT, LLC

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OFF-RESERVATION FEE LAND LEASE

THIS LEASE (together with all exhibits and attachments hereto, collectively the "Lease"), in sextuplicate, is made and entered into this _____ day of _____, 20____, by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is Post Office Box 663, Window Rock, Navajo Nation (Arizona) 86515, and, Churchrock Development, LLC, hereinafter called the Lessee, whose address is P. O. Box 37, Church Rock, New Mexico 87311, in accordance with Navajo Nation law.

WITNESSETH

WHEREAS, Navajo Nation lands are administered by the Navajo Nation to provide economic and social benefits to the Navajo People.

NOW THEREFORE, in accordance with Navajo law, which by this reference is made a part hereof, Lessor and Lessee agree as follows:

1.0 DEFINITIONS

- 1.1 "Approved Encumbrance" means an encumbrance approved in writing by the Lessor, and sureties, if any, in accordance with the terms and conditions of this Lease.
- 1.2 "Assignee" means any individual or entity that enters into an Assignment with the Lessee.
- 1.3 "Condemnation" means the taking of any real property right thereof, in condemnation proceeding, by right of eminent domain, or by conveyance in lieu of or in settlement of a condemnation or eminent domain proceeding brought by any governmental authority having jurisdiction and power over the property.
- 1.4 "Effective Date" means the date the Lease is signed by the President of the Navajo Nation.
- 1.5 "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.
- 1.6 "Federal Laws" means all applicable federal laws, including:
 - (1) "CERCLA," the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et. seq., and
 - (2) "RCRA," the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.
- 1.7 "Lessee" means Churchrock Development, LLC.
- 1.8 "Lessor" means the Navajo Nation.
- 1.9 "Regulated Substance" is defined in Section 9001(7) of the Resources Conservation and Recovery Act, 42 U.S.C. 6991(7), which is any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (42 U.S.C. 9601(14)) (but not including any substances regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. 6921 et seq.) and petroleum).
- 1.10 "Storage Tanks" means any tank which is defined by either the following subsections:

(1) An underground storage tank as defined by 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 or 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.

1.11 "Sublessee" means any individual or entity that enters into a Sublease with the Lessee.

2.0 PROPERTY DESCRIPTION

2.1 For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to the Lessee the following land situated in the Church Rock Industrial Park, Church Rock, New Mexico more particularly described as follows:

A parcel of land located in a Boundary Map of the Church Rock Industrial Park, a unrecorded survey plat located in the Tract 37 of Fractional Section 15, Township 15 North, Range 17 West, N.M.P.M., McKinley County, New Mexico situate in the Church Rock area and being more particularly described as follows.

Commencing at the Northwest corner of said parcel from which the Northwest Corner of said Section 15 bears North 67°36'24" West, a distance of 4,406.54, a point also being the on the South Right of Way line of Burlington Northern Santa Fe Railroad.

thence South 86°46'02" East along said South Right of Way line a distance of 744.46 feet to a set 1/2" rebar;
thence South 03°42'57" West, a distance of 78.40 feet to a set 1/2" rebar;
thence South 85°08'59" East, a distance of 60.32 feet to a set 1/2" rebar;
thence North 02°40'14" East, a distance of 80.11 feet to a point on said South Right of way line to a set 1/2" rebar;
thence continuing along South Right of Way line South 86°46'05" East, a distance of 564.76 feet to a set 1/2" rebar;
thence South 01°19'22" West, a distance of 83.26 feet to a set 1/2" rebar;
thence South 81°30'26" East, a distance of 23.40 feet to a set 1/2" rebar;
thence South 01°19'22" West, a distance of 184.82 feet to a set 1/2" rebar a point on the North line of a 60' Access Easement;
thence Along the 60' Access Easement North 86°17'03" West, a distance of 359.28 feet to a set 1/2" rebar;
thence South 04°02'15" West, a distance of 60 feet to a P.K. Nail;
thence Continuing South 04°02'15" West, a distance of 266.86 feet to a found rebar with plastic cap # 12163 said point being the Northerly Right of Way line of New Mexico State Route #118;
thence Along said Right of Way line North 85°46'58" West, a distance of 1045.25 feet to a Set 1/2" Rebar'
thence North 04°05'35" East, a distance of 575.96 feet to the Point of Beginning.
Containing 16.0544 Acres, more or less.

2.2 Said parcel contains 16.0544 acres and is subject to any valid existing easements, rights-of-way, records, reservations, and restrictions. Said property is shown on the attached survey plat marked as Exhibit "A", which by reference is made a part hereof.

- 2.3 The leased premises, located in Church Rock Chapter of the Navajo Nation, McKinley County, State of New Mexico is subject to any valid existing easements and rights-of-way. There is hereby reserved and excepted from the leased premises rights-of-way for utilities constructed by or on authority of the Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the leased premises.

3.0 PURPOSE, UNLAWFUL USES

- 3.1 Lessee shall use and operate the leased premises for the following purposes only:

Manufacturing facilities for nitrile gloves, and related products; warehouse, distribution centers, corporate offices, and equivalent operations as it relates to nitrile glove production; and renting or subleasing out any unused facility space.

- 3.2 The leased premises shall not be used by Lessee, Sublessee(s) or Assignee(s), for any purpose or purposes other than those set out above, except with the prior written consent of Lessor. Consent shall not be unreasonable withheld.

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

4.0 TERM

The Term of this Lease shall be seventy-five (75) years, beginning on the date the Lease is executed by the Navajo Nation President or an authorized designee.

5.0 RENTAL

- 5.1 The Lessee, in consideration of the foregoing covenants, agrees to pay monthly rental payments in lawful money of the United States of America to the Controller of the Navajo Nation, Post Office Box 3150, Window Rock, Navajo Nation (Arizona) 86515, as follows:

Years 1 – 5	No Rental, Development Period
Years 6 – 7	\$14,400.00 per month
Years 8 – 10	\$16,000.00 per month
Years 11 – 15	\$18,000.00 per month
Years 16 – 25	\$19,000.00 per month
Years 26 – 75	\$20,000.00 per month

- 5.2 Lessee must make monthly rental payments prior to the 1st day of each month during the Term of the Lease.
- 5.3 All rental payments shall be deposited with the Controller of the Navajo Nation. The first \$4,281,600 of rental payments shall be deposited by the Controller of the Navajo Nation into the Sihasin Fund. After \$4,281,600 of rental payments is deposited into the Sihasin Fund, all future rental payments shall be deposited in the General Fund.
- 5.4 If rent is unpaid ten (10) days after the 1st day of each month, the Lessee shall be subject to a late charge, as hereinafter provided. The Lessee shall be subject to a late charge of ten percent (10%) of the previous monthly amount due, however such amount shall be prorated for each day the rent is not paid until the thirtieth day after the due date, when the late charge shall be paid in full. If the Lessee does not pay the full amount past due within sixty (60) days, Lessor shall send a written

notice to Lessee that such amount has not been paid and the Lessee shall be subject to an additional late charge of ten percent (10%) of the monthly amount due. If the Lessee does not pay the full amount within ninety (90) days, Lessor shall send a written notice to Lessee that such amount has not been paid and the Lessee shall be subject to an additional late charge of ten percent (10%) of the monthly rent. After 90 days of non-payment, Lessee shall be deemed in default of the Lease.

- 5.5 In the event of a sublease, assignment, amendment, or transfer of this Lease, or any right to interest in this Lease, or improvements are made to the leased premises, the rent and other terms of this Lease shall be subject to renegotiation.

5.6 Rental and Performance Bond

Lessee agrees to post a cash deposit in the amount of \$40,000.00, as security. The purpose of such security is to guarantee performance on the lease, and is refundable to Lessee 3 years after the date of execution.

6.0 CONDITIONS OF LEASED PREMISE

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

7.0 UTILITY SERVICE LINE AGREEMENTS

- 7.1 Lessee will identify the rights-of-way necessary or appropriate for construction, operation and maintenance of any improvements. Lessee shall obtain approval from any third parties and Lessor as may be necessary or appropriate.
- 7.2 Lessee is authorized to enter into appropriate service line agreements with utility companies for the provision of necessary or appropriate utility services to the leased premises, including gas, water, sewer, electricity, telephone, television, internet, and other utilities, without further consent by Lessor, on the condition that:
- (1) Such agreements are for the sole purpose of supplying utility services to the leased premises; and
 - (2) Such agreements authorize utility service lines only within the leased premises; and
 - (3) Such agreements do not extend beyond the term of this Lease, including any extensions thereof; and
 - (4) Executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines are filed by the utility companies with Lessor within thirty (30) days of their execution.
- 7.3 Lessor reserves the right for Lessor's benefit or for the benefit of other land users, whether or not adjacent to the leased premises, to enter into service line agreements with utility companies for

service lines across the leased premises, provided that, after consultation, Lessor and Lessee determine such service lines do not unreasonably interfere with Lessee's use of the leased premises nor otherwise affect any property rights reserved to Lessor.

8.0 IMPROVEMENTS

- 8.1 All improvements and developments placed on the leased premises by Lessee, shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes.
- 8.2 Except as otherwise provided in this Lease, all buildings and improvements, excluding Lessee's removable personal property, equipment, and trade fixtures, on the leased premises shall remain on said leased premises after termination of this Lease and shall thereupon become the property of Lessor.
- 8.3 Lessee shall remove all removable personal property, equipment, and trade fixtures prior to termination of this Lease. Should Lessee fail to remove said personal property, equipment, 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.
- 8.4 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 attached or affixed to the buildings, improvements, or land in such a way as to legally retain the characteristics of personal property.
- 8.5 Lessor may require Lessee, at Lessee's expense, to remove improvements and restore the premises to the original state, within reason, upon termination of the Lease. Any such removal of property by Lessee must be completed within ninety (90) days after termination of this Lease.

9.0 CONSTRUCTION; ALTERATIONS; MAINTENANCE.

- 9.1 The Lessee shall not enter a construction loan agreement with a financial institution without approval of the Lessor.
- 9.2 Lessee shall have the right to make alterations, additions, or repairs to the leased premises. Notice of any alterations, additions, or repairs to the leased premises will be provided to Lessor thirty (30) days prior to the commencement of such alterations, additions, or repairs.
- 9.2 All parts of building visible to the public or from adjacent properties shall be maintained by Lessee in a pleasant appearance reasonably accepted by Lessor and all service areas shall be screened by Lessee from public view.
- 9.3 Except as otherwise provided for herein, Lessee shall, at all times during the term of this Lease and at Lessee's sole cost and expense, maintain the leased premises, including any and all improvements, thereon and any alterations, additions, or appurtenances thereto by Lessee, 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 leased premises.
- 9.4 Lessee shall indemnify and hold harmless the Lessor against liability for all claims arising from Lessee's failure to maintain said premises, structure, foundation, and the improvements thereon as herein above provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

10.0 NOTICES

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

To or upon Lessor: President
The Navajo Nation
Post Office Box 9000
Window Rock, Navajo Nation (Arizona) 86515

Telefax: 1-928-871-4025

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

Telefax: 1-928-871-7381

Copy by Email: srbp@navajoadvantage.com

To or upon Lessee: Churchrock Development, LLC
Attn: Mark Minsoo Lee, Member
P.O. Box 37
Church Rock, New Mexico 87311

Copy by Email: markmslee@hotmail.com

- 10.2 All notices shall be given by personal delivery, or by registered or certified mail with return receipt requested. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours, or if not during normal business hours, on the next business day following delivery; if by registered or certified mail, on the next business day following actual delivery or receipt.

- 10.3 Lessor and Lessee may at any time change its address for purposes of this Section by written notice.

11.0 SUBLEASES AND ASSIGNMENTS

- 11.1 Pursuant to Section 45.0 of this Lease, based on the contribution by Economic Development Administration for the building and improvements under EDA Award Number: 07-01-06088, Lessee hereby agrees that assignment and subletting are permitted under this Lease without prior written approval of the Economic Development Administration or any Navajo Nation committee/body. Should the Lessee enter into a sublease or assignment, the Lessee must:

- 1) Provide a copy of the sublease or assignment to the Navajo Nation Division of Economic Development;
- 2) The Sublessee or Assignee must agree to be bound by all terms and conditions of this Lease;
- 3) The sublease or assignment must not change the purposes set forth in Section 3.0; and

- 4) The term of the sublease or assignment must not extend beyond the term and any renewals set forth in Section 4.0.

12.0 AMENDMENT AND TRANSFER

- 12.1 Lessee shall not amend, or in any manner whatsoever transfer this Lease or any right to or interest in this Lease or any of the improvements on the leased premises, without prior written approval of the Lessor, which consent shall not be unreasonably withheld. No such amendment or transfer shall be valid or binding without such approval, and then only upon the condition that the Transferee or other successor in interest, excepting an approved encumbrancer(s), shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make such amendment or transfer, except as set forth herein, such action shall be deemed a breach of this Lease, excepting that an encumbrancer may enforce his rights in the manner herein provided.
- 12.2 Should Lessee sell, assign, or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee, Lessee shall provide written notice to the Lessor.
- 12.3 For purposes of this Section, the creation of a partnership, corporation, joint venture, management agreement, or other arrangement under which any person or entity other than Lessee is entitled to share in profits derived directly or indirectly from the leased premises or activities carried out thereon, shall require the written consent of Lessor and Lessee, which consent shall not be unreasonably withheld, unless Lessee is the majority owner (i.e. majority shareholder, majority partner, etc.) of the business that is reorganized, then only written notice will be required.

13.0 ENCUMBRANCE

- 13.1 This Lease, or any right to or interest in this Lease or any of the improvements on the leased premises, may be encumbered by Lessee for the purposes of securing a line of credit to develop and improve the leased premises on or after Effective Date. Encumbrancer must agree to be bound by all terms and conditions of this Lease.
- 13.2 Any encumbrance will:
- (1) Be limited to the leasehold interest of the Lessee or subleasehold interest of the Sublessee; and
 - (2) Not jeopardize in any way Lessor's interest in the land; and
 - (3) Be subject to the written approval of the Lessor as well as the sureties. The Lessor shall not unreasonably withhold its approval to an encumbrance.
- 13.3 Lessee agrees to furnish as requested any financial statements or analysis pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of said encumbrance.
- 13.4 Lessor shall give each encumbrancer notice of, and the right to cure within a reasonable time, a default by Lessee or Sublessee under this Lease or sublease, whichever is applicable. Lessor shall accept performance by the encumbrancer for covenants or other obligations under the Lease or sublease, with the same force and effect as though performed by the Lessee or Sublessee.
- 13.5 In the event of default by Sublessee, an encumbrancer of any sublease may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor and Lessee notice of the

same character and duration as is required to be given to the Sublessee by the encumbrancer. If notice of such sale is given and the Lessee fails to act, Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:

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

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

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

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

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

sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note, issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the 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.

- 13.9 Each encumbrancer must provide, if Lessor exercises the foregoing rights, all right, title and interest of Lessee in the Lease shall automatically terminate on the same date the right is exercised and the Lessor shall acquire the Lease; provided, however, that termination shall not relieve the Lessee from any obligation or liability which had accrued prior to the date of termination. Acquisition of the Lease by Lessor under these circumstances shall not serve to extinguish the Lease by merger or otherwise. The Lessee shall have the duty to execute any documents and take any action necessary to effectuate the termination and transfer of the Lessee's leasehold interest.
- 13.10 In the event Lessor does not avail itself of the above rights and a sale occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Lessee in the leasehold estate covered by said approved encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may assign the leasehold interest without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of this Lease. If the encumbrancer is the purchaser, it shall be required to perform the Lease only so long as it retains title thereto. If a sale, of the leasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by Lessor of any assignment will be required and said purchaser, as successor in interest to the Lessee, shall be bound by all the terms and conditions of the Lease and will assume in writing all the obligations thereunder.

14.0 LIENS; TAXES; UTILITY CHARGES

- 14.1 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
- 14.2 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 premises and all interests therein, for which either Lessee or Lessor may become liable.
- 14.3 Upon request Lessee shall furnish Lessor written evidence duly certified that any and all taxes required to be paid by Lessee have been paid, satisfied, or otherwise discharged. Lessee shall have the right to contest any claim, asserted tax, or assessment against the leased premises, by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless Lessor and the leased premises and all interest therein and improvements thereon from any and all claims, taxes, assessments, and like charges and from any lien therefor, or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessor shall execute and file any appropriate documents with reference to real estate tax exemption of the land when requested by Lessee.
- 14.4 In addition to the rent, taxes, and other charges herein described, Lessee shall pay charges for water, sewage, gas, electricity, telephone, trash, and other utility services as required for operation and maintenance of the leased premises.

15.0 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, not less than thirty (30) days after written notice from the Lessor, fails to pay or to post bond against enforcement. All costs and other expenses incurred by Lessor in so doing shall be paid to Lessor by Lessee on demand, with interest at the rate of eighteen percent (18%) per annum from the date of Lessor's payment until repayment is made. Failure to make such repayment on demand shall constitute a default of the Lease.

16.0 SANITATION

- 16.1 Lessee hereby agrees to comply with applicable, federal, state, local, and Navajo Nation laws, pertaining to all sanitation matters including but not limited to the storage and disposal of refuse, rubbish, other non-hazardous trash, and any Regulated Substances. All solid waste, including but not limited to refuse, rubbish, other non-hazardous trash, and any other Regulated Substance generated by the Lessee or by any Sublessee shall be disposed of only in accordance with applicable laws.
- 16.2 Lessee agrees to at all times maintain the entire leased premises in a safe, sanitary condition, presenting a good appearance both inside and out in all buildings operated on the leased premises. Non-compliance with this Section shall constitute a default of this Lease.
- 16.3 Lessee agrees to maintain all records required by applicable law, regarding refuse disposal, and to make such records available to appropriate officials of the Navajo Nation.

17.0 REGULATED SUBSTANCES

- 17.1 Lessee shall not cause or permit any Regulated Substance to be used, stored, generated, or disposed of, on, or in the leased premises without first obtaining written consent from the Navajo Nation Environmental Protection Agency. If the Navajo Nation Environmental Protection Agency does not respond to a request for consent within thirty (30) days such consent is deemed given.
- 17.2 If Regulated Substances are used, stored, generated or disposed of on or in the leased premises, or if the leased premises become contaminated in any manner for which Lessee or Sublessee are legally liable, Lessee shall indemnify and hold harmless the Lessor from any and all direct claims, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the leased premises, damages due to loss or restriction of rentable or usable space, or any damage 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, any and all sums paid for clean-up to the extent required by governmental authorities) arising during or after the Lease term and arising as a result of such contamination by Lessee.
- 17.3 This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration, or other costs of regulatory compliance mandated by the federal, state, local, or Navajo Nation law.
- 17.4 Without limitation of the foregoing, if Lessee causes, or permits, the presence of any regulated substance on the leased premises and such results in any contamination of the leased premises or other property including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions required by federal, state, local, and Navajo Nation applicable laws. Lessees will first obtain Lessor's approval for any such remedial action.

18.0 STORAGE TANKS

- 18.1 Lessee shall provide the Navajo Nation Environment Protection Agency and the Navajo Nation Division of Economic Development with a clear and legible copy of all notices and reports

concerning storage tank installation, testing, leakage, or remediation at the premises subject to the Lease which Lessee is required by applicable law or regulation to provide to the United States Environmental Protection Agency or which Lessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Lease upon the Navajo Nation Environmental Protection Agency shall be by first class to:

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

and,

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

- 18.2 If Lessee or Sublessee installs or operates storage tanks on the leased property, the Lessee or Sublease shall post a bond, obtain insurance, or provide such other evidence of financial responsibility that meets all the requirements of 40 C.F.R. Part 280, Subpart H regardless of whether the storage tank in question is an aboveground or underground storage tank. Lessee shall provide proof of this bond, insurance, or other qualifying financial responsibility mechanism to the Navajo Nation Division of Economic Development. The bond, insurance, or other qualifying financial responsibility mechanism shall remain in effect for the term of the base lease or sublease, and any renewals thereof, and shall not be released or terminated until such time as the Division certifies that the facility is in compliance with all applicable law and regulations, or that the tanks have been removed and the site has been remediated, or that the base lease or sublease has been transferred and the new operator has provided proof of an adequate bond, insurance, or otherwise satisfied the 40 C.F.R. Part 280, Subpart H financial responsibility requirements. It shall be the responsibility of the Lessee and the Sublessee to provide the Navajo Nation Division of Economic Development with all proof required for release of bond or termination of insurance coverage.
- 18.3 If storage tanks are located at the Lease site, the Lessee will supply the Navajo Nation Environmental Protection Agency and the Navajo Nation Division of Economic Development with a complete copy of the report and underlying data generated in preparation of a Phase Two environmental audit before Lessee places any Regulated Substances in the storage tanks or releases any Regulated Substances from the storage tanks but no later than ninety (90) days after the Lease is approved by the Lessor.
- 18.4 The Lessee shall notify the Navajo Nation Environmental Protection Agency and the Navajo Nation Division of Economic Development, or any institutional successor, of the firm chosen to perform the Phase Two Environmental audit prior to the performance of such audit. Lessor may accept or decline the choice of the environmental auditor within twenty (20) days of written notice by Lessee. If Lessor does not respond within twenty (20) days of receipt of the Lessee's written notice, the environmental auditor is deemed accepted. If, however, the most recent prior Lessee of the premises has performed a Phase Two environmental audit on the premises at or after the termination of the prior tenancy, Lessee is not required to perform a Phase Two environmental audit if Lessee agrees to be conclusively legally bound by the findings of the above referenced Phase Two environmental audit.
- 18.5 Lessee shall pay to the Navajo Nation the amount of \$15,000 which will be held by the Navajo Nation during the term of the Lease. One year after Lessee's rental obligation commences Lessee shall pay \$5,000 toward payment of the \$15,000 and shall pay \$5,000 at the end of the second and

third years of Lessee's rent payment obligation.

The amounts shall be submitted for deposit at the Navajo Nation Division of Economic Development at P.O. Box 663, Window Rock, Navajo Nation (Arizona) 86515.

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

- 18.6 If the Navajo Nation Environmental Protection Agency determines an environmental audit should be performed at the leased premises prior to the Lessee's deposit of entire \$15,000 deposit and the amount deposited is insufficient to pay for the environmental audit, and the environmental audit determines Regulated Substances are unlawfully present, Lessee shall upon written demand by Lessor, promptly deposit with Lessor an amount sufficient to pay for the environmental audit or to bring Lessee's deposit to \$15,000, whichever is less. If Lessor performs an environmental audit pursuant to this article during the term of the Lease which finds Regulated Substances unlawfully present and which is financed by all or part of the above referenced sum, Lessee shall, at the end of the year in which the audit is completed, deposit funds with the Navajo Nation sufficient to reestablish the amount deposited prior to the audit and to reimburse the Navajo Nation for any amount the Navajo Nation spent on the environmental audit in excess of the \$15,000 deposit.
- 18.7 The deposit shall be kept in an account by the Navajo Nation Office of the Controller on behalf of the Lessee to meet the expenses of the obligations stated above. At the termination of the Lease and upon completion of all environmental audits, removal and remediation to be performed on the premises, the Navajo Nation shall return any of the money deposited to the Lessee which was not spent to conduct environmental audits of the leased premises or to remediate, or remove Regulated Substances which were released on the leased premises.
- 18.8 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 attorney's fees.
- 18.9 The ownership and removal responsibility for any regulated substances or petroleum product manufacturing, processing, storage, or conveyance facilities placed in or on the leased premises shall be the responsibility of the Lessee. All facilities or storage tanks must comply with applicable federal, state, local, and Navajo Nation law including requirements for corrosion protection, spill and overfill protection, and leak detection. Any repairs made to such facilities or storage tanks must comply with applicable repair standards. Lessee shall provide the appropriate Navajo Nation Division of Economic Development department with complete and legible copies of all documents establishing Lessee's ownership of, lease of, or acquisition of any other use interest in any storage tanks installed on the leased premises.
- 18.10 Unless otherwise notified by the Lessor, Regulated Substances and storage tanks are the property of the Lessee who places them on the property and do not become the property of the Lessor for RCRA liability purposes unless or upon the expiration of the Lease. Lessee is 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 the Lessor in writing not to remove.
- 18.11 Prior to termination or expiration of the Lease and prior to vacancy of the property, the Lessee shall remove those improvements that are subject to removal as described above and below, assess the

site for potential contamination, remediate any contamination discovered, and satisfy or actively and in good faith seek resolution of any third party damages which may have occurred. Should any of the above activities extend past the termination or expiration date of the Lease, the Lease shall be extended and Lessee shall remain financially responsible for completing these activities. The bond, unless waived, or the insurance of this Lease shall not be released or terminated until these activities are completed.

19.0 LIABILITY INSURANCE

19.1 Unless otherwise provided, without limiting any liabilities or any other obligations of Lessee, Lessee will provide and maintain, from the date the lease is approved and continuing until the Lease is terminated or expired, the minimum insurance coverages listed below. Coverage will be provided with forms and insurers acceptable to the Lessor until all obligations under this Lease are satisfied. All insurers must be a Nationally Accredited Insurance Company with a financial strength rating of "A" or the equivalent, and authorized to do business in the State where the leased premises are located. All policies required under this Lease shall name the Lessor as an additional named insured. These coverages are as follows:

- (1) Workers' compensation insurance to cover obligations imposed by federal and state statutes of the entity having jurisdiction over the Lessee's employees working at the leased premises, and Employers' Liability insurance with a minimum amount as required and regulated by the state in which the leased premises is located. In case of any contracted work on the leased premises, the Lessee will require the contractor, and all subcontractors, to provide the same as above.
- (2) Lessee shall obtain Commercial General Liability Insurance. The Commercial General Liability Insurance shall be with an unimpaired minimum combined single limit of not less than \$1,000,000.00, including with each occurrence a General Aggregate Limit of \$500,000.00. This policy shall cover property business interruption, bodily injury, broad form property damage, personal injury, death, blanket contract, independent contractor, product, and completed operations coverage. The policy shall contain a severability of interests provision. Lessor may require the amount of the Commercial General Liability Insurance be increased at any time, whenever Lessor determines that such increase is reasonably necessary for the protection of the Lessor. If leased premise is undeveloped, the Lessee must obtain appropriate insurance, which shall include Lessor as an additional named insured.
- (3) Commercial Automobile Liability Insurance with a combined single limit for bodily injury and property damage for each occurrence with respect to Lessee's owned, hired, and non-owned vehicles assigned to or used in Lessee's business, shall be based upon the minimum amount required and regulated under the State in which the lease premises is located.
- (4) If Lessee is engaged in a profession, the Lessee shall carry Professional Liability insurance in an amount as is required and regulated under the State or Association for which the professional is licensed.
- (5) Lessee, at its cost, shall maintain insurance coverage on all of Lessee's personal property, Lessee's alterations, Lessee's utility installations, and Lessee's trade fixtures in, or about the leased premises. The proceeds from any such insurance may be used by Lessee for the replacement of Lessee's personal property, alterations, utility installations, or trade fixtures if Lessor repairs or rebuilds the leased premises.

19.2 The policies required by Sections 20 shall be endorsed to include the Navajo Nation, its agents, representatives, officers, directors, officials, and employees as an additional insured and shall

require that the insurance provided by Lessee shall be primary insurance and that any insurance carried by the Navajo Nation shall be excess and not contributory insurance to that provided by Lessee.

- 19.3 A certificate of insurance shall be issued to the Navajo Nation by the Lessee, within thirty (30) days from the date of execution of the Lease but before beginning operations of the leased premise, as evidence that the required coverages are in full force and effect. The certificate shall indemnify this leased premises and indicate that the insurer will provide at least thirty (30) days prior written notice to Lessor if the policies will be canceled, terminated, or materially altered.

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

- 19.4 The Lessee may request to postpone the insurance requirements until either (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received; subject to Section 19.1(2). Such postponement shall be as the sole discretion of the Navajo Nation Division of Economic Development and shall not be unreasonably withheld.
- 19.5 Failure on the part of the Lessee to procure or maintain required insurance shall constitute a material breach of contract upon which the Lessor may immediately terminate this Lease.
- 19.6 Lessor reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.
- 19.7 Lessee and its insurers providing the required coverages shall waive all rights of recovery against the Navajo Nation and its agents, officials, and employees.
- 19.8 The insurance limits required under this Lease shall not limit the liability of the Lessee, nor relieve the Lessee of any obligation under this Lease.
- 19.9 The Lessee shall not do or commit to be done anything in or upon any portions of the leased premises or bring or keep anything there which would in any way conflict with the conditions of any insurance policy upon the leased premises or in any way increase the rate of insurance upon the leased premises or on property kept there.
- 19.10 Lessor will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by Lessee proves to be inadequate or otherwise insufficient for any reason whatsoever.

20.0 FIRE AND CASUALTY INSURANCE

- 20.1 Lessee shall carry, from the Effective Date, fire and casualty insurance with extended coverage endorsement, covering not less than full insurable value of the building on the leased premises. Said policy shall be obtained from a Nationally Accredited Insurance Company, with a financial rating of A or equivalent, licensed to do business in the state in which the leased premises are located and shall be written jointly to protect Lessee and Lessor. Lessee shall provide for notification to the Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason, including non-payment of premiums.
- 20.2 Lessee may be granted a postponement for either (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received.
- 20.3 In the event of damage to the building, Lessee shall rebuild, repair, or otherwise reinstate the damaged building in a good and substantial manner according to the plan and elevation of the

building so destroyed or damaged or in accordance with any modified plan approved in writing by the Lessor prior to commencement of repair reconstruction. Repair or reconstruction shall commence as soon as possible and shall be pursued diligently. Rent shall abate in its entirety for any period in which the leased premises are not restored to the condition which existed prior to the casualty. The Term of the Lease shall not be extended while the rent is being abated.

- 20.4 Insurance proceeds shall be deposited in an escrow account with an institution approved by Lessor. Lessee shall also deposit in said escrow account all additional funds required to reconstruct the damaged improvement. Escrow instructions shall include provisions that all funds so deposited shall be used in 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.
- 20.5 If the leased premises cannot be restored within twenty-four (24) months of the casualty, Lessee shall have the right, by providing written notice to Lessor, to terminate this Lease, unless otherwise agreed, in writing between the Lessor and Lessee.
- 20.6 In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all improvements on the leased premises during the last one (1) year of the Term of this Lease, including the Renewal Options, Lessee may choose not to reconstruct said improvements. Lessee shall provide Lessor with a written notice of the exercise of Lessee's reconstruction decision within thirty (30) days of the event of damage, giving rise to Lessee's decision. 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. Should Lessee not exercise its option to reconstruct, this Lease shall terminate thirty (30) days after notice is sent to Lessor. The leased premise shall be cleared of debris at Lessee's expense prior to termination of the Lease. Lessee shall not be charged rent during the period of debris removal unless Lessee occupies the leased premises beyond the Lease termination date, after which the Lessee will be charged hold over rental as provided herein. In the event Lessee does not reconstruct, all insurance proceeds shall be paid to the Lessor.
- 20.7 Any encumbrancer shall be named as beneficiary under all insurance policies required by this paragraph and in the event of loss or damage to the buildings on the leased property while an approved encumbrance remains unpaid, the amount of such loss or damage (but not exceeding the remaining balance of the approved encumbrance) shall be paid to the encumbrancer on the condition that the encumbrancer agrees to comply with the reconstruction obligations set forth herein. If such amount paid to the encumbrancer is sufficient to repair the loss or damage or if Lessor or Lessee shall within three (3) months after such payment by the insurer to the encumbrancer deposit with the encumbrancer enough money to completely repair the loss or damage, when added to the amount paid by the insurer to the encumbrancer, the encumbrancer shall, upon written order of Lessor or Lessee, pay such monies for such repair, and it shall not be deemed a payment or credit on the encumbrance; but otherwise, at the expiration of such three (3) months said sum so paid by the insurer to the encumbrancer shall be applied and credited upon the approved encumbrance. It is understood and agreed that nothing herein shall relieve Lessee of its obligation to repair and/or replace the damaged improvement to a condition as good or better than before the damage.

21.0 INDEMNIFY

Except for Lessor's sole negligence, Lessee shall indemnify, protect, defend, and hold Lessor harmless from and against any claims, loss rents, damages, costs, liens, judgments, penalties, permits, attorneys or consultant's fees, expenses and/or liabilities arising out of, involving, or dealing with, the occupancy of the leased premise by Lessee, the conduct of the Lessee's business, any act, omission, neglect or misconduct of Lessee, its agents, contractors, employees, or invitees, and out of any default or breach by Lessee in the performance in a timely manner of any obligation on the Lessee's part to be performed under this Lease. The

forgoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not litigated and/or reduced to judgment, and whether well-founded or not. In case any action or proceeding be brought against Lessor by reason of any of the foregoing matters, Lessee, upon notice from the Lessor shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor, and Lessor shall cooperate with Lessee in such defense. Lessee shall have the right to control such defense and to settle or compromise the claim in cooperation with Lessor as long as such defense, settlement, or compromise does not unduly prejudice Lessor.

22.0 EMINENT DOMAIN

- 22.1 If, at any time during the term of this Lease, the leased premises or any part thereof is taken or condemned under the laws of eminent domain, then and in every such case, the leasehold estate and interest of the Lessee in said leased premises or part thereof taken shall forthwith cease and terminate. All compensation awarded by reason of any takings of the leased premises 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.
- 22.2 If the condemnation is less than the entire leased premises and/or improvements, the Lease shall continue as for the remainder of the Term of the Lease, however the rent shall be reduced proportionately. Notwithstanding the foregoing if Lessee in its reasonable opinion believes a taking of less than all of the leased premises has a material adverse impact on its business operations at the leased premises then Lessee may terminate the Lease in its entirety, upon a thirty (30) day notice to Lessor.
- 22.3 If a temporary condemnation of all or a portion of the leased premises and/or improvements, Lessee will be entitled to the entire amount of an award, whether paid by way of damages, rent or otherwise; however, if such condemnation extends beyond the Term of the Lease, such amounts will be apportioned among Lessor and Lessee based upon the duration of the Term remaining following the condemnation and the duration of the condemnation following the end of the Term of the Lease.

23.0 DEFAULT

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

notice thereof has been received by Lessee from Lessor.

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

- (1) Notify in writing to the Lessor that the default has been cured or cure commenced and submit documentation necessary to indicate the default has indeed been cured or cure commenced; or
- (2) Submit in writing to the Lessor a statement and explanation disputing the Lessor's determination that the Lease is in default and why the Lease should not be terminated; or
- (3) Request in writing to be given additional time to cure or commence cure, unless it is found it is not reasonably to cure within ten (10) days there is no default for such longer period of time as is reasonably required to cure. Any additional time granted to cure shall be in the discretion of the Navajo Nation Division of Economic Development. If a grant of extension for time to cure is given, the Lessee shall diligently perform and complete the corrective actions within a time frame agreed, in writing, between the Lessor and Lessee.

23.4 Should a default occur beyond all applicable cure periods; the Lessor may exercise the following options upon Lessee's default:

- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease; or
- (2) Re-enter the leased premises if the Lessee has abandoned the leased premises or has failed to conduct business for a period of sixty (60) days without notice and remove all persons and property therefrom, excluding the property belonging to authorized Sublessees, and re-let the leased premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to terminate the Lease thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor who shall have the right to alter and repair the leased premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering, and repairing, including attorney's fees and any real estate commissions actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor may sue thereafter as each monthly deficiency shall arise; or
- (3) Terminate this Lease, as a matter of law; or
- (4) Pursue the execution on bonds or collection of insurance proceeds.

23.5 No waiver 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.

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

23.7 If any approved encumbrancer shall give Lessor, before any default shall have occurred in this Lease, a written notice containing the name and address and the interest in the leased premises of such encumbrancer, Lessor shall thereafter give to such encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given by Lessor to Lessee.

Lessor shall accept such encumbrancer's performance of any of Lessee's covenants or other obligations under this Lease, with the same force and effect as though performed by Lessee. Upon providing such written notice, the encumbrancer shall have standing to pursue any appeals permitted by applicable statutes and regulations that Lessee would be entitled to pursue. Further, Lessor shall not terminate the Lease if an encumbrancer has commenced and is diligently pursuing a foreclosure action to terminate Lessee's interest in said Lease and has cured or is taking action to cure the breach that is the cause of the termination.

24.0 EARLY TERMINATION

- 24.1 Lessee shall have the unconditional right to terminate this Lease, without liability or fault (an "Early Termination"), subject to a penalty fee of one (1) year rent which shall be in effect until the ninth anniversary of the Effective Date, by giving to Lessor a thirty (30) day notice of termination upon the seventh anniversary of the Effective Date, so long as the Lessee or any Sublessees are not in Default, beyond all applicable cure periods.
- 24.2 Upon such termination, the Parties shall have no further rights, obligations or liabilities under this Lease, except a penalty fee as set forth in Section 24.1 and except such rights, obligations or liabilities that expressly survive termination hereof
- 24.3 If Lessor terminates the Lease, Lessor shall send a termination letter to Lessee within a reasonable time period from the date of determination by the Lessor to terminate, by certified mail, return receipt requested. Lessee shall vacate the premises within thirty (30) days upon receipt of the termination letter, unless an appeal has been filed. The termination shall become effective 31 days after mailing the letter.
- 24.4 Lessee may terminate this Lease, without penalty, subject to approval from the Lessor, only during the development period, set forth in this Section 5 of this Lease, and conditioned upon the compliance with the Navajo Business Procurement Code, 15 N.N.C. 1501 et seq. Lessee must notify the Lessor in writing of its intention to terminate no later than thirty (30) days prior to the expiration of the development period.
- 24.5 Lessor and Lessee may agree to mutually terminate this Lease without a penalty fee.

25.0 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 a temporary assignment to Lessor, without merger of the Lease and sublease or subtenancy, of any and all such subleases and/or subtenancies, until a lease can be obtained between the Sublessee, Assignee, and the Lessor, which such parties shall diligently pursue.

26.0 DELIVERY OF LEASED PREMISES

- 26.1 At the termination or expiration of this Lease, Lessee will peaceably and without legal process deliver up the possession of the leased premises, in good condition, usual wear and tear casualty, taking or repairs conducted by Lessor excepted.
- 26.2 Lessee agrees to allow the Navajo Nation Environmental Protection Agency to conduct an environmental audit 360 days prior to the expiration or termination of such Lease. Such assessment shall be delivered to the Navajo Nation Division of Economic Development sixty (60) days prior to the expiration or termination or the delivery of the Leased Premises, whichever occurs first, in turn the Navajo Nation Division of Economic Development shall submit to the Lessee a copy of such audit within ten (10) days of receipt.

27.0 INSPECTION

- 27.1 Lessor and its authorized representatives shall have the right, at any reasonable time during the term of this Lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the leased premises, the protection of the leased premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Lessee shall pay the costs of such testing. Nothing in this paragraph shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.
- 27.2 Lessor, specifically Project Development Department, shall have the right, during normal business hours, during the term of this Lease and if the Lease is terminated or expired, at any time, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements as is required under the Navajo Nation Lease Compliance Form, and the Lessor and its authorized Representatives shall notify the Lessee not less than three (3) days before conducting the inspection. Such inspection shall not unreasonably interfere with the Lessee's business operations, unless the Lease has expired or is terminated.

28.0 HOLDING OVER

Holding over by the Lessee after the termination of this Lease shall not constitute a renewal or extension thereof or give the Lessee any rights in or to the leased premises. In the event of a holding over by Lessee, the Lessee shall be subject to immediate removal and shall agree to pay as hold over rental an annual rental computed at double the rental amount charged during the twelve months immediately preceding the commencement of the holding over period. Accepting holdover rent from Lessee does not extend the Lease or constitute an election of remedies or adversely affect any of Lessor's other remedies.

29.0 LEASE REQUIREMENTS NOT EXCLUSIVE

Nothing in this Lease shall be construed to relieve Lessor, Lessee, or any Sublessee of any obligations pursuant to any federal, state, local, or Navajo Nation law, which is currently enacted or which may be enacted at a later date, for the protection of the environment or the public health, safety, or general welfare.

30.0 NO PARTNERSHIP

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

31.0 NAVAJO PREFERENCE

To the extent permitted under paragraph 47.1 and the Civil Rights Act, all employment and contracting opportunities arising out of Lessee's activities under this Lease, Lessee shall give preference in employment and contracting to qualified Navajo individuals and certified contractors in compliance with the Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq. ("NPEA"), and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq. ("NBOA"). The terms and provisions of the NPEA and NBOA are specifically incorporated in, and become a part of this Lease. Violation of such laws by the Lessee shall constitute a breach of this Lease and provide grounds for suspension or termination of the Lease or any other remedy prescribed by the NPEA and NBOA.

32.0 USE OF NAVAJO PRODUCED GOODS AND SERVICES

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

33.0 MINERALS

All minerals, including sand and gravel, contained in or on the leased premises are reserved for the use of Lessor, unless placed on the leased premises by the Lessee. Any removal of minerals as set forth herein shall only be conducted by the Lessor, provided during the Term of the Lease Lessor shall not interfere with the ongoing business operation of the Lessee or Sublessee nor enter upon the premises to search or remove minerals unless agreed in writing between the Lessor and Lessee and/or Sublessee.

34.0 QUALIFICATIONS OF BUSINESS

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

35.0 AGREEMENT TO ABIDE BY ALL APPLICABLE LAWS

The Lessee and the Lessee's employees, agents, and Sublessees and their employees and agents agree to abide by all applicable laws, regulations, and ordinances of the Navajo Nation, the State of New Mexico, and the United States, now in force and effect or as may be hereafter in force and effect.

36.0 GOVERNING LAW AND RESOLUTION OF DISPUTES

The laws of the Navajo Nation shall govern the construction, performance, and enforcement of this Lease. All actions or proceedings brought by Lessee against the Navajo Nation in connection with or arising out of the terms and conditions of this Lease, shall be brought only in the courts of the Navajo Nation, and no action or proceeding shall be brought by Lessee against the Navajo Nation in any court or administrative body of any state.

37.0 CONSENT TO JURISDICTION

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

38.0 COVENANT NOT TO CONTEST JURISDICTION

Lessee hereby covenants and agrees never to contest or challenge the legislative, executive, or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons, and activities within its territorial boundaries, or on any other basis generally applicable to similar challenges to the jurisdiction of a state government.

39.0 NO WAIVER OF SOVEREIGN IMMUNITY

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

40.0 SUCCESSORS

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

41.0 SAVINGS CLAUSE

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

42.0 NO ORAL AGREEMENTS

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

43.0 VALIDITY

This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party hereto until approved by the Resource Development Committee of the Navajo Nation Council and/or any other appropriate oversight committees and the President of the Navajo Nation, pursuant to Navajo Law.

44.0 FEDERAL COMPLIANCE TERMS FOR LOT 15A BUILDINGS

Lessee, based on the contribution by Economic Development Administration for the building and improvements under EDA Award Number: 07-01-06088, hereby agrees to the following Federal compliance terms:

- 44.1 Civil Rights. The Lessee shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, religion, sex, age or physical or mental disability.
- 44.2 Audits and Inspections. At any time during normal business hours and as frequently as is deemed necessary, the Lessee shall make available to the Lessor and the Economic Development Administration (EDA) or EDA's authorized agents, for their examination, all of its records pertaining to matters covered by this Lease and only matters relating to the Lease.
- 44.3 Retention of Records. All records in the possession of the Lessee pertaining to this Agreement shall be retained for a period of three (3) years after the expiration of the Agreement or any extensions thereof. All records shall be retained beyond the three (3) year period if audit findings have not been resolved within that period or if other disputes have not been resolved.
- 44.4 Assignment and Subletting. Assignment and subletting are permitted under this Agreement without prior written approval of the Economic Development Administration or any Navajo Nation committee/body.

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

LESSEE, CHURCH ROCK DEVELOPMENT, LLC

By: _____
Mark Minsoo Lee, Member

Date: _____

THE NAVAJO NATION, LESSOR

By: _____
President, Navajo Nation or Designee

Date: _____

**THE NAVAJO NATION
CHURCH ROCK CHAPTER**

Kin Łitsó Sinili

Community Service Coordinator

Vera Marianito, Accounts Maintenance Specialist



Edmund E. Yazzie, Council Delegate
Johnnie Henry Jr., President
Sherman Woody, Vice-President
Louise Jim, Secretary/Treasurer
Donald Arviso, Land Board Member

**RESOLUTION OF CHURCH ROCK CHAPTER
CRC-19-02-02**

**SUPPORTING A LEASE BETWEEN THE NAVAJO NATION AND CHURCH ROCK
DEVELOPMENT, LLC AND RHINO HEALTH INC TO OCCUPY THE INDUSTRIAL
BUILDING AND WAREHOUSE AND ADDITIONAL ACREAGE WITHIN THE CHURCH
ROCK INDUSTRIAL PARK ON LANDS LOCATED WITHIN CHURCH ROCK, NAVAJO
NATION, NEW MEXICO**

WHEREAS:

1. The Church Rock Chapter Government is a duly certified Chapter of the Navajo Nation Code; Title II, Section 4001 and 4006. Therefore, the Chapter is authorized to address and take action on the needs concerns for the betterment of its people.
2. Church Rock Development, LLC and Rhino Health Inc, submitted an application to the Project Development Department within the Division of Economic Development to lease the Manufacturing Facility and Warehouse in Lot 15 and additional acreage for Phase II in the Church Rock Industrial Park located in Church Rock, Navajo Nation, New Mexico; and
3. The Project Development Department legislative program's purpose is to promote and create employment and business opportunities in the commercial, industrial, tourism and private sectors of the Navajo economy; and
4. The Project Development Department has reviewed Church Rock Development, LLC and Rhino Health's application and recommends approval of a lease with Church Rock Development, LLC and a sublease with Rhino Health Inc. for occupancy of the manufacturing facility and warehouse in Lot 15 and expansion of Phase II within the Church Rock Industrial Park; and
5. The purpose of this lease is to establish a data center and data recovery center with cooperate offices in the Church Rock Industrial Park consisting of 2.00 acres more or less. The establishment of this business will benefit the community of Church Rock Chapter by providing employment in the local area. The proposed occupancy of Church Rock Development LLC and Rhino Health, Inc. has support for the Project Development Department, Division of Economic Development; and
6. The people of the Church Rock Chapter community having reviewed the request and the need for the establishment of this business and Mark Minsoo and DJ Yoon, CEO and Owner of the Rhino Health, Inc. and Church Rock Development, LLC having appeared before the Chapter hereby recommends approval of a business site lease by the Resource Committee of the Navajo nation Council.

NOW THEREFORE BE IT RESOLVED:

1. The Church Rock Community supports Church Rock Development, LLC and Rhino Health, Inc. to occupy an industrial building and warehouse and additional acreage for Phase II within the Church Rock Industrial Park located in Church Rock Navajo Nation, New Mexico.

THE NAVAJO NATION CHURCH ROCK CHAPTER

Kin Łitsó Sinilí

Community Service Coordinator

Vera Marianito, Accounts Maintenance Specialist



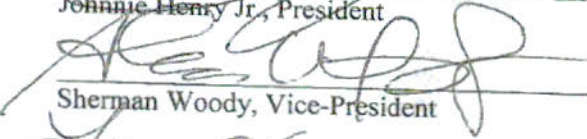
Edmund E. Yazzie, Council Delegate
Johnnie Henry Jr., President
Sherman Woody, Vice-President
Louise Jim, Secretary/Treasurer
Donald Arviso, Land Board Member

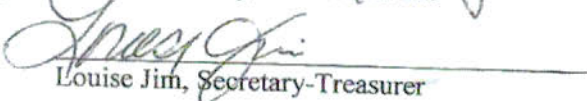
2. The Church Rock Chapter requests the Project Development Department, Division of Economic Development to take any and all necessary actions to process and obtain approval of the above transaction for Church Rock Development, LLC and Rhino Health, Inc. to locate in Church Rock, Navajo Nation, New Mexico.
3. The Church Rock Chapter further recommends to the Resource Committee of the Navajo Nation Council to approve of a business site lease between the Navajo Nation and Church Rock Development, LLC and sublease with Rhino Health, Inc.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Church Rock Chapter at a duly called meeting in Church Rock, Navajo Nation, New Mexico, at which a quorum was present and that same was passed by the vote of 34 in favor, 08 opposed and 11 abstained this **13th day of February, 2019**


Johnnie Henry Jr., President


Sherman Woody, Vice-President


Louise Jim, Secretary-Treasurer

Motioned By: Louise Begay

Seconded By: Geneva Peter

Document No. 013466Date Issued: 09/24/2019**EXECUTIVE OFFICIAL REVIEW**Title of Document: BSL between NN&Churchrock Development LLCContact Name: BEGAY-PLATERO, SHARLENE R.Program/Division: DIV. OF ECONOMIC DEVELOPMENTEmail: srbp@navajoadvantage.comPhone Number: (505) 905-6414☒ **Business Site Lease**

1. Division: SR Begay-Platero Date: 11/10/20 9/25/19 Sufficient ☒ Insufficient ☐

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

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

3. Office of the Attorney General: KB Date: 10/17/19 ☒ ☒

KB 11/10/2020 KB 11/10/2020

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

1. Division: Date: ☐ ☐

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

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

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

2. Office of the Controller: Date: ☐ ☐

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

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

1. NNEPA: Date: ☐ ☐

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

☐ **Lease Purchase Agreements**

1. Office of the Controller: Date: ☐ ☐

(recommendation only)

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

☐ **Grant Applications**

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

2. Office of the Controller: Date: ☐ ☐

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

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

1. Division: Date: ☐ ☐

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

☐ **Relinquishment of Navajo Membership**

1. Land Department: Date: ☐ ☐

2. Elections: Date: ☐ ☐

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

☐	Land Withdrawal or Relinquishment for Commercial Purposes			Sufficient	Insufficient
1. Division:	_____	Date: _____	☐	☐	
2. Office of the Attorney General:	_____	Date: _____	☐	☐	
☐	Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases				
1. NLD	_____	Date: _____	☐	☐	
2. F&W	_____	Date: _____	☐	☐	
3. HPD	_____	Date: _____	☐	☐	
4. Minerals	_____	Date: _____	☐	☐	
5. NNEPA	_____	Date: _____	☐	☐	
6. DNR	_____	Date: _____	☐	☐	
7. DOJ	_____	Date: _____	☐	☐	
☐	Rights of Way				
1. NLD	_____	Date: _____	☐	☐	
2. F&W	_____	Date: _____	☐	☐	
3. HPD	_____	Date: _____	☐	☐	
4. Minerals	_____	Date: _____	☐	☐	
5. NNEPA	_____	Date: _____	☐	☐	
6. Office of the Attorney General:	_____	Date: _____	☐	☐	
7. OPVP	_____	Date: _____	☐	☐	
☐	Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease				
1. Minerals	_____	Date: _____	☐	☐	
2. OPVP	_____	Date: _____	☐	☐	
3. NLD	_____	Date: _____	☐	☐	
☐	Assignment of Mineral Lease				
1. Minerals	_____	Date: _____	☐	☐	
2. DNR	_____	Date: _____	☐	☐	
3. DOJ	_____	Date: _____	☐	☐	
☐	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: _____	☐	☐	
2. F&W	_____	Date: _____	☐	☐	
3. HPD	_____	Date: _____	☐	☐	
4. Minerals	_____	Date: _____	☐	☐	
5. NNEPA	_____	Date: _____	☐	☐	
6. DNR	_____	Date: _____	☐	☐	
7. DOJ	_____	Date: _____	☐	☐	
8. OPVP	_____	Date: _____	☐	☐	
☐	OTHER:				
1. _____	_____	Date: _____	☐	☐	
2. _____	_____	Date: _____	☐	☐	
3. _____	_____	Date: _____	☐	☐	
4. _____	_____	Date: _____	☐	☐	
5. _____	_____	Date: _____	☐	☐	



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ	
01-10-2020 @ 12N	
DATE / TIME	
☐ 7 Day Deadline	
DOC #:	013466 #2
SAS #:	
UNIT:	ECON

☒ RESUBMITTAL
(Sept 2019)

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

CLIENT TO COMPLETE

DATE OF REQUEST:	1/10/2020	DIVISION:	Of Economic Development
CONTACT NAME:	Sharlene Begay-Platero	DEPARTMENT:	Proj Dev Department
PHONE NUMBER:	505-905-6414	E-MAIL:	srbp@navajoadvantage.com

TITLE OF DOCUMENT: Review of this Draft #7 of this proposed BSL (on Fee Land) in the Church Rock Industrial Park

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:	JAN 10 2020 1:00pm	REVIEWING ATTORNEY/ADVOCATE:	Katherine Belzowski
DATE TIME OUT OF UNIT:			

DOJ ATTORNEY / ADVOCATE COMMENTS

Legally Sufficient.

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
Katherine Belzowski	1/10/17 2:35pm	[Signature]	1/10/2020 3:48pm

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

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

NNDJ/DRRF-July 2013



ENVIRONMENTAL SUMMARY

DATE: September 10, 2018

Requesting Party: Sharlene Begay-Platero, PDD/DED

Reviewed by: Eugenia Quintana, NN-EPA

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

1. Historic Preservation:

2. Fish and Wildlife:

3. Navajo Environmental Protection Agency:

Summary of Compliance with Environmental Laws:

1. National Historic Preservation:

The Church Rock Industrial Park was inventoried by the Office of Contract Archaeology, University of New Mexico. The report describes the fieldwork and findings. Development at the Church Rock Site will have no effect on traditional cultural properties or sacred areas. The Navajo Nation Historic Preservation Department, Cultural Resource Compliance Section has reviewed all work conducted at Church Rock and no further work is required and authorizes development to proceed. A Cultural Resource Compliance Form, OCA-88-447, UNM Proposal No. 185-369 was approved by NNHPD. (Source: An Environmental Assessment (EA) for the Church Rock Industrial by J.R. Analla EA Services, July 2002.)

2. Floodplain Management:

The Church Rock Industrial Park is not located in a 100 year frequently flood plain as defined in 24 CFR 55, Executive Order 11988. This site is protected from the Rio Puerco flood plain by the Burlington Northern & Santa Fe railroad. No wetlands have been identified with the tract as defined by Executive Order 11990. (Source: An Environmental Assessment (EA) for the Church Rock Industrial by J.R. Analla EA Services, July 2002.)

3. Wetlands Protection:

The Church Rock Industrial Park is not located in a 100 year frequently flood plain as defined in 24 CFR 55, Executive Order 11988. This site is protected from the Rio Puerco flood plain by the Burlington Northern & Santa Fe railroad. No wetlands have been identified with the tract as defined by Executive Order 11990. (Source: An Environmental Assessment (EA) for the Church Rock Industrial by J.R. Analla EA Services, July 2002.)

4. Endangered Species Act;
The Navajo Department of Fish and Wildlife, Natural Heritage Program has determined the project is not expected to affect any federally listed species or significantly impact any tribally listed species or other species of concern. Letter dated 9/24/02. (Source: An Environmental Assessment (EA) for the Church Rock Industrial by J.R. Analla EA Services, July 2002.)
5. Air Quality:
Development at the Church Rock Industrial Park may result in an increase of dust in the immediate area during the construction and development of businesses at the site. This is short-term and will not result in an increase in airborne pollutants except when the wind is blowing in the area of the project. The proposed business site lease will not have an effect on the air quality. Lessee shall for the entire term of this lease: (1) fully comply with the Navajo Nation Air Quality Prevention and Control Act of 2004; and (2) obtain and maintain any necessary air quality permits related to reporting emissions, and comply with any subsequent permit conditions as contained in respective permits from the USEPA or the Navajo Nation Air Quality Program under the Navajo Environmental Protection Agency.

(Source: An Environmental Assessment (EA) for the Church Rock Industrial by J.R. Analla EA Services, July 2002, and Navajo Nation Environmental Protection website)
6. Sole Source Aquifer
No designated sole source aquifers within the State of New Mexico or the Navajo Nation: no effect on sole source aquifers as defined by 40 CFR 149. (Source: An Environmental Assessment (EA) for the Church Rock Industrial by J.R. Analla EA Services, July 2002.)
7. Abandoned Mine Lands:
No mineral resources in the Church Rock area. (Source: An Environmental Assessment (EA) for the Church Rock Industrial by J.R. Analla EA Services, July 2002.)
8. Navajo Nation's Solid Waste Act:
Solid waste generated by businesses located at the Church Rock Industrial Park will be collected and disposed of in conformance with applicable federal and Navajo Nation laws and regulations. (Source: An Environmental Assessment (EA) for the Church Rock Industrial by J.R. Analla EA Services, July 2002.)
9. Navajo Nation's Safe Drinking Water Act:
Lessee shall for the entire term of this lease: (1) fully comply with the Navajo Nation Safe Drinking Water Act of 2012; and (2) obtain, maintain, and comply with a permit from the Navajo Nation Public Water Supervision Program under the Navajo Nation Environmental Protection Agency. (Source, Navajo Nation Environmental Protection website: <http://navajopublicwater.org/Regulations.html>)

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



Environmental Reviewer
Navajo Nation – Environmental Protection Agency

DATE: 01/08/2019

OFF-RESERVATION FEE LAND LEASE

Dated _____, 20____

BY AND BETWEEN
THE NAVAJO NATION
AND

CHURCH ROCK DEVELOPMENT, LLC

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OFF-RESERVATION FEE LAND LEASE

THIS LEASE (together with all exhibits and attachments hereto, collectively the "Lease"), in sextuplicate, is made and entered into this _____ day of _____, 20____, by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is Post Office Box 663, Window Rock, Navajo Nation (Arizona) 86515, and, Churchrock Development, LLC, hereinafter called the Lessee, whose address is P. O. Box 37, Church Rock, New Mexico 87311, in accordance with Navajo Nation law.

WITNESSETH

WHEREAS, Navajo Nation lands are administered by the Navajo Nation to provide economic and social benefits to the Navajo People.

NOW THEREFORE, in accordance with Navajo law, which by this reference is made a part hereof, Lessor and Lessee agree as follows:

1.0 DEFINITIONS

- 1.1 "Approved Encumbrance" means an encumbrance approved in writing by the Lessor, and sureties, if any, in accordance with the terms and conditions of this Lease.
- 1.2 "Assignee" means any individual or entity that enters into an Assignment with the Lessee.
- 1.3 "Condemnation" means the taking of any real property right thereof, in condemnation proceeding, by right of eminent domain, or by conveyance in lieu of or in settlement of a condemnation or eminent domain proceeding brought by any governmental authority having jurisdiction and power over the property.
- 1.4 "Effective Date" means the date the Lease is signed by the President of the Navajo Nation.
- 1.5 "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.
- 1.6 "Federal Laws" means all applicable federal laws, including:
 - (1) "CERCLA," the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et. seq., and
 - (2) "RCRA," the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.
- 1.7 "Lessee" means Churchrock Development, LLC.
- 1.8 "Lessor" means the Navajo Nation.
- 1.9 "Regulated Substance" is defined in Section 9001(7) of the Resources Conservation and Recovery Act, 42 U.S.C. 6991(7), which is any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (42 U.S.C. 9601(14)) (but not including any substances regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. 6921 et seq.) and petroleum).
- 1.10 "Storage Tanks" means any tank which is defined by either the following subsections:

(1) An underground storage tank as defined by 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 or 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.

1.11 "Sublessee" means any individual or entity that enters into a Sublease with the Lessee.

2.0 PROPERTY DESCRIPTION

2.1 For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to the Lessee the following land situated in the Church Rock Industrial Park, Church Rock, New Mexico more particularly described as follows:

A parcel of land located in a Boundary Map of the Church Rock Industrial Park, a unrecorded survey plat located in the Tract 37 of Fractional Section 15, Township 15 North, Range 17 West, N.M.P.M., McKinley County, New Mexico situate in the Church Rock area and being more particularly described as follows.

Commencing at the Northwest corner of said parcel from which the Northwest Corner of said Section 15 bears North 67°36'24" West, a distance of 4,406.54, a point also being the on the South Right of Way line of Burlington Northern Santa Fe Railroad.

thence South 86°46'02" East along said South Right of Way line a distance of 744.46 feet to a set 1/2" rebar;
thence South 03°42'57" West, a distance of 78.40 feet to a set 1/2" rebar;
thence South 85°08'59" East, a distance of 60.32 feet to a set 1/2" rebar;
thence North 02°40'14" East, a distance of 80.11 feet to a point on said South Right of way line to a set 1/2" rebar;
thence continuing along South Right of Way line South 86°46'05" East, a distance of 564.76 feet to a set 1/2" rebar;
thence South 01°19'22" West, a distance of 83.26 feet to a set 1/2" rebar;
thence South 81°30'26" East, a distance of 23.40 feet to a set 1/2" rebar;
thence South 01°19'22" West, a distance of 184.82 feet to a set 1/2" rebar a point on the North line of a 60' Access Easement;
thence Along the 60' Access Easement North 86°17'03" West, a distance of 359.28 feet to a set 1/2" rebar;
thence South 04°02'15" West, a distance of 60 feet to a P.K. Nail;
thence Continuing South 04°02'15" West, a distance of 266.86 feet to a found rebar with plastic cap # 12163 said point being the Northerly Right of Way line of New Mexico State Route #118;
thence Along said Right of Way line North 85°46'58" West, a distance of 1045.25 feet to a Set 1/2" Rebar'
thence North 04°05'35" East, a distance of 575.96 feet to the Point of Beginning.
Containing 16.0544 Acres, more or less.

2.2 Said parcel contains 16.0544 acres and is subject to any valid existing easements, rights-of-way, records, reservations, and restrictions. Said property is shown on the attached survey plat marked as Exhibit "A", which by reference is made a part hereof.

- 2.3 The leased premises, located in Church Rock Chapter of the Navajo Nation, McKinley County, State of New Mexico is subject to any valid existing easements and rights-of-way. There is hereby reserved and excepted from the leased premises rights-of-way for utilities constructed by or on authority of the Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the leased premises.

3.0 PURPOSE, UNLAWFUL USES

- 3.1 Lessee shall use and operate the leased premises for the following purposes only:

Manufacturing facilities for nitrile gloves, and related products; warehouse, distribution centers, corporate offices, and equivalent operations as it relates to nitrile glove production; and renting or subleasing out any unused facility space.

- 3.2 The leased premises shall not be used by Lessee, Sublessee(s) or Assignee(s), for any purpose or purposes other than those set out above, except with the prior written consent of Lessor. Consent shall not be unreasonable withheld.
- 3.3 Lessee agrees that it will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

4.0 TERM

The Term of this Lease shall be seventy-five (75) years, beginning on the date the Lease is executed by the Navajo Nation President or an authorized designee.

5.0 RENTAL

- 5.1 The Lessee, in consideration of the foregoing covenants, agrees to pay monthly rental payments in lawful money of the United States of America to the Controller of the Navajo Nation, Post Office Box 3150, Window Rock, Navajo Nation (Arizona) 86515, as follows:

Years 1 – 5	No Rental, Development Period
Years 6 – 7	\$14,400.00 per month
Years 8 – 10	\$16,000.00 per month
Years 11 – 15	\$18,000.00 per month
Years 16 – 25	\$19,000.00 per month
Years 26 – 75	\$20,000.00 per month

- 5.2 Lessee must make monthly rental payments prior to the 1st day of each month during the Term of the Lease.
- 5.3 All rental payments shall be deposited with the Controller of the Navajo Nation. The first \$4,281,600 of rental payments shall be deposited by the Controller of the Navajo Nation into the Sihasin Fund. After \$4,281,600 of rental payments is deposited into the Sihasin Fund, all future rental payments shall be deposited in the General Fund.
- 5.4 If rent is unpaid ten (10) days after the 1st day of each month, the Lessee shall be subject to a late charge, as hereinafter provided. The Lessee shall be subject to a late charge of ten percent (10%) of the previous monthly amount due, however such amount shall be prorated for each day the rent is not paid until the thirtieth day after the due date, when the late charge shall be paid in full. If the Lessee does not pay the full amount past due within sixty (60) days, Lessor shall send a written notice to Lessee that such amount has not been paid and the Lessee shall be subject to an additional

late charge of ten percent (10%) of the monthly amount due. If the Lessee does not pay the full amount within ninety (90) days, Lessor shall send a written notice to Lessee that such amount has not been paid and the Lessee shall be subject to an additional late charge of ten percent (10%) of the monthly rent. After 90 days of non-payment, Lessee shall be deemed in default of the Lease.

- 5.5 In the event of a sublease, assignment, amendment, or transfer of this Lease, or any right to interest in this Lease, or improvements are made to the leased premises, the rent and other terms of this Lease shall be subject to renegotiation.

5.6 Rental and Performance Bond

Lessee agrees to post a cash deposit in the amount of \$40,000.00, as security. The purpose of such security is to guarantee performance on the lease, and is refundable to Lessee 3 years after the date of execution.

6.0 CONDITIONS OF LEASED PREMISE

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

7.0 UTILITY SERVICE LINE AGREEMENTS

- 7.1 Lessee will identify the rights-of-way necessary or appropriate for construction, operation and maintenance of any improvements. Lessee shall obtain approval from any third parties and Lessor as may be necessary or appropriate.
- 7.2 Lessee is authorized to enter into appropriate service line agreements with utility companies for the provision of necessary or appropriate utility services to the leased premises, including gas, water, sewer, electricity, telephone, television, internet, and other utilities, without further consent by Lessor, on the condition that:
- (1) Such agreements are for the sole purpose of supplying utility services to the leased premises; and
 - (2) Such agreements authorize utility service lines only within the leased premises; and
 - (3) Such agreements do not extend beyond the term of this Lease, including any extensions thereof; and
 - (4) Executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines are filed by the utility companies with Lessor within thirty (30) days of their execution.
- 7.3 Lessor reserves the right for Lessor's benefit or for the benefit of other land users, whether or not adjacent to the leased premises, to enter into service line agreements with utility companies for service lines across the leased premises, provided that, after consultation, Lessor and Lessee

determine such service lines do not unreasonably interfere with Lessee's use of the leased premises nor otherwise affect any property rights reserved to Lessor.

8.0 IMPROVEMENTS

- 8.1 All improvements and developments placed on the leased premises by Lessee, shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes.
- 8.2 Except as otherwise provided in this Lease, all buildings and improvements, excluding Lessee's removable personal property, equipment, and trade fixtures, on the leased premises shall remain on said leased premises after termination of this Lease and shall thereupon become the property of Lessor.
- 8.3 Lessee shall remove all removable personal property, equipment, and trade fixtures prior to termination of this Lease. Should Lessee fail to remove said personal property, equipment, 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.
- 8.4 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 attached or affixed to the buildings, improvements, or land in such a way as to legally retain the characteristics of personal property.
- 8.5 Lessor may require Lessee, at Lessee's expense, to remove improvements and restore the premises to the original state, within reason, upon termination of the Lease. Any such removal of property by Lessee must be completed within ninety (90) days after termination of this Lease.

9.0 CONSTRUCTION; ALTERATIONS; MAINTENANCE.

- 9.1 The Lessee shall not enter a construction loan agreement with a financial institution without approval of the Lessor.
- 9.2 Lessee shall have the right to make alterations, additions, or repairs to the leased premises. Notice of any alterations, additions, or repairs to the leased premises will be provided to Lessor thirty (30) days prior to the commencement of such alterations, additions, or repairs.
- 9.2 All parts of building visible to the public or from adjacent properties shall be maintained by Lessee in a pleasant appearance reasonably accepted by Lessor and all service areas shall be screened by Lessee from public view.
- 9.3 Except as otherwise provided for herein, Lessee shall, at all times during the term of this Lease and at Lessee's sole cost and expense, maintain the leased premises, including any and all improvements, thereon and any alterations, additions, or appurtenances thereto by Lessee, 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 leased premises.
- 9.4 Lessee shall indemnify and hold harmless the Lessor against liability for all claims arising from Lessee's failure to maintain said premises, structure, foundation, and the improvements thereon as herein above provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

10.0 NOTICES

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

To or upon Lessor: President
The Navajo Nation
Post Office Box 9000
Window Rock, Navajo Nation (Arizona) 86515

Telefax: 1-928-871-4025

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

Telefax: 1-928-871-7381

Copy by Email: srbp@navajoadvantage.com

To or upon Lessee: Churchrock Development, LLC
Attn: Mark Minsoo Lee, Member
P.O. Box 37
Church Rock, New Mexico 87311

Copy by Email: markmslee@hotmail.com

- 10.2 All notices shall be given by personal delivery, or by registered or certified mail with return receipt requested. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours, or if not during normal business hours, on the next business day following delivery; if by registered or certified mail, on the next business day following actual delivery or receipt.

- 10.3 Lessor and Lessee may at any time change its address for purposes of this Section by written notice.

11.0 SUBLEASES AND ASSIGNMENTS

- 11.1 Pursuant to Section 45.0 of this Lease, based on the contribution by Economic Development Administration for the building and improvements under EDA Award Number: 07-01-06088, Lessee hereby agrees that assignment and subletting are permitted under this Lease without prior written approval of the Economic Development Administration or any Navajo Nation committee/body. Should the Lessee enter into a sublease or assignment, the Lessee must:

- 1) Provide a copy of the sublease or assignment to the Navajo Nation Division of Economic Development;
- 2) The Sublessee or Assignee must agree to be bound by all terms and conditions of this Lease;
- 3) The sublease or assignment must not change the purposes set forth in Section 3.0; and

- 4) The term of the sublease or assignment must not extend beyond the term and any renewals set forth in Section 4.0.

12.0 AMENDMENT AND TRANSFER

- 12.1 Lessee shall not amend, or in any manner whatsoever transfer this Lease or any right to or interest in this Lease or any of the improvements on the leased premises, without prior written approval of the Lessor, which consent shall not be unreasonably withheld. No such amendment or transfer shall be valid or binding without such approval, and then only upon the condition that the Transferee or other successor in interest, excepting an approved encumbrancer(s), shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make such amendment or transfer, except as set forth herein, such action shall be deemed a breach of this Lease, excepting that an encumbrancer may enforce his rights in the manner herein provided.
- 12.2 Should Lessee sell, assign, or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee, Lessee shall provide written notice to the Lessor.
- 12.3 For purposes of this Section, the creation of a partnership, corporation, joint venture, management agreement, or other arrangement under which any person or entity other than Lessee is entitled to share in profits derived directly or indirectly from the leased premises or activities carried out thereon, shall require the written consent of Lessor and Lessee, which consent shall not be unreasonably withheld, unless Lessee is the majority owner (i.e. majority shareholder, majority partner, etc.) of the business that is reorganized, then only written notice will be required.

13.0 ENCUMBRANCE

- 13.1 This Lease, or any right to or interest in this Lease or any of the improvements on the leased premises, may be encumbered by Lessee for the purposes of securing a line of credit to develop and improve the leased premises on or after Effective Date. Encumbrancer must agree to be bound by all terms and conditions of this Lease.
- 13.2 Any encumbrance will:
 - (1) Be limited to the leasehold interest of the Lessee or subleasehold interest of the Sublessee; and
 - (2) Not jeopardize in any way Lessor's interest in the land; and
 - (3) Be subject to the written approval of the Lessor as well as the sureties. The Lessor shall not unreasonably withhold its approval to an encumbrance.
- 13.3 Lessee agrees to furnish as requested any financial statements or analysis pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of said encumbrance.
- 13.4 Lessor shall give each encumbrancer notice of, and the right to cure within a reasonable time, a default by Lessee or Sublessee under this Lease or sublease, whichever is applicable. Lessor shall accept performance by the encumbrancer for covenants or other obligations under the Lease or sublease, with the same force and effect as though performed by the Lessee or Sublessee.
- 13.5 In the event of default by Sublessee, an encumbrancer of any sublease may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor and Lessee notice of the

same character and duration as is required to be given to the Sublessee by the encumbrancer. If notice of such sale is given and the Lessee fails to act, Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:

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

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

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

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

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

sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note, issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the 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.

- 13.9 Each encumbrancer must provide, if Lessor exercises the foregoing rights, all right, title and interest of Lessee in the Lease shall automatically terminate on the same date the right is exercised and the Lessor shall acquire the Lease; provided, however, that termination shall not relieve the Lessee from any obligation or liability which had accrued prior to the date of termination. Acquisition of the Lease by Lessor under these circumstances shall not serve to extinguish the Lease by merger or otherwise. The Lessee shall have the duty to execute any documents and take any action necessary to effectuate the termination and transfer of the Lessee's leasehold interest.
- 13.10 In the event Lessor does not avail itself of the above rights and a sale occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Lessee in the leasehold estate covered by said approved encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may assign the leasehold interest without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of this Lease. If the encumbrancer is the purchaser, it shall be required to perform the Lease only so long as it retains title thereto. If a sale, of the leasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by Lessor of any assignment will be required and said purchaser, as successor in interest to the Lessee, shall be bound by all the terms and conditions of the Lease and will assume in writing all the obligations thereunder.

14.0 LIENS; TAXES; UTILITY CHARGES

- 14.1 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
- 14.2 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 premises and all interests therein, for which either Lessee or Lessor may become liable.
- 14.3 Upon request Lessee shall furnish Lessor written evidence duly certified that any and all taxes required to be paid by Lessee have been paid, satisfied, or otherwise discharged. Lessee shall have the right to contest any claim, asserted tax, or assessment against the leased premises, by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless Lessor and the leased premises and all interest therein and improvements thereon from any and all claims, taxes, assessments, and like charges and from any lien therefor, or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessor shall execute and file any appropriate documents with reference to real estate tax exemption of the land when requested by Lessee.
- 14.4 In addition to the rent, taxes, and other charges herein described, Lessee shall pay charges for water, sewage, gas, electricity, telephone, trash, and other utility services as required for operation and maintenance of the leased premises.

15.0 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, not less than thirty (30) days after written notice from the Lessor, fails to pay or to post bond against enforcement. All costs and other expenses incurred by Lessor in so doing shall be paid to Lessor by Lessee on demand, with interest at the rate of eighteen percent (18%) per annum from the date of Lessor's payment until repayment is made. Failure to make such repayment on demand shall constitute a default of the Lease.

16.0 SANITATION

- 16.1 Lessee hereby agrees to comply with applicable, federal, state, local, and Navajo Nation laws, pertaining to all sanitation matters including but not limited to the storage and disposal of refuse, rubbish, other non-hazardous trash, and any Regulated Substances. All solid waste, including but not limited to refuse, rubbish, other non-hazardous trash, and any other Regulated Substance generated by the Lessee or by any Sublessee shall be disposed of only in accordance with applicable laws.
- 16.2 Lessee agrees to at all times maintain the entire leased premises in a safe, sanitary condition, presenting a good appearance both inside and out in all buildings operated on the leased premises. Non-compliance with this Section shall constitute a default of this Lease.
- 16.3 Lessee agrees to maintain all records required by applicable law, regarding refuse disposal, and to make such records available to appropriate officials of the Navajo Nation.

17.0 REGULATED SUBSTANCES

- 17.1 Lessee shall not cause or permit any Regulated Substance to be used, stored, generated, or disposed of, on, or in the leased premises without first obtaining written consent from the Navajo Nation Environmental Protection Agency. If the Navajo Nation Environmental Protection Agency does not respond to a request for consent within thirty (30) days such consent is deemed given.
- 17.2 If Regulated Substances are used, stored, generated or disposed of on or in the leased premises, or if the leased premises become contaminated in any manner for which Lessee or Sublessee are legally liable, Lessee shall indemnify and hold harmless the Lessor from any and all direct claims, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the leased premises, damages due to loss or restriction of rentable or usable space, or any damage 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, any and all sums paid for clean-up to the extent required by governmental authorities) arising during or after the Lease term and arising as a result of such contamination by Lessee.
- 17.3 This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration, or other costs of regulatory compliance mandated by the federal, state, local, or Navajo Nation law.
- 17.4 Without limitation of the foregoing, if Lessee causes, or permits, the presence of any regulated substance on the leased premises and such results in any contamination of the leased premises or other property including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions required by federal, state, local, and Navajo Nation applicable laws. Lessees will first obtain Lessor's approval for any such remedial action.

18.0 STORAGE TANKS

- 18.1 Lessee shall provide the Navajo Nation Environment Protection Agency and the Navajo Nation Division of Economic Development with a clear and legible copy of all notices and reports

concerning storage tank installation, testing, leakage, or remediation at the premises subject to the Lease which Lessee is required by applicable law or regulation to provide to the United States Environmental Protection Agency or which Lessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Lease upon the Navajo Nation Environmental Protection Agency shall be by first class to:

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

and,

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

- 18.2 If Lessee or Sublessee installs or operates storage tanks on the leased property, the Lessee or Sublease shall post a bond, obtain insurance, or provide such other evidence of financial responsibility that meets all the requirements of 40 C.F.R. Part 280, Subpart H regardless of whether the storage tank in question is an aboveground or underground storage tank. Lessee shall provide proof of this bond, insurance, or other qualifying financial responsibility mechanism to the Navajo Nation Division of Economic Development. The bond, insurance, or other qualifying financial responsibility mechanism shall remain in effect for the term of the base lease or sublease, and any renewals thereof, and shall not be released or terminated until such time as the Division certifies that the facility is in compliance with all applicable law and regulations, or that the tanks have been removed and the site has been remediated, or that the base lease or sublease has been transferred and the new operator has provided proof of an adequate bond, insurance, or otherwise satisfied the 40 C.F.R. Part 280, Subpart H financial responsibility requirements. It shall be the responsibility of the Lessee and the Sublessee to provide the Navajo Nation Division of Economic Development with all proof required for release of bond or termination of insurance coverage.
- 18.3 If storage tanks are located at the Lease site, the Lessee will supply the Navajo Nation Environmental Protection Agency and the Navajo Nation Division of Economic Development with a complete copy of the report and underlying data generated in preparation of a Phase Two environmental audit before Lessee places any Regulated Substances in the storage tanks or releases any Regulated Substances from the storage tanks but no later than ninety (90) days after the Lease is approved by the Lessor.
- 18.4 The Lessee shall notify the Navajo Nation Environmental Protection Agency and the Navajo Nation Division of Economic Development, or any institutional successor, of the firm chosen to perform the Phase Two Environmental audit prior to the performance of such audit. Lessor may accept or decline the choice of the environmental auditor within twenty (20) days of written notice by Lessee. If Lessor does not respond within twenty (20) days of receipt of the Lessee's written notice, the environmental auditor is deemed accepted. If, however, the most recent prior Lessee of the premises has performed a Phase Two environmental audit on the premises at or after the termination of the prior tenancy, Lessee is not required to perform a Phase Two environmental audit if Lessee agrees to be conclusively legally bound by the findings of the above referenced Phase Two environmental audit.
- 18.5 Lessee shall pay to the Navajo Nation the amount of \$15,000 which will be held by the Navajo Nation during the term of the Lease. One year after Lessee's rental obligation commences Lessee shall pay \$5,000 toward payment of the \$15,000 and shall pay \$5,000 at the end of the second and

third years of Lessee's rent payment obligation.

The amounts shall be submitted for deposit at the Navajo Nation Division of Economic Development at P.O. Box 663, Window Rock, Navajo Nation (Arizona) 86515.

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

- 18.6 If the Navajo Nation Environmental Protection Agency determines an environmental audit should be performed at the leased premises prior to the Lessee's deposit of entire \$15,000 deposit and the amount deposited is insufficient to pay for the environmental audit, and the environmental audit determines Regulated Substances are unlawfully present, Lessee shall upon written demand by Lessor, promptly deposit with Lessor an amount sufficient to pay for the environmental audit or to bring Lessee's deposit to \$15,000, whichever is less. If Lessor performs an environmental audit pursuant to this article during the term of the Lease which finds Regulated Substances unlawfully present and which is financed by all or part of the above referenced sum, Lessee shall, at the end of the year in which the audit is completed, deposit funds with the Navajo Nation sufficient to reestablish the amount deposited prior to the audit and to reimburse the Navajo Nation for any amount the Navajo Nation spent on the environmental audit in excess of the \$15,000 deposit.
- 18.7 The deposit shall be kept in an account by the Navajo Nation Office of the Controller on behalf of the Lessee to meet the expenses of the obligations stated above. At the termination of the Lease and upon completion of all environmental audits, removal and remediation to be performed on the premises, the Navajo Nation shall return any of the money deposited to the Lessee which was not spent to conduct environmental audits of the leased premises or to remediate, or remove Regulated Substances which were released on the leased premises.
- 18.8 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 attorney's fees.
- 18.9 The ownership and removal responsibility for any regulated substances or petroleum product manufacturing, processing, storage, or conveyance facilities placed in or on the leased premises shall be the responsibility of the Lessee. All facilities or storage tanks must comply with applicable federal, state, local, and Navajo Nation law including requirements for corrosion protection, spill and overfill protection, and leak detection. Any repairs made to such facilities or storage tanks must comply with applicable repair standards. Lessee shall provide the appropriate Navajo Nation Division of Economic Development department with complete and legible copies of all documents establishing Lessee's ownership of, lease of, or acquisition of any other use interest in any storage tanks installed on the leased premises.
- 18.10 Unless otherwise notified by the Lessor, Regulated Substances and storage tanks are the property of the Lessee who places them on the property and do not become the property of the Lessor for RCRA liability purposes unless or upon the expiration of the Lease. Lessee is 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 the Lessor in writing not to remove.
- 18.11 Prior to termination or expiration of the Lease and prior to vacancy of the property, the Lessee shall remove those improvements that are subject to removal as described above and below, assess the

site for potential contamination, remediate any contamination discovered, and satisfy or actively and in good faith seek resolution of any third party damages which may have occurred. Should any of the above activities extend past the termination or expiration date of the Lease, the Lease shall be extended and Lessee shall remain financially responsible for completing these activities. The bond, unless waived, or the insurance of this Lease shall not be released or terminated until these activities are completed.

19.0 LIABILITY INSURANCE

19.1 Unless otherwise provided, without limiting any liabilities or any other obligations of Lessee, Lessee will provide and maintain, from the date the lease is approved and continuing until the Lease is terminated or expired, the minimum insurance coverages listed below. Coverage will be provided with forms and insurers acceptable to the Lessor until all obligations under this Lease are satisfied. All insurers must be a Nationally Accredited Insurance Company with a financial strength rating of "A" or the equivalent, and authorized to do business in the State where the leased premises are located. All policies required under this Lease shall name the Lessor as an additional named insured. These coverages are as follows:

- (1) Workers' compensation insurance to cover obligations imposed by federal and state statutes of the entity having jurisdiction over the Lessee's employees working at the leased premises, and Employers' Liability insurance with a minimum amount as required and regulated by the state in which the leased premises is located. In case of any contracted work on the leased premises, the Lessee will require the contractor, and all subcontractors, to provide the same as above.
- (2) Lessee shall obtain Commercial General Liability Insurance. The Commercial General Liability Insurance shall be with an unimpaired minimum combined single limit of not less than \$1,000,000.00, including with each occurrence a General Aggregate Limit of \$500,000.00. This policy shall cover property business interruption, bodily injury, broad form property damage, personal injury, death, blanket contract, independent contractor, product, and completed operations coverage. The policy shall contain a severability of interests provision. Lessor may require the amount of the Commercial General Liability Insurance be increased at any time, whenever Lessor determines that such increase is reasonably necessary for the protection of the Lessor. If leased premise is undeveloped, the Lessee must obtain appropriate insurance, which shall include Lessor as an additional named insured.
- (3) Commercial Automobile Liability Insurance with a combined single limit for bodily injury and property damage for each occurrence with respect to Lessee's owned, hired, and non-owned vehicles assigned to or used in Lessee's business, shall be based upon the minimum amount required and regulated under the State in which the lease premises is located.
- (4) If Lessee is engaged in a profession, the Lessee shall carry Professional Liability insurance in an amount as is required and regulated under the State or Association for which the professional is licensed.
- (5) Lessee, at its cost, shall maintain insurance coverage on all of Lessee's personal property, Lessee's alterations, Lessee's utility installations, and Lessee's trade fixtures in, or about the leased premises. The proceeds from any such insurance may be used by Lessee for the replacement of Lessee's personal property, alterations, utility installations, or trade fixtures if Lessor repairs or rebuilds the leased premises.

19.2 The policies required by Sections 20 shall be endorsed to include the Navajo Nation, its agents, representatives, officers, directors, officials, and employees as an additional insured and shall

require that the insurance provided by Lessee shall be primary insurance and that any insurance carried by the Navajo Nation shall be excess and not contributory insurance to that provided by Lessee.

- 19.3 A certificate of insurance shall be issued to the Navajo Nation by the Lessee, within thirty (30) days from the date of execution of the Lease but before beginning operations of the leased premise, as evidence that the required coverages are in full force and effect. The certificate shall indemnify this leased premises and indicate that the insurer will provide at least thirty (30) days prior written notice to Lessor if the policies will be canceled, terminated, or materially altered.

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

- 19.4 The Lessee may request to postpone the insurance requirements until either (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received; subject to Section 19.1(2). Such postponement shall be as the sole discretion of the Navajo Nation Division of Economic Development and shall not be unreasonably withheld.
- 19.5 Failure on the part of the Lessee to procure or maintain required insurance shall constitute a material breach of contract upon which the Lessor may immediately terminate this Lease.
- 19.6 Lessor reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.
- 19.7 Lessee and its insurers providing the required coverages shall waive all rights of recovery against the Navajo Nation and its agents, officials, and employees.
- 19.8 The insurance limits required under this Lease shall not limit the liability of the Lessee, nor relieve the Lessee of any obligation under this Lease.
- 19.9 The Lessee shall not do or commit to be done anything in or upon any portions of the leased premises or bring or keep anything there which would in any way conflict with the conditions of any insurance policy upon the leased premises or in any way increase the rate of insurance upon the leased premises or on property kept there.
- 19.10 Lessor will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by Lessee proves to be inadequate or otherwise insufficient for any reason whatsoever.

20.0 FIRE AND CASUALTY INSURANCE

- 20.1 Lessee shall carry, from the Effective Date, fire and casualty insurance with extended coverage endorsement, covering not less than full insurable value of the building on the leased premises. Said policy shall be obtained from a Nationally Accredited Insurance Company, with a financial rating of A or equivalent, licensed to do business in the state in which the leased premises are located and shall be written jointly to protect Lessee and Lessor. Lessee shall provide for notification to the Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason, including non-payment of premiums.
- 20.2 Lessee may be granted a postponement for either (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received.
- 20.3 In the event of damage to the building, Lessee shall rebuild, repair, or otherwise reinstate the damaged building in a good and substantial manner according to the plan and elevation of the

building so destroyed or damaged or in accordance with any modified plan approved in writing by the Lessor prior to commencement of repair reconstruction. Repair or reconstruction shall commence as soon as possible and shall be pursued diligently. Rent shall abate in its entirety for any period in which the leased premises are not restored to the condition which existed prior to the casualty. The Term of the Lease shall not be extended while the rent is being abated.

- 20.4 Insurance proceeds shall be deposited in an escrow account with an institution approved by Lessor. Lessee shall also deposit in said escrow account all additional funds required to reconstruct the damaged improvement. Escrow instructions shall include provisions that all funds so deposited shall be used in 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.
- 20.5 If the leased premises cannot be restored within twenty-four (24) months of the casualty, Lessee shall have the right, by providing written notice to Lessor, to terminate this Lease, unless otherwise agreed, in writing between the Lessor and Lessee.
- 20.6 In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all improvements on the leased premises during the last one (1) year of the Term of this Lease, including the Renewal Options, Lessee may choose not to reconstruct said improvements. Lessee shall provide Lessor with a written notice of the exercise of Lessee's reconstruction decision within thirty (30) days of the event of damage, giving rise to Lessee's decision. 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. Should Lessee not exercise its option to reconstruct, this Lease shall terminate thirty (30) days after notice is sent to Lessor. The leased premise shall be cleared of debris at Lessee's expense prior to termination of the Lease. Lessee shall not be charged rent during the period of debris removal unless Lessee occupies the leased premises beyond the Lease termination date, after which the Lessee will be charged hold over rental as provided herein. In the event Lessee does not reconstruct, all insurance proceeds shall be paid to the Lessor.
- 20.7 Any encumbrancer shall be named as beneficiary under all insurance policies required by this paragraph and in the event of loss or damage to the buildings on the leased property while an approved encumbrance remains unpaid, the amount of such loss or damage (but not exceeding the remaining balance of the approved encumbrance) shall be paid to the encumbrancer on the condition that the encumbrancer agrees to comply with the reconstruction obligations set forth herein. If such amount paid to the encumbrancer is sufficient to repair the loss or damage or if Lessor or Lessee shall within three (3) months after such payment by the insurer to the encumbrancer deposit with the encumbrancer enough money to completely repair the loss or damage, when added to the amount paid by the insurer to the encumbrancer, the encumbrancer shall, upon written order of Lessor or Lessee, pay such monies for such repair, and it shall not be deemed a payment or credit on the encumbrance; but otherwise, at the expiration of such three (3) months said sum so paid by the insurer to the encumbrancer shall be applied and credited upon the approved encumbrance. It is understood and agreed that nothing herein shall relieve Lessee of its obligation to repair and/or replace the damaged improvement to a condition as good or better than before the damage.

21.0 INDEMNIFY

Except for Lessor's sole negligence, Lessee shall indemnify, protect, defend, and hold Lessor harmless from and against any claims, loss rents, damages, costs, liens, judgments, penalties, permits, attorneys or consultant's fees, expenses and/or liabilities arising out of, involving, or dealing with, the occupancy of the leased premise by Lessee, the conduct of the Lessee's business, any act, omission, neglect or misconduct of Lessee, its agents, contractors, employees, or invitees, and out of any default or breach by Lessee in the performance in a timely manner of any obligation on the Lessee's part to be performed under this Lease. The

forgoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not litigated and/or reduced to judgment, and whether well-founded or not. In case any action or proceeding be brought against Lessor by reason of any of the foregoing matters, Lessee, upon notice from the Lessor shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor, and Lessor shall cooperate with Lessee in such defense. Lessee shall have the right to control such defense and to settle or compromise the claim in cooperation with Lessor as long as such defense, settlement, or compromise does not unduly prejudice Lessor.

22.0 EMINENT DOMAIN

- 22.1 If, at any time during the term of this Lease, the leased premises or any part thereof is taken or condemned under the laws of eminent domain, then and in every such case, the leasehold estate and interest of the Lessee in said leased premises or part thereof taken shall forthwith cease and terminate. All compensation awarded by reason of any takings of the leased premises 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.
- 22.2 If the condemnation is less than the entire leased premises and/or improvements, the Lease shall continue as for the remainder of the Term of the Lease, however the rent shall be reduced proportionately. Notwithstanding the foregoing if Lessee in its reasonable opinion believes a taking of less than all of the leased premises has a material adverse impact on its business operations at the leased premises then Lessee may terminate the Lease in its entirety, upon a thirty (30) day notice to Lessor.
- 22.3 If a temporary condemnation of all or a portion of the leased premises and/or improvements, Lessee will be entitled to the entire amount of an award, whether paid by way of damages, rent or otherwise; however, if such condemnation extends beyond the Term of the Lease, such amounts will be apportioned among Lessor and Lessee based upon the duration of the Term remaining following the condemnation and the duration of the condemnation following the end of the Term of the Lease.

23.0 DEFAULT

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

notice thereof has been received by Lessee from Lessor.

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

- (1) Notify in writing to the Lessor that the default has been cured or cure commenced and submit documentation necessary to indicate the default has indeed been cured or cure commenced; or
- (2) Submit in writing to the Lessor a statement and explanation disputing the Lessor's determination that the Lease is in default and why the Lease should not be terminated; or
- (3) Request in writing to be given additional time to cure or commence cure, unless it is found it is not reasonably to cure within ten (10) days there is no default for such longer period of time as is reasonably required to cure. Any additional time granted to cure shall be in the discretion of the Navajo Nation Division of Economic Development. If a grant of extension for time to cure is given, the Lessee shall diligently perform and complete the corrective actions within a time frame agreed, in writing, between the Lessor and Lessee.

23.4 Should a default occur beyond all applicable cure periods; the Lessor may exercise the following options upon Lessee's default:

- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease; or
- (2) Re-enter the leased premises if the Lessee has abandoned the leased premises or has failed to conduct business for a period of sixty (60) days without notice and remove all persons and property therefrom, excluding the property belonging to authorized Sublessees, and re-let the leased premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to terminate the Lease thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor who shall have the right to alter and repair the leased premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering, and repairing, including attorney's fees and any real estate commissions actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor may sue thereafter as each monthly deficiency shall arise; or
- (3) Terminate this Lease, as a matter of law; or
- (4) Pursue the execution on bonds or collection of insurance proceeds.

23.5 No waiver 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.

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

23.7 If any approved encumbrancer shall give Lessor, before any default shall have occurred in this Lease, a written notice containing the name and address and the interest in the leased premises of such encumbrancer, Lessor shall thereafter give to such encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given by Lessor to Lessee.

Lessor shall accept such encumbrancer's performance of any of Lessee's covenants or other obligations under this Lease, with the same force and effect as though performed by Lessee. Upon providing such written notice, the encumbrancer shall have standing to pursue any appeals permitted by applicable statutes and regulations that Lessee would be entitled to pursue. Further, Lessor shall not terminate the Lease if an encumbrancer has commenced and is diligently pursuing a foreclosure action to terminate Lessee's interest in said Lease and has cured or is taking action to cure the breach that is the cause of the termination.

24.0 EARLY TERMINATION

- 24.1 Lessee shall have the unconditional right to terminate this Lease, without liability or fault (an "Early Termination"), subject to a penalty fee of one (1) year rent which shall be in effect until the ninth anniversary of the Effective Date, by giving to Lessor a thirty (30) day notice of termination upon the seventh anniversary of the Effective Date, so long as the Lessee or any Sublessees are not in Default, beyond all applicable cure periods.
- 24.2 Upon such termination, the Parties shall have no further rights, obligations or liabilities under this Lease, except a penalty fee as set forth in Section 24.1 and except such rights, obligations or liabilities that expressly survive termination hereof
- 24.3 If Lessor terminates the Lease, Lessor shall send a termination letter to Lessee within a reasonable time period from the date of determination by the Lessor to terminate, by certified mail, return receipt requested. Lessee shall vacate the premises within thirty (30) days upon receipt of the termination letter, unless an appeal has been filed. The termination shall become effective 31 days after mailing the letter.
- 24.4 Lessee may terminate this Lease, without penalty, subject to approval from the Lessor, only during the development period, set forth in this Section 5 of this Lease, and conditioned upon the compliance with the Navajo Business Procurement Code, 15 N.N.C. 1501 et seq. Lessee must notify the Lessor in writing of its intention to terminate no later than thirty (30) days prior to the expiration of the development period.
- 24.5 Lessor and Lessee may agree to mutually terminate this Lease without a penalty fee.

25.0 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 a temporary assignment to Lessor, without merger of the Lease and sublease or subtenancy, of any and all such subleases and/or subtenancies, until a lease can be obtained between the Sublessee, Assignee, and the Lessor, which such parties shall diligently pursue.

26.0 DELIVERY OF LEASED PREMISES

- 26.1 At the termination or expiration of this Lease, Lessee will peaceably and without legal process deliver up the possession of the leased premises, in good condition, usual wear and tear casualty, taking or repairs conducted by Lessor excepted.
- 26.2 Lessee agrees to allow the Navajo Nation Environmental Protection Agency to conduct an environmental audit 360 days prior to the expiration or termination of such Lease. Such assessment shall be delivered to the Navajo Nation Division of Economic Development sixty (60) days prior to the expiration or termination or the delivery of the Leased Premises, whichever occurs first, in turn the Navajo Nation Division of Economic Development shall submit to the Lessee a copy of such audit within ten (10) days of receipt.

27.0 INSPECTION

- 27.1 Lessor and its authorized representatives shall have the right, at any reasonable time during the term of this Lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the leased premises, the protection of the leased premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Lessee shall pay the costs of such testing. Nothing in this paragraph shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.
- 27.2 Lessor, specifically Project Development Department, shall have the right, during normal business hours, during the term of this Lease and if the Lease is terminated or expired, at any time, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements as is required under the Navajo Nation Lease Compliance Form, and the Lessor and its authorized Representatives shall notify the Lessee not less than three (3) days before conducting the inspection. Such inspection shall not unreasonably interfere with the Lessee's business operations, unless the Lease has expired or is terminated.

28.0 HOLDING OVER

Holding over by the Lessee after the termination of this Lease shall not constitute a renewal or extension thereof or give the Lessee any rights in or to the leased premises. In the event of a holding over by Lessee, the Lessee shall be subject to immediate removal and shall agree to pay as hold over rental an annual rental computed at double the rental amount charged during the twelve months immediately preceding the commencement of the holding over period. Accepting holdover rent from Lessee does not extend the Lease or constitute an election of remedies or adversely affect any of Lessor's other remedies.

29.0 LEASE REQUIREMENTS NOT EXCLUSIVE

Nothing in this Lease shall be construed to relieve Lessor, Lessee, or any Sublessee of any obligations pursuant to any federal, state, local, or Navajo Nation law, which is currently enacted or which may be enacted at a later date, for the protection of the environment or the public health, safety, or general welfare.

30.0 NO PARTNERSHIP

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

31.0 NAVAJO PREFERENCE

To the extent permitted under paragraph 47.1 and the Civil Rights Act, all employment and contracting opportunities arising out of Lessee's activities under this Lease, Lessee shall give preference in employment and contracting to qualified Navajo individuals and certified contractors in compliance with the Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq. ("NPEA"), and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq. ("NBOA"). The terms and provisions of the NPEA and NBOA are specifically incorporated in, and become a part of this Lease. Violation of such laws by the Lessee shall constitute a breach of this Lease and provide grounds for suspension or termination of the Lease or any other remedy prescribed by the NPEA and NBOA.

32.0 USE OF NAVAJO PRODUCED GOODS AND SERVICES

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

33.0 MINERALS

All minerals, including sand and gravel, contained in or on the leased premises are reserved for the use of Lessor, unless placed on the leased premises by the Lessee. Any removal of minerals as set forth herein shall only be conducted by the Lessor, provided during the Term of the Lease Lessor shall not interfere with the ongoing business operation of the Lessee or Sublessee nor enter upon the premises to search or remove minerals unless agreed in writing between the Lessor and Lessee and/or Sublessee.

34.0 QUALIFICATIONS OF BUSINESS

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

35.0 AGREEMENT TO ABIDE BY ALL APPLICABLE LAWS

The Lessee and the Lessee's employees, agents, and Sublessees and their employees and agents agree to abide by all applicable laws, regulations, and ordinances of the Navajo Nation, the State of New Mexico, and the United States, now in force and effect or as may be hereafter in force and effect.

36.0 GOVERNING LAW AND RESOLUTION OF DISPUTES

The laws of the Navajo Nation shall govern the construction, performance, and enforcement of this Lease. All actions or proceedings brought by Lessee against the Navajo Nation in connection with or arising out of the terms and conditions of this Lease, shall be brought only in the courts of the Navajo Nation, and no action or proceeding shall be brought by Lessee against the Navajo Nation in any court or administrative body of any state.

37.0 CONSENT TO JURISDICTION

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

38.0 COVENANT NOT TO CONTEST JURISDICTION

Lessee hereby covenants and agrees never to contest or challenge the legislative, executive, or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons, and activities within its territorial boundaries, or on any other basis generally applicable to similar challenges to the jurisdiction of a state government.

39.0 NO WAIVER OF SOVEREIGN IMMUNITY

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

40.0 SUCCESSORS

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

41.0 SAVINGS CLAUSE

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

42.0 NO ORAL AGREEMENTS

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

43.0 VALIDITY

This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party hereto until approved by the Resource Development Committee of the Navajo Nation Council and/or any other appropriate oversight committees and the President of the Navajo Nation, pursuant to Navajo Law.

44.0 FEDERAL COMPLIANCE TERMS FOR LOT 15A BUILDINGS

Lessee, based on the contribution by Economic Development Administration for the building and improvements under EDA Award Number: 07-01-06088, hereby agrees to the following Federal compliance terms:

- 44.1 Civil Rights. The Lessee shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, religion, sex, age or physical or mental disability.
- 44.2 Audits and Inspections. At any time during normal business hours and as frequently as is deemed necessary, the Lessee shall make available to the Lessor and the Economic Development Administration (EDA) or EDA's authorized agents, for their examination, all of its records pertaining to matters covered by this Lease and only matters relating to the Lease.
- 44.3 Retention of Records. All records in the possession of the Lessee pertaining to this Agreement shall be retained for a period of three (3) years after the expiration of the Agreement or any extensions thereof. All records shall be retained beyond the three (3) year period if audit findings have not been resolved within that period or if other disputes have not been resolved.
- 44.4 Assignment and Subletting. Assignment and subletting are permitted under this Agreement without prior written approval of the Economic Development Administration or any Navajo Nation committee/body.

44.5 **Environmental Compliance.** Lessor warrants and represents to the Lessee that it has no knowledge of the presence or of the release, now or in the past, of any hazardous substance or material on the Premises. Lessor agrees to hold Lessee free, harmless and indemnified from any penalty, fine, liability, cost or charge whatsoever related to any damage or condition that might be caused by any existing environmental condition that currently exists on the leased premises.

Lessee covenants and agrees that throughout the Term its use and occupancy of the premises will at all times be in strict compliance with all governmental regulations, be they federal, state or local, that pertain to the use and storage of hazardous materials and substances, and Lessee shall save and hold Lessor free, harmless and indemnified from any penalty, fine, liability, cost or charge whatsoever which Lessor may incur by reason of Lessee's failure to comply with this Paragraph. Such covenants, however, shall not apply to any condition that existed at the time Lessee first took possession of any part of the Premises, or which is caused or results from acts of others, including Lessor.

Lessee's obligations under this Paragraph shall automatically terminate and expire one (1) year after Lessee no longer occupies the leased premises unless an action has been filed in some judicial tribunal of competent jurisdiction prior to that time which related to a period during which Lessee in fact did occupy any part of the leased premises.

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

LESSEE, CHURCH ROCK DEVELOPMENT, LLC

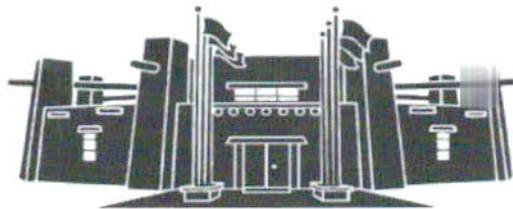
By: _____
Mark Minsoo Lee, Member

Date: _____

THE NAVAJO NATION, LESSOR

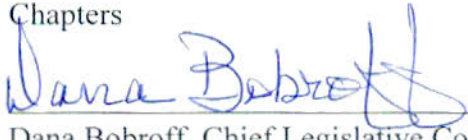
By: _____
President, Navajo Nation or Designee

Date: _____



MEMORANDUM

TO: Honorable Seth Damon
Baahaali, Chilchiltah, Manuelito, Red Rock, Rock Springs, and Tsayatoh
Chapters

FROM: 
Dana Bobroff, Chief Legislative Counsel
Office of Legislative Counsel

DATE: February 28, 2020

SUBJECT: **AN ACTION RELATING TO RESOURCES AND DEVELOPMENT;
APPROVING THE OFF-RESERVATION FEE LAND LEASE BETWEEN
THE NAVAJO NATION AND CHURCH ROCK DEVELOPMENT, LLC**

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.

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).

Please ensure that his 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 NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0044-20_____

SPONSOR: Seth Damon

TITLE: An Action Relating to Resources and Development; Approving the Off-Reservation Fee Land lease between the Navajo Nation and Church Rock Development, LLC

Date posted: March 2, 2020 at 5:08pm

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

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

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

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